

**SUMMARY:** The General Services Administration (GSA) is amending the General Services Administration Acquisition Regulation (GSAR) by revising and updating the agency's implementation of Federal Acquisition Regulation (FAR) Part 13, Simplified Acquisition Procedures.

**DATES:** *Effective Date:* May 28, 2009.

**FOR FURTHER INFORMATION CONTACT:** For clarification of content, contact Ms. Meredith Murphy, Procurement Analyst, at (202) 208-6925, or by email at [meredith.murphy@gsa.gov](mailto:meredith.murphy@gsa.gov). For information pertaining to status or publication schedules, contact the Regulatory Secretariat (VPR), Room 4041, 1800 F Street, NW, Washington, DC, 20405, (202) 501-4755. Please cite Amendment 2009-0007, GSAR case 2007-G502 (Change 35).

**SUPPLEMENTARY INFORMATION:**

**A. Background**

This is part of the GSAM Rewrite Project, initiated in 2006 to revise, update, and simplify the GSA Acquisition Manual (GSAM). An Advance Notice of Proposed Rulemaking (ANPR), with a request for comments, was published in the **Federal Register** at 71 FR 7910 on February 15, 2006. No public comments were received in response to GSAM Part 513. Prior to publication of the ANPR, internal comments were incorporated. The current GSAM Part 513 implements three of the FAR Part 13 subparts and the policy at GSAM 513.003. There are no clauses associated with GSAM Part 513, and no supplementary subparts. The proposed rule deleted the policy statement at GSAM 513.003 and certain GSA-specific forms that are redundant to standard or optional forms in the FAR, as well as the GSAM text associated with them.

The GSA review team noted that the GSAM Part 513 material currently coded as regulatory, *i.e.*, GSAR, does not, in fact, contain regulatory material. The GSAR 513.302-70, 513.303-3(a) and (b), and 513.307 are considered policy, and this material has been converted to GSAM from GSAR. This change is shown by lining out the current GSAR text. The effect is to remove all of the GSAM Part 513 GSAR material. However, this former GSAR material has been retained, with some modifications, in the GSAM, which is also available to the public on the GSAM web site.

A notice of proposed rulemaking was published in the **Federal Register** at 73 FR 44955 on August 1, 2008. The public comment period for the proposed rule closed September 30, 2008. No

comments were received. Therefore, the proposed rule is being converted to a final rule without change.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

**B. Regulatory Flexibility Act**

The General Services Administration certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the changes are primarily editorial in nature. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. No comments were received in response to the shift from GSAR to GSAM.

**C. Paperwork Reduction Act**

The Paperwork Reduction Act does not apply because the changes to the GSAR do not impose recordkeeping or information collection requirements, or otherwise collect information from offerors, contractors, or members of the public that require approval of the Office of Management and Budget under 44 U.S.C. Chapter 35, *et seq.*

**List of Subjects in 48 CFR Part 513**

Government procurement.

Dated: May 14, 2009.

**David A. Drabkin,**

*Acting Chief Acquisition Officer, Office of the Chief Acquisition Officer, General Services Administration.*

■ Therefore, GSA amends 48 CFR part 513 as set forth below:

■ 1. The authority citation for 48 CFR part 513 is revised to read as follows:

**Authority:** 40 U.S.C. 121(c).

**PART 513 [Removed and Reserved]**

■ 2. Remove and reserve Part 513 consisting of Subpart 513.3 and sections 513.302, 513.302-70, 513.303, 513.303-3, and 513.307.

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 680**

[Docket No. 080416577-9898-03]

RIN 0648-AW73

**Fisheries of the Exclusive Economic Zone Off Alaska; Bering Sea and Aleutian Islands Crab Rationalization Program; Amendment 27**

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

**ACTION:** Final rule.

**SUMMARY:** NMFS issues regulations to implement Amendment 27 to the Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs (FMP). These regulations amend the Crab Rationalization Program to: implement the statutory requirements of section 122(e) of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act that specifically directs NMFS to modify how individual processing quota (IPQ) use caps apply to a person who is custom processing *Chionoecetes opilio* crab in the North Region; clarify that for other crab fisheries, IPQ crab that is processed at a facility through contractual arrangements with the facility owners will not be applied against the IPQ use cap of the facility owners provided specific conditions are met; and modify IPQ use caps that limit the amount of IPQ that may be used at a facility by persons processing Eastern Aleutian Islands golden king crab and Western Aleutian Islands red king crab. This 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:** Effective June 29, 2009.

**ADDRESSES:** Copies of Amendment 27, the Regulatory Impact Review (RIR), the Final Regulatory Flexibility Analysis (FRFA), and the categorical exclusion prepared for this action, and the Environmental Impact Statement (EIS), RIR, FRFA, and Social Impact Assessment prepared for the Crab Rationalization Program are available from the NMFS Alaska Region at 709 West 9<sup>th</sup> Street, Room 420A, Juneau, AK, or from the Alaska Region website at <http://www.fakr.noaa.gov/sustainablefisheries.htm>.

**FOR FURTHER INFORMATION CONTACT:** Glenn Merrill, 907-586-7228.

**SUPPLEMENTARY INFORMATION:** The king and Tanner crab fisheries in the exclusive economic zone (EEZ) of the Bering Sea and Aleutian Islands (BSAI) are managed under the FMP. The FMP was prepared by the North Pacific Fishery Management Council (Council) under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act or MSA) as amended by the Consolidated Appropriations Act of 2004 (Public Law 108–199, section 801). A final rule implementing the Crab Rationalization Program (Program) published on March 2, 2005 (70 FR 10174). Regulations implementing the FMP, and all amendments to the Program are at 50 CFR part 680 and general regulations related to fishery management at 50 CFR part 600.

### Program Overview

#### *Harvester, Processor, and Community Provisions*

The Program established a limited access privilege program (LAPP) for nine crab fisheries in the BSAI, and assigned quota share (QS) to persons based on their historic participation in one or more of those nine BSAI crab fisheries during a specific time period. Under the Program, NMFS issued four types of QS: catcher vessel owner (CVO) QS was assigned to holders of License Limitation Program (LLP) licenses who delivered their catch onshore or to stationary floating crab processors; catcher/processor vessel owner (CPO) QS was assigned to LLP holders that harvested and processed their catch at sea; captains and crew onboard catcher/processor vessels were issued catcher/processor crew (CPC) QS; and captains and crew onboard catcher vessels were issued catcher vessel crew (CVC) QS. Each year, a person who holds QS may receive an exclusive harvest privilege for a portion of the annual total allowable catch (TAC), called individual fishing quota (IFQ).

NMFS also issued processor quota share (PQS) under the Program. Each year PQS yields an exclusive privilege to process a portion of the IFQ in each of the nine BSAI crab fisheries. This annual exclusive processing privilege is called individual processor quota (IPQ). Only a portion of the QS issued yields IFQ that is required to be delivered to a processor with IPQ. QS derived from deliveries made by catcher vessel owners (i.e., CVO QS) is subject to designation as either Class A IFQ or Class B IFQ. Ninety percent of the IFQ derived from CVO QS is designated as Class A IFQ, and the remaining 10 percent of the IFQ is designated as Class

B IFQ. Class A IFQ must be matched and delivered to a processor with IPQ. Class B IFQ is not required to be delivered to a specific processor with IPQ. Each year there is a one-to-one match of the total pounds of Class A IFQ with the total pounds of IPQ issued in each crab fishery.

The Program seeks to ensure that communities that were historically active as processing ports continue to receive socioeconomic benefits from crab deliveries through regional delivery requirements, commonly known as regionalization. Even if processors transfer their PQS/IPQ, the Program specifies geographic regions where Class A IFQ must be delivered, and where IPQ must be used to receive that crab. The specific geographic regions applicable to Class A IFQ and IPQ are based on historic geographic delivery and processing patterns. Class B, CVC, CPO, and CPC IFQ are not subject to regionalization. For most crab fisheries, CVO QS and the resulting Class A IFQ, and PQS and the resulting IPQ, are regionally designated for the North Region (i.e., north of 54°20' N. lat.), or the South Region (i.e., any location south of 54° 20' N. lat.) based on the historic delivery and processing patterns of a specific CVO QS or PQS holder. For one fishery, the Western Aleutian Islands golden king crab fishery, half of the Class A IFQ and IPQ are designated for the West region, west of 174° W. long., and the other half of the Class A IFQ and IPQ are not subject to a regional designation. Two crab fisheries are not subject to regionalization requirements, the eastern Bering Sea and western Bering Sea *C. bairdi* fisheries.

For communities that were historically active processing ports, the Program provides a right-of-first-refusal (ROFR) to purchase any PQS or IPQ that are derived from processing activities in those communities. The ROFR provision requires that any processor who wishes to transfer the PQS or IPQ in a specific crab fishery originally derived from processing activities in specific communities for use outside of those communities cannot complete that transfer unless they first provide those communities an opportunity to purchase the PQS or IPQ under the same terms and conditions offered to the processor to whom they wish to transfer those shares. The specific communities and fisheries eligible for the ROFR are described in regulation at 50 CFR 680.2. The intent behind the ROFR is to provide communities with an option to purchase PQS or IPQ that would otherwise be used outside of the community. The rationale for the

specific fisheries and communities subject to ROFR requirements is described in detail in the EIS prepared for the Program (see **ADDRESSES**).

#### *Use Caps*

When the Council recommended the Program, it expressed concern about the potential for excessive consolidation of QS and PQS, and the resulting annual IFQ and IPQ. Excessive consolidation could have adverse effects on crab markets, price setting negotiations between harvesters and processors, employment opportunities for harvesting and processing crew, tax revenue to communities in which crab are landed, and other factors considered and described in the EIS prepared for the Program (see **ADDRESSES**). To address these concerns, the Program limits the amount of QS that a person can hold, the amount of IFQ that a person can use, and the amount of IPQ that can be used onboard a vessel. Similarly, the Program limits the 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 given facility. These limits are commonly referred to as use caps.

Currently, processors are limited in how much IPQ they can receive at a processing facility. In each of the nine BSAI crab fisheries under the Program, a person is limited to holding no more than 30 percent of the PQS initially issued in the fishery and using no more than the amount of IPQ resulting from 30 percent of the initially issued PQS in a given fishery. In addition, no person is permitted to use more than 60 percent of the IPQ crab in the Bering Sea *C. opilio* fishery designated for exclusive use in the north region. Finally, no processing facility can be used to process more than 30 percent of the IPQ in a crab fishery.

The Program is designed to minimize the potential that PQS and IPQ use caps could be evaded through the use of corporate affiliations or other legal relationships that would effectively allow a single person to use PQS or IPQ even if they are not the majority owner of that PQS or IPQ. Prior to Amendment 27, the Program calculated a person's IPQ use cap by summing the total amount of IPQ that is (1) held by that person; (2) held by other persons who are affiliated with that person through common ownership or control; and (3) any IPQ crab that is custom processed at a facility an IPQ holder owns. A custom processing arrangement exists when one IPQ holder: (1) has a contract with the owners of a processing facility to have his crab processed at that

facility; (2) that IPQ holder does not have an ownership interest in the processing facility; and (3) that IPQ holder is not otherwise affiliated with the owners of that crab processing facility. In custom processing arrangements, the IPQ holder contracts with a facility operator to have the IPQ crab processed according to his specifications. Custom processing arrangements typically occur when an IPQ holder does not own an onshore processing facility or cannot economically operate a stationary floating crab processor in a specific region. Relevant to this action, in each of the nine Program fisheries, a person is limited to holding no more than an amount equal to 30 percent of the PQS initially issued in a given BSAI crab fishery and limited to using no more than the amount of IPQ resulting from 30 percent of the initially issued PQS in a given BSAI crab fishery. In addition, no person is permitted to use more than 60 percent of the IPQ crab issued in the Bering Sea *C. opilio* fishery designated for exclusive use in the North Region. Finally, no processing facility can be used to process more than 30 percent of the IPQ issued for a crab fishery.

#### Amendment 27

Amendment 27 accomplishes three broad goals. First, it establishes regulations necessary to implement section 122(e) of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006 (MSRA) which became law on January 12, 2007 (Public Law 109–479). Second, it modifies the methods used to calculate and apply use caps when custom processing arrangements occur. Third, it establishes a limit on the maximum amount of processing that may be undertaken at processing facilities in the Eastern Aleutian Islands golden king crab and Western Aleutian Islands red king crab fisheries.

Section 122(e) of the MSRA specifically directs NMFS to modify how IPQ use caps apply to a person who is custom processing Bering Sea *C. opilio* crab in the North Region. Section 122(e) of the MSRA states:

(e) USE CAPS.—

(1) IN GENERAL.—Notwithstanding sections 680.42(b)(ii)(2) and 680.7(a)(ii)(7) of title 50, Code of Federal Regulations, custom processing arrangements shall not count against any use cap for the processing of *opilio* crab in the Northern Region so long as such crab is processed in the North region by a shore-based crab processor.

(2) SHORE-BASED CRAB PROCESSOR DEFINED.—In this paragraph, the term “shorebased processor” means any person or vessel that receives, purchases, or arranges to

purchase unprocessed crab, that is located on shore or moored within the harbor.

To fully implement section 122(e) of the MSRA, NMFS must adopt conforming regulations. However, several of the specific terms used in section 122(e), such as “custom processing arrangements” and “moored within the harbor,” are not defined in the statute or in regulation and Congress did not provide legislative history to guide NMFS on how to interpret those terms.

In response, the Council received guidance from the public and adopted recommendations to revise the Program to implement section 122(e) of the MSRA. During this process, participants in other crab fisheries expressed concerns about the economic viability of their fishing operations and proposed IPQ use cap exemptions for custom processing arrangements similar to those congressionally mandated for the north region Bering Sea *C. opilio* fishery. Specifically, participants in crab fisheries with historically low TAC allocations or active in crab fisheries in more remote geographic regions argued that exempting IPQ crab processed under custom processing arrangements from the IPQ use caps of the owners of facilities could improve their operational efficiency. The Council recommended Amendment 27 to clarify that IPQ holders who hold at least a 10 percent or greater direct or indirect ownership interest in a processing facility would not be considered as using IPQ when that IPQ crab was (1) received by an IPQ holder at their facility under a custom processing arrangement; (2) limited to specific crab fisheries; (3) received and processed at specific types of processing facilities; or (4) was IPQ crab that was derived from PQS earned from processing in specific communities where crab has been historically delivered. In addition, the Council recommended limits on the amount of IPQ crab that could be processed at a facility for the Aleutian Islands golden and red king crab fisheries. In December 2007, the Council adopted these recommended changes in addition to the clarifications necessary to implement section 122(e) of the MSRA and forwarded Amendment 27 to the Secretary for review.

#### Notice of Availability and Proposed Rule

NMFS published the notice of availability for Amendment 27 on September 11, 2008 (73 FR 52806), with a public comment period that closed on November 10, 2008. NMFS published the proposed rule for this action on

September 19, 2008 (73 FR 54346), with a public comment period that closed on November 3, 2008. NMFS received 12 public comments from 3 unique persons on Amendment 27 and the proposed rule, which are summarized and responded to below.

#### Changes to the Program

This rule modifies or adds regulations at §§ 680.7(a)(7), 680.7(a)(8), 680.7(a)(9), 680.42(b)(2), and 680.42(b)(7). These changes are described in the following sections.

#### *Exempting Custom Processing Arrangements from IPQ Use Caps*

For certain crab fisheries, this rule removes the requirement that NMFS apply any IPQ used at a facility through a custom processing arrangement against the IPQ use cap of the owners of that facility if there is no affiliation between the person whose IPQ crab is processed at that facility and the IPQ holders who own that facility. The changes to § 680.7(a)(7) modify the calculation of a person's IPQ use cap to be the sum of the IPQ held by that person, either directly or indirectly through subsidiary corporations, and all IPQ held by any IPQ holders affiliated with that person. Effectively, this change does not count IPQ crab that are custom processed at a facility owned by an IPQ holder against the IPQ use cap of the owner of the processing facility. A person who holds IPQ and who owns a processing facility is credited only with the amount of IPQ crab used by that person, or any affiliates of that person, when calculating IPQ use caps.

In sum, the rule allows processing facility owners who also hold IPQ to be able to use their facility to establish custom processing arrangements with other IPQ holders to process more crab at their facilities, thereby improving throughput and providing a more economically viable processing platform. Conceivably, most or all of the IPQ crab to which the exemption applies could be processed at a single facility depending on the degree of affiliation that may exist between IPQ holders who have an ownership interest in the facility and the number of IPQ holders that establish custom processing arrangements with a given facility owner. The affiliation relationships among IPQ holders and processing facility ownership can change with time, so the degree of processing consolidation that may occur at a given processing facility in a specific crab fishery cannot be predicted. The analysis prepared for this action notes the possibility that IPQ crab designated for a specific region could be processed

at a single facility and notes the potential benefits that may accrue from increased efficiencies in processing (see **ADDRESSES**). A more extensive discussion of the rationale for relieving processing restrictions is provided in the preamble to the proposed rule (see **ADDRESSES**).

*Removing IPQ Crab Under Custom Processing Arrangement From The Facility Use Cap*

Consistent with the exemption for custom processing arrangements from IPQ use caps, this rule amends the regulations at § 680.7(a)(8) so that IPQ crab processed under a custom processing arrangement do not apply against the limit on the maximum amount of IPQ crab that can be processed at a facility in which no IPQ holder has a 10 percent or greater ownership interest. The rule effectively removes that limit so that more than 30 percent of the IPQ could be processed at a facility in which no IPQ holder has a 10 percent or greater direct or indirect ownership interest in the processing facility, provided those IPQ crab are custom processed at that facility.

*Removing IPQ Crab under Custom Processing Arrangement In The North Region C. opilio Fishery From IPQ Use Cap Calculations*

The rule modifies regulations at § 680.42(b)(2) so that IPQ crab processed under a custom processing arrangement do not apply against the IPQ use cap limitation that no person can use more than 60 percent of the Bering Sea *C. opilio* IPQ designated for the North Region. This exemption for IPQ crab custom processed in the Bering Sea *C. opilio* fishery in the North Region meets the intent of section 122(e) of the MSRA to exempt custom processing arrangements from this use cap.

To conform to section 122(e) of the MSRA, this rule modifies § 680.42(b)(2) to allow persons holding Bering Sea *C. opilio* IPQ designated for delivery in the North Region to establish custom processing arrangements to have their IPQ crab processed at a facility. The IPQ crab processed under those custom processing arrangements do not apply against the Bering Sea *C. opilio* use cap of IPQ holders who own the facility where those crab are custom processed.

*Fisheries Subject To Custom Processing Arrangement Exemption*

The rule establishes regulations at § 680.42(b)(7)(ii)(A) that list the six crab fisheries for which the custom processing arrangement exemption applies. These are: Bering Sea *C. opilio* with a North Region designation,

Eastern Aleutian Islands golden king crab, Pribilof Island blue and red king crab, Saint Matthew blue king crab, Western Aleutian golden king crab processed west of 174° W. long., and Western Aleutian Islands red king crab. In these six crab fisheries, IPQ crab that are processed under a custom processing arrangement do not apply against the use cap of IPQ holders who own the facility where those crab are custom processed.

*Facilities Where Custom Processing Arrangements Are Exempt From Use Caps*

The rule establishes regulations at § 680.42(b)(7)(ii)(B) that exempt IPQ crab under custom processing arrangements in the six crab fisheries described above from applying to the IPQ use cap of the owner of that facility if that facility meets specific requirements. Consistent with section 122(e) of the MSRA, the Council recommended that any IPQ crab that were custom processed do not count against the IPQ use cap of persons holding a 10 percent or greater direct or indirect ownership interest in the facility where those IPQ crab were custom processed if the facility is: (1) in a home rule, first class, or second class city in the State of Alaska on the effective date of this rule; and (2) either a shorebased crab processor (i.e., shoreside), or a stationary floating crab processor that is moored within a harbor at a dock, docking facility, or other permanent mooring buoy, with specific provisions applicable to the City of Atka.

In addition to the requirement that a facility be located in a home rule, first class, or second class city, the facility needs to be a shoreside processor, or be a stationary floating crab processor that is moored at a dock, docking facility, or other permanent mooring buoy located in a harbor within the municipal boundaries of the city. An exemption to the requirement that a stationary floating crab processor must be moored within a harbor at a dock, docking facility, or other permanent mooring buoy is provided for the City of Atka as described below.

The requirement that a stationary floating crab processor be moored within a harbor within city boundaries is consistent with the statutory language of section 122(e) of MSRA. Although section 122(e) applies only to the *C. opilio* fishery in the North Region, the Council, with one exception for the City of Atka, did not wish to apply different standards to the use of stationary floating crab processors for purposes of applying an IPQ use cap exemption for

custom processed crab in different crab fisheries. NMFS determined that a uniform standard will reduce confusion among fishery participants and ease enforcement of this provision.

The Council recommended that a stationary floating crab processor would not be required to be moored within a harbor in the city of Atka. Currently, the city of Atka lacks an onshore processing facility capable of processing crab economically. These conditions do not appear to exist in other cities with substantial history of crab processing, and so an exemption to the mooring requirements does not appear necessary in other communities where custom processing is likely to occur. The preamble to the proposed rule contains a more detailed description of the rationale for the provisions specific to Atka (see **ADDRESSES**).

NMFS defines home rule, first class, and second class cities and the boundaries of those cities as those that are in existence as of the effective date of this rule. Fixing the specific communities and their boundaries facilitates compliance with this provision and assists these municipalities or the State of Alaska in considering effects on processors who rely on the existing municipalities and the boundaries of those existing municipalities in any future action to redesignate these cities or modify their boundaries.

*Use Cap Exemptions For IPQ Crab Subject To ROFR Requirements*

This rule adds regulations at § 680.42(b)(7)(ii)(C) to exempt IPQ crab derived from PQS that is, or once was, subject to ROFR requirements and that is to be custom processed within the boundaries of an eligible crab community (ECC) with whom the ROFR contract applies, or did apply, from the IPQ use cap of the owner of the facility where those crab are custom processed. Any IPQ crab derived from this PQS and custom processed within that community would be exempt from the IPQ use cap of persons who own the crab processing facility.

The fisheries subject to ROFR contract requirements are the Eastern Aleutian Islands golden king crab, Bristol Bay red king crab, Bering sea *C. opilio* crab, Pribilof Islands red and blue king crab, and St. Matthew blue king crab fisheries. The eight ECCs are Akutan, Dutch Harbor, False Pass, King Cove, Kodiak, Port Moller, Saint George, and Saint Paul. The net effect of this provision is to allow consolidation of processing through custom processing arrangements in these specific communities that are historically

dependent on crab processing operations.

This provision differs from the more general custom processing IPQ use cap exemptions in several ways. First, processing can occur only within the boundaries of the ECCs. Second, Bristol Bay red king crab as well as Bering Sea *C. opilio* crab designated for either the North Region or the South Region could be custom processed at facilities within the ECCs and does not apply to the IPQ use cap of the facility owners. Third, only IPQ derived from PQS that is, or was, subject to a ROFR with an ECC and transferred to another person can be custom processed at a facility within that community, and does not apply to the IPQ use cap of the owner of the facility. Fourth, this provision does not require that these IPQ crab be processed at specific types of facilities, only that the IPQ crab be processed within the boundaries of the ECC. Therefore, this provision does not require the IPQ crab to be processed only onshore or on stationary floating crab processors that are moored at a dock or a permanent mooring buoy in a harbor.

*IPQ Use Cap For Eastern Aleutian Islands Golden King Crab and Western Aleutian Islands Red King Crab*

The rule adds regulations at § 680.7(a)(9) that prohibit a person from processing more than 60 percent of the IPQ issued for the Western Aleutian Islands red king crab or Eastern Aleutian Islands golden king crab fisheries in a crab fishing year at a single processing facility east of 174° W. long. This provision applies to all IPQ processed at a shoreside crab processor or stationary floating crab processor, and does not exempt IPQ crab that are delivered under a custom processing arrangement from IPQ use cap calculations. The Council's intent behind this provision is to limit the potential consolidation of IPQ that could occur under the custom processing exemptions contained in this rule. This processing limit prevents excessive consolidation of the number of markets available to harvesters, a scenario that is more likely in these fisheries compared to the other fisheries with custom processing exemptions given their historically relatively small TACs compared to other crab fisheries.

In addition, this provision minimizes the potentially adverse effects on processing facilities west of 174° W. long. by preventing the complete consolidation of IPQ in processing facilities east of 174° W. long. Due to the limited TAC in the Eastern Aleutian Islands golden king crab fishery, and the currently limited number of PQS

holders, processing could consolidate in one or a few facilities east of 174° W. long., such as Dutch Harbor or other ports where PQS holders in this fishery currently own processing facilities. Processors owning facilities west of 174° W. long. expressed concern about their ability to effectively compete in these fisheries if all of the catch were processed in one facility east of 174° W. long.

**Response to Comments**

*Comment 1:* The Fisheries Impact Statement prepared to support the proposed rule did not adequately describe the foreseeable impacts of the proposed rule on certain processing operations in the Aleutian Islands Pacific cod fishery. The commenter notes that he has provided testimony to the Council recommending that limits be placed on the amount of Pacific cod that may be processed by vessels that have historically been used as stationary floating crab processors in the *C. opilio* fishery. The commenter believes that Pacific cod processing limits should be established and notes that such processing limits are not included as part of this action.

*Response:* Section 303(a)(9) of the MSA requires that a fishery management plan include a fishery impact statement:

[W]hich shall assess, specify, and analyze the likely effects, if any, including the cumulative conservation, economic, and social impacts, of the conservation and management measures on, and possible mitigation measures for—

(A) participants in the fisheries and fishing communities affected by the plan or amendment;

(B) participants in the fisheries conducted in adjacent areas *under the authority of another Council* [emphasis added], after consultation with such Council and representatives of those participants; and

(C) the safety of human life at sea, including whether and to what extent such measures may affect the safety of participants in the fishery."

Section 303(a)(9)(B) requires the Council and NMFS to examine the likely effects of Amendment 27 on participants in other fisheries under the jurisdiction of fishery management councils other than the North Pacific Fishery Management Council. It is not clear that section 303(a)(9)(B) applies to this action. The EEZ off Alaska under the authority of the Council is not adjacent to the EEZ of any other state under the authority of any other fishery management council. Second, this action would not be expected to have "likely effects" because this action is limited to amending the FMP for crab

fisheries in the BSAI and these stocks are not harvested in fisheries under the authority of other fishery management councils.

NMFS and the Council did conduct a Fishery Impact Statement consistent with section 303(a)(9) of the MSA that assessed, specified, and analyzed the likely effects of Amendment 27. The Fishery Impact Statement is contained in section 4.2 of the RIR/IRFA prepared for this action and notes "[t]he impacts of the alternatives on participants in the harvesting sector and processing sector have been discussed in previous sections of this document. This action will have no effect on participants in other fisheries." Specifically, the RIR/IRFA contains a discussion of the impacts of the action on harvesters, processors, and fishing communities. Section 2.4.7 contains a discussion of the potential effects of this action on participants in other fisheries including groundfish fisheries such as Pacific cod. Specifically, section 2.4.7 notes that:

Processor concerns have focused primarily on the activity of floating processors that have historically participated in the Bering Sea *C. opilio* fishery, now being freed up to process groundfish. In the first two years of the rationalization program, four and three processors participated in the North region, respectively, while four and six processors participated in the South region, respectively. This participation is a substantial decline from the 15 to 20 processors that participated in the years immediately preceding implementation of the program. Given this level of consolidation under [the Program], the potential for this action to contribute to further consolidation that has a perceptible effect on processors in other fisheries, is very limited.

The analysis clearly indicates that although the Program resulted in some consolidation in the crab fishery, the potential that this action would encourage a redistribution of excess processing capacity to the Aleutian Islands Pacific cod fishery is not likely. The Fisheries Impact Statement adequately addresses the requirements of section 303(a)(9) of the MSA, specifically the "likely effects" of the action, including a discussion noting that the specific concerns raised by the commenter are not likely to occur.

NMFS is adding some clarification to section 2.4.7 to note that in response to concerns raised by processing representatives (including the commenter) subsequent to implementation of the Program, the Council has initiated an examination of alternatives to impose limits on processing of groundfish harvested from the Aleutian Islands by floating

processors whose processing history led to an allocation under the Program. That action is intended to address possible inequities to historic groundfish processors that might arise from the potential that additional processing capacity could have been made available by the implementation of the Program and that additional capacity could increase processing effort in the groundfish fisheries. However, the conclusions contained in section 2.4.7 clearly note that the potential effects of Amendment 27 and the accompanying regulations are not likely to have an adverse effect on existing processing operations.

Although it is possible that the implementation of the Program may have reduced the need for processing capacity for BSAI crab fisheries, and some of that processing capacity could be redirected for processing Pacific cod, there is no information to suggest that Amendment 27 and its accompanying regulations would measurably increase the amount of processing capacity that may be used to process Pacific cod in the Aleutian Islands beyond that which may have already occurred with the implementation of the Program. Section 2.4 of the analysis notes that currently there is likely to be excess processing capacity that may be used in a variety of fisheries, including the Aleutian Islands Pacific cod fishery. Modifying the method for calculating the IPQ use cap is not expected to substantially increase processing capacity available for use in the Aleutian Islands Pacific cod fishery.

*Comment 2:* The Council acknowledged and then ignored the foreseeable impacts of this action on Aleutian Islands Pacific cod processing in Adak. The commenter provides an example of the operations of a specific floating processor involved in both Aleutian Islands Pacific cod and the snow crab fishery in 2008 and appears to suggest that this final rule would encourage this vessel to process Aleutian Islands Pacific cod instead of snow crab in a manner that would be disadvantageous to the specific processing operations in Adak. The commenter notes that additional mitigation measures, presumably to address the fishing operations of this floating processor, should be considered. The commenter notes that the Council is currently considering an action that would limit the amount of Aleutian Islands Pacific cod that could be received and processed by vessels that participate in LAPPs. The commenter provides a description of Council deliberations related to Aleutian Islands Pacific cod processing.

In particular, the commenter notes that in the transcript of Council deliberations, NOAA General Counsel had raised concerns about the nature of discussions and whether the Council had fully considered the impacts of its action.

*Response:* NMFS reviewed the record developed by the Council for this action and determined that the Council did not ignore the foreseeable impact of this action on Aleutian Islands Pacific cod processing. The analysis prepared for this action analyzed the effects of this action and its likely effects on participants in various fisheries. Specifically, sections 2.3, 2.4, and 3.7 of the analysis contain an extensive description of the likely effects of this action on harvesters, processors, communities, and participants in other fisheries.

The reference the commenter makes to a specific floating processor and how this action would affect that vessel's operations appears speculative. The analysis generally examined changes in processing operations that might occur from this action but cannot reasonably predict or analyze the actions of specific vessel's operations due to the wide variety of factors that will affect their operations. There is no reason to assume that a specific vessel operator will choose to process Aleutian Islands Pacific cod differently due to this action. However, the information the commenter presents in the comment indicates that the vessel of concern is already actively processing in the Aleutian Islands Pacific cod fishery, in which case, this action would not be expected to have any additional impact on processing by this vessel in the Aleutian Islands Pacific cod fishery.

During deliberations, Council members explored the potential impact of this action on other fisheries. After a consideration of the potential impacts of this action, the Council chose to proceed with this action. In addition, the Council chose to initiate a review of the potential impacts of limited access privilege programs (LAPPs), including the Program, the AFA, and the Amendment 80 Program on processing capacity and the potential effects of those LAPPs on processing operations in various communities. The Council concluded that this action did not have a demonstrable likely impact on processing consolidation that would adversely affect other participants, but did choose to explore the impacts of LAPPs generally under a separate action. Based on the deliberations and a review of the analysis, NMFS agrees with the Council's conclusions. It should be noted that the commenter's

description of comments made by NOAA General Counsel is not complete. NOAA General Counsel raised concerns in an effort to help focus the Council's deliberations. Unfortunately, those deliberations are not available because the discussion among NOAA General Counsel and Council members was not recorded in its entirety.

*Comment 3:* The IRFA improperly concludes that this action would be expected to benefit the directly regulated entities. Adak Fisheries would be harmed because under this action an IPQ holder will have less incentive to custom process in Adak, and this action would provide an incentive for a person to bring a floating processor into the Aleutians to process crab and Pacific cod which would reduce the potential product delivered to Adak. These issues have not been adequately addressed in the IRFA. Specific requirements that allow custom processing by floating processors in the Aleutian Islands undermine the goals of the Council to sustain communities in the Aleutian Islands. Allowing floating processors minimizes the potential benefits that may be received by shoreside processing operations.

*Response:* NMFS disagrees. The commenter's assertions about the effects of this final rule on directly regulated entities must be considered separately from the rule's effects on other indirectly regulated entities, such as the communities of Adak or Atka, or processing facilities. The IRFA and FRFA conclude that directly regulated entities are the PQS and IPQ holders who would be allowed to undertake custom processing with less constraint than they could prior to this rule. The PQS and IPQ holders are expected to benefit because the action would relieve a restriction on their ability to consolidate processing operations and may provide additional benefits relative to the status quo such as improved operations efficiency. The commenter does not provide any information to suggest that this conclusion is not true. The action would allow any directly regulated PQS or IPQ holder to establish custom processing relationships with any other PQS or IPQ holder within the limits established by this action. Specific to this comment, Adak Fisheries, or any other IPQ holder, could choose to have crab processed at any facility that is able to process those crab, including Adak, provided that facility is not otherwise ineligible to be used. The potential for a processing facility at Adak to use this provision is addressed in the analysis prepared for this action (see **ADDRESSES**).

The commenter asserts that the action would reduce the incentive for an IPQ holder to use the processing facility in Adak for custom processing, but provides no reason as to why this may be the case. Facilities in Adak, or any other community, could be used for custom processing. The only factors that would prevent operations from being consolidated in Adak would be those unrelated to this action (e.g., IPQ holders cannot reach agreement with the facility operators on terms to have their crab custom processed at that facility, the facility is unable to meet the processing requirements of the IPQ holders who wish to have their crab custom processed, or the facility is not economically viable for a given custom processing arrangement). As noted in the response to Comment 1, NMFS has concluded it is unlikely that this action will have an effect on processing activities in the Aleutian Islands Pacific cod fishery.

The commenter notes that one of the goals in the Council's purpose and need statement (i.e., problem statement) for this action is "sustaining communities," but the commenter fails to consider the Council's purpose and need statement in its entirety. The Council considered alternatives that would "protect the economic base of remote communities dependent on crab processing, and to allow for the efficient prosecution of quota held by fishermen." Specifically, the Council considered alternatives that would allow Adak and Atka to benefit from more efficient prosecution of crab fisheries by the exemption of custom processing arrangements from IPQ use caps. The Council noted that given the limited shoreside processing facilities available in Aleutian Island communities other than Adak, allowing floating processors to operate in the Aleutian Islands under specific conditions would help to protect the economic base of Atka by allowing floating operators to operate there, while ensuring that processing operations in Adak may continue. Section 2.3.13 of the analysis notes that Adak has the only shoreside processing facilities in the Central and Western Aleutian Islands, and section 2.4.3 notes that the onshore processing facility "at Adak could be provided a substantial advantage relative to other processors, if only shore plants are qualified for the [custom processing] exemption." Because the goal of this action is to protect the economic base of all communities, not only Adak, and is to allow efficient prosecution of quota, the Council considered, and ultimately selected options to allow floating

processors to operate in the Aleutian Islands as a way to accomplish these two goals. A review of the factors the Council considered is provided in the preamble to the proposed rule, section 2.4 of the analysis prepared for this action, and records of Council deliberation.

*Comment 4:* The confidentiality standards applied to data used in the analysis compromised the Council's decision making. Much of the WAG fishery harvested by catcher vessels has been processed by facilities in Adak since 1999. The commenter raises concerns about confidentiality standards applied both in the EIS prepared for the Program and the analysis conducted for this action. The commenter asserts that applying data confidentiality standards to catch data from LAPPs is a bad policy.

*Response:* Due to the limited number of participants in the WAG fishery, the Council and NMFS are unable to release information in the analysis concerning processing in specific locations because doing so would reveal confidential information. Section 402(b)(3) of the MSA allows NMFS to "release or make public any such information in any aggregate or summary form which does not directly or indirectly disclose the identity of any person who submits such information." Similarly, data from State of Alaska fish tickets are considered confidential and may not be released by the State, NMFS, or the Council under the requirements of State of Alaska statute except in an aggregate form that would not reveal data from an individual submitter (Alaska Statute, sec.16.05.815). However, the Council was generally aware of the overall patterns of harvesting and processing in the WAG fishery and the participants in that fishery through public testimony and the limited data available in the analysis. Constraints on the release of confidential information did not affect the ability of the Council or NMFS from adequately considering the effects of its actions. Public comment from the commenter to the Council and NMFS noted the historic and current processing activities of WAG crab at the facilities of Adak.

*Comment 5:* The commenter asserts that this action would undermine existing investments in shoreside processing facilities in Adak. The commenter notes that the current dependence of Adak on crab is compromised by the ability of persons to use a stationary floating crab processor instead of a shoreside facility to custom process crab. The commenter states that section 303A(c)(5) of the MSA requires NMFS to consider

"current and historical" participation by fishing communities.

*Response:* The Council and NMFS considered current and historic participation of Adak, and other fishing communities in the development and approval of this action. Additional detail on the fishing communities and their current and historic participation in the fishery is provided in section 2.4 of the analysis.

While NMFS agrees with the commenter that section 303A(c)(5) requires NMFS to consider that current and historical participation of fishing communities during the development of a new LAPP, this action modifies an existing LAPP and under section 303A(i), the requirements of section 303A(c)(5) are inapplicable to this action. However, pursuant to other provisions of the MSA, NMFS has determined that this action would not undermine the ability for crab to be custom processed in Adak relative to other locations in the Aleutian Islands. The decision by an IPQ holder to process catch in Adak, or at any other location, will be based on a wide array of factors such as the potential costs of any custom processing fees, throughput of the facility, the ability of the facility managers to meet the demands of the custom processors, and other economic factors. Allowing custom processing to occur at both stationary floating processors and shoreside facilities provides competition among processors and addresses concerns raised by the Council that limiting processing to shoreside facilities in the Aleutian Islands could limit competition. Sections 2.3.13 and 2.4.3 of the analysis and the response to Comment 2 provide additional rationale for allowing stationary floating processors and shoreside facilities to custom process crab in the Aleutian Islands.

*Comment 6:* The analysis does not clarify that PQS holders would be the primary beneficiaries of this action. Facility operators who choose to custom process catch will not benefit from this action.

*Response:* NMFS disagrees with the characterization of the analysis. The analysis, particularly sections 2.4 and 3.7, describe the potential effects of the action on harvesters, processing facility operators, PQS and IPQ holders, and communities. Section 2.4 of the analysis describes the potential benefits that PQS holders would receive from this action. However, the analysis also describes potential benefits from this action for facility operators, IPQ holders who may or may not be PQS holders, harvesters, and communities. The analysis contains a comprehensive discussion of the

effects of this action and the potential beneficiaries.

*Comment 7:* The alternatives considered do not adequately address the Council's purpose and need statement for the action. Specifically, the action does not contribute to community stability or provide for efficient prosecution of the fishery. The commenter asserts that 75 percent of the west region designated Western Aleutian Islands golden king crab (WAG) Class A IFQ was not harvested due to additional custom processing fees that made the operations uneconomic. The commenter asserts that PQS and IPQ for west designated WAG crab should be extinguished but that regional delivery requirements should be retained.

*Response:* The Council considered a range of alternatives that would address the purpose and need statement and NMFS determined that the range of alternatives considered by the Council addressed the purpose and need statement for this action. The analysis examines the impacts of the exemption on community stability and effects on processors in section 2 of the document (see **ADDRESSES**). The commenter does not provide any specific examples that describe how the proposed action failed to address the Council's purpose and need statement. Without additional detail, NMFS is unaware of any information omitted from the analysis. The commenter incorrectly states that 75 percent of the west designated WAG Class A IFQ has been unharvested. A review of NMFS landing data from the first three years of the Program indicates that in only one year (2006/2007) was a substantial portion of the west designated WAG Class A IFQ unharvested. NMFS cannot provide a more precise description of the use of west designated WAG Class A IFQ due to limitations on the release of potentially confidential fishery data. Furthermore, NMFS has no information to conclude that the WAG Class A IFQ that was left unharvested was due to additional custom processing fees. Finally, the commenter's statements about eliminating PQS and IPQ for west designated WAG crab are noted, but are not relevant to the purpose of this action which is to modify IPQ use cap calculation procedures to provide greater opportunities for more efficient custom processing operations.

*Comment 8:* The commenter supports the proposed action and notes that the ability for processors to consolidate processing in the north region *C. opilio* fishery will benefit the community of Saint Paul, Alaska. The commenter describes the relationships among

various processing companies and local government entities, and notes that economically efficient crab processing operations are necessary to benefit the community.

*Response:* NMFS notes the support for the rule and the importance of crab processing to Saint Paul.

*Comment 9:* The commenter provides some detailed information about the business arrangements that exist among various local government agencies and companies involved in crab processing in Saint Paul. The commenter notes that the text of section 2.4.2 of the analysis states that "a plant could be owned and operated by two distinct [IPQ] share holders, with each [IPQ] share holder credited with only its own [IPQ] share holdings for purposes of applying the cap." While the preamble to the proposed rule states that "[a] person who holds IPQ and who owns a processing facility would be credited with only the amount of IPQ crab used by that person, or any affiliates of that person, when calculating IPQ use caps." The commenter asks if these two statements are consistent, and whether the specific processing operations described by the commenter would be permitted.

*Response:* NMFS cannot comment on whether the specific business arrangements described by the commenter would be subject to the custom processing use cap exemption due to incomplete knowledge about the specific conditions that may exist among the parties in question. However, the statements made in section 2.4.2 and the preamble to the proposed rule are not inconsistent. In cases where an IPQ holder is not affiliated with another IPQ holder then those two separate and distinct IPQ holders may process their IPQ crab at the same crab processing facility, provided they are otherwise eligible to receive the exemption. The preamble to the proposed rule notes that "affiliation" is defined in regulation at 50 CFR 680.2. Provided an IPQ holder is not defined as affiliated with another IPQ holder, then it is possible that two IPQ holders could own a portion of a crab processing facility, not be considered affiliated according to 50 CFR 680.2, and process their IPQ at that commonly owned facility. In that case, each IPQ holder would be considered to use only the amount of IPQ that it processed at the facility and only that IPQ would be credited against that person's IPQ use cap.

*Comment 10:* The commenter supports the definition of the specific processing facilities at which the custom processing exemption would

apply, and notes that it is consistent with section 122(e) of the MSA.

*Response:* NMFS notes the comment and agrees that the final rule is consistent with section 122(e) of the MSA.

*Comment 11:* The commenter supports applying an exemption to the IPQ use cap calculations for PQS that is, or was, subject to a ROFR.

*Response:* NMFS notes the comment.

*Comment 12:* The commenter raises general concerns about fisheries management asserting that fishery policies have been overly liberal and have not been to the benefit of American citizens. The commenter asserts that NMFS is biased and should not be allowed to manage fisheries.

*Response:* The comments are not specifically related to the proposed rule and recommend broad changes to fisheries management that are outside of the scope of this action.

#### Changes from the Proposed Rule

NMFS did not make any changes from the proposed rule.

#### Classification

The Assistant Administrator for Fisheries, NOAA, has determined that Amendment 27 is necessary for the conservation and management of the BSAI crab fisheries and that it is consistent with the MSA and other applicable laws.

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

#### Final Regulatory Flexibility Analysis (FRFA)

A FRFA was prepared for this rule, as required by section 604 of the Regulatory Flexibility Act (RFA). Copies of the FRFA prepared for this final rule are available from NMFS (see **ADDRESSES**). The FRFA incorporates the IRFA, a summary of the significant issues raised by the public comments in response to the IRFA, NMFS' responses to those comments, and a summary of the analyses completed to support the action. A summary of the FRFA follows.

#### Why Action by the Agency is Being Considered and Objectives of, and Legal Basis for, the Rule

The FRFA describes in detail the reasons why this action is being proposed, describes the objectives and legal basis for the rule, and discusses both small and non-small regulated entities to adequately characterize the fishery participants. The MSA provides the legal basis for the rule, as discussed in this preamble. The objectives of the rule are to (1) implement the statutory

requirements of section 122(e) of the MSRA, modify IPQ use caps apply to a person who is processing IPQ crab through contractual arrangements with the facility owners to provide greater flexibility in processing operations, and (3) modify IPQ use caps that limit the amount of IPQ that may be used at a facility by persons processing Eastern Aleutian Islands golden king crab and Western Aleutian Islands red king crab.

#### Number of Small Entities to Which the Final Rule Would Apply

For purposes of a FRFA, the Small Business Administration (SBA) has established that a business involved in fish harvesting is a small business if it is independently owned and operated, not dominant in its field of operation (including its affiliates), and if it has combined annual gross receipts not in excess of \$4.0 million for all its affiliated operations worldwide. A seafood processor is a small business if it is independently owned and operated, not dominant in its field of operation, and employs 500 or fewer persons on a full-time, part-time, temporary, or other basis, at all its affiliated operations worldwide.

Because the SBA does not have a size criterion for businesses that are involved in both the harvesting and processing of seafood products, NMFS has in the past applied and continues to apply SBA's fish harvesting criterion for these businesses because catcher/processors are first and foremost fish harvesting businesses. Therefore, a business involved in both the harvesting and processing of seafood products is a small business if it meets the \$4.0 million criterion for fish harvesting operations. NMFS currently is reviewing its small entity size classification for all catcher/processors in the United States. However, until new guidance is adopted, NMFS will continue to use the annual receipts standard for catcher/processors. NMFS plans to issue new guidance in the near future.

The FRFA contains a description and estimate of the number of small entities to which the rule would apply. Currently, 29 processors hold processing shares. Estimates of large entities were made, based on available records of employment information on participation in processing activities in other fisheries, and analysts' knowledge of foreign ownership of vertically integrated processing companies. Of the recipients of PQS, 11 are estimated to be large entities, leaving 18 small entities among the directly regulated universe under consideration.

#### Public Comments Received on the IRFA

NMFS received one public comment on the IRFA or on the economic impacts of the rule. That comment is addressed in the Response to Comment section of this preamble (see response to Comment 3) and the FRFA prepared for this action (see **ADDRESSES**).

#### Projected Reporting, Recordkeeping, and Other Compliance Requirements

This rule would not change existing reporting, recordkeeping, or other compliance requirements.

#### Comparison of Alternatives

All the directly regulated individuals would be expected to benefit from the preferred alternative, Alternative 2 (described in this rule) relative to the status quo alternative because it relieves individuals from requirements that limit their ability to consolidate processing operations that may provide additional benefits relative to the status quo. Of the two alternatives considered, status quo and this action, this action minimizes adverse economic impacts on the individuals that are directly regulated.

Although the alternatives under consideration in this action would have distributional and efficiency impacts for directly regulated small entities, in no case are these combined impacts expected to be substantial. The status quo alternative would not allow the additional processing efficiencies that were the motivation for the action. However, exempting processors from use caps under custom processing arrangements would provide additional processing opportunities for small entities that wish to reduce costs by consolidating operations with other processors. Although neither of the alternatives is expected to have any significant economic or socioeconomic impacts, the preferred Alternative 2 minimizes the potential negative impacts that could arise under Alternative 1, the status quo alternative.

#### Small Entity Compliance Guide

NMFS has posted a small entity compliance guide on its website at <http://www.fakr.noaa.gov/sustainablefisheries/crab/crfaq.htm> to satisfy the Small Business Regulatory Enforcement Fairness Act of 1996 requirement for a plain language guide to assist small entities in complying with this rule. Contact NMFS to request a hard copy of the guide (see **ADDRESSES**).

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

Alaska, Fisheries.

Dated: May 21, 2009.

#### John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

■ For the reasons set out in the preamble, 50 CFR part 680 is amended 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 § 680.7, paragraphs (a)(7) and (a)(8) are revised, and paragraph (a)(9) is added to read as follows:

#### § 680.7 Prohibitions.

\* \* \* \* \*

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

(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 be used to receive in excess of 30 percent of the IPQ issued for that crab fishery unless that IPQ crab meets the requirements described in § 680.42(b)(7).

(9) For any shoreside crab processor or stationary floating crab processor east of 174 degrees west longitude to process more than 60 percent of the IPQ issued in the EAG or WAI crab QS fisheries.

\* \* \* \* \*

■ 3. In § 680.42, paragraph (b)(2) is revised, and paragraph (b)(7) is added to read as follows:

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

\* \* \* \* \*

(b) \* \* \*  
(2) A person may not use more than 60 percent of the IPQ issued in the BSS crab QS fishery with a North region designation during a crab fishing year except that a person who:

- (i) Holds IPQ; and
- (ii) Has a 10 percent or greater direct or indirect ownership interest in the shoreside crab processor or stationary

floating crab processor where that IPQ crab is processed will not be considered to use any IPQ in the BSS crab QS fishery with a North region designation if that IPQ meets the requirements described in paragraph (b)(7) of this section.

\* \* \* \* \*

(7) Any IPQ crab that is received by an RCR will not be considered use of IPQ by an IPQ holder who has a 10 percent or greater direct or indirect ownership interest in the shoreside crab processor or stationary floating crab processor where that IPQ crab is processed under § 680.7(a)(7) or paragraph (a)(8) of this section if:

(i) That RCR is not affiliated with an IPQ holder who has a 10 percent or greater direct or indirect ownership interest in the shoreside crab processor or stationary floating crab processor where that IPQ crab is processed; and

(ii) The following conditions apply:

(A) The IPQ crab is:

(1) BSS IPQ crab with a North region designation;

(2) EAG IPQ crab;

(3) PIK IPQ crab;

(4) SMB IPQ crab;

(5) WAG IPQ crab provided that IPQ crab is processed west of 174 degrees west longitude; or

(6) WAI IPQ crab; and

(B) That IPQ crab is processed at:

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

(2) Any stationary floating crab processor that is:

(i) Located within the boundaries of a home rule, first class, or second class city in the State of Alaska in existence on the effective date of this rule;

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

be moored at a dock, docking facility, or at a permanent mooring buoy; and

(iii) Located within a harbor, unless that stationary floating crab processor is located within the boundaries of the city of Atka on the effective date of this rule in which case that stationary floating crab processor is not required to be located within a harbor; or

(C) The IPQ crab is:

(1) Derived from PQS that is, or was, subject to a ROFR as that term is defined at § 680.2;

(2) Derived from PQS that has been transferred from the initial recipient of those PQS to another person under the requirements described at § 680.41;

(3) Received by an RCR who is not the initial recipient of those PQS; and

(4) Received by an RCR within the boundaries of the ECC for which that PQS and IPQ derived from that PQS is, or was, designated in the ROFR.

\* \* \* \* \*

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