

TABLE 6—FINAL 2020 SEASONAL AND SPATIAL ALLOWANCES, GEAR SHARES, CDQ RESERVE, INCIDENTAL CATCH ALLOWANCE, AND AMENDMENT 80 ALLOCATIONS OF THE BSAI ATKA MACKEREL TAC—Continued

[Amounts are in metric tons]

Sector ¹	Season ^{2,3,4}	2020 Allocation by area		
		Eastern aleutian district/bering sea	Central aleutian district ⁵	Western aleutian district
	Critical Habitat	n/a	3,529	5,365

¹ Section 679.20(a)(8)(ii) allocates the Atka mackerel TACs, after subtracting the CDQ reserves, jig gear allocation, and ICAs, to the Amendment 80 and BSAI trawl limited access sectors. The allocation of the ITAC for Atka mackerel to the Amendment 80 and BSAI trawl limited access sectors is established in Table 33 to 50 CFR part 679 and § 679.91. The CDQ reserve is 10.7 percent of the TAC for use by CDQ participants (see §§ 679.20(b)(1)(ii)(C) and 679.31).

² Sections 679.20(a)(8)(ii)(A) and 679.22(a) establish temporal and spatial limitations for the Atka mackerel fishery.

³ The seasonal allowances of Atka mackerel are 50 percent in the A season and 50 percent in the B season.

⁴ Section 679.23(e)(3) authorizes directed fishing for Atka mackerel with trawl gear during the A season from January 20 to June 10 and the B season from June 10 to December 31.

⁵ Section 679.20(a)(8)(ii)(C)(1)(i) limits no more than 60 percent of the annual TACs in Areas 542 and 543 to be caught inside of Steller sea lion critical habitat; section 679.20(a)(8)(ii)(C)(1)(i) equally divides the annual TACs between the A and B seasons as defined at § 679.23(e)(3); and section 679.20(a)(8)(ii)(C)(2) requires that the TAC in Area 543 shall be no more than 65 percent of ABC in Area 543.

⁶ Section 679.20(a)(8)(i) requires that up to 2 percent of the Eastern Aleutian District and the Bering Sea subarea TAC be allocated to jig gear after subtracting the CDQ reserve and the ICA. NMFS sets the amount of this allocation for 2020 at 0.5 percent. The jig gear allocation is not apportioned by season.

Note: Seasonal or sector apportionments may not total precisely due to rounding.

This will enhance the socioeconomic well-being of harvesters dependent upon Atka mackerel in this area. The Regional Administrator considered the following factors in reaching this decision: (1) The current catch of Atka mackerel ICA in the BS/EAI, (2) the harvest capacity and stated intent on future harvesting patterns of the Amendment 80 cooperative that participates in this BS/EAI fishery.

Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act. This action is required by 50 CFR part 679, which was issued pursuant to section 304(b), and is exempt from review under Executive Order 12866.

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment would be impracticable and contrary to the public interest, as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the harvest of Atka mackerel in the BE/EAI fishery. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of November 3, 2020.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 6, 2020.

Jennifer M. Wallace,
Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.
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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 680

[Docket No. 201020-0271]

RIN 0648-BJ64

Fisheries of the Exclusive Economic Zone Off Alaska; Removing the Prohibition on Continuing To Fish After a Partial Offload in the Bering Sea and Aleutian Islands Crab Rationalization Program

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

ACTION: Final rule.

SUMMARY: NMFS issues regulations to remove the regulatory prohibition on continuing to fish after a partial offload in the Bering Sea and Aleutian Islands (BS/AI) Crab Rationalization (CR) Program. This final rule is needed to provide CR crab fishery participants operational flexibility to conduct their business in an efficient manner, in particular when emergencies or special circumstances arise. This action is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the Fishery Management Plan (FMP) for BS/AI King and Tanner Crabs (Crab FMP), and other applicable laws.

DATES: Effective December 14, 2020.

ADDRESSES: Electronic copies of the Regulatory Impact Review (referred to as

the “Analysis”) and the Categorical Exclusion prepared for this final rule may be obtained from www.regulations.gov.

FOR FURTHER INFORMATION CONTACT: Megan Mackey, 907-586-7228.

SUPPLEMENTARY INFORMATION:

Authority for Action

NMFS manages the king and Tanner crab fisheries in the exclusive economic zone (EEZ) of the BS/AI under the Crab FMP. The North Pacific Fishery Management Council (Council) prepared the Crab FMP under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801 *et seq.* Regulations implementing most provisions of the Crab FMP, including the CR Program, are located at 50 CFR part 680. Regulations implementing specific provisions of the Crab FMP that pertain to the License Limitation Program are located at 50 CFR part 679.

The proposed rule to implement this action was published in the **Federal Register** on August 4, 2020, with comments invited through September 3, 2020 (85 FR 47157). NMFS received two comment letters containing a total of two unique comments. The comments are summarized and responded to under the heading Comments and Responses below.

A detailed review of the provisions and rationale for this action is provided in the preamble to the proposed rule (85 FR 47157, August 4, 2020) and is briefly summarized in this final rule.

Background

The CR Program was implemented on April 1, 2005 (70 FR 10174, March 2, 2005). The CR Program established a

limited access program (LAP) for nine crab fisheries in the BS/AI and assigned quota share (QS) to persons based on their historic participation in one or more of those nine BS/AI crab fisheries during a specific period. Each year, a person who holds QS may receive an exclusive harvest privilege for a portion of the annual total allowable catch (TAC). This annual exclusive harvest privilege is called individual fishing quota (IFQ).

NMFS also issued processor quota share (PQS) under the CR Program. Each year, PQS yields an exclusive privilege to process a portion of the IFQ in each of the nine BS/AI CR 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. Each year there is a one-to-one match between the total pounds of IFQ that must be delivered to a processor with IPQ and the total pounds of IPQ issued in each CR crab fishery.

Under current regulations, a person may offload a portion of CR crab from a vessel at multiple processors. However, except for the Western Aleutian Islands golden king crab fishery, regulations at 50 CFR 680.7(b)(3) prohibit a person from fishing again or taking CR crab on board the vessel until all of the crab originally on board the vessel have been offloaded. The prohibition against resuming fishing once an offload has commenced and until it is completed applies to CR Program crab, which includes IFQ and Community Development Quota (CDQ) crab landings. In December 2019, the Council recommended removing the regulatory prohibition on resuming fishing for CR crab between partial offloads for all CR crab fisheries. This final rule is a regulatory amendment that will remove this prohibition against continuing to fish in the BS/AI CR crab fisheries once offloading has commenced and until all CR crab are landed.

Removal of the prohibition will provide IFQ and CDQ participants in CR crab fisheries operational flexibility to conduct their business in an efficient manner, in particular when emergencies or special circumstances arise, such as inclement weather. With adjustments by the State of Alaska (State) to its data collection protocols, proper catch accounting will be maintained with this action. The following sections of this preamble provide (1) a brief history of the prohibition on crab partial offloads, (2) the expected effects of and need for this action, and (3) a description of the

regulatory change made by this final rule.

Brief History of the Prohibition on Crab Partial Offloads

The regulatory prohibition on returning to fish after a partial offload of crab was originally established with the implementation of the CR Program. NMFS published the final rule to implement the CR Program on March 2, 2005 (70 FR 10174). Fishing under the CR Program started with the 2005/2006 crab fishing year. The regulatory prohibition on partial offloads at 50 CFR 680.7(b)(3) was intended to address enforcement concerns associated with a potential change in discarding behavior due to the new management of the fisheries.

Experience with the CR Program has shown that illegal (unreported) crab discards are unlikely for several reasons. First, there is no prohibition on sorting crab at the rail, and this is where undesirable crab are often discarded. These discards are accounted for by the Alaska Department of Fish and Game (ADF&G) and ADF&G has communicated to industry that high levels of discarding at the rail would be reflected in the stock assessments and ultimate crab TACs. Second, while discarding crab later in the trip is prohibited, dumping crab at sea once it has gone into the tanks would be dangerous and impractical. Third, the risk of quota overages has been greatly reduced due to the cooperative structure of the CR Program, online quota transfers, and post-delivery quota transfers, giving the industry many options to resolve a potential overage. Finally, the structure of the CR Program means more people than just the vessel operators are put at risk by this sort of illegal activity. Experience with the CR Program also has shown that the prohibition against continuing to fish for CR crab after an offload has begun and until the offload is complete has simplified dockside sampling and catch accounting.

In April 2018, the Council received a proposal from the Pacific Northwest Crab Industry Advisory Committee, requesting removal of the regulatory prohibition on continuing to fish after a partial offload in the BS/AI CR Program. In February 2019, the Council decided to examine the proposal, stating that while the Council was interested in providing operational flexibility, particularly in emergencies or special circumstances, it also wanted to ensure that ADF&G would be able to maintain proper catch monitoring and accounting in the CR crab fisheries.

The Expected Effects of and Need for This Action

While fishing after a partial delivery was fairly common practice by vessels racing to catch and deliver crab before the CR Program was implemented, the CR Program has increased coordination between harvesters and processors, allowing for an increase in the efficiency of offloads. Under the CR Program, it is more economically efficient for vessels to offload all crab before resuming fishing in order to avoid deadloss of the crab sitting in tanks on the vessel. For this, and other reasons described earlier, the Council and NMFS do not anticipate that the resumption of fishing after a crab partial offload will become a routine operating procedure. The flexibility resulting from this action is expected to be used only in emergency situations, such as inclement weather, or special circumstances related to the economics of the operations. Therefore, the impacts of this action are expected to be minimal and only beneficial.

While the prohibition at § 680.7(b)(3) may no longer be needed to address enforcement concerns, the prohibition has greatly simplified dockside sampling and catch accounting. Section 2.7.4 of the Analysis for this action examined the effects of removing this prohibition for all CR fisheries on the State's monitoring and catch accounting procedures and whether modifications would be necessary and if necessary, what modifications would be required. Section 2.7.4 concludes that without modifications by ADF&G to accommodate the change, removal of the prohibition could complicate some aspects of the State's dockside sampling, catch accounting, and Observer Program, and may degrade the spatial quality of some of the data collected in these fisheries. ADF&G indicated that it could adjust its monitoring and catch accounting procedures and protocols to accommodate the action and maintain data quality, and that it would make those adjustments upon implementation of the action.

The Council determined, and NMFS agrees, that this action will provide CR Program fishery participants with additional operational flexibility to conduct their business in an efficient manner, in particular when emergencies or special circumstances arise, such as inclement weather. The Council also acknowledged that with adjustments by the State to its data collection protocols, proper catch accounting will be maintained with this action.

Final Rule

This final rule removes the prohibition on continuing to fish after a partial offload of crab in the BS/AI CR crab fisheries. To make this change, this final rule removes the prohibition language in paragraph (b)(3) under 50 CFR 680.7 and redesignates subsequent paragraphs under § 680.7(b).

Comments and Responses

NMFS received two comment letters containing a total of two unique comments.

Comment 1: NMFS should deny this rule change.

Response: NMFS sees no reason to deny this rule change, which the Council and NMFS anticipate will rarely be used and will provide flexibility to CR crab fishery participants to conduct their business in an efficient manner.

Comment 2: Removal of the prohibition would provide IFQ and CDQ participants in CR crab fisheries operational flexibility to conduct their business in an efficient manner, in particular when emergencies or special circumstances arise, such as inclement weather, while also ensuring proper catch accounting.

Response: NMFS acknowledges the comment and is implementing this final rule.

Changes From the Proposed Rule

No changes were made from the proposed rule.

Classification

Pursuant to section 304(b)(3) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this final rule is consistent with the Council's regulatory amendment, the Crab FMP, other provisions of the Magnuson-Stevens Act, and other applicable laws.

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

This final rule is considered an Executive Order 13771 deregulatory action.

Certification Under the Regulatory Flexibility Act

The Chief Counsel for Regulation for the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not required and none was prepared.

This final rule contains no information collection requirements under the Paperwork Reduction Act of 1995.

List of Subjects in 50 CFR Part 680

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: October 20, 2020.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For reasons set out in the preamble, NMFS amends 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.

§ 680.7 Amended

■ 2. In § 680.7, remove paragraph (b)(3) and redesignate paragraphs (b)(4) through (7) as (b)(3) through (6), respectively.

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