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DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Parts 679 and 680**

RIN 0648–BL50

Fisheries of the Exclusive Economic Zone off Alaska; Revisions to the Economic Data Reports Requirements; Amendment 52 to the Fishery Management Plan for the Commercial King and Tanner Crab Fisheries of the Bering Sea and Aleutian Islands

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

ACTION: Notification of availability of fishery management plan amendments; request for comments.

SUMMARY: The North Pacific Fishery Management Council (Council) submitted Amendment 52 to the Fishery Management Plan for the Commercial King and Tanner Crab Fisheries of the Bering Sea and Aleutian Islands (Crab FMP) to the Secretary of Commerce (Secretary) for review. If approved, Amendment 52 would remove third-party data verification audits and blind formatting requirements for the Bering Sea and Aleutian Islands (BSAI) crab fisheries Economic Data Report (EDR). Amendment 52 is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the Crab FMP, and other applicable laws.

DATES: Submit comments on or before December 5, 2022.

ADDRESSES: You may send comments, identified by Docket ID NOAA–NMFS–2022–0083 by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to <https://www.regulations.gov> and enter NOAA–NMFS–2022–0083 in the Search box. Click on the “Comment” icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Assistant Regional Administrator, Sustainable Fisheries Division, Alaska

Region NMFS. Mail comments to P.O. Box 21668, Juneau, AK 99802–1668.

Instructions: 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 by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous).

Electronic copies of the Regulatory Impact Review (referred to as the “Analysis”) and the Categorical Exclusion prepared for this rule may be obtained from <https://www.regulations.gov> identified by Docket ID NOAA–NMFS–2022–0083 or from the NMFS Alaska Region website at <https://www.fisheries.noaa.gov/region/alaska>.

FOR FURTHER INFORMATION CONTACT: Jennifer Watson, 907–586–7228.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Act requires that each regional fishery management council submit any fishery management plan amendment it prepares to NMFS for review and approval, disapproval, or partial approval by the Secretary. The Magnuson-Stevens Act also requires that NMFS, upon receiving an FMP amendment, immediately publish a notice in the **Federal Register** announcing that the amendment is available for public review and comment. This document announces that proposed Amendment 52 is available for public review and comment.

NMFS manages the king and Tanner crab fisheries in the U.S. exclusive economic zone (EEZ) of the BSAI under the Crab FMP. The Council prepared, and NMFS approved the Crab FMP under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801 *et seq.* Regulations governing and implementing the Crab FMP appear at 50 CFR parts 600 and 680.

The purpose of the EDR program is to gather data and information to improve the Council’s ability to analyze the social and economic effects of the catch share or rationalization programs, to understand the economic performance of participants in these programs, and to help estimate impacts of future issues, problems, or proposed revisions to the programs covered by the EDRs.

The Crab EDR was implemented concurrent with the Crab Rationalization (CR) Program under Amendments 18 and 19 of the BSAI Crab FMP (70 FR 10174, March 2, 2005). The rule requiring the Crab EDR submission was codified in 50 CFR 680.6, which retroactively required affected entities to submit EDR forms for 1998, 2001, and 2004 calendar year operations by June 1, 2005, and to submit an annual Crab EDR form for calendar year 2005 and thereafter by May 1 of the following year. Amendment 42 (78 FR 36122, June 17, 2013) was implemented on July 17, 2013, and revised Crab EDR reporting requirements. The amended rule extended the annual submission deadline to July 31.

The reporting requirements for the Crab EDR apply to owners and leaseholders of catcher vessels (CVs) and catcher/processors (CPs) with landings of BSAI CR crab, including Community Development Quota (CDQ) allocation crab, and owners and leaseholders of Registered Crab Receivers, who purchase and/or process landed BSAI CR crab during a calendar year. For all groups, the annual submission requirement is imposed on CR crab program participants who harvest, purchase, or process CR crab.

The Crab EDR consists of reporting forms developed for three respective sectors: the Crab CV EDR, Crab processor EDR, and the Crab CP EDR. The CV and processor forms collect distinct sets of data elements, with the CP form combining of all data elements collected in the CV form and applicable elements from the processor form. A complete list of the data elements for each of the forms is in Section 3.2 of the Analysis (see **ADDRESSES**).

Data submitted in the current Crab EDRs provide valuable information for program evaluation and analysis of proposed conservation and management measures. However, since the inception of the Crab EDR over 10 years ago, revisions are now needed to improve the usability, efficiency, and consistency of this data collection program and to minimize cost to industry and the Federal government. Several proposed revisions to the Crab EDR, specifically on the use of third-party audits and blind formatting could reduce industry and government costs while still maintaining the integrity and confidentiality of this data collection program.

In the original Crab EDR program, several requirements were implemented to provide a higher standard of confidentiality for proprietary business information reported in the Crab EDR.

These requirements were stricter than those that apply to all other confidential fisheries information. In practice, these stricter confidentiality requirements have reduced the usability of the data for analysis and increased the cost of the Crab EDR program, without providing additional practical protections.

Confidentiality requirements that apply to other routine data collections provide sufficient protections for the EDR data.

In consideration of the confidentiality issues and other issues discussed below, in February 2022, the Council recommended Amendment 52 to remove third-party audit verification, data aggregation protocols, and blind formatting requirements from the Crab EDR program. The amendment, if approved, would improve the usability, efficiency, and consistency of the Crab EDR data submissions and minimize cost to industry and the Federal government.

The BSAI Crab FMP requires NMFS to verify the accuracy and completeness of Crab EDR data submissions. The NMFS designated collection agent (DCA) must conduct the data verification process with any person submitting the Crab EDR or that person's designated representative. The regulations require the EDR submitter to respond to inquiries from the DCA within 20 days, require the submitter to provide supporting records to the DCA as requested, and authorize DCA to review the records for the purpose of substantiating values reported in the Crab EDR. In developing the data verification and audit procedures, NMFS has relied on the Council's record of decision for the CR Program for guidance in implementing the Crab EDR, specifically the CR Program Regulatory Impact Review/Initial Regulatory Flexibility Analysis (RIR/IRFA). This guidance states that the verification of data, auditing, and error-checking would be the primary responsibility of the DCA. Further, the guidance provides that the DCA will: (1) develop a system to identify outliers, incomplete data, or anomalies in the data submissions; and (2) retain accountants to review data submissions as part of the audit process and identify errors or flag possible fraudulent submissions.

NMFS began developing data verification protocols and procedures for the Crab EDR in 2005 and has continued to refine the process to identify and correct data reporting errors while reducing the cost and burden of the audit process. Prior to incorporation of EDR data into the Alaska Fisheries Information Network (AKFIN) relational database in 2011,

EDR data validation was largely reliant on the audit process. Automation now allows the DCA to identify most errors and obtain corrections from submitters shortly after EDRs are submitted.

EDR data verification via automation currently employs a series of validation procedures, including (1) primary, automated data validation procedures, (2) secondary, validation employing statistical procedures and visual inspection to identify data anomalies and statistical outliers, and (3) editing and imputation for data errors identified by data users that were not detected and corrected in primary and secondary validation.

Primary automated validation procedures are executed on each EDR record shortly after receiving a certified EDR submission, with follow-up contacts with submitters to obtain corrections as needed. Most of these errors are identified and corrected easily with a phone call and result in a re-certified EDR submission within 2 weeks of the submission.

To begin secondary validation via automation, AKFIN completes integration of current year EDR records with other datasets, calculation of pro-rata and statistical indices, and plotting for visual inspection. NMFS and the DCA review the results to identify visual outliers and anomalies. Flagged values are selected for correction through follow-up by the DCA, or selection to third-party verification audit.

By contrast, audit protocols require auditors to notify EDR submitters that have been selected for audit and to request supporting materials to enable auditors to substantiate reported values. Once auditors have received the requested records, the auditors confirm a correct value for the data element (either the original reported value or a corrected value). Auditors also evaluate the quality of supporting information provided by the submitter and characterize the quality and nature of reporting errors. Audit corrections are entered into the EDR database, and AKFIN's production version of the EDR database is finalized after all audit results are entered.

Two issues have emerged from working with CPA firms for the audit process. First, in all audits reviews conducted since 2006, there has not been a single finding of intentional misreporting or of any bias in the direction of reporting errors identified by auditors. Second, verifying the quality of results produced by CPAs has required NMFS and the DCA to recreate the same work completed by the CPA firms. The tasks involved with auditing

EDR data submissions are unique, generally unfamiliar to CPAs, and require one or two annual cycles of EDR submissions to gain experience. Additionally, CPA firms face staff turnovers and cannot be relied on to maintain staffing stability for audits of EDR submissions.

Removal of the audit authorization would prevent the DCA from contracting with a third party auditor to conduct the audit portion of the data verification. However, EDR data verification currently employs a series of validation procedures, as described above. These data validation procedures would remain in place and continue to be used if the audit authorization is removed. Additionally, enforcement provisions exist for all recordkeeping and reporting requirements, including the EDR program. Enforcement actions would continue to be possible in cases of noncompliance with the EDR provisions described in regulations.

In all audit reviews conducted since 2006, there has not been a single finding of intentional misreporting or of any bias in the direction of reporting errors identified by auditors. Additionally, verifying the quality of results produced by auditors requires considerable effort by NMFS and the DCA. Contracting for the services of CPA firms to conduct data validation audits is not straightforward, and the tasks involved are unfamiliar to CPAs. Proposed Amendment 52 would eliminate the audit authorization language in the FMP and would remove these challenges.

The automated verification and audit processes accrue an annual cost for industry estimated to be approximately \$26,400 for the Crab EDR. Routine data verification procedures would continue so some portion of these costs will continue.

In addition to reducing the cost of industry compliance with audits, the NMFS contracting cost for CPA firms would be eliminated. The Crab EDR costs have ranged from approximately \$65,000 annually to as low as about \$22,000 annually and have generally been falling over the life of the Crab EDR program. Proposed Amendment 52 would eliminate the audit contracting costs incurred for the EDR program.

Blind formatting requires the collection of EDR forms to be performed by a third-party designated data collection auditor (DDCA) and the removal of unique identifiers (*e.g.*, vessel identifiers, permit numbers) from EDR data records accessible to Council and NMFS. Blind formatting is required for the Crab EDR. Blind formatting introduces significant administrative challenges for NMFS's management of

the EDR program because staff responsible for oversight of data verification and validation processes are prohibited from accessing identifying information. This has impeded timely completion of verification audits and production of economic reports developed from EDR data.

The EDR data confidentiality protocols also impose limitations on the data's usability because the data is aggregated to such an extent that details needed to analyze the associated catch share program's social and economic impacts are not available. The DDCA and blind formatting are unique to EDR data and were recommended by the Council as part of the Crab EDR program. The Council wished to apply a higher standard of confidential data protection to the cost data and other proprietary business information collected in EDRs, but these protective standards impede the Council and NMFS analysts' use of the data. Blind data is frequently either inconsistently applied across EDR programs or unusable because critical data elements, such as permit numbers, are not accessible. Analysts' use of blind EDR data also enhances the risk of inadvertently disclosing confidential data. This is because of the small number of entities that may be represented in the EDR records. If the EDR records are not accessible to analysts, it is hard for them to know if the data should be confidential. Analysts may avoid using EDR data even where it may have been the best information available, and choose alternative data sets with lower risk and complexity.

The Crab FMP's aggregation standard specifies that a minimum of five distinct submitter EDR records is required for public release of Crab EDR aggregated statistics and tabular summaries. This is in contrast to the standards applied to other confidential commercial fisheries

data under NMFS and Council reciprocal access agreements with other agencies and respective agency administrative rules. The five record guideline was proposed by NMFS in 2006 in response to a Council request for Crab EDR confidentiality and data quality standards.

The small number of entities required to submit Crab EDRs in the crab fisheries requires confidential data suppression of significant portions of the data collected in EDRs. In particular, under the current rule of five, the small number of crab processors providing custom crab processing services prevents release of data reported in the Crab Processor EDR form. Thus, NMFS cannot disclose custom processing service fees paid by buyers and the data showing revenue received by custom process providers. This service fee data represents a substantial portion of the data reported in the crab processor EDR. The five record aggregation standard also requires data suppression for cost and employment data in smaller crab fisheries that would otherwise be publishable.

Amendment 52, if approved, would remove the blind formatting and the rule of five data aggregation requirements from the Crab FMP text making the data aggregations and confidentiality protections for the Crab EDR comparable to the requirements under the other EDR programs. It would also increase the usability and access to the EDR data for Council and NMFS analysts. Without the concern of inadvertently disclosing confidential data, analysts may be more likely to use the EDR data.

Requirements for the CR Program Economic Data Collection are in Chapter 11, Section 14 of the Crab FMP. These requirements are elements of the CR Program, which Amendment 18 added to the Crab FMP in 2004. These requirements were revised in 2013

through Amendment 42 to the Crab FMP. The intent of Amendment 42 for the wording of what was (F) Enforcement of Data Requirements is unclear. The FMP amendment may or may not have retained the text under paragraph 14.7. This action assumes the text is included in the FMP and Amendment 52, if approved, would revise or delete the text as needed to remove the third-party audit requirements, the data aggregation requirements, and the blind formatting requirements described above.

NMFS is soliciting public comments on proposed Amendment 52 through the end of the comment period (see **DATES**). NMFS intends to publish in the **Federal Register** and seek public comment on a proposed rule that would implement Amendment 52, following NMFS' evaluation of the proposed rule under the Magnuson-Stevens Act.

Respondents do not need to submit the same comments on Amendment 52 and the proposed rule. All relevant written comments received by the end of the applicable comment period, whether specifically directed to the FMP amendment or the proposed rule will be considered by NMFS in the approval/disapproval decision for Amendment 52 and addressed in the response to comments in the final decision. Comments received after end of the applicable comment period will not be considered in the approval/disapproval decision on Amendment 52. To be considered, comments must be received, not just postmarked or otherwise transmitted, by the last day of the comment period (see **DATES**).

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

Dated: October 3, 2022.

Jennifer M. Wallace,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

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