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#### Previous Federal Actions

On July 15, 2002, we published a proposed rule (67 FR 46441) to list *Lepidium papilliferum* as endangered under the Act (16 U.S.C. 1531 *et seq.*). For a description of Federal actions regarding *Lepidium papilliferum* prior to that proposed listing rule, please refer to that proposal. Here we provide a summary of the Federal actions concerning *L. papilliferum* from the 2002 proposed listing rule to this action.

We accepted public comments on the July 15, 2002, proposed rule for 60 days, until September 13, 2002. We held a public hearing on August 29, 2002. On September 25, 2002 (67 FR 60206), and again on July 18, 2003 (68 FR 42666), we reopened the public comment period on the proposed listing. On October 30, 2003, we made a Candidate Conservation Agreement (CCA) and a document compiled by the Service entitled "Best Available Information for Slickspot Peppergrass" available for public review and comment (68 FR 61821). On January 22, 2004, we published a withdrawal of our proposed rule to list *Lepidium papilliferum* as endangered (69 FR 3094). Our withdrawal was based on our conclusion that evidence of a negative population trend was lacking and that the formalized conservation plans (e.g., the CCA and Integrated Natural Resource Management Plans) had sufficient certainty that they would be implemented and effective such that the risk to the species was reduced to a level below the statutory definition of endangered or threatened.

On April 5, 2004, the Western Watersheds Project filed a complaint challenging our decision to withdraw the proposed rule to list *Lepidium papilliferum* as endangered (*Western Watersheds Project v. Jeffery Foss, et al.*, Case No. CV 04-168-S-EJL). On August 19, 2005, the U.S. District Court for the District of Idaho reversed our decision to withdraw the proposed rule, effectively reinstating our July 15, 2002, proposed rule (67 FR 46441). The Court remanded the case to the Secretary of the Department of the Interior for reconsideration of "whether a proposed rule listing the slickspot peppergrass as either threatened or endangered should be adopted."

Following the August 19, 2005, remand order, we notified Federal, State, and local agencies, county governments, elected officials, and other

interested parties of the District Court's decision in a letter dated October 13, 2005. We requested new scientific data, information, and comments about *Lepidium papilliferum* by November 14, 2005. We also stated that scientific information received from the public would be utilized in an updated document entitled "Draft Best Available Biological Information for Slickspot Peppergrass (*Lepidium papilliferum*)" (BAI), which would combine all existing and new information regarding the species and its habitat. We accepted information through December 14, 2005, and received 13 comment letters in response to our request for additional information. From February 27, 2006, through March 30, 2006, we accepted information from peer reviewers and others on the draft BAI and on conservation efforts for the species. We received an additional 36 comments. On October 23, 2006, we opened an additional 22-day comment period through November 13, 2006 (71 FR 62078) to allow the opportunity for public comment on a variety of documents, including peer review comments on the draft BAI and results of an expert panel workshop. We received 20 comments in response to this request for comments.

On January 12, 2007, we withdrew our proposed rule to list *Lepidium papilliferum* as endangered under the Act (72 FR 1621). This withdrawal was based on our determination that the best available information indicated that, in regard to *Lepidium papilliferum*, " \* \* \* while its sagebrush-steppe matrix habitat is degraded, there is little evidence of negative impacts on the abundance of *Lepidium papilliferum*, which inhabits slickspot microsites within this system." The withdrawal further concluded that annual abundance of the plant is strongly correlated with spring precipitation; therefore, a high degree of variability in annual plant abundance is to be expected. Furthermore, evidence regarding the plant's overall population trend was inconsistent.

Subsequently, on April 16, 2007, the Western Watersheds Project filed another complaint challenging our January 2007 decision to withdraw the proposed rule to list *Lepidium papilliferum* as endangered (*Western Watersheds Project v. Jeffery Foss et al.*, Case No. 07-161-E-MHW).

On June 4, 2008, the U.S. District Court for the District of Idaho vacated the Service's January 2007 withdrawal of the proposed listing of *Lepidium papilliferum*, and remanded the decision to the Service for further consideration consistent with the

Court's opinion. The Court's action effectively reinstates the July 15, 2002, proposed rule to list *L. papilliferum* as endangered (67 FR 46441). The Service will complete its review of the best available scientific and commercial data, including information and comments submitted during this comment period, as part of the remand process. We will then complete a new listing determination.

#### Author

The primary authors of this document are the staff at the Snake River Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

#### Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: September 10, 2008.

**Kenneth Stansell,**

*Acting Director, Fish and Wildlife Service.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 680

[Docket No. 080416577-81187-02]

**RIN 0648-AW73**

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

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

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

**SUMMARY:** NMFS proposes regulations to implement Amendment 27 to the Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs (FMP). These proposed regulations would 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 would 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:** Comments must be received no later than November 3, 2008.

**ADDRESSES:** Send comments to Sue Salvesson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Ellen Sebastian. You may submit comments, identified by 0648-AW73, by any one of the following methods:

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

- Mail: P. O. Box 21668, Juneau, AK 99802.

- Fax: 907-586-7557.

- Hand delivery to the Federal Building: 709 West 9th Street, Room 420A, Juneau, AK.

All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (e.g., name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe portable document file (pdf) formats only.

Copies of Amendment 27, the Regulatory Impact Review (RIR), the Initial Regulatory Flexibility Analysis (IRFA), and the categorical exclusion prepared for this action, and the Environmental Impact Statement (EIS), RIR, IRFA, and Social Impact Assessment prepared for the Crab Rationalization Program are available from the NMFS Alaska Region at the address above 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 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) 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. The Program 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 Class A IFQ and IPQ requirements comprise one of three key measures currently in regulation to help to ensure that catch historically delivered to onshore processors continues to be delivered to processors with historic investment in the fisheries. These measures are intended to provide economic benefits to processors and communities representative of historic delivery patterns. In addition to the Class A IFQ and IPQ requirements, the Program establishes regional delivery requirements and a right of first refusal for the purchase of PQS and IPQ for specific communities.

Although the Class A IFQ and IPQ matching requirements require linkages between harvesters and processors, PQS and the resulting IPQ can be transferred among processors. Therefore, there is no guarantee that crab will continue to be delivered at the same processing facility or community indefinitely. The PQS/IPQ transfer provisions provide processors with the ability to consolidate processing operations, or sell their processing operations to new participants, for economic efficiency. Limits on the total amount of PQS that a person can hold and limits on the total amount of IPQ that a person can use ensure that no person can receive an excessive share of the processing capacity. These limits constrain the ability of processors to maximize the consolidation of processing.

The second key measure established by 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.

The specific North, South, and West Region boundaries were selected by the Council and implemented in the Program to help ensure that deliveries continue to specific communities

historically active as processing centers for various crab fisheries. Some of the major BSAI crab landing ports include the communities of Saint George and Saint Paul in the North Region; Akutan, Dutch Harbor, False Pass, King Cove, Kodiak, and Port Moller in the South Region; and Adak and Atka in the West Region. Table 1 below shows the nine BSAI crab fisheries that are managed under the Program, the relative proportion of CVO QS and PQS assigned to each region, and the resulting pounds of Class A IFQ and IPQ issued for the 2007/2008 crab fishing

year and assigned to each region. Due to the biology of crab species and the traditional pattern of harvesting crab between calendar years, IFQ and IPQ is assigned for use during a twelve month period spanning two calendar years called a "crab fishing year." The crab fishing year begins on July 1 and ends on June 30 of the following calendar year. Table 1 indicates that a number of crab fisheries were not open to fishing during the 2007/2008 crab fishing year, and therefore no Class A IFQ or IPQ was issued for those fisheries.

TABLE 1: BSAI CRAB FISHERIES, REGIONS, AND ALLOCATIONS OF QS, PQS, CLASS A IFQ, & IPQ.

| Crab fishery                                              | Percentage of CVO QS & PQS assigned to each region | Pounds of Class A IFQ & IPQ assigned to each region based on the 2007/2008 crab fishing year TAC |
|-----------------------------------------------------------|----------------------------------------------------|--------------------------------------------------------------------------------------------------|
| Eastern Aleutian Islands golden king crab (EAG)           | 100 % South                                        | 2,243,082 lb. South                                                                              |
| Western Aleutian Islands golden king crab (WAG)           | 50 % West<br>50 % Undesignated                     | 570,932 lb. West<br>569,855 lb. Undesignated                                                     |
| Western Aleutian Islands red king crab (WAI)              | 100 % South                                        | -- Fishery Not Open --<br>No Class A IFQ or IPQ                                                  |
| Eastern Bering Sea Tanner crab <i>C. bairdi</i> (EBT)     | 100 % Undesignated                                 | 2,525,080 lb. Undesignated                                                                       |
| Western Bering Sea Tanner crab ( <i>C. bairdi</i> ) (WBT) | 100 % Undesignated                                 | 1,592,952 lb. Undesignated                                                                       |
| Bristol Bay red king crab (BBR)                           | 2.7 % North<br>97.3 % South                        | 388,006 lb. North<br>14,893,400 lb. South                                                        |
| Bering Sea snow crab ( <i>C. opilio</i> ) (BSS)           | 47 % North<br>53 % South                           | 21,073,807 lb. North<br>23,957,111 lb. South                                                     |
| Pribilof Islands red and blue king crab (PIK)             | 67.5 % North<br>32.5 % South                       | -- Fishery Not Open --<br>No Class A IFQ or IPQ                                                  |
| St. Matthew blue king crab (SMB)                          | 78.3 % North<br>21.7 % South                       | -- Fishery Not Open --<br>No Class A IFQ or IPQ                                                  |

The third key measure established by the Program to protect communities that were historically active processing ports is 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 detail later in this preamble. 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 IFQ 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.

Relevant to this proposed 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.

The Program is designed to minimize the potential for a single person to evade the PQS or IPQ use caps through the use of corporate affiliations or other legal relationships. To do this, the Program specifies that the amount of PQS or IPQ that applies to a person's use cap is calculated by summing the total amount of PQS or IPQ (1) held by that person; and (2) held by other persons with PQS or IPQ who are "affiliated" with that person through common ownership or control. In addition, any IPQ crab processed at a facility on behalf of an IPQ holder who does not own that facility through "custom processing arrangements" is assigned to the IPQ use cap of the facility owner. This proposed action is focused primarily on modifying the application of IPQ crab custom processed at a facility against the IPQ use cap of the owner of that facility.

#### *Affiliated Persons and Custom Processing Arrangements*

Under the Program, a person is considered "affiliated" with another person if that person has a 10 percent or greater direct or indirect ownership interest in the other person (i.e., a corporation, partnership, or other entity), or that person directs another person's business operations, uses PQS or IPQ, or otherwise has the ability to control that other person (see 50 CFR 680.2 for the definition of "Affiliation"). Attributing all PQS or IPQ held by persons linked through affiliation to each person in the affiliated group limits the ability of corporations to consolidate PQS and IPQ and avoid PQS and IPQ use caps by owning or controlling that PQS or IPQ through holding companies or other corporate arrangements. In addition, the Program limits the amount of consolidation of processing activity that occurs at any one processing facility. Excessive consolidation could limit potential markets and reduce processing activities in some communities if deliveries of crab were consolidated.

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) does not have an ownership interest in the processing facility; and (3) is not otherwise

affiliated with the owners of that crab processing facility. In custom processing arrangements, the IPQ holder essentially contracts with a facility operator to have the crab processed according to his specifications. Custom processing arrangements are typically used when one person holds IPQ designated for a specific region (e.g., North Region *C. opilio* crab), but does not own a shoreside processing facility or cannot economically operate a stationary floating crab processor in that fishery or region. In such a case, a custom processing arrangement with the owner of a processing facility in that region provides an IPQ holder with the opportunity to receive Class A IFQ crab without having to undertake costly measures to establish a physical processing facility.

#### **Amendment 27**

Amendment 27 would accomplish three broad goals. First, it would establish 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 would modify the methods used to calculate and apply use caps when custom processing arrangements occur. Third, it would establish 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 would need to 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 no legislative history is available to guide NMFS on how to interpret those terms. In January 2007, NOAA provided guidance to the affected industry on how it intended to enforce section 122(e) of the MSRA without the benefit of regulations that specifically define these terms. NOAA provided this guidance with the expectation that the Council would subsequently provide recommendations to NMFS to amend the Program's regulations after receiving additional input from the affected industry and community interests. As expected, the Council received guidance from the public and in December 2007 adopted recommendations under Amendment 27 to revise the Program to implement section 122(e) of the MSRA.

During the process of defining the terms required to implement section 122(e) of the MSRA, participants in other crab fisheries expressed concerns about the economic viability of their fishing operations and advocated IPQ use cap exemptions for custom processing arrangements similar to those congressionally mandated for the North Region Bering Sea *C. opilio* fishery be considered in other fisheries. Specifically, participants in crab fisheries with historically low TAC allocations or who are active in crab fisheries in more remote regions argued that exempting IPQ crab processed under custom processing arrangements from the IPQ use caps that apply to the owners of facilities could improve their operational efficiency.

After reviewing public comments and analyzing the BSAI crab fisheries, the Council recommended that crab delivered to a facility for custom processing should be exempt from IPQ use caps for specified crab fisheries and regions. The Council recommended that IPQ crab that is, or had once been, subject to ROFR requirements and processed in the community from which that crab was derived (i.e., the community of origin) be exempted from the IPQ use cap of the owner of the facility where those crab are processed. In addition, the Council recommended a limit on the amount of IPQ crab that could be processed at any one facility in the Eastern Aleutian golden king crab and Western Aleutian 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. This proposed rule would implement the Council's recommendations. The following section describes the changes that this

proposed rule would have on existing Program management.

### Proposed Changes to the Program

This proposed rule would modify or add regulations at §§ 680.7(a)(7), 680.7(a)(8), 680.7(a)(9), 680.42(b)(2), and 680.42(b)(7). These proposed changes would apply as described in the following sections of this preamble.

#### *Exempting custom processing arrangements from IPQ use caps*

For certain crab fisheries, this proposed rule would remove 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 proposed changes to § 680.7(a)(7) would 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 would 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 would be credited only with the amount of IPQ crab used by that person, or any affiliates of that person, when calculating IPQ use caps.

The following example demonstrates how the regulations would be modified by this proposed rule. Person A holds PQS and IPQ, owns a processing facility, and Person A is affiliated with four other PQS/IPQ holders (Persons B, C, D, and E) through common ownership of the companies that hold their PQS/IPQ, delivery contracts that define how their IPQ will be used, and other linkages that create a common ownership or control of their PQS or IPQ. This proposed rule does not change how IPQ use caps apply to a person who is affiliated with other persons. Therefore, the amount of IPQ that is considered to be used by Person A and applied to Person A's use cap is the sum of the IPQ held by Person A, and all of the IPQ held by Persons B through E with whom Person A is affiliated. Similarly, the amount of IPQ considered to be used by each other person (Persons B, C, D, and E) in this commonly affiliated group is the sum of the IPQ held by all the members (Persons A through E) in the group. For this example, Persons B through E receive their IPQ crab at the facility owned by

Person A although they are not owners of that facility.

Under this example, a sixth person, Person F, establishes a custom processing arrangement to have his crab processed at the facility owned by Person A. Also assume that Person F is not an owner of that facility, and is not affiliated with Persons A through E. Under existing regulations, Person F's use of IPQ is applied against Person A's IPQ use cap because Person A owns a ten percent or greater interest in the facility where Person F has his crab custom processed, even though Person A and Person F are not otherwise affiliated with each other. Under this proposed rule, the IPQ held by Person F and custom processed at Person A's facility would not apply to the IPQ use cap calculations for Person A.

In sum, the proposed rule would allow 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 proposed exemption would apply 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.

#### *Removing IPQ crab under custom processing arrangement from the facility use cap*

The proposed rule would amend the regulations at § 680.7(a)(8) so that IPQ crab processed under a custom processing arrangement would 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. Under existing regulations, a processing facility cannot be used to process more than the amount of IPQ resulting from 30 percent of the PQS in a fishery if no IPQ holder has a 10 percent or greater direct or indirect ownership interest in the processing facility. The current prohibition limits the ability of IPQ holders to evade the IPQ use caps and process all of their crab at one facility

by creating a corporate structure where the physical processing facility was held under one corporation that was not linked through common ownership to the corporations holding IPQ. The proposed rule would effectively remove 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. As an example, if Person Q owned a processing facility but held no IPQ, and Persons R and S held IPQ and established custom processing arrangements with Person Q to have their crab processed at his facility, they could do so in excess of the 30 percent facility use cap. This change would allow plant owners to establish custom processing arrangements in specific crab fisheries.

#### *Removing IPQ crab under custom processing arrangement in the North Region C. opilio fishery from IPQ use cap calculations*

The proposed rule would modify regulations at § 679.42(b)(2) so that IPQ crab processed under a custom processing arrangement would 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 would meet the intent of section 122(e) of the MSRA to exempt custom processing arrangements from this use cap.

Existing regulations at § 680.7(a)(7) do not allow "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 Registered Crab Receiver (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 interest. Existing regulations at § 680.42(b) set out the specific PQS and IPQ use caps, which include (1) a PQS use cap of 30 percent of the initial PQS pool for all crab fisheries; (2) an annual IPQ use cap that is equal to the amount of IPQ derived from 30 percent of the initial PQS pool for each fishery; and (3) an annual IPQ use cap of 60 percent for north region Bering Sea *C. opilio* crab.

To conform to section 122(e) of the MSRA, this proposed rule would modify § 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 would 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 proposed rule would establish regulations at § 680.42(b)(7)(ii)(A) that list 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 as the six crab fisheries in which IPQ crab that are processed under a custom processing arrangement would not apply against the use cap of IPQ holders who own the facility where those crab are custom processed.

The Council determined that exempting IPQ crab processed under custom processing arrangements from a facility owner's IPQ use cap would likely improve processing efficiencies without adversely affecting community interests. The Council recommended that crab that are custom processed in the Eastern Aleutian Islands golden king crab, Pribilof Island blue and red king crab, Saint Matthew blue king crab, and Western Aleutian Islands red king crab fisheries not apply against the IPQ use cap of a processing facility owner because these fisheries historically have relatively small TACs when they are open to fishing, and consolidation of processing at one or a few facilities would improve the economic efficiency of harvesters and processors without having an adverse effect on community interests within the regions where those crab are consolidated. If custom processing is not permitted in fisheries with small TACs, it may not be economically viable for harvesters and processors to deliver and process the limited catch at multiple facilities. These four fisheries are all subject to regional designations (see Table 1) and processing operations could only consolidate within a specific region.

For the Western Aleutian Islands golden king crab fishery, the Council recommended exempting IPQ crab processed under custom processing arrangements from a facility owner's IPQ use cap calculation only if those crab were custom processed at facilities west of 174° W. long. The Council recommended this geographic restriction for the exemption based on

the historic landing patterns in the Western Aleutian Islands golden king crab fishery, the processing operations, and the processing opportunities available to the more remote communities of Adak and Atka compared with those in Akutan and Dutch Harbor. The Council concluded that granting an exemption to the IPQ use cap for IPQ crab custom processed west of 174° W. long. could serve to attract processing operations to these more remote communities. Allowing consolidation of IPQ in Adak or Atka could entice harvesters to deliver their undesignated Western Aleutian Island golden king crab west of 174° W. long.

Presumably, these arrangements would be facilitated if harvesters could share some of their operational efficiency benefits with processors. For example, harvesters may accept a lower exvessel price for deliveries to Adak or Atka in exchange for reduced operating costs because vessels would not be required to travel from the fishing grounds to more distant landing facilities (e.g., Dutch Harbor). If the custom processing exemption from IPQ use caps for Western Aleutian Islands golden king crab were not restricted to facilities west of 174° W. long., it could contribute to the consolidation of processing of regionally undesignated shares in Dutch Harbor. The Council considered the relative impacts of processing consolidation on these Aleutian Island communities and judged that there was a greater need to provide additional processing efficiencies and harvester incentives to communities west of 174° W. long. than to communities east of 174° west long. given the limited economic opportunities available in the more remote Aleutian Islands communities.

The Council did not recommend exempting IPQ crab processed under a custom processing arrangement from applying against the IPQ use cap of a facility owner for all crab fisheries. Specifically, IPQ crab that are custom processed at a facility would continue to apply to the use cap of IPQ holders who have a 10 percent or greater direct or indirect ownership interest in the facility when those crab are custom processed in the Bristol Bay red king crab fishery, Bering Sea *C. opilio* crab fishery with a South Region designation, Eastern Bering Sea *C. bairdi* crab fishery, Western Bering Sea *C. bairdi* crab fishery, and Western Aleutian Islands golden king crab fishery if those IPQ crab were processed east of 174° W. long. The Council's rationale for not providing a custom processing exemption from the IPQ use caps for these fisheries follows.

First, Bristol Bay red king crab is assigned a relatively large TAC; 97.3 percent of the IPQ is designated for the South Region (see Table 1), and the Council did not judge that additional opportunities for consolidation were needed to facilitate economically efficient operations among the multiple processors in the South Region. Due to the limited TAC assigned in the North Region, processors can easily consolidate processing operations at a single facility. Second, Bering Sea *C. opilio* crab with a South Region designation also is assigned a relatively large TAC, and the ability to deliver to multiple processors in the South Region reduces the need to exempt custom processing arrangements from the use cap calculation. The Council did not judge that it needed to encourage additional consolidation in the processing operations for this fishery to encourage economically efficient processing. Third, Bering Sea *C. bairdi* crab are not subject to regionalization and therefore the need to exempt custom processing arrangements from the IPQ use cap does not appear necessary because crab can be effectively delivered to any processor with matching IPQ in any location. Fourth, as explained above, exempting Western Aleutian Island golden king crab custom processed east of 174° W. long. is not necessary given the multiple delivery locations available to harvesters delivering east of 174° W. long.

*Facilities where custom processing arrangements are exempt from use caps*

The proposed rule would establish regulations at § 680.42(b)(7)(ii)(B) that would exempt IPQ crab under custom processing arrangements in the crab fisheries described in the previous section of this preamble and listed under the proposed rule at § 680.42(b)(7)(ii)(A) from applying to the IPQ use cap of the owner of that facility if that facility met specific requirements. Consistent with section 122(e) of the MSRA, the Council recommended that any IPQ crab that were custom processed would 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 at 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.

The Council recommended that facilities would have to be located within specific municipal designations used by the State of Alaska to ensure that the custom processing exemption would not serve as an incentive for crab to be processed outside of communities historically active in crab processing. This proposed requirement helps to ensure these communities continue to receive economic benefits from crab processing, including tax revenue, employment opportunities, and subsidiary benefits that arise from processing operations such as additional freight service. As described in the analysis prepared for this proposed action, almost all IPQ crab delivered to shoreside or to stationary floating crab processors are currently processed in home rule, first class, or second class cities, and this proposed action would not be expected to limit custom processing arrangements that are likely to occur (see **ADDRESSES**). This requirement would not contravene or otherwise be inconsistent with the intent of section 122(e) of the MSRA to allow custom processing in the Bering Sea *C. opilio* fishery by shoreside processors.

In addition to the requirement that a facility be located in a home rule, first class, or second class city, the facility would need 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 would be 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 anticipates that a uniform standard would reduce confusion among fishery participants and ease enforcement of this provision.

Applying a requirement that a stationary floating crab processor be moored within a harbor would ensure that communities would continue to

benefit economically if the IPQ use cap exemption on custom processing were approved. Although workers at a stationary floating crab processor are likely to spend less time on shore and in local businesses than shoreside plant workers, these floating processor workers are likely to occasionally frequent local businesses. The use of a dock, docking facility, or permanent mooring buoy within a harbor to qualify for the exemption is likely to ensure some use of local services by both the processing platform and its employees.

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. Additionally, the harbor of Nazan Bay, located along the city shoreline, has limited docking space and lacks permanent mooring facilities. 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. By not requiring moorage at specific facilities in Nazan Bay, neither the City of Atka, nor processors, would have to incur the costs of developing docks or permanent moorage. It is possible that, if a processor chooses to process in Atka regularly, that processor will choose to either develop the onshore processing plant's capacity to handle crab or install docking or moorage that will support a stationary floating crab processor. Allowing processing on stationary floating crab processors within the municipal boundaries of the city of Atka, but not requiring that they be docked or permanently moored, could contribute to the economic development of the city of Atka, and ultimately could encourage the development of permanent mooring facilities or onshore processing facilities in Atka.

NMFS proposes defining the home rule, first class, second class cities and the boundaries of those cities in existence as of the effective date of the rule. Fixing the specific communities and their boundaries would facilitate compliance with this provision by ensuring that future actions by these municipalities or the State of Alaska to redesignate them or modify their boundaries would not have adverse effects on processors who are relying on the existing municipalities and the boundaries of those existing municipalities.

#### *Use cap exemptions for IPQ crab subject to ROFR requirements*

The proposed rule would add 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 Council recommended this provision to ensure that if PQS/IPQ has been transferred from the initial recipients of that PQS/IPQ to another person, the ECC with whom the original PQS/IPQ holder had a ROFR contract could continue to receive the economic benefit of having that crab custom processed within the community. In some instances, the combination of consolidation of PQS/IPQ holdings among processing companies and the application of the IPQ use cap to crab custom processed at a facility in these ECCs to the owner of that facility could limit the retention of processing activity in the community from which those IPQ were derived. Trends in processing capacity consolidation that have occurred under the Program, and are described in the analysis prepared for this proposed action, support this requirement (see **ADDRESSES**).

The proposed rule would allow IPQ crab fisheries that are subject to ROFR contract requirements to be custom processed at a facility and not applied against the IPQ use cap of the facility owner only within the eight ECCs with current or former ROFR agreements. 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 would be to allow consolidation of processing through custom processing arrangements in these specific communities that are historically dependent on crab processing operations.

This provision would differ from the more general custom processing IPQ use cap exemptions in several ways. First, processing could only occur within the



boundaries of the ECCs. All of the ECCs, with the exception of Port Moller, are home rule, first class, or second class cities under State of Alaska law. Port Moller is defined as a census designated place with specific boundaries defined by the U.S. Census.

Second, Bristol Bay red king crab as well as Bering Sea *C. opilio* crab designated for either the North or the South Region could be custom processed at facilities within the ECCs and would not apply to the IPQ use cap of the facility owners. This provision would allow ECCs to continue to receive the economic benefits from the IPQ derived from PQS earned within those communities.

Third, only IPQ derived from PQS that is, or was, subject to a ROFR with an ECC and transferred to another person could be custom processed at a facility within that community, and not apply to the IPQ use cap of the owner of the facility. As an example, if a person receives Bristol Bay red king crab IPQ by transfer that is, or was, derived from PQS subject to a ROFR contract in Akutan and custom processes those IPQ crab in Sand Point, the use of that IPQ would apply against the IPQ use cap of the facility owner in Sand Point. However, if a person received Bristol bay red king crab IPQ by transfer that is, or was, derived from PQS subject to a ROFR contract in King Cove and custom processes those IPQ crab in King Cove, those IPQ would not apply against the IPQ use cap of the facility owner in King Cove. Again, this provision would ensure that the relief from the IPQ use cap for custom processed IPQ crab applies only to IPQ crab that are custom processed in the ECC that has, or had, a ROFR contract on the PQS that gave rise to those IPQ. This provision would maintain the Council's goal of providing economic benefits to historically active crab processing communities.

Fourth, this provision would 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. This would 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. Crab could be processed at any facility onshore or at any stationary floating crab processor within the boundaries of the eligible crab community. The Council did not recommend, and this proposed rule would not implement, more restrictive provisions on the processing facilities that could be used when custom processing IPQ crab under this

exemption. The Council did not recommend more restrictive facility requirements because such requirements could limit the ability of ECCs to receive benefits that may arise from establishing custom processing arrangements within their communities.

*IPQ use cap for Eastern Aleutian Islands golden king crab and Western Aleutian Islands red king crab*

The proposed rule would add regulations at § 680.7(a)(9) to 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 would apply to all IPQ processed at a shoreside crab processor or stationary floating crab processor, and would not exempt IPQ crab that are delivered under a custom processing arrangement from IPQ use cap calculations. As noted earlier in this preamble, both of these fisheries were issued PQS with only a South Region designation (see Table 1). Although the Western Aleutian Islands red king crab fishery is closed, at this time, the analysis prepared for this action indicates that when it is open for fishing, the Western Aleutian Islands red king crab fishery has a small TAC relative to other BSAI crab fisheries (see **ADDRESSES**). The Council's intent behind this provision was to limit the potential consolidation of IPQ that could occur under the custom processing exemptions proposed under this rule. This proposed change to the regulation seeks to prevent a potentially undesirable consolidation on the number of markets available to harvesters, a scenario that is more likely in these fisheries given their historically relatively small TACs compared to other crab fisheries.

In addition, this provision would minimize the potentially adverse effects on processing facilities west of 174° W. long. if all of the IPQ were consolidated 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, it is conceivable that processing could consolidate in one or a few facilities in 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. This proposed action would require that a

minimum of two processing facilities be used if Eastern Aleutian Islands golden king crab or Western Aleutian Islands red king crab were processed east of 174° W. long.

**Classification**

The Assistant Administrator for Fisheries, NMFS, has determined that this proposed rule is consistent with Amendment 27, the Magnuson-Stevens Act and other applicable laws.

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

An RIR was prepared for this action that assesses all costs and benefits of available regulatory alternatives. The RIR describes the potential size, distribution, and magnitude of the economic impacts that this action may be expected to have. Copies of the RIR prepared for this proposed rule are available from NMFS. Additionally, an IRFA was prepared that describes the impact this proposed rule would have on small entities. Copies of the RIR/IRFA prepared for this proposed rule are available from NMFS (see **ADDRESSES**). The RIR/IRFA prepared for this proposed rule incorporates by reference an extensive RIR/IRFA prepared for Amendments 18 and 19 to the FMP that detailed the impacts of the Program on small entities.

The IRFA for this proposed action describes in detail the reasons why this action is being proposed; describes the objectives and legal basis for the proposed rule; describes and estimates the number of small entities to which the proposed rule would apply; describes any projected reporting, recordkeeping, or other compliance requirements of the proposed rule; identifies any overlapping, duplicative, or conflicting Federal rules; and describes any significant alternatives to the proposed rule that accomplish the stated objectives of the Magnuson-Stevens Act and any other applicable statutes, and that would minimize any significant adverse economic impact of the proposed rule on small entities.

The description of the proposed action, its purpose, and its legal basis are described in the preamble and are not repeated here. The directly regulated entities under this proposed rule are holders of PQS or IPQ. The IRFA estimates that currently 29 persons hold PQS. Eleven of the PQS holders are estimated to be large entities, leaving 18 small entities that would be directly regulated by the proposed action. The IRFA notes that estimates of the number of small entities directly regulated by this proposed action are complicated by limited share



holder information, and are based on available records of employment, information on participation in processing activities in other fisheries, and available knowledge of foreign ownership of vertically integrated processing companies. The estimate of the number of small entities is conservative, and may be fewer than 18.

The proposed rule would not change or require additional existing reporting, recordkeeping, and other compliance requirements. The analysis revealed no Federal rules that would conflict with, overlap, or be duplicated by the alternatives under consideration.

All of the directly regulated entities would be expected to benefit from this action relative to the status quo alternative because it would relieve requirements that limit their ability to consolidate processing operations that may provide additional benefits relative to the status quo. Small entities that wish to employ the custom processing services of large entities that are constrained by the cap, would be able to use those services under the custom processing exemption under the proposed rule. These small entities could benefit from an additional market for custom processing services that might not exist in the absence of the custom processing exemption. The IRFA notes that a potentially competing effect could arise if small entities that wish to increase their processing capacity, by providing custom processing services, were to confront additional competition in the market for providing those services from large entities who would otherwise have been constrained by the cap.

Two alternatives were considered, with numerous options and suboptions under those alternatives. These options and suboptions included analysis of various alternatives for the specific fisheries subject to custom processing exemptions, the types of processing facilities at which a custom processing exemption could apply, and the amount of the IPQ use limitation at a facility for Eastern Aleutian Islands golden king crab and Western Aleutian Islands red king crab. The combinations of these options and suboptions under the two alternatives effectively provided numerous alternatives for analysis. Compared with the status quo, the proposed action selected by the Council would be the alternative that would minimize adverse economic impacts on the individuals that are directly regulated small entities.

Although the alternatives under consideration in this proposed 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.

#### *Collection-of-Information*

This proposed rule does not contain a collection-of-information requirement subject to review and approval by the Office of Management and Budget under the Paperwork Reduction Act.

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

Alaska, Fisheries.

Dated: September 15, 2008.

#### **Samuel D. Rauch III**

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

For the reasons set out in the preamble, 50 CFR part 680 is proposed to be 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. 108–199; 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 § 680.7(a)(8) 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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