

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

[Docket No. 0910301387–1315–02]

RIN 0648–AY33

**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:** Final rule.

**SUMMARY:** NMFS issues regulations to implement Amendment 34 to the Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs. Amendment 34 amends the Bering Sea and Aleutian Islands Crab Rationalization Program to exempt additional recipients of crab quota share from Gulf of Alaska Pacific cod and pollock harvest limits, called sideboards, which apply to some vessels and license limitation program licenses that are used to participate in these fisheries. The North Pacific Fishery Management Council determined that these recipients demonstrated a sufficient level of historical participation in Gulf of Alaska Pacific cod or pollock fisheries and should be exempt from the Gulf of Alaska Pacific cod and pollock sideboards. This action is necessary to give these recipients an opportunity to participate in the Gulf of Alaska Pacific cod and pollock fisheries at historical levels. This final rule revises regulations governing exemptions from and calculations of sideboard harvest limits in the Gulf of Alaska Pacific cod and pollock fisheries and revises Tables 17 and 18 that establish the 2011–2012 Gulf of Alaska groundfish harvest sideboard limits. To fully implement Amendment 34 NMFS will reissue Federal fisheries permits and license limitation program licenses to all participants that are affected by the action. This final rule promotes the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act and the Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs.

**DATES:** Effective July 20, 2011.

**ADDRESSES:** Electronic copies of Amendment 34, the Regulatory Impact Review (RIR), the Final Regulatory Flexibility Analysis (FRFA), and the Categorical Exclusion prepared for this

proposed action may be obtained from <http://www.regulations.gov> or from the Alaska Region Web site at <http://alaskafisheries.noaa.gov>. The Environmental Impact Statement, RIR, FRFA, and Social Impact Assessment prepared for the Crab Rationalization Program are available from the NMFS Alaska Region Web site at <http://alaskafisheries.noaa.gov>.

**FOR FURTHER INFORMATION CONTACT:** Rachel Baker, 907–586–7425, or Forrest R. Bowers, 907–586–7240.

**SUPPLEMENTARY INFORMATION:****Background**

The King and Tanner crab fisheries in the exclusive economic zone of the Bering Sea and Aleutian Islands (BSAI) are managed under the Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs (Crab FMP). Groundfish fisheries in the Gulf of Alaska (GOA) are managed under the Fishery Management Plan for Groundfish of the Gulf of Alaska (GOA FMP). The North Pacific Fishery Management Council (Council) prepared, and NMFS approved, the Crab FMP and the GOA FMP under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Amendments 18 and 19 to the Crab FMP implemented the BSAI Crab Rationalization Program (CR Program). Regulations implementing the FMP, including the CR Program, are located at 50 CFR part 680. Regulations implementing the GOA FMP are at 50 CFR part 679. General regulations governing U.S. fisheries also appear at 50 CFR part 600.

The CR Program allocates BSAI crab resources among harvesters, processors, and coastal communities. The CR Program is a limited access privilege program (LAPP) for nine BSAI crab fisheries. Participants receive exclusive harvesting and processing privileges for a portion of the total allowable catch established for each crab fishery in the CR Program.

Sideboards are implemented within LAPPs to prevent participants who benefit from receiving exclusive harvesting privileges from shifting effort into fisheries that are not managed with a LAPP. In developing the CR Program, the Council anticipated that flexibility inherent in the CR program would allow crab fishermen to expand their fishing operations into other fisheries. Because the Bering Sea snow crab (*Chionoecetes opilio*) and many economically valuable GOA groundfish fisheries were conducted concurrently from January through March the Council was

particularly concerned that increased flexibility for recipients of Bering Sea snow crab quota share (QS) could give them an incentive to increase effort in GOA groundfish fisheries.

The Council determined that the CR Program should include sideboards for most GOA groundfish fisheries to prevent Bering Sea snow crab QS recipients from increasing their participation in those fisheries. However, because some Bering Sea snow crab QS recipients had significant historical participation in the GOA Pacific cod fishery, the Council also developed criteria that would exempt from sideboards certain Bering Sea snow crab QS recipients with significant participation in, or dependence on, the GOA Pacific cod fishery. The CR Program did not establish sideboard limits for American Fisheries Act (AFA) vessels with historical participation in the Bering Sea snow crab fishery because these vessels are subject to GOA harvesting and processing restrictions under the AFA and the implementing regulations for the AFA (§ 679.64(b)). Vessels subject to the sideboards are referred to as “non-AFA crab vessels”. Exemption criteria are based on snow crab and groundfish catch history during a set of qualifying years and are fully described in the preamble to the proposed rule for this action (76 FR 17088).

After the CR Program was implemented in 2005, some non-AFA crab vessel operators testified to the Council that the GOA Pacific cod and pollock sideboard limits were too restrictive. These operators indicated that with the sideboard limits they were unable to maintain historical groundfish catch levels in the GOA and should qualify for an exemption from those limits. Some operators testified that although their vessel’s catch history exceeded the maximum allowable amount to qualify for the exemption from the Pacific cod sideboard limits, they had significant history in, and dependence on, GOA Pacific cod and pollock fisheries. Based on this public testimony and a review of the effects of the sideboard limits in the first 2 years of the CR Program (2005/2006 and 2006/2007 crab fishing years), the Council determined that the existing criteria for exemption from the sideboard limits in GOA Pacific cod and pollock fisheries should be examined to consider inclusion of additional vessels and LLP licenses with historical participation in and sufficient dependence on these fisheries. The Council initiated an analysis in December 2007 to examine alternatives that would expand the criteria for non-AFA crab vessels to

qualify for an exemption from the Pacific cod sideboard limits and that would extend a similar exemption to the pollock sideboard limits.

In October 2008, the Council recommended Amendment 34 to the Crab FMP to exempt additional vessels and groundfish LLP licenses from the GOA Pacific cod and pollock sideboard limits. The Council also clarified that it did not intend for Amendment 34 to disqualify any vessels or groundfish LLP licenses that are currently exempt from non-AFA crab vessel Pacific cod sideboard limits in the GOA.

This final rule implements two actions. The first action modifies the criteria exempting vessels and LLP licenses from the non-AFA crab vessel GOA Pacific cod sideboard limits. Under this action, non-AFA crab vessels are exempt from GOA Pacific cod sideboards if their catch history of Bering Sea snow crab from 1996 to 2000 was less than 750,000 lbs. (340.2 mt) and their catch history of Pacific cod during the same time period was greater than 680 metric tons. In developing these new sideboard exemption criteria, the Council first considered a person's dependence on the GOA Pacific cod fishery demonstrated through both sufficient volume of landings, represented by the 680 metric ton level, which is slightly more than twice the average 1996 to 2000 GOA Pacific cod landings of all non-AFA crab vessels, as well as a person's recent annual participation in the fishery represented by landings of GOA Pacific cod each year from 1998 to 2007. The Council determined, and NMFS agrees, that the Bering Sea snow crab threshold of less than 100,000 lbs. (45.4 mt) of landings between 1996 and 2000 is too restrictive and that increasing the threshold to less than 750,000 lbs. (340.2 mt) of landings between 1996 and 2000 was justified given demonstrated dependence on the GOA Pacific cod fishery by the three additional vessels and licenses that are estimated to qualify for exemption under this final rule. The Council concluded, and NMFS agrees, that the effects of three additional exempt vessels and LLP licenses on other participants in the GOA Pacific cod fishery would be minimal since these three vessels and LLP licenses represent approximately one percent of the number of participating vessels and their combined harvests of Pacific cod from 1995 through 2009 were less than 2 percent of the total catch of GOA Pacific cod during that period.

The second action implemented by this final rule adds an exemption to GOA pollock sideboard limits for non-AFA crab vessels. Under the CR

Program, all non-AFA crab vessels are subject to sideboard limits in GOA pollock fisheries. Although some non-AFA crab vessels historically participated in GOA pollock fisheries, the aggregate catch history of GOA pollock by non-AFA crab vessels from 1996 to 2000 yielded sideboard limits that NMFS determined were of an insufficient amount to support directed fishing. Since 2006, NMFS has closed the GOA pollock sideboard fishery to directed fishing by non-AFA crab vessels. With the likelihood of no directed fishing for pollock sideboard limits for the foreseeable future, a GOA pollock-dependent non-AFA crab vessel could not maintain its historical level of participation in GOA pollock fisheries and the Council determined that they are negatively impacted under the status quo.

The Council determined and NMFS agrees that a non-AFA crab vessel that was used to land less than 0.22 percent of all Bering Sea snow crab landings from 1996 to 2000 (1,212,673 lbs. (550 mt)), and made 20 landings of pollock harvested from the GOA from 1996 to 2000, was minimally dependent on the Bering Sea snow crab fishery and sufficiently dependent on the GOA pollock fishery to qualify for an exemption from the pollock sideboard limits. In reaching this decision, the Council determined that the 20-landings minimum threshold for an exemption from the GOA pollock sideboard limit was the minimum level of participation by non-AFA crab vessels that would demonstrate significant participation in, and dependence on, the GOA pollock fishery.

A single vessel is estimated to qualify for an exemption under the criteria selected by the Council. Pollock comprised approximately 80 percent of the vessel's catch in the GOA in most years from 1995 through 2000. Additionally, this vessel was used to make at least twice as many landings of pollock (20) harvested from the GOA from 1996 through 2000 than the three other vessel operations that would qualify under lower landings thresholds considered by the Council. The Council determined and NMFS agrees that this catch information clearly demonstrated the operator's dependence on the GOA pollock fishery. NMFS also agrees with the Council that vessels meeting the proposed threshold for Bering Sea snow crab landings would demonstrate minimal participation in, and dependence on, this fishery because it represents a very low level of harvest relative to other participants in the Bering Sea snow crab fishery. NMFS estimates that the average landings of

Bering Sea snow crab per vessel from 1996 through 2000 for all vessels with catch history that generated Bering Sea snow crab QS totaled approximately 2,366,000 lbs (1,073 mt) per vessel. The Council's recommended threshold of a maximum harvest of 1,212,673 lbs (550 mt) is approximately half of this average.

Under Action 2 the Council considered three levels of past participation in the pollock fishery upon which to base the sideboard exemption—5, 10, and 20 landings of GOA pollock from 1996 to 2000 as well as a Bering Sea snow crab landing volume cap of no more than 550 mt of snow crab during the same time period. Four vessels qualified for an exemption under the 5 and 10 landing levels and one qualified under the 20 landing level. In considering the effects of exempting vessels on participants in the GOA pollock fishery, the Council determined that the exemption of one vessel and one LLP license that clearly demonstrated past dependence on the pollock fishery would not negatively affect other participants in the fishery. However, the Council determined, and NMFS agrees, that the exemption of four vessels, three of which had questionable past dependence on the fishery, would negatively affect other GOA pollock fishery participants.

To implement Amendment 34, NMFS will revise non-AFA crab vessel sideboard limit ratios that are specified in the final 2011 and 2012 harvest specifications for the GOA. For Action 1, NMFS will remove from the inshore component GOA Pacific cod sideboard limits the amount of retained catch of Pacific cod harvested in the GOA from 1996 through 2000 by the non-AFA crab vessels that qualify for a sideboard limit exemption under Amendment 34. The ratio calculated after the removal of this catch history will be multiplied by the 2011 and 2012 GOA Pacific cod TACs and apportioned by area and season to determine new sideboard limits in metric tons. For Action 2, Amendment 34 does not modify the non-AFA crab vessel pollock sideboard limits from the ratios implemented in the final 2011 and 2012 GOA harvest specifications. The 2011 and 2012 non-AFA crab vessel Pacific cod and pollock sideboard limit ratio calculations already exclude the retained catch of these species harvested from the GOA from 1996 through 2000 by some of the newly exempt non-AFA crab vessels whose owners took advantage of an agency administrative appeals process to challenge implementation of the sideboard limits on their vessels in 2006 because NMFS removed this catch history during the

appeals process. Thus, the 1996 through 2000 catch history of some of the vessels that qualify for an exemption from GOA sideboard limits under Amendment 34 is not currently included in the sideboard limit calculations. As a result,

the sideboard limit adjustments necessary to implement Amendment 34 are partially reflected in the 2011 and 2012 harvest specifications.

Table 17 and Table 18 present the final 2011 and 2012 non-AFA crab

vessel sideboard limits for GOA groundfish harvest under Amendment 34 based on the Council's recommended harvest specifications for these species.

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Table 17. Final 2011 GOA Non-AFA Crab Vessel Groundfish Harvest Sideboard Limits

Under Amendment 34 (Values are rounded to nearest metric ton).

Species	Season/gear	Area/component	Ratio of 1996-2000 non-AFA crab vessel catch to 1996-2000 total harvest	2011 TAC	2011 non-AFA crab vessel sideboard limit
Pollock	A Season January 20 - March 10	Shumagin (610)	0.0098	4,787	47
		Chirikof (620)	0.0031	11,896	37
		Kodiak (630)	0.0002	4,475	1
	B Season March 10 - May 31	Shumagin (610)	0.0098	4,787	47
		Chirikof (620)	0.0031	14,232	44
		Kodiak (630)	0.0002	2,139	0
	C Season August 25 - October 1	Shumagin (610)	0.0098	8,729	86
		Chirikof (620)	0.0031	5,618	17
		Kodiak (630)	0.0002	6,811	1
	D Season October 1 - November 1	Shumagin (610)	0.0098	8,729	86
		Chirikof (620)	0.0031	5,618	17
		Kodiak (630)	0.0002	6,811	1
Annual	WYK (640)	0.0000	2,339	0	
	SEO (650)	0.0000	9,245	0	
Pacific cod	A Season <sup>1</sup> January 1 - June 10	W inshore	0.0852	12,303	1,048
		W offshore	0.3376	1,367	461
		C inshore	0.0475	21,795	1,035
		C offshore	0.2076	2,422	503
	B Season <sup>2</sup> September 1 - December 31	W inshore	0.0852	8,202	699
		W offshore	0.3376	911	308
		C inshore	0.0475	14,530	690
		C offshore	0.2076	1,614	335
	Annual	E inshore	0.0110	1,758	19
		E offshore	0.0000	195	0
Sablefish	Annual, trawl gear	W	0.0000	334	0
		C	0.0000	948	0
		E	0.0000	247	0
Flatfish, shallow-water	Annual	W	0.0059	4,500	27
		C	0.0001	13,000	1
		E	0.0000	1,228	0
Flatfish, deep-water	Annual	W	0.0035	529	2
		C	0.0000	2,919	0
		E	0.0000	2,083	0
Rex sole	Annual	W	0.0000	1,517	0
		C	0.0000	6,294	0
		E	0.0000	868	0

Arrowtooth flounder	Annual	W	0.0004	8,000	3
		C	0.0001	30,000	3
		E	0.0000	2,500	0
Flathead sole	Annual	W	0.0002	2,000	0
		C	0.0004	5,000	2
		E	0.0000	2,064	0
Pacific ocean perch	Annual	W	0.0000	2,798	0
		C	0.0000	10,379	0
		E	0.0000	1,937	0
Northern rockfish	Annual	W	0.0005	2,573	1
		C	0.0000	2,281	0
Shortraker rockfish	Annual	W	0.0013	134	0
		C	0.0012	325	0
		E	0.0009	455	0
Other rockfish	Annual	W	0.0035	212	1
		C	0.0033	507	2
		E	0.0000	276	0
Pelagic shelf rockfish	Annual	W	0.0017	611	1
		C	0.0000	3,052	0
		E	0.0000	407	0
Rougheye rockfish	Annual	W	0.0067	81	1
		C	0.0047	868	4
		E	0.0008	363	0
Demersal shelf rockfish	Annual	SEO	0.0000	300	0
Thornyhead rockfish	Annual	W	0.0047	425	2
		C	0.0066	637	4
		E	0.0045	708	3
Atka mackerel	Annual	Gulfwide	0.0000	2,000	0
Big skate	Annual	W	0.0392	598	23
		C	0.0159	2,049	33
		E	0.0000	681	0
Longnose skate	Annual	W	0.0392	81	3
		C	0.0159	2,009	32
		E	0.0000	762	0
Other skates	Annual	Gulfwide	0.0176	2,093	37
Squids	Annual	Gulfwide	0.0176	1,148	20
Sharks	Annual	Gulfwide	0.0176	6,197	109
Octopuses	Annual	Gulfwide	0.0176	954	17
Sculpins	Annual	Gulfwide	0.0176	5,496	97

<sup>1</sup> The Pacific cod A season for trawl gear does not open until January 20.

<sup>2</sup> The Pacific cod B season for trawl gear closes November 1.

Table 18. Final 2012 GOA Non-AFA Crab Vessel Groundfish Harvest Sideboard Limits

Under Amendment 34 (Values are rounded to nearest metric ton).

Species	Season/gear	Area/component	Ratio of 1996-2000 non-AFA crab vessel catch to 1996-2000 total harvest	2012 TAC	2012 non-AFA crab vessel sideboard limit
Pollock	A Season January 20 - March 10	Shumagin (610)	0.0098	6,186	61
		Chirikof (620)	0.0031	15,374	48
		Kodiak (630)	0.0002	5,783	1
	B Season March 10 - May 31	Shumagin (610)	0.0098	6,185	61
		Chirikof (620)	0.0031	18,393	57
		Kodiak (630)	0.0002	2,765	1
	C Season August 25 - October 1	Shumagin (610)	0.0098	11,280	111
		Chirikof (620)	0.0031	7,262	23
		Kodiak (630)	0.0002	8,803	2
	D Season October 1 - November 1	Shumagin (610)	0.0098	11,280	111
		Chirikof (620)	0.0031	7,262	23
		Kodiak (630)	0.0002	8,803	2
Annual	WYK (640)	0.0000	3,024	0	
	SEO (650)	0.0000	9,245	0	
Pacific cod	A Season <sup>1</sup> January 1 - June 10	W inshore	0.0852	11,085	944
		W offshore	0.3376	1,232	416
		C inshore	0.0475	19,636	933
		C offshore	0.2076	2,182	453
	B Season <sup>2</sup> September 1 - December 31	W inshore	0.0852	7,390	630
		W offshore	0.3376	821	277
		C inshore	0.0475	13,091	622
		C offshore	0.2076	1,455	302
	Annual	E inshore	0.0110	1,583	17
		E offshore	0.0000	176	0
Sablefish	Annual, trawl gear	W	0.0000	297	0
		C	0.0000	869	0
		E	0.0000	226	0
Flatfish, shallow-water	Annual	W	0.0059	4,500	27
		C	0.0001	13,000	1
		E	0.0000	1,228	0
Flatfish, deep-water	Annual	W	0.0035	541	2
		C	0.0000	3,004	0
		E	0.0000	2,144	0
Rex sole	Annual	W	0.0000	1,490	0
		C	0.0000	6,184	0
		E	0.0000	853	0

Arrowtooth flounder	Annual	W	0.0004	8,000	3
		C	0.0001	30,000	3
		E	0.0000	2,500	0
Flathead sole	Annual	W	0.0002	2,000	0
		C	0.0004	5,000	2
		E	0.0000	2,125	0
Pacific ocean perch	Annual	W	0.0000	2,665	0
		C	0.0000	9,884	0
		E	0.0000	1,845	0
Northern rockfish	Annual	W	0.0005	2,446	1
		C	0.0000	2,168	0
Shortraker rockfish	Annual	W	0.0013	134	0
		C	0.0012	325	0
		E	0.0009	455	0
Other rockfish	Annual	W	0.0035	212	1
		C	0.0033	507	2
		E	0.0000	275	0
Pelagic shelf rockfish	Annual	W	0.0017	570	1
		C	0.0000	2,850	0
		E	0.0000	380	0
Rougheye shelf rockfish	Annual	W	0.0067	81	1
		C	0.0047	868	4
		E	0.0008	363	0
Demersal shelf rockfish	Annual	SEO	0.0000	300	0
Thornyhead rockfish	Annual	W	0.0047	425	2
		C	0.0066	637	4
		E	0.0045	708	3
Atka mackerel	Annual	Gulfwide	0.0000	2,000	0
Big skate	Annual	W	0.0392	598	23
		C	0.0159	2,049	33
		E	0.0000	681	0
Longnose skate	Annual	W	0.0392	81	3
		C	0.0159	2,009	32
		E	0.0000	762	0
Other skates	Annual	Gulfwide	0.0176	2,093	37
Squids	Annual	Gulfwide	0.0176	1,148	20
Sharks	Annual	Gulfwide	0.0176	6,197	109
Octopuses	Annual	Gulfwide	0.0176	954	17
Sculpins	Annual	Gulfwide	0.0176	5,496	97

<sup>1</sup> The Pacific cod A season for trawl gear does not open until January 20.

<sup>2</sup> The Pacific cod B season for trawl gear closes November 1.

The vessel owners affected by this final rule hold unique Federal Fisheries Permits (FFP). Federal Fisheries Permits are required on all vessels participating in groundfish fisheries in Federal waters in Alaska and NMFS designates vessel sideboard limitations, or exemptions, on a vessel's FFP. This final rule also affect holders of a groundfish LLP license derived from catch history generated by a vessel that qualifies for a sideboard exemption under this final rule.

The process used by NMFS to determine which vessels and LLP licenses qualify for an exemption from the non-AFA crab vessel GOA Pacific cod and pollock sideboard limits is described as follows. First, a vessel must meet the catch threshold criteria described at § 680.22(a) to qualify for an exemption from non-AFA crab vessel Pacific cod or pollock sideboard limits. Once a vessel is determined to qualify for an exemption from sideboard limits, NMFS will determine whether the GOA groundfish LLP license that was generated by that exempt vessel's catch history would also qualify for the exemption. An LLP license is deemed to qualify for a GOA Pacific cod or pollock sideboard limit exemption if the vessel with catch history that generated the groundfish LLP license: (1) Qualifies for an exemption under § 680.22(a); and (2) is the only vessel that contributed GOA Pacific cod or pollock catch history to generate the LLP license. This approach prevents a groundfish LLP license that drew its catch history from multiple vessels from qualifying for the sideboard exemption under Amendment 34.

NMFS will create an official record with all relevant information necessary to assign landings to specific vessels and LLP licenses. The official record created by NMFS will contain vessel landings data and the LLP licenses to which those landings would be attributed. Evidence of the number and amount of landings will be based only on legally submitted NMFS weekly production reports for catcher/processors and State of Alaska fish tickets for catcher vessels. Historically, NMFS has used only these two data sources to determine the specific amount and location of landings and NMFS will continue to do so under this final rule. The official record will include the records of the specific LLP licenses assigned to vessels and other relevant information necessary to attribute landings to specific LLP licenses.

NMFS will presume the official record is correct and will notify each affected FFP and LLP license holder of the effect of Amendment 34 on their FFP or LLP license. NMFS will mail a

notification to the address on record for each FFP and LLP license holder at the time the notification is sent. The notification will indicate which non-AFA crab vessel sideboard category applies to the FFP or LLP license based on the official record: (1) CR GOA Sideboarded for all groundfish species; (2) CR GOA Sideboarded for all groundfish species and no GOA Pacific cod fishing; (3) CR GOA Sideboarded for all groundfish species except Pacific cod; (4) CR GOA Sideboarded for all groundfish species except pollock; or (5) CR GOA Sideboarded for all groundfish species except Pacific cod and pollock. NMFS will include information concerning any changes to the non-AFA crab vessel sideboard restrictions applicable to the FFP or LLP license in the GOA and offer a single 30-day evidentiary period from the date that notification is sent for an FFP or LLP license holder to submit any supporting information, or evidence, to demonstrate that the information contained in the official record is inconsistent with his or her records.

An FFP or LLP license holder who submits claims that are inconsistent with information in the official record would have the burden of proving that the submitted claims are correct. NMFS will not accept inconsistent claims unless supported by clear written documentation. NMFS would evaluate additional information or evidence to support an FFP or LLP license holder's inconsistent claims submitted prior to or within the 30-day evidentiary period. If NMFS determines that the additional information or evidence proves that the FFP or LLP license holder's inconsistent claims were indeed correct, NMFS would act in accordance with that information or evidence. However, if after the 30-day evidentiary period, NMFS were to determine that the additional information or evidence did not show that the FFP or LLP license holder's inconsistent claims were correct, NMFS would deny the claim. NMFS would notify the applicant through an initial administrative determination (IAD) that the additional information or evidence did not meet the burden of proof to overcome the official record.

NMFS's IAD would indicate the deficiencies and discrepancies in the information and the evidence submitted in support of the claim. NMFS's IAD would indicate which claims could not be approved based on the available information or evidence, and include information on how an applicant could appeal the IAD. The appeals process is described in 50 CFR 679.43. A person who appeals an IAD would be eligible

to use the disputed FFP or LLP license until final agency action by NMFS on the appeal. The non-AFA crab vessel sideboard limitation, or exemption, designated on an FFP or LLP license would continue to be effective unless modified by a successful appeal. NMFS would reissue any FFP or LLP licenses pending final action by NMFS as interim FFP or LLP licenses. Once final action has been taken, NMFS would reissue the FFP or LLP license as a non-interim license. Interim LLP licenses would be non-transferable to ensure that a person would not receive an LLP license by transfer and have the non-AFA crab vessel sideboard category changed through an appeals process that was initiated and conducted by the previous LLP license holder, a process that a transferee could not control, and which could substantially affect the value and utility of an LLP license.

If a person does not dispute the notification of changes to their FFP or LLP license, or upon the resolution of any inconsistent claims, a revised non-interim FFP or LLP license with the appropriate non-AFA crab vessel sideboard category would be reissued to the FFP or LLP license holder, unless the FFP or LLP license is interim for another reason.

#### **Notice of Availability and Proposed Rule**

NMFS published the notice of availability for Amendment 34 on March 14, 2011 (76 FR 13593), with a public comment period that closed on May 13, 2011. NMFS published the proposed rule to implement Amendment 34 on March 28, 2011 (76 FR 17088), and the public comment period closed on April 27, 2011. NMFS received two public comments during the public comment periods, but neither directly addressed Amendment 34 or the proposed rule, rather they were general comments related to the Federal government's management of marine resources. NMFS made no modifications from proposed to final rule.

#### **Classification**

Pursuant to sections 304(b) and 305(d) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that Amendment 34 and this final rule are consistent with the FMP, other provisions of the Magnuson-Stevens Act, and other applicable law.

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

A Final Regulatory Flexibility Analysis (FRFA) was prepared, as required by section 603 of the Regulatory Flexibility Act, which



describes the impact this final rule would have on small entities. Copies of the FRFA prepared for this final rule are available from NMFS (see **ADDRESSES**). The FRFA prepared for this final rule incorporates by reference an extensive RIR and FRFA prepared for the CR Program that detailed its impacts on small entities.

NMFS published the proposed rule to implement Amendment 34 on March 28, 2011 (76 FR 17088), and the public comment period closed on April 27, 2011. An IRFA was prepared and summarized in the "Classification" section of the preamble to the proposed rule. The description of this action, its purpose, and its legal basis are described in the preamble to the proposed rule and are not repeated here. NMFS received two letters of public comment on Amendment 34 and the proposed rule. Neither of these comments addressed the IRFA.

The principal objective of this final rule is to rectify an economic burden that was unintentionally imposed on a small group of non-AFA crab vessels by implementation of the sideboard limit provisions of the CR Program. Action 1 and Action 2 would relieve catch restrictions that apply to certain non-AFA crab vessels in GOA Pacific cod and pollock fisheries. NMFS expects the relief from sideboard limit restrictions will enable these vessels to increase participation in GOA Pacific cod and pollock fisheries as compared to their participation while subject to the sideboard restrictions.

The Council and NMFS determined that the existing sideboard limit restrictions do not contain exemption criteria that take into account all non-AFA crab vessels with demonstrated dependence on GOA Pacific cod and pollock fisheries. This outcome is inconsistent with the Council's intent in establishing the non-AFA crab vessel GOA sideboards, which was to enable non-AFA crab vessels with relatively small amounts of Bering Sea snow crab QS, but with relatively significant participation in GOA groundfish fisheries, to continue fishing in GOA groundfish fisheries without being subject to the sideboard limit restrictions. Compared with the existing sideboard limits, the actions implemented by this rule would most benefit non-AFA crab vessels that the Council deemed are dependent on GOA Pacific cod and pollock fisheries. This rule also would have a low likelihood of negatively impacting other participants in these GOA fisheries.

The entities directly regulated by this action are those non-AFA crab vessels that target GOA Pacific cod and pollock

in the EEZ of the GOA. Earnings from all fisheries in and off Alaska for 2007 were matched with the non-AFA crab vessels that participated in the GOA Pacific cod and pollock fisheries for that year. Of the six vessels and associated LLP licenses that would be directly regulated by Action 1 to revise the criteria for exemption from the GOA Pacific cod sideboard, five catcher vessels had gross earnings less than \$4 million, thus categorizing them as small entities. The remaining vessel, a catcher/processor, had gross earnings greater than \$4 million, categorizing the vessel as a large entity. Of the four vessels and associated LLP licenses that would be directly regulated by Action 2 to establish criteria for exemption from the GOA pollock sideboard, all four vessels are estimated to be small entities. One small entity would qualify for exemptions from both the GOA Pacific cod and pollock sideboards under the final actions. All of the entities that would be directly regulated under this final rule would be expected to benefit from the actions relative to the status quo because the proposed actions would relieve restrictions that limit their ability to conduct directed fishing for GOA Pacific cod and pollock. This final rule would not be expected to have adverse impacts on any of the directly regulated small entities.

This final rule would not change 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.

This final rule does not contain a collection-of-information requirement subject to the Paperwork Reduction Act.

#### *Small Entity Compliance Guide*

NMFS has posted a small entity compliance guide on the NMFS Alaska Region Web site (<http://www.fakr.noaa.gov/sustainablefisheries/crab/rat/progfaq.htm>) to satisfy the Small Business Regulatory Enforcement Fairness Act of 1996, which requires a plain language guide to assist small entities in complying with this rule. Contact NMFS to request a hard copy of the guide (see **ADDRESSES**).

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

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: June 15, 2011.

**John Oliver,**

*Deputy Assistant Administrator for Operations, National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 680 is amended as follows:

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

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

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

■ 2. In § 680.22:

- a. Revise paragraph (a)(3);
- b. Add paragraph (a)(4);
- c. Revise the introductory text of paragraph (d);
- d. Redesignate paragraph (d)(2) as (d)(3), and revise newly redesignated paragraph (d)(3); and
- e. Add a new paragraph (d)(2).

The revisions and additions read as follows:

#### **§ 680.22 Sideboard protections for GOA groundfish fisheries.**

\* \* \* \* \*

(a) \* \* \*

(3) *Vessels and LLP licenses exempt from Pacific cod sideboard closures in the GOA.* Any vessel or LLP license that NMFS has determined meets either of the following criteria is exempt from sideboard directed fishing closures for Pacific cod in the GOA:

(i) Any vessel subject to GOA groundfish closures under paragraph (a)(1)(i) of this section that landed less than 750,000 lb (340.2 mt), in raw weight equivalents, of Bering Sea snow crab and more than 680 mt (1,499,143 lb), in round weight equivalents, of Pacific cod harvested from the GOA between January 1, 1996, and December 31, 2000; and

(ii) Any LLP license that:

(A) Was initially issued based on the catch history of a vessel meeting the criteria in paragraph (a)(3)(i) of this section; and

(B) Did not generate crab QS based on legal landings from any vessel other than the vessel meeting the criteria in paragraph (a)(3)(i) of this section.

(4) *Vessels and LLP licenses exempt from pollock sideboard closures in the GOA.* Any vessel or LLP license that NMFS has determined meets either of the following criteria is exempt from sideboard directed fishing closures for pollock in the GOA:

(i) Any vessel subject to GOA groundfish closures under paragraph

(a)(1)(i) of this section that landed less than 1,212,673 lb (550 mt), in raw weight equivalents, of Bering Sea snow crab, and had 20 or more legal landings of pollock harvested from the GOA between January 1, 1996, and December 31, 2000; and

(ii) Any LLP license that:

(A) Was initially issued based on the catch history of a vessel meeting the criteria in paragraph (a)(4)(i) of this section; and

(B) Did not generate crab QS based on legal landings from any vessel other than the vessel meeting the criteria in paragraph (a)(4)(i) of this section.

\* \* \* \* \*

(d) *Determination of GOA groundfish sideboard ratios.* Except for fixed-gear sablefish, sideboard ratios for each GOA groundfish species, species group, season, and area for which annual specifications are made are established according to the following formulas:

\* \* \* \* \*

(2) *Pollock.* The sideboard ratios for pollock are calculated by dividing the aggregate retained catch of pollock by vessels that are subject to sideboard directed fishing closures under paragraph (a)(1) of this section and that do not meet the criteria in paragraph (a)(4) of this section by the total retained catch of pollock by all groundfish vessels between 1996 and 2000.

(3) *Groundfish other than Pacific cod and pollock.* The sideboard ratios for groundfish species and species groups other than Pacific cod and pollock are calculated by dividing the aggregate landed catch by vessels subject to sideboard directed fishing closures under paragraph (a)(1) of this section by the total landed catch of that species by all groundfish vessels between 1996 and 2000.

\* \* \* \* \*

[FR Doc. 2011-15284 Filed 6-17-11; 8:45 am]

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 680

[Docket No. 100723308-1315-02]

RIN 0648-BA11

#### Fisheries of the Exclusive Economic Zone Off Alaska; Bering Sea and Aleutian Islands Crab Rationalization Program; Amendment 37

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule.

**SUMMARY:** NMFS issues regulations to implement Amendment 37 to the Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs (FMP). This action amends the Bering Sea/Aleutian Islands Crab Rationalization Program by establishing a process for eligible contract signatories to request that NMFS exempt holders of West-designated individual fishing quota (IFQ) and individual processor quota (IPQ) in the Western Aleutian Islands golden king crab fishery from the West regional delivery requirements. Federal regulations require West-designated golden king crab IFQ to be delivered to a processor in the West region of the Aleutian Islands with an exact amount of unused West-designated IPQ. However, sufficient processing capacity may not be available each season. This rule is necessary to prevent disruption to the Western Aleutian Islands golden king crab fishery, while providing for the sustained participation of municipalities in the region. This action is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act, the FMP, and other applicable law.

**DATES:** Effective July 20, 2011.

**ADDRESSES:** Electronic copies of Amendment 37 to the FMP, the Regulatory Impact Review (RIR), the Final Regulatory Flexibility Analysis (FRFA), the Small Entity Compliance Guide, and the Categorical Exclusion prepared for this final action may be obtained from <http://www.regulations.gov> or from the Alaska Region Web site at <http://alaskafisheries.noaa.gov>. The Environmental Impact Statement, RIR, FRFA, and Social Impact Assessment prepared for the Crab Rationalization Program are available from the NMFS Alaska Region Web site at <http://alaskafisheries.noaa.gov>. Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule may be submitted to NMFS at the above address, e-mailed to [OIRA\\_Submission@omb.eop.gov](mailto:OIRA_Submission@omb.eop.gov), or faxed to 202-395-7285.

**FOR FURTHER INFORMATION CONTACT:** Seanbob Kelly, 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 (Pub. L. 108-199, section 801).

This final rule implements Amendment 37 to the FMP. In April 2010, the Council recommended Amendment 37 to the Secretary of Commerce. NMFS published a Notice of Availability of this amendment in the **Federal Register** on February 1, 2011 (76 FR 5556), with comments invited through April 4, 2011. NMFS published the proposed rule for this action on February 25, 2011 (76 FR 8700), with comments invited through April 1, 2011. NMFS approved Amendment 37 on April 25, 2011. NMFS received three unique comment letters during the public comment period for Amendment 37 and the proposed rule; however, these comments did not result in any modification to the proposed regulation text. These comments are discussed in greater detail below.

#### Background

Amendments 18 and 19 amended the FMP to include the Bering Sea/Aleutian Islands Crab Rationalization Program (Program). Regulations implementing the Program are located at 50 CFR part 680. NMFS established the Program as a catch share program for nine crab fisheries in the BSAI. The IFQ portion of the Program assigned quota share (QS) to persons based on their historic participation in one or more of these 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 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 QS; and captains and crew onboard catcher vessels were issued catcher vessel crew QS. Each year, a person who holds QS may receive IFQ, which represents an exclusive harvest privilege for a portion of the annual total allowable catch (TAC). Under the program, QS holders can form cooperatives to pool the harvest of the IFQ on fewer vessels to minimize operational costs.

NMFS also issued processor quota share (PQS) under the Program. Each year, PQS yields an exclusive privilege to receive for processing a portion of the