

**Pt. 679, Table 46**

Longitude		Latitude	
172	24.00W	62	42.00N
172	24.00W	63	57.03N
172	17.42W	64	0.01N

Note: The area is delineated by connecting the coordinates in the order listed by straight lines. The last set of coordinates for each area is connected to the first set of coordinates for the area by a straight line. The projected coordinate system is North American Datum 1983, Albers.

[73 FR 43370, July 25, 2008]

**TABLE 46 TO PART 679—ST. MATTHEW ISLAND HABITAT CONSERVATION AREA**

Longitude		Latitude	
172	0.00W	60	54.00N
171	59.92W	60	3.52N
174	0.50W	59	42.26N
174	24.98W	60	9.98N
174	1.24W	60	54.00N

Note: The area is delineated by connecting the coordinates in the order listed by straight lines. The last set of coordinates for each area is connected to the first set of coordinates for the area by a straight line. The projected coordinate system is North American Datum 1983, Albers.

[73 FR 43370, July 25, 2008]

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

**Subpart A—General**

Sec.

- 680.1 Purpose and scope.
- 680.2 Definitions.
- 680.3 Relation to other laws.
- 680.4 Permits.
- 680.5 Recordkeeping and reporting (R&R).
- 680.6 Crab economic data report (EDR).
- 680.7 Prohibitions.
- 680.8 Facilitation of enforcement.
- 680.9 Penalties.

**Subpart B—Management Measures**

- 680.20 Arbitration System.
- 680.21 Crab harvesting cooperatives.
- 680.22 Sideboard protections for GOA groundfish fisheries.
- 680.23 Equipment and operational requirements.
- 680.30 [Reserved]

**Subpart C—Quota Management Measures**

- 680.40 Quota Share (QS), Processor QS (PQS), Individual Fishing Quota (IFQ), and Individual Processor Quota (IPQ) Issuance.

**50 CFR Ch. VI (10–1–08 Edition)**

- 680.41 Transfer of QS, PQS, IFQ and IPQ.
- 680.42 Limitations on use of QS, PQS, IFQ, and IPQ.
- 680.43 Determinations and appeals.
- 680.44 Cost recovery.

TABLE 1 TO PART 680—CRAB RATIONALIZATION (CR) FISHERIES

TABLE 2 TO PART 680—CRAB SPECIES CODES

TABLE 3A TO PART 680—CRAB DELIVERY CONDITION CODES

TABLE 3B TO PART 680—CRAB DISPOSITION OR PRODUCT CODES

TABLE 3C TO PART 680—CRAB PRODUCT CODES FOR ECONOMIC DATA REPORTS

TABLE 4 TO PART 680—CRAB PROCESS CODES

TABLE 5 TO PART 680—CRAB SIZE CODES

TABLE 6 TO PART 680—CRAB GRADE CODES

TABLE 7 TO PART 680—INITIAL ISSUANCE OF CRAB QS BY CRAB QS FISHERY

TABLE 8 TO PART 680—INITIAL QS AND PQS POOL FOR EACH CRAB QS FISHERY

TABLE 9 TO PART 680—INITIAL ISSUANCE OF CRAB PQS BY CRAB QS FISHERY

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

SOURCE: 70 FR 10241, Mar. 2, 2005, unless otherwise noted.

**Subpart A—General**

**§ 680.1 Purpose and scope.**

Regulations in this part implement policies developed by the North Pacific Fishery Management Council and approved by the Secretary of Commerce in accordance with the Magnuson-Stevens Fishery Conservation and Management Act. In addition to part 600 of this chapter, these regulations implement the following:

(a) *Fishery Management Plan (FMP) for Bering Sea and Aleutian Islands King and Tanner Crabs.* Regulations in this part govern commercial fishing for, and processing of, king and Tanner crabs in the Bering Sea and Aleutian Islands Area pursuant to section 313(j) of the Magnuson-Stevens Act, including regulations implementing the Crab Rationalization Program for crab fisheries in the Bering Sea and Aleutian Islands Area, and supersede State of Alaska regulations applicable to the commercial king and Tanner crab fisheries in the Exclusive Economic Zone (EEZ) of the Bering Sea and Aleutian Islands Area that are determined to be inconsistent with the FMP.

(b) *License Limitation Program.* Commercial fishing for crab species not included in the Crab Rationalization Program for crab fisheries of the Bering Sea and Aleutian Islands Area remains subject to the License Limitation Program for the commercial crab fisheries in the Bering Sea and Aleutian Islands Area under part 679 of this chapter.

**§ 680.2 Definitions.**

In addition to the definitions in the Magnuson-Stevens Act, in 50 CFR part 600, and §679.2 of this chapter, the terms used in this part have the following meanings:

*Adak community entity* means the non-profit entity incorporated under the laws of the state of Alaska that represents the community of Adak and has a board of directors elected by the residents of Adak.

*Affiliation* means a relationship between two or more entities in which one directly or indirectly owns or controls a 10 percent or greater interest in, or otherwise controls, another, or a third entity directly or indirectly owns or controls a 10 percent or greater interest in, or otherwise controls, both. For the purpose of this definition, the following terms are further defined:

(1) *Entity.* An entity may be an individual, corporation, association, partnership, joint-stock company, trust, or any other type of legal entity, any receiver, trustee in bankruptcy or similar official or liquidating agent, or any organized group of persons whether incorporated or not, that holds direct or indirect interest in:

(i) Quota share (QS), processor quota share (PQS), individual fishing quota (IFQ), or individual processing quota (IPQ); or,

(ii) For purposes of the economic data report (EDR), a vessel or processing plant operating in CR fisheries.

(2) *Indirect interest.* An indirect interest is one that passes through one or more intermediate entities. An entity's percentage of indirect interest in a second entity is equal to the entity's percentage of direct interest in an intermediate entity multiplied by the intermediate entity's direct or indirect interest in the second entity.

(3) *Controls a 10 percent or greater interest.* An entity controls a 10 percent

or greater interest in a second entity if the first entity:

(i) Controls a 10 percent ownership share of the second entity, or

(ii) Controls 10 percent or more of the voting stock of the second entity.

(4) *Otherwise controls.* (i) A PQS or IPQ holder otherwise controls QS or IFQ, or a QS or IPQ holder, if it has:

(A) The right to direct, or does direct, the business of the entity which holds the QS or IFQ;

(B) The right in the ordinary course of business to limit the actions of or replace, or does limit or replace, the chief executive officer, a majority of the board of directors, any general partner or any person serving in a management capacity of the entity which holds the QS or IFQ;

(C) The right to direct, or does direct, the transfer of QS or IFQ;

(D) The right to restrict, or does restrict, the day-to-day business activities and management policies of the entity holding the QS or IFQ through loan covenants;

(E) The right to derive, or does derive, either directly, or through a minority shareholder or partner, and in favor of a PQS or IPQ holder, a significantly disproportionate amount of the economic benefit from the holding of QS or IFQ;

(F) The right to control, or does control, the management of, or to be a controlling factor in, the entity holding QS or IFQ;

(G) The right to cause, or does cause, the sale of QS or IFQ;

(H) Absorbs all of the costs and normal business risks associated with ownership and operation of the entity holding QS or IFQ; and

(I) Has the ability through any other means whatsoever to control the entity that holds QS or IFQ.

(ii) Other factors that may be indicative of control include, but are not limited to the following:

(A) If a PQS or IPQ holder or employee takes the leading role in establishing an entity that will hold QS or IFQ;

(B) If a PQS or IPQ holder has the right to preclude the holder of QS or IFQ from engaging in other business activities;

§ 680.2

50 CFR Ch. VI (10-1-08 Edition)

(C) If a PQS or IPQ holder and QS or IFQ holder use the same law firm, accounting firm, etc.;

(D) If a PQS or IPQ holder and QS or IFQ holder share the same office space, phones, administrative support, etc.;

(E) If a PQS or IPQ holder absorbs considerable costs and normal business risks associated with ownership and operation of the QS or IFQ holdings;

(F) If a PQS or IPQ holder provides the start up capital for the QS or IFQ holder on less than an arm's-length basis;

(G) If a PQS or IPQ holder has the general right to inspect the books and records of the QS or IFQ holder; and

(H) If the PQS or IPQ holder and QS or IFQ holder use the same insurance agent, law firm, accounting firm, or broker of any PQS or IPQ holder with whom the QS or IFQ holder has entered into a mortgage, long-term or exclusive sales or marketing agreement, unsecured loan agreement, or management agreement.

*Arbitration IFQ* means:

(1) Class A catcher vessel owner (CVO) IFQ held by a person who is not a holder of PQS or IPQ and who is not affiliated with any holder of PQS or IPQ, and

(2) IFQ held by an FCMA cooperative.

*Arbitration QS* means CVO QS held by a person who is not a holder of PQS or IPQ and is not affiliated with any holder of PQS or IPQ.

*Arbitration System* means the system established by the contracts required by § 680.20, including the process by which the Market Report and Non-Binding Price Formula are produced, the negotiation approaches, the Binding Arbitration process, and fee collection.

*Assessed value* means the most recent value for a vessel and gear provided in a marine survey.

*Auditor* means an examiner employed by, or under contract to, the data collection agent to verify data submitted in an economic data report.

*Blind data* means any data collected from the economic data report by the data collection agent that are subsequently amended by removing personal identifiers, including, but not limited to social security numbers, crew permit numbers, names and addresses,

Federal fisheries permit numbers, Federal processor permit numbers, Federal tax identification numbers, State of Alaska vessel registration and permit numbers, and by adding in their place a nonspecific identifier.

*Box size* means the capacity of a crab-packing container in kilograms or pounds.

*BSAI crab* means those crab species governed under the Fishery Management Plan (FMP) for Bering Sea/Aleutian Islands King and Tanner Crabs.

*BSAI Crab Capacity Reduction Program* means the program authorized by Public Law 106-554, as Amended by Public Law 107-20 and Public Law 107-117.

*BSAI crab fisheries* means those crab fisheries governed under the Fishery Management Plan (FMP) for Bering Sea/Aleutian Islands King and Tanner Crabs.

*Captain* means, for the purposes of the EDR, a vessel operator.

*Catcher/processor (CP)* means a vessel that is used for catching crab and processing that crab.

*Catcher vessel* means a vessel that is used for catching crab and that does not process crab on board.

*CDQ community* means a community eligible to participate in the Western Alaska Community Development Program under subpart C of 50 CFR part 679.

*CDQ group* means a CDQ group as that term is defined at 50 CFR 679.2.

*Committed IFQ* means:

(1) Any Arbitration IFQ for which the holder of such IFQ has agreed or committed to delivery of crab harvested with the IFQ to the holder of previously uncommitted IPQ and for which the holder of the IPQ has agreed to accept delivery of that crab, regardless of whether such agreement specifies the price or other terms for delivery, or

(2) Any Arbitration IFQ for which, on or after the date which is 25 days prior to the opening of the first crab fishing season in the crab QS fishery for such IFQ, the holder of the IFQ has unilaterally committed to delivery of crab harvested with the IFQ to the holder of previously uncommitted IPQ, regardless of whether the IFQ and IPQ holders have reached an agreement that

## Fishery Conservation and Management

## § 680.2

specifies the price or other terms for delivery.

*Committed IPQ* means any IPQ for which the holder of such IPQ has received a commitment of delivery from a holder of Arbitration IFQ such that the Arbitration IFQ is committed IFQ, regardless of whether the Arbitration IFQ and IPQ holders have reached an agreement that specifies the price or other terms for delivery.

*Converted CPO QS* means CPO QS for the BBR and BSS crab QS fisheries that is issued to the entities defined in § 680.40(c)(5)(ii), (c)(5)(iii), or (c)(5)(iv) based on the procedures established in § 680.40(c)(5).

*CP standard price* means price, expressed in U.S. dollars per raw crab pound, for all CR crab landed by a CP as determined for each crab fishing year by the Regional Administrator and documented in a CP standard price list published by NMFS.

*Crab cost recovery fee liability* means that amount of money, in U.S. dollars, owed to NMFS by a CR allocation holder or RCR as determined by multiplying the appropriate ex-vessel value of the amount of CR crab debited from a CR allocation by the appropriate crab fee percentage.

*Crab fee percentage* means that positive number no greater than 3 percent determined for each crab fishing year by the Regional Administrator and used to calculate the crab cost recovery fee liability for a CR allocation holder or RCR under the Crab Rationalization Program.

*Crab fishing year* means the period from July 1 of one calendar year through June 30 of the following calendar year.

*Crab grade* means a grading system to describe the quality of crab.

(1) Grade 1 means standard or premium quality crab, and

(2) Grade 2 means below standard quality crab.

*Crab harvesting cooperative*, for the purposes of this part 680, means a group of crab QS holders who have chosen to form a crab harvesting cooperative, under the requirements of § 680.21, in order to combine and collectively harvest their crab IFQ through a crab harvesting cooperative IFQ permit issued by NMFS.

*Crab harvesting cooperative IFQ* means the annual catch limit of IFQ crab that may be harvested by a crab harvesting cooperative that is lawfully allocated a harvest privilege for a specific portion of the TAC of a crab QS fishery.

*Crab individual fishing quota (crab IFQ)* means the annual catch limit of a crab QS fishery that may be harvested by a person who is lawfully allocated a harvest privilege for a specific portion of the TAC of a crab QS fishery with the following designations or with the designation as a crab IFQ hired master:

(1) *Catcher vessel crew (CVC) IFQ* means a permit to annually harvest, but not process, a CR crab on board a vessel.

(2) *Catcher vessel owner (CVO) IFQ* means a permit to annually harvest, but not process, a CR crab on board a vessel.

(i) *Class A IFQ* means IFQ that is required to be delivered to a processor holding unused IPQ.

(ii) *Class B IFQ* means IFQ that is not required to be delivered to a processor holding unused IPQ.

(3) *Catcher/processor owner (CPO) IFQ* means a permit to annually harvest and process a CR crab on a catcher/processor.

(4) *Catcher/processor crew (CPC) IFQ* means a permit to annually harvest and process a CR crab on a catcher/processor.

*Crab IFQ hired master* means a person who holds a crab IFQ hired master permit issued under § 680.4.

*Crab IFQ permit holder* means the person identified on an IFQ permit.

*Crab LLP license history* means, for any particular crab LLP license, the legal landings made on the vessel(s) that was used to qualify for that LLP license and any legal landings made under the authority of that LLP license.

*Crab quota share (crab QS)* means a permit the face amount of which is used as the basis for the annual calculation and allocation of a person's crab IFQ with the following designations:

(1) *Catcher vessel crew (CVC) QS* means a permit that yields CVC IFQ.

(2) *Catcher vessel owner (CVO) QS* means a permit that yields CVO IFQ.

(3) *Catcher/processor owner (CPO) QS* means a permit that yields CPO IFQ.

(4) *Catcher/processor crew (CPC) QS* means a permit that yields CPC IFQ.

*Crab QS fishery* means those CR fisheries under Table 1 to this part that require the use of QS and PQS, and their resulting IFQ and IPQ, to harvest and receive IFQ crab.

*Crab QS program* means the program that allocates QS and PQS, and their resulting IFQ and IPQ, for CR crab of the BSAI off Alaska and governed by regulations under this part.

*Crab QS regional designation* means the designation of QS or PQS and their resulting IFQ and IPQ subject to regional delivery requirements in this part.

*Crab Rationalization (CR) allocation* means any allocation of CR crab authorized under the CR Program.

*Crab Rationalization (CR) crab* means those crab species in the crab fisheries subject to management under the Crab Rationalization Program described in Table 1 to this part.

*Crab Rationalization (CR) fisheries* means those fisheries defined in Table 1 to part 680.

*Crab Rationalization (CR) Program* means the crab QS program plus the CDQ and the Adak community allocation programs, including all management, monitoring, and enforcement components, for BSAI king and Tanner crabs governed by the regulations of this part.

*Crew* means:

(1) Any individual, other than the fisheries observers, working on a vessel that is engaged in fishing.

(2) For the purposes of the EDR, each employee on a vessel, excluding the captain and fisheries observers, that participated in any CR fishery.

*Custom processing* means processing of crab by a person undertaken on behalf of another person.

*Data collection agent (DCA)* means the entity selected by the Regional Administrator to distribute an EDR to a person required to complete it, to receive the completed EDR, to review and verify the accuracy of the data in the EDR, and to provide those data to authorized recipients.

*Days at sea* means, for the purposes of the EDR, the number of days spent at

sea while fishing for crab, including travel time to and from fishing grounds.

*Economic data report (EDR)* means the report of cost, labor, earnings, and revenue data for catcher vessels, catcher/processors, shoreside crab processors, and stationary floating crab processors participating in CR fisheries.

*Eligible community resident* means, for purposes of the Crab QS program, any individual who:

(1) Is a citizen of the United States;

(2) Has maintained a domicile in the ECC, from which the individual requests to lease crab IFQ, for at least 12 consecutive months immediately preceding the time when the assertion of residence is made and who is not claiming residency in another community, state, territory, or country; and

(3) Is otherwise eligible to receive crab QS or IFQ by transfer.

*Eligible crab community (ECC)* means a community in which at least 3 percent of the initial allocation of processor quota share of any crab fishery is allocated. The specific communities are:

(1) CDQ Communities.

(i) Akutan;

(ii) False Pass;

(iii) St. George; and

(iv) St. Paul.

(2) Non-CDQ Communities.

(i) Unalaska/Dutch Harbor;

(ii) Kodiak;

(iii) King Cove;

(iv) Port Moller; and

(v) Adak.

*Eligible crab community (ECC) entity* means a non-profit organization specified under §680.41(j)(2) that is designated by the governing body of an ECC, other than Adak, to represent it for the purposes of engaging in the right of first refusal of transfer of crab PQS or IPQ outside the ECC under contract provisions set forth under section 313(j) of the Magnuson-Stevens Act. For those ECCs that also are CDQ communities, the ECC entity is the CDQ group to which the ECC is a member.

*Eligible crab community organization (ECCO)* means a non-profit organization that represents at least one ECC, as defined in this part, and that has been approved by the Regional Administrator to obtain by transfer and hold

## Fishery Conservation and Management

## § 680.2

crab QS and to lease the resulting IFQ on behalf of an ECC.

*Ex-vessel value* means:

(1) *For the shoreside processing sector.* The total U.S. dollar amount of all compensation, monetary and non-monetary, including any retroactive payments, received by a CR allocation holder for the purchase of any CR crab debited from the CR allocation described in terms of raw crab pounds.

(2) *For the catcher/processor sector.* The total U.S. dollar amount of CR crab landings as calculated by multiplying the number of raw crab pounds debited from the CR allocation by the appropriate CP standard price determined by the Regional Administrator.

*FCMA cooperative*, for the purposes of this part 680, means a cooperative formed in accordance with the Fishermen's Collective Marketing Act of 1934 (15 U.S.C. 521).

*Finished pounds* means the total weight, in pounds, of processed product, not including the container.

*IFQ account* means the amount of crab IFQ in raw crab pounds that is held by a person at any particular time for a crab QS fishery, sector, region, and class.

*IFQ crab* means crab species listed in Table 1 to this part subject to management under the crab QS program.

*Individual processor quota (IPQ)* means the annual amount of crab, in pounds, representing a specific portion of the TAC for a crab QS fishery, that may be received for processing by a person who is lawfully allocated PQS or IPQ.

*Initial processor quota share (PQS) pool* means the total number of PQS units for each crab QS fishery which is the basis of initial PQS allocations.

*Initial quota share (QS) pool* means the total number of non-processor QS units for each crab QS fishery which is the basis of initial QS allocations.

*IPQ account* means the amount of crab IPQ in raw crab pounds that is held by a person at any particular time for a crab QS fishery and region.

*Landing* means the transfer of raw crab harvested by a vessel prior to that crab being reported on a CR crab landing report.

(1) For catcher/processers, the amount of crab retained during a reporting period constitutes a landing.

(2) For catcher vessels, the amount of crab removed from the boat at a single location/time constitutes a landing.

*Lease of QS/IFQ or PQS/IPQ* means a temporary, annual transfer of crab IFQ or IPQ without the underlying QS or PQS.

*Leaseholder* means, for purposes of the EDR, a person who:

(1) Is identified as the leaseholder in a written lease of a catcher vessel, catcher/processor, shoreside crab processor, or stationary floating crab processor, or

(2) Pays the expenses of a catcher vessel, catcher/processor, shoreside crab processor, or stationary floating crab processor, or

(3) Claims expenses for the catcher vessel, catcher/processor, shoreside crab processor, or stationary floating crab processor as a business expense on schedule C of his/her Federal income tax return or on a state income tax return.

*Magnuson-Stevens Act* means the Magnuson-Stevens Fishery Conservation and Management Act, as amended (16 U.S.C. 1801 *et seq.*).

*Mutual Agreement* means, for purposes of the Arbitration System, the consent and agreement of Arbitration Organizations that represent an amount of Arbitration QS equal to more than 50 percent of all the Arbitration QS in a fishery, and an amount of PQS equal to more than 50 percent of all the PQS in a fishery based upon the Annual Arbitration Organization Reports.

*Newly constructed vessel* means, for the purposes of initial QS issuance, a vessel on which the keel was laid by June 10, 2002.

*Official crab rationalization record* means the information prepared by the Regional Administrator about the legal landings and legal processing by vessels and persons in the BSAI crab fisheries during the qualifying periods specified at § 680.40.

*Processing, or to process* means the preparation of, or to prepare, crab to render it suitable for human consumption or storage. This includes, but is not limited to: Cooking, canning, butchering, sectioning, freezing or icing.

*Processor quota share (PQS)* means a permit the face amount of which is

### § 680.3

used as the basis for the annual calculation and allocation of IPQ.

*Raw crab pounds* means the weight of raw crab in pounds when landed.

*Registered crab receiver (RCR)* means a person holding an RCR Permit issued by the Regional Administrator.

*Retain* means to fail to return crab to the sea after a reasonable opportunity to sort the catch.

*Right of First Refusal (ROFR)* means the civil contract provisions set forth under section 313(j) of the Magnuson-Stevens Act between the holders of PQS and IPQ and ECC entities, other than Adak, for the opportunity of ECCs to exercise the right to purchase or lease PQS or IPQ proposed to be transferred by a holder of PQS or IPQ in an ECC.

*Seafood Marketing Association Assessment (SMAA)* means the seafood processing assessment collected by processing firms and buyers from fishery harvesters for the State of Alaska.

*Share payment* means an amount of monetary compensation (not salary or wages) based on gross or net earnings of a BSAI crab fishing vessel.

*Shoreside crab processor* means any person or vessel that receives, purchases, or arranges to purchase unprocessed crab, except a catcher/processor or a stationary floating crab processor.

*Stationary floating crab processor (SFCP)* means a vessel of the United States that remains anchored or otherwise remains stationary while receiving or processing crab in the waters of the State of Alaska.

*Uncommitted IFQ* means any Arbitration IFQ that is not Committed IFQ.

*Uncommitted IPQ* means any IPQ that is not Committed IPQ.

*U.S. Citizen* means:

(1) Any individual who is a citizen of the United States; or

(2) Any corporation, partnership, association, or other entity that is organized under Federal, state, or local laws of the United States or that may legally operate in the United States.

[70 FR 10241, Mar. 2, 2005, as amended at 73 FR 29982, May 23, 2008; 73 FR 35088, June 20, 2008]

### § 680.3 Relation to other laws.

(a) *King and Tanner crab.* (1) Additional laws and regulations governing

### 50 CFR Ch. VI (10–1–08 Edition)

the conservation and management of king crab and Tanner crab in the BSAI area are contained in 50 CFR part 679, Alaska Statutes at A.S. 16, and Alaska Administrative Code at 5 AAC Chapters 34, 35, and 39.

(2) The Alaska Administrative Code (at 5 AAC 39.130) governs reporting and permitting requirements using the ADF&G “Intent to Operate” registration form and “Fish Tickets.”

(b) *Sport, personal use, and subsistence.*

(1) For State of Alaska statutes and regulations governing sport and personal use crab fishing other than subsistence fishing, see Alaska Statutes, Title 16—Fish and Game; 5 AAC Chapters 47 through 77.

(2) For State of Alaska statutes and regulations governing subsistence fishing for crab, see Alaska Statutes, Title 16—Fish and Game; 5 AAC 02.001 through 02.625.

### § 680.4 Permits.

(a) *General information.* Persons participating in the CR fisheries are required to possess the permits described in this section.

(1) *Approval.* Approval of applications under this part may be conditioned on the payment of fees under § 680.44 or the submission of an EDR as described under § 680.6.

(2) *Issuance.* The Regional Administrator may issue or amend any permits under this section or under § 680.21 annually or at other times as needed under this part.

(3) *Transfer.* Crab QS and PQS permits issued under § 680.40 and Crab IFQ and IPQ permits issued under this section are transferable, as provided under § 680.41. Crab IFQ hired master permits, Federal crab vessel permits, and RCR permits issued under this section are not transferable.

(4) *Inspection.* The holder of a Federal crab vessel permit, crab IFQ permit, crab IPQ permit, or crab IFQ hired master permit, must present a legible copy of the permit on request of any authorized officer or RCR receiving a crab IFQ landing. A legible copy of the RCR permit must be present at the location of a crab IFQ landing and an individual representing the RCR must

## Fishery Conservation and Management

## § 680.4

make the RCR permit available for inspection on request of any authorized officer.

(b) *Crab QS permit.* (1) Crab QS is issued by the Regional Administrator to persons who qualify for an initial allocation under § 680.40 or receive QS by transfer under § 680.41. Once issued, a crab QS permit is valid until modified under paragraph (b)(2) or (b)(3) of this section, or by transfer under § 680.41; or until the permit is revoked, suspended, or modified pursuant to § 679.43 of this chapter or under 15 CFR part 904. To qualify for a crab QS permit, the applicant must be a U.S. citizen.

(2) Each unit of Crab QS initially issued under § 680.40 for the Bering Sea Tanner crab (*Chionoecetes bairdi*) CR fishery shall be reissued as one unit of Eastern Bering Sea Tanner crab (EBT) QS and one unit of Western Bering Sea Tanner crab (WBT) QS.

(3) A converted CPO QS permit is valid until the end of the crab fishing year for which the permit is issued.

(c) *Crab PQS permit.* (1) Crab PQS is issued by the Regional Administrator to persons who successfully apply for an initial allocation under § 680.40 or receive PQS by transfer under § 680.41. Once issued, a crab PQS permit is valid until modified under paragraph (c)(2) of this section, or by transfer under § 680.41; or until the permit is revoked, suspended, or modified pursuant to § 679.43 of this chapter or under 15 CFR part 904.

(2) Each unit of Crab PQS initially issued under § 680.40 for the Bering Sea Tanner crab (*Chionoecetes bairdi*) CR fishery shall be reissued as one unit of Eastern Bering Sea Tanner crab (EBT) PQS and one unit of Western Bering Sea Tanner crab (WBT) PQS.

(d) *Crab IFQ permit.* (1) A crab IFQ permit authorizes the person identified on the permit to harvest crab in the fishery identified on the permit at any time the fishery is open during the crab fishing year for which the permit is issued, subject to conditions of the permit. A crab IFQ permit is valid under the following circumstances:

- (i) Until the end of the crab fishing year for which the permit is issued;
- (ii) Until the amount harvested is equal to the amount specified on the permit;

(iii) Until the permit is modified by transfers under § 680.41; or

(iv) Until the permit is revoked, suspended, or modified pursuant to § 679.43 or under 15 CFR part 904.

(2) A legible copy of the crab IFQ permit must be carried on board the vessel used by the permitted person at all times that IFQ crab are retained on board.

(3) A crab IFQ permit is issued on an annual basis by the Regional Administrator to persons who hold crab QS, of the type specified on the crab QS permit, and who have submitted a complete annual application for crab IFQ/IPQ permit, described at paragraph (f) of this section, that is subsequently approved by the Regional Administrator.

(4) To qualify for a crab IFQ permit, the applicant must be a U.S. Citizen.

(e) *Crab IPQ permit.* (1) A crab IPQ permit authorizes the person identified on the permit to receive/process the IFQ crab identified on the permit during the crab fishing year for which the permit is issued, subject to conditions of the permit. A crab IPQ permit is valid under the following circumstances:

(i) Until the end of the crab fishing year for which the permit is issued;

(ii) Until the amount received/processed is equal to the amount specified on the permit;

(iii) Until the permit is modified by transfers under § 680.41; or

(iv) Until the permit is revoked, suspended, or modified pursuant to § 679.43 or under 15 CFR part 904.

(2) A legible copy of the crab IPQ permit authorizing receiving/processing of IFQ crab must be retained on the premises or vessel used by the permitted person to process the IFQ crab at all times that IFQ crab are retained on the premises or vessel.

(3) A crab IPQ permit is issued on an annual basis by the Regional Administrator to persons who hold crab PQS, and who have submitted a complete annual application for crab IFQ/IPQ permit, described at paragraph (f) of this section, that is subsequently approved by the Regional Administrator.

(f) *Contents of annual application for crab IFQ/IPQ permit.* (1) A complete application must be received by NMFS no later than August 1 of the crab fishing

## § 680.4

## 50 CFR Ch. VI (10–1–08 Edition)

year for which a person is applying to receive IFQ or IPQ. If a complete application is not received by NMFS by this date, that person will not receive IFQ or IPQ for that crab fishing year.

(2) For the application to be considered complete, all fees required by NMFS must be paid, and any EDR required under § 680.6 must be submitted to the DCA. In addition, the applicant must include the following information:

(i) *Applicant information.* Enter applicant's name and NMFS Person ID; applicant's date of birth or, if a non-individual, date of incorporation; applicant's social security number (optional) or tax identification number; applicant's permanent business mailing address and any temporary mailing address the applicant wishes to use; and applicant's business telephone number, facsimile number, and e-mail address.

(ii) *Crab IFQ or IPQ permit identification.* Indicate the type of crab IFQ or IPQ permit for which applicant is applying by QS fishery(ies) and indicate (YES or NO) whether applicant has joined a crab harvesting cooperative. If YES, indicate cooperative's name and ensure that this application is submitted by the applicant's cooperative with its completed application for an annual crab harvesting cooperative IFQ permit.

(iii) *Identification of ownership interests.* If the applicant is not an individual, provide the names of all persons, to the individual level, holding an ownership interest in the entity and the percentage ownership each person and individual holds in the applicant.

(iv) *Documentation of affiliation.* Complete a documentation of affiliation declaring any and all affiliations, as the term "affiliation" is defined at § 680.2. A documentation of affiliation includes affirmations by the applicant pertaining to relationships that may involve direct or indirect ownership or control of the delivery of IFQ crab and any supplemental documentation deemed necessary by NMFS to determine whether an affiliation exists. Indicate whether any entity that holds PQS or IPQ is affiliated with the applicant, as affiliation is defined in § 680.2. If the applicant is considered affiliated,

the applicant must provide a list of all PQS or IPQ holders with which he/she is affiliated, including full name, business mailing address, and business telephone number.

(v) *Certification of applicant.* The applicant must sign and date the application certifying that all information is true, correct, and complete to the best of his/her knowledge and belief. Print the name of the applicant. If the application is completed by an authorized representative, proof of authorization must accompany the application.

(g) *Crab IFQ hired master permit.* (1) A crab IFQ hired master permit is issued on an annual basis and authorizes the individual identified on the permit to harvest and land IFQ crab for debit against the specified crab IFQ permit until the crab IFQ hired master permit expires or is revoked, suspended, or modified pursuant to § 679.43 or under 15 CFR part 904, or on request of the crab IFQ permit holder.

(2) A legible copy of the crab IFQ hired master permit must be on board the vessel used by the hired master to harvest IFQ crab at all times IFQ crab are retained on board. Except as specified in § 680.42, an individual who is issued a crab IFQ hired master permit must remain aboard the vessel used to harvest IFQ crab, specified under that permit, during the crab fishing trip and at the landing site until all crab harvested under that permit are offloaded and the landing report for IFQ crab is completed.

(h) *Contents of application for crab IFQ hired master permit.* In order for the application to be considered complete, a copy of the USCG *Abstract Of Title* or *Certificate Of Documentation* must be included with this application to demonstrate percent of vessel ownership by the IFQ permit holder. A complete application for a crab IFQ hired master permit must include the following information:

(1) *Purpose of application.* Indicate whether the application is to add or to delete a hired master and identification of crab IFQ permit(s) for which this application is submitted.

(2) *IFQ permit holder information.* Enter permit holder's name, NMFS Person ID, and social security number

(optional) or tax identification number; permit holder's permanent or temporary business mailing address; and permit holder's business telephone number, facsimile number, and e-mail address (if available).

(3) *Identification of vessel upon which crab IFQ will be harvested.* Enter the vessel's name, ADF&G vessel registration number, and USCG documentation number. Indicate whether (YES or NO) the permit holder has at least a 10 percent ownership interest in the vessel the crab IFQ hired master will use to fish permit holder's IFQ crab. If YES, provide documentation of IFQ permit holder's 10 percent ownership interest.

(4) *IFQ hired master permit holder information.* Complete a separate section for each crab IFQ hired master. Enter the hired master's name, NMFS Person ID, social security number (optional) or tax identification number, and date of birth; hired master's permanent or temporary business mailing address; and hired master's business telephone number, facsimile number, and e-mail address (if available).

(5) *Applicant certification.* The applicant must sign and date the application certifying that all information is true, correct, and complete to the best of his/her knowledge and belief. If the application is completed by an authorized representative, then authorization must accompany the application.

(i) *RCR permit.* (1) An RCR permit is issued on an annual basis. An RCR permit is valid during the crab fishing year for which it is issued until the RCR permit expires or is revoked, suspended, or modified pursuant to §679.43 or under 15 CFR part 904.

(2) An RCR permit is required for any person who receives unprocessed CR crab from the person(s) who harvested the crab, the owner or operator of a vessel that processes CR crab at sea, any person holding IPQ, and any person required to submit a Departure Report under 50 CFR 679.5(1)(4).

(j) *Contents of application for RCR permit.* For the application to be considered complete, all fees required by NMFS must be paid, and any EDR required under §680.6 must be submitted to the DCA. In addition, the applicant must include the following information:

(1) *Purpose of application.* Indicate whether the application is a request for a new RCR permit, a renewal of an existing RCR permit, or an amendment to an existing RCR permit. If a renewal of or amendment to an existing RCR permit, include the applicant's RCR permit number.

(2) *Applicant identification.* Enter applicant's name and NMFS Person ID; applicant's social security number or tax ID number (required); name of contact person for the applicant, if applicant is not an individual; applicant's permanent business mailing address; and business telephone number, facsimile number, and e-mail address (if available).

(3) *Type of activity.* Select type of receiving or processing activity and whether catcher/processor or shoreside processor.

(4) *Individual responsible for submission of EDR.* Enter the name of the designated representative submitting the EDR on behalf of the RCR, if an EDR is required at §680.6. If different from the RCR's contact information, also enter the designated representative's business mailing address, telephone number, facsimile number, and e-mail address (if available).

(5) *Application certification.* The applicant must sign and date the application certifying that all information is true, correct, and complete to the best of his/her knowledge and belief. If the application is completed by an authorized representative, then proof of authorization must accompany the application.

(k) *Federal crab vessel permit.* The owner of a vessel must have a Federal crab vessel permit on board that vessel when used to fish for CR crab.

(1) A Federal crab vessel permit is issued on an annual basis to the owner of the vessel and is in effect from the date of issuance through the end of the crab fishing year for which the permit was issued, unless it is revoked, suspended, or modified under §600.735 or §600.740.

(2) A Federal crab vessel permit may not be surrendered at any time during the crab fishing year for which it was issued.

(3) A Federal crab vessel permit issued under this paragraph is not

## § 680.4

## 50 CFR Ch. VI (10–1–08 Edition)

transferable or assignable and is valid only for the vessel for which it is issued.

(4) To qualify for a Federal crab vessel permit, the applicant must be a U.S. Citizen.

(5) The holder of a Federal crab vessel permit must submit an amended application for a Federal crab vessel permit within 10 days of the date of change in: the ownership of the vessel (a copy of the current USCG documentation for the vessel showing the change in ownership must accompany the amended application), or the individual responsible for submission of the EDR on behalf of the vessel's owner(s).

(1) *Contents of application for federal crab vessel permit.* For the application to be considered complete, all fees required by NMFS must be paid, and any EDR required under § 680.6 must be submitted to the DCA. Also, if ownership of the vessel has changed or if the permit application for a vessel to which a Federal crab vessel permit has never been issued, a copy of the USCG *Abstract Of Title* or *Certificate Of Documentation*. In addition the applicant must include the following information:

(1) *Purpose of application.* Indicate whether the application is a request for a new permit, a renewal of an existing permit, or an amendment to an existing permit. If a renewal of or amendment to an existing permit, include the current Federal crab vessel permit number.

(2) *Contact owner information.* The name(s), permanent business mailing address, social security number (voluntary) or tax ID number, business telephone number, business facsimile number, business e-mail address (if available) of all vessel owners, and the name of any person or company (other than the owner) that manages the operation of the vessel.

(3) *Vessel information.* Enter the vessel's name and home port (city and state); ADF&G processor code, if vessel is a catcher/processor or stationary floating crab processor; whether a vessel of the United States; USCG documentation number; ADF&G vessel registration number; and vessel's LOA (in feet), registered length (in feet), gross tonnage, net tonnage, and shaft horse-

power. Indicate all types of operations the vessel may conduct during a crab fishing year.

(4) *Designated representative for EDR.* Enter the name of the designated representative who is responsible for completion and submission of the EDR, and the representative's business mailing address, telephone number, facsimile number, and e-mail address (if available).

(5) *Applicant certification.* The applicant must sign and date the application certifying that all information is true, correct, and complete to the best of his/her knowledge and belief. Print the applicant name. If the application is completed by an authorized representative, then authorization must accompany the application.

(m) *Annual crab harvesting cooperative IFQ permit.* See § 680.21.

(n) *Contents of annual application for converted CPO QS/IFQ permit.* (1)(i) A complete application must be received by NMFS no later than August 1 of the crab fishing year for which a person or crab harvesting cooperative is applying to receive converted CPO QS and the IFQ derived from that converted CPO QS. If a complete application is not received by NMFS by this date, that person or crab harvesting cooperative will not receive converted CPO QS and the IFQ derived from that converted CPO QS for that crab fishing year.

(ii) To receive converted CPO QS/IFQ this application must be accompanied by a timely and complete application for crab IFQ/IPQ described at paragraph (f) of this section or a timely and complete application for a crab harvesting cooperative IFQ permit described at paragraph (m) of this section.

(2) For the application to be considered complete, all fees required by NMFS must be paid, and any EDR required under § 680.6 must be submitted to the DCA. In addition, the applicant must include the following information (see paragraphs (n)(2)(i) through (v) of this section):

(i) *Entity identification.* Indicate the entity (Entity A, B, or C) described in § 680.40(c)(5)(ii) through (c)(5)(iv) for which you are applying to receive converted CPO QS.

**Fishery Conservation and Management**

**§ 680.5**

(ii) *Applicant information.* Enter applicant's name and NMFS Person ID; applicant's permanent business mailing address and any temporary mailing address the applicant wishes to use; and applicant's business telephone number, facsimile number, and e-mail address.

(A) For Entity A or B:

(1) Identify the amount of CVO QS in either the BBR or BSS crab QS fishery with a North Region designation for issuance as converted CPO QS; and

(2) Identify the amount of PQS in either the BBR or BSS crab QS fishery initially issued to you by NMFS with a North Region designation for issuance as converted CPO QS.

(B) For Entity C:

(1) Identify the amount of CVO QS in either the BBR or BSS crab QS fishery initially issued to you by NMFS with a North Region designation for issuance as converted CPO QS; and

(2) Identify the amount of PQS in either the BBR or BSS crab QS fishery with a North Region designation for issuance as converted CPO QS.

(iii) *Affiliate information for Entities A and B.* (A) For Entities A and B described in § 680.40(c)(5)(ii) and (c)(5)(iii), indicate the permanent business mailing address and any temporary mailing address, business telephone number, facsimile number, and e-mail address of any person who is affiliated with you based on information provided in an annual application for IFQ/IPQ that is approved by the Regional Administrator for that crab fishing year

(B) Indicate the amount of PQS in either the BBR or BSS crab QS fishery initially issued to that person with a North Region designation for issuance as converted CPO QS.

(C) Indicate the amount of CVO QS in either the BBR or BSS crab QS fishery with a North Region designation held

by the affiliate for issuance as converted CPO QS.

(iv) *Affiliate information for Entity C.* (A) For Entity C described in § 680.40(c)(5)(iv), indicate the permanent business mailing address and any temporary mailing address, business telephone number, facsimile number, and e-mail address of any person who is affiliated with you based on information provided in an annual application for IFQ/IPQ that is approved by the Regional Administrator for that crab fishing year.

(B) Indicate the amount of PQS in either the BBR or BSS crab QS fishery with a North Region designation for issuance as converted CPO QS.

(C) Indicate the amount of CVO QS in either the BBR or BSS crab QS fishery initially issued to the affiliate with a North Region designation for issuance as converted CPO QS.

(v) *Certification of applicant and affiliates.* The applicant and any persons who are affiliated with the applicant and named on the application must sign and date the application certifying that all information is true, correct, and complete to the best of his/her knowledge and belief. If the application is completed by an authorized representative, proof of authorization must accompany the application.

[70 FR 10241, Mar. 2, 2005, as amended at 71 FR 32864, June 7, 2006; 73 FR 29982, May 23, 2008]

**§ 680.5 Recordkeeping and reporting (R&R).**

(a) *General requirements*—(1) *Recording and reporting crab.* Any CR crab harvested that is retained must be recorded and reported.

(2) *Responsibility.* (i) The participants in the CR fisheries are responsible for complying with the following R&R requirements:

Recordkeeping and reporting report	Person responsible	Reference
(A) Longline and pot gear catcher vessel daily fishing logbook.	Owner and operator of vessel .....	§ 679.5(c)(1).
(B) Longline and pot gear catcher/processor daily cumulative production logbook.	Owner and operator of vessel .....	§ 679.5(c)(1).
(C) Product Transfer Report (PTR) .....	Owner and operator of catcher/processor; Owner and manager of shoreside processor or SFCP; RCR.	§ 679.5(g).
(D) U.S. Vessel Activity Report (VAR) .....	Owner and operator of vessel .....	§ 679.5(k).
(E) Transshipment Authorization .....	Owner and operator of a catcher/processor; RCR ....	§ 679.5(l)(3).
(F) IFQ Departure Report .....	Owner and operator of vessel .....	§ 679.5(l)(4).
(G) CR crab Landing Report .....	RCR .....	§ 680.5(c).

Recordkeeping and reporting report	Person responsible	Reference
(H) Catcher/processor offload report .....	Owner and operator of a catcher/processor .....	§ 680.5(e).
(I) Eligible Crab Community Organization (ECCO) Annual Report for an Eligible Crab Community (ECC).	ECCO .....	§ 680.5(f).
(J) RCR Fee Submission Form .....	RCR .....	§ 680.5(g).
(K) Crab Economic Data Report (EDR) .....	Owners or leaseholders of a catcher vessel, catcher/processor, shoreside processor, or SFCP.	§ 680.6.

(3) *Representative.* Designation of a representative to complete R&R requirements does not relieve the person(s) responsible for compliance from ensuring compliance with this section.

(4) *Submittal of information.* A person must submit to NMFS all information, records, and reports required in this section in English and in a legible, timely, and accurate manner, based on A.l.t.; if handwritten or typed, in indelible ink.

(5) *Alteration of records.* A person may not alter or change any entry or record submitted to NMFS, except that an inaccurate, incomplete, or incorrect entry or record may be corrected after notifying the Regional Administrator at the address and facsimile number listed on each form, or as provided the opportunity on the Internet.

(6) *Inspection of records.* A person responsible for R&R under paragraph (a)(2) of this section must make available for inspection all reports, forms, scale receipts, and CR crab landing report receipts upon the request of an authorized officer for the time periods indicated in paragraph (a)(7) of this section.

(7) *Retention of records.* A person responsible for R&R under paragraph (a)(2) of this section must retain all reports and receipts as follows:

- (i) *On site.* Until the end of the crab fishing year during which the records were made and for as long thereafter as crab or crab products recorded in the records are retained onboard the vessel or on site at the facility; and
- (ii) *For 3 years.* For 3 years after the end of the crab fishing year during which the records were made.

(8) *Landing verification and inspection.* Each CR crab landing and all crab retained on board the vessel making a CR crab landing are subject to verification and inspection by authorized officers.

(9) *Sampling.* Each CR crab landing and all crab retained onboard a vessel

making a CR crab landing are subject to sampling by authorized officers and observers.

(b) *CR landing report procedure—(1) Properly debited landing.* All retained crab catch must be weighed, reported, and debited from the appropriate IFQ or IPQ account under which the catch was harvested, as appropriate.

(2) An RCR and his or her designee(s) must enter his or her authorized user ID and password to access the IERS.

(3) [Reserved]

(4) The RCR must enter the landing and/or processing data specified under paragraphs (d)(7), (d)(8) or (d)(9) of this section in the Internet submission form(s) or other NMFS-approved method.

(5) Deadloss and personal use crab must be debited from the appropriate CR allocation under which the catch was harvested.

(6) Deadloss and personal use crab that an IPQ holder did not purchase are not required to be debited from the IPQ holder's account.

(7) A properly debited, printed receipt from the IERS or other NMFS-approved reporting method constitutes confirmation that NMFS received the CR crab landing report and that the permit holder's account is properly debited.

(8) The RCR and the crab IFQ permit holder, crab IFQ hired master, IPQ permit holder, or person who harvested Adak or CDQ crab must each sign the printed receipt(s) to indicate that the landing reports are accurate and must enter date signed.

(9) The receipt must be retained as specified under paragraph (a)(7) of this section.

(10) A person who for any reason is unable to properly submit an electronic CR crab landing report or debit a landing as required under paragraph (d) of this section must telephone NMFS (800–304–4846).

(11) The address of the NMFS Alaska Region Internet site will be provided to all RCRs receiving crab.

(c) *Interagency electronic reporting system (IERS)*. Unless an alternative reporting method has been approved by NMFS, an RCR must obtain at his or her own expense: hardware, software, and Internet connectivity to support Internet submissions of the CR crab landing report on the IERS. The IERS will provide a web page where the applicant will enter information.

(1) *IERS processor registration*. (i) Before an RCR and his or her designee(s) can use the eLandings system to report landings, he/she must request authorization to use the system, reserve a particular user ID, and receive a password. Each RCR and his or her designee(s) must provide information needed to process account access into the IERS by completing an IERS Processor Registration at <http://www.fakr.noaa.gov/sustainablefisheries/crab/crfaq.htm>. Upon receiving the signed registration, the IERS will validate that all required information is submitted, that the information entered is in correct format, and that the requested user ID is not already in use. The IERS will generate a PDF document from the information entered by the applicant.

(ii) The user must print, sign, and submit the application to the address provided on the registration form. A user ID will be activated after a signed registration form is received. The signature of an applicant on the form means that the applicant agrees to use access privileges to the IERS for purposes of submitting legitimate fishery landing reports and to safeguard the user ID and password to prevent their use by unauthorized persons. In addition, signature of the RCR ensures that the applicant is authorized to submit landing reports for the processor permit number(s) listed.

(iii) Agency staff will review the form, confirm that the user should be authorized for the system, and will activate the user on the IERS. The IERS will then send the user an e-mail informing the user that his or her new user ID is ready for use.

(2) *Contents of the IERS processor registration*. The application for IERS

processor registration must contain the following information: Date of application, name of applicant (user), processor name and location (city and state) or vessel name, if applicable, business telephone number, business facsimile number, business e-mail address (if available), requested user ID, initial password, security question, security answer, ADF&G processor code(s), Federal processor permit number, if applicable, and RCR permit number(s).

(d) *CR crab landings—(1) Joint and several liability*. The RCR and the crab IFQ permit holder, crab IFQ hired master, IPQ permit holder, or person who harvested Adak or CDQ crab are required to provide accurate information to the RCR to complete the CR crab landing report.

(2) *Reporting*. All CR crab must be reported by the receiving RCR unless the crab has been previously reported.

(i) *Reporting by all except catcher/processors*. Crab must be reported using the IERS system described in paragraph (c) of this section.

(ii) *Reporting by catcher/processors*. Catcher/processors may submit CR crab landings by e-mail attachment in a format approved by NMFS.

(3) *Submittal requirement*. An RCR is required to submit a CR crab landing report to the Regional Administrator for each catcher vessel landing or catcher/processor landing.

(4) *Time limits*. (i) For CR crab harvested on a catcher/processor, the owner or operator is required to submit a CR crab landing report to NMFS by Tuesday noon after the end of each weekly reporting period in which CR crab was harvested.

(ii) For CR crab landed to an RCR that is not a catcher/processor, the owner or manager is required to submit a CR crab landing report to NMFS within 6 hours after all crab is offloaded from a specific vessel.

(5) *Remain at landing site*. Except for landings of CR crab processed at sea, once the landing has commenced, neither the harvesting vessel nor the crab IFQ permit holder, crab IFQ hired master, or person who harvested Adak or

CDQ crab may leave the landing facility until the CR crab account is properly debited (as described in paragraph (b)(7) of this section).

(6) *No movement of CR crab.* The landed crab may not be moved from the facility where it was landed until the CR crab landing report is received by the Regional Administrator, and the IFQ permit holder's or IPQ permit holder's account is properly debited (as described in paragraph (b)(7) of this section).

(7) *Contents of CR crab landing report.* The RCR must accurately enter the following information in a CR crab landing report:

- (i) RCR permit number, IFQ permit number, and IPQ permit number, as appropriate;
- (ii) ADF&G processor code of first purchaser;
- (iii) State of Alaska Interim Use Permit (IUP) number;
- (iv) Commercial Fisheries Entry Commission year sequence number;
- (v) Indicate (YES or NO) whether a portion of the harvested CR crab was or will be delivered to another RCR (partial delivery);
- (vi) Indicate (YES or NO) whether this is the last delivery for the trip;
- (vii) Management program: IFQ, CDQ, or Adak. (If CDQ or Adak, see paragraph (d)(9) of this section);
- (viii) ADF&G vessel registration number of the delivering vessel;
- (ix) Date fishing began;
- (x) Date of the CR crab landing;
- (xi) Number of pot lifts in each ADF&G statistical area;
- (xii) Number of crew, including operator and excluding observer(s);
- (xiii) Number of observers;
- (xiv) ADF&G fish ticket number (if not automatically supplied);
- (xv) If a shoreside processor, type of processing operation; enter port code from Tables 14a or 14b to part 679. If a catcher/processor, enter operation type from Table 14c to part 679;
- (xvi) ADF&G statistical area of harvest reported by the IFQ permit holder;
- (xvii) Species code of catch from Table 2 to this part;
- (xviii) Delivery-condition codes of catch from Table 3a to this part;
- (xix) Number of crab retained (optional);

- (xx) Price per pound;
- (xxi) Sold weight of live crab in pounds;
- (xxii) Scale weight of deadloss in pounds;
- (xxiii) Scale weight of crab retained for personal use in pounds; and
- (xxiv) Gear code to describe gear used to harvest CR crab (see Table 15 to 50 CFR part 679).

(8) *Custom processing.* In addition to the information required in paragraph (d)(7) of this section, if custom processing CR crab, enter the ADF&G processor code of the person for which the CR crab was custom processed;

(9) *CDQ and Adak landings.* Instead of the information described in paragraph (d)(7) of this section, an RCR who receives a landing of CR crab harvested under the CDQ or Adak community allocation programs must submit for each landing the following information for each CR fishery and species:

- (i) RCR permit number;
- (ii) Crab species code from Table 2 to this part;
- (iii) Type of crab, either CDQ or Adak community allocation;
- (iv) If CDQ, enter CDQ group number;
- (v) Crab species amount. Enter the scale weight(s) in raw crab pounds landed or processed at sea; and
- (vi) Price per pound.

(e) *Catcher/processor offload report.* The owner or operator of a catcher/processor that harvested and processed CR crab must complete a catcher/processor offload report at the time of offload of CR crab and attach a scale printout showing gross product offload weight.

(1) *Contents of catcher/processor offload report.* The catcher/processor offload report must include the following: Name, ADF&G processor code, and Federal crab vessel permit number of the catcher/processor; fishing start date and time; fishing stop date and time; product code from Table 3b to this part; total gross weight of product offload, including glaze and packaging (specify lb or kg); estimated glaze percentage; case count and average box weight (specify lb or kg); net weight of crab product (specify lb or kg); completion date and time of catcher/processor offload; location (port) of catcher/processor offload (see Tables 14a and 14b to

## Fishery Conservation and Management

## § 680.5

part 679); and ADF&G fish ticket numbers.

(2) *Submittal.* The RCR must submit electronically or by facsimile (907-586-7465) the catcher/processor offload report and a copy of the scale printout within 2 hours of completion of offload to the Regional Administrator.

(f) *ECCO Annual Report.* (1) Annually by June 30, each ECCO must submit a complete annual report on its crab QS activity for the prior crab fishing year for each ECC represented by the ECCO. The ECCO must submit a copy of the annual report to the governing body of each community represented by the ECCO and to the Regional Administrator, NMFS, Alaska Region; P.O. Box 21668; Juneau, AK 99802.

(2) *Contents of ECCO Annual Report.* A complete annual report must include the following information for the crab IFQ derived from the QS held by the ECCO:

(i) Name, ADF&G vessel registration number, USCG documentation number, and Federal crab vessel permit of each vessel from which the crab IFQ was harvested;

(ii) Name and business addresses of individuals employed as crew members when fishing the crab IFQ;

(iii) Criteria used by the ECCO to distribute crab IFQ leases among eligible community residents;

(iv) Description of efforts made to ensure that crab IFQ lessees employ crew members who are eligible community residents of the ECC aboard vessels on which crab IFQ derived from QS held by a ECCO is being fished;

(v) Description of the process used to solicit lease applications from eligible community residents of the ECC on whose behalf the ECCO is holding QS;

(vi) Names and business addresses and amount of crab IFQ requested by each individual applying to receive crab IFQ from the ECCO;

(vii) Any changes in the bylaws of the ECCO, board of directors, or other key management personnel;

(viii) Copies of minutes, bylaw changes, motions, and other relevant decision making documents from ECCO board meetings.

(g) *RCR fee submission form* (See § 680.44). (1) *Applicability.* An RCR who receives any CR crab pursuant to

§ 680.44 or the RCR's authorized representative, must submit a complete RCR fee submission form electronically, by mail, or by facsimile to the Regional Administrator. Mail to: Regional Administrator, NMFS, Alaska Region; Attn: OMI; P.O. Box 21668; Juneau, AK 99802-1668; Facsimile (907-586-7354). Fee submission forms are available from RAM or on the Alaska Region Home Page at <http://www.fakr.noaa.gov/>.

(2) *Due date and submittal.* The reporting period of the RCR fee submission form shall be the crab fishing year. An RCR must submit any crab cost recovery fee liability payment(s) and the RCR fee submission form to NMFS electronically or to the address provided at paragraph (g)(1) of this section not later than July 31 following the crab fishing year in which the CR crab landings were made.

(3) *Required information.* An RCR must accurately record on the RCR fee submission form the following information:

(i) *Identification of the RCR.* Enter the printed full name, NMFS person ID, RCR permit number, social security number or Federal tax identification number of the RCR. Enter the permanent or temporary business mailing address (indicate whether permanent or temporary), and the business telephone number, facsimile number, and e-mail address (if available).

(ii) *Signature of applicant.* Enter printed name and signature of applicant and date signed. If authorized representative, attach authorization to application.

(iii) *Method of Payment* (see § 680.44 (a)(4)). The RCR must select the method of payment for fees; whether by personal check, bank certified check (cashier's check), money order, or credit card. If by credit card, the RCR must select the type of credit card and enter the card number, expiration date, amount of payment, name as printed on the card, signature of the card holder, and date of signature.

(h) *Product transfer report.* (See § 679.5(g).)

(i) *U.S. Vessel activity report (VAR).* (See § 679.5(k).)

(j) *Transshipment authorization.* (See § 679.5(1)(3).)

§ 680.6

50 CFR Ch. VI (10–1–08 Edition)

(k) *IFQ departure report.* (See § 679.5(1)(4).)

(1) *Catcher vessel longline and pot daily fishing logbook (DFL) and catcher/processor daily cumulative production logbook (DCPL).* (See § 679.5 (c)).

[70 FR 10241, Mar. 2, 2005, as amended at 70 FR 33395, June 8, 2005; 70 FR 75421, Dec. 20, 2005]

**§ 680.6 Crab economic data report (EDR).**

Persons participating in the CR crab fisheries are required to submit the EDRs described in this section for various permit applications to be considered complete. Use these tables to complete the EDRs described in this section: Table 1, Crab Rationalization (CR) Fisheries; Table 2, Crab Species Codes; Table 3c, Crab Product Codes for the EDRs; Table 4, Crab Process Codes; Table 5, Crab Size Codes; and Table 6, Crab Grade Codes.

(a) *Catcher vessel historical EDR.* (1) NMFS will select catcher vessels from a list of known catcher vessels, as determined by NMFS, that made at least one landing from fisheries listed in Table 1 to this part between January 1,

1998, through December 31, 2004, and will publish a FEDERAL REGISTER notice identifying vessels whose existing or former owners and leaseholders are required to submit an EDR, as follows:

(i) Owners or leaseholders of catcher vessels that participated in the BSAI crab fisheries between January 1, 1998, through December 31, 2004, and have received an allocation of QS, PQS, IFQ, or IPQ.

(ii) Owners or leaseholders of catcher vessels that participated in the BSAI crab fisheries between January 1, 1998, through December 31, 2004, that did not qualify for and receive QS, PQS, IFQ, or IPQ, but were participants at any time since January 23, 2004, in the BSAI crab fisheries.

(2) *Time limit.* The owner or leaseholder of the identified vessels must submit the historical EDR to the DCA 90 days after the FEDERAL REGISTER notice notifying owners or leaseholders, to the address provided on the form.

(3) *Instructions.* Instructions for submitting a catcher vessel historical EDR and certification page are specified in the following table:

If you were . . .	And . . .	You must complete and submit . . .
(i) The catcher vessel owner as described in paragraph (a)(1) of this section.	(A) You harvested BSAI crab in the vessel described at paragraph (a)(4)(ii)(B) of this section and were notified by NMFS to submit an EDR for selected years.  (B) No one harvested BSAI crab in the vessel described at paragraph (a)(4)(ii)(B) of this section and you were notified by NMFS to submit an EDR for selected years. (C) You leased the vessel to another party, and harvested no BSAI crab in the vessel described at paragraph (a)(4)(ii)(B) of this section and were notified by NMFS to submit an EDR for selected years.  (D) You leased the vessel for a portion of the year to another party, but harvested some BSAI crab in the vessel described at paragraph (a)(4)(ii)(B) of this section and were notified by NMFS to submit an EDR for selected years.	Entire EDR for each year that BSAI crab was harvested.  EDR certification pages.  (1) EDR certification pages.  (2) Provide the name, business address, and telephone number of the person to whom you leased the vessel during the NMFS-selected years.  (1) Entire EDR for each year that BSAI crab was harvested.  (2) Provide the name, business address, and telephone number of the person to whom you leased the vessel during the NMFS-selected years.
(ii) The leaseholder as described in paragraph (a)(1) of this section.	You harvested BSAI crab in the vessel described at paragraph (a)(4)(ii)(B) of this section vessel and were notified by NMFS to submit an EDR for selected years.	Entire EDR for each year that BSAI crab was harvested.

## Fishery Conservation and Management

## § 680.6

(4) *EDR certification pages.* (i) The owner or leaseholder must submit the EDR certification pages either:

(A) *As part of the entire EDR.* The owner or leaseholder must submit the completed EDR certification pages as part of the entire EDR and must attest to the accuracy and completion of the EDR by signing and dating the certification pages; or

(B) *As a separate document.* The owner or leaseholder must submit the completed EDR certification pages only, and must attest that they meet the conditions exempting them from submitting the EDR, by signing and dating the certification pages (see paragraph (a)(3) of this section).

(ii) The owner, leaseholder, or designated representative must submit the following information on the certification pages:

(A) *Calendar year of EDR.* Calendar year for which the vessel must submit the EDR;

(B) *Catcher vessel information.* Vessel name, USCG documentation number, ADF&G vessel registration number, crab LLP license number(s), current estimated market value of vessel and equipment, and replacement value of vessel and equipment.

(C) *Owner information.* Name of company, partnership, or sole proprietorship and business telephone number, facsimile number, and e-mail address (if available).

(D) *Designated representative.* Any owner or leaseholder may appoint a designated representative who is an individual for responding to questions on the EDR and must ensure that the designated representative complies with the regulations in this part. The designated representative is the primary contact person for the DCA on issues relating to data required in the EDR.

(E) *Person completing this report.* (1) Indicate whether the person completing this report is the owner, leaseholder, or designated representative;

(2) If the owner is the person completing this report, check the correct box. If the name and address of the owner provided in paragraph (a)(4)(ii)(C) of this section is the same as the name and address of the person completing the EDR, the information does not need to be repeated here; and

(3) Name of person, title, and business telephone number, facsimile number, and e-mail address (if available).

(5) *EDR.* The owner or leaseholder must record the following information on an EDR:

(i) *BSAI Crab activity chart.* Complete a crab activity chart by entering the following information: CR fishery code, ADF&G Fish ticket number(s), number of days at sea, average crew size (including captain), and number of pots lost (if applicable).

(ii) *Crab sales gross revenue.* CR fishery code, pounds sold, and gross revenue.

(iii) *CDQ crab lease costs.* CR fishery code, pounds leased, and total cost of lease. If you did not participate in CDQ fisheries, indicate N/A.

(iv) *Crab harvesting labor costs.* CR fishery code, number of crew earning shares (excluding captain), total crew share payment, and captain's share payment.

(v) *BSAI crab crew residence.* For employees that participated in BSAI crab harvesting, record the locations where they reside and the number of employees that are from each residential location, as follows:

(A) If Alaska, enter primary city of residence.

(B) If state other than Alaska, enter primary state of residence.

(C) If country other than United States, enter primary country of residence.

(vi) *BSAI crab-specific vessel costs.* For the fishing year being reported, record insurance premiums (for hull, property and indemnity, and pollution), insurance deductible fees, quantity and cost of pots purchased, line, and other crab fishing gear purchases, pounds and cost of bait by species, gallons and cost of fuel, cost of lubrication and hydraulic fluids, cost of food and provisions for crew, other crew costs, freight costs of supplies shipped to you for the vessel, freight costs for landed crab, storage, observer costs, fish taxes, and other crab-specific costs.

(vii) *Vessel-specific costs.* Record the total annual costs for each category. If the reported total cost is not exclusively for BSAI crab operations, place an "X" in the COST RELATED TO MORE THAN JUST CRAB FISHING

§ 680.6

50 CFR Ch. VI (10-1-08 Edition)

column. The agency or contracted analyst will prorate this amount over all fishing activities. Indicate capitalized expenditures for vessel, gear and equipment; repair and maintenance (R&M) expenses for vessel, gear and equipment; and other vessel-specific costs (specify).

(viii) *Labor payment details.* (A) Indicate with an "X" in the appropriate column whether the following expenses were deducted, directly charged, or not deducted or directly charged from the total revenue before calculating the crew payments in BSAI fisheries: fuel and lubrication, food and provisions, bait, fish tax, observer costs, CDQ fish, freight, gear loss, and other (specify).

(B) Indicate percentage of the net share that was applied to boat share and crew share (including captain).

(ix) *Annual totals for all fisheries.* For the calendar year, record the total days at sea, gross revenue, round pounds caught (excluding discards), and labor costs for your fishing activities in all fisheries in which you participated (crab, groundfish, etc.).

(b) *Catcher vessel annual EDR—(1) Requirement.* On or before June 28 of each year, any owner or leaseholder of a catcher vessel that landed crab from a CR fishery must submit to the DCA, at the address provided on the form, an EDR for annual data for the previous calendar year. For the year 2005, the annual EDR is due on or before June 28, 2006.

(2) *Instructions.* Instructions for submitting a catcher vessel annual EDR and certification page are specified in the following table:

If you are . . .	And . . .	You must complete and submit . . .
(i) The catcher vessel owner.	(A) You harvested BSAI crab in the vessel described at paragraph (b)(3)(ii)(B) of this section during this calendar year. (B) No one harvested BSAI crab in the vessel described at paragraph (b)(3)(ii)(B) of this section during this year. (C) You leased the vessel to another party, and harvested no BSAI crab in the vessel described at paragraph (b)(3)(ii)(B) of this section during this calendar year.  (D) You leased the vessel for a portion of the year to another party, but harvested some BSAI crab in the vessel described at paragraph (b)(3)(ii)(B) of this section during this calendar year.	Entire EDR.  EDR certification pages.  (1) EDR certification pages.  (2) Provide the name, address, and telephone number of the person to whom you leased the vessel during this calendar year. (1) Entire EDR.  (2) Provide the name, address, and telephone number of the person to whom you leased the vessel during this calendar year.
(ii) The leaseholder	You harvested BSAI crab in the vessel described at paragraph (b)(3)(ii)(B) of this section vessel during this calendar year.	Entire EDR.

(3) *EDR certification pages.* (i) The owner or leaseholder must submit the EDR certification pages either:

(A) *As part of the entire EDR.* The owner or leaseholder must submit the completed EDR certification pages as part of the entire EDR and must attest to the accuracy and completion of the EDR by signing and dating the certification pages; or

(B) *As a separate document.* The owner or leaseholder must submit the completed EDR certification pages only, and must attest that they meet the conditions exempting them from sub-

mitting the EDR, by signing and dating the certification pages.

(ii) The owner or leaseholder must submit the following information on the certification pages:

(A) *Calendar year of EDR.* Calendar year of reporting year;

(B) *Catcher vessel information.* Catcher vessel name, USCG documentation number, ADF&G vessel registration number, Federal crab vessel permit number, crab LLP license number(s), current estimated market value of vessel and equipment, and replacement value of vessel and equipment;

## Fishery Conservation and Management

## § 680.6

(C) *Owner information.* Name of company, partnership, or sole proprietorship and business telephone number, facsimile number, and e-mail address (if available);

(D) *Designated representative.* Any owner or leaseholder may appoint a designated representative who is an individual for responding to questions on the EDR and must ensure that the designated representative complies with the regulations in this part. The designated representative is the primary contact person for the DCA on issues relating to data required in the EDR.

(E) *Person completing this report.* (1) Indicate whether the person completing this report is the owner, leaseholder, or designated representative;

(2) If the owner is the person completing this report, check the correct box. If the name and address of the owner provided in paragraph (b)(3)(ii)(C) of this section are the same as the name and address of the person completing the EDR, the information does not need to be repeated here; and

(3) Name of person, title, and business telephone number, facsimile number, and e-mail address (if available).

(4) *EDR.* The owner or leaseholder must record the following information on an EDR.

(i) *BSAI Crab activity chart.* Complete a crab activity chart by entering the following information: CR fishery code, ADF&G Fish ticket number(s), number of days at sea, average crew size (including captain), and number of pots lost (if applicable).

(ii) *Crab sales, gross revenue.* CR fishery code, species code, pounds sold, and gross revenue;

(iii) *CDQ and IFQ crab leases.* CR fishery code, species code, pounds leased, and total cost of leasing the quota. If you did not participate in CDQ or IFQ fisheries, indicate N/A.

(iv) *Crab harvesting labor costs—(A) Standard crew payment (shares) for non-IFQ crew and/or captains.* CR fishery code, number of crew earning shares, total crew share payment, and captain's share payment;

(B) *Payments to IFQ-holding crew and/or captains.* CR fishery code, number of crew contributing IFQ shares, pounds of IFQ contributed by crew, total payment to crew for IFQ and shares (for

all crab caught, and residual profit on their IFQ), pounds of IFQ contributed by captain, and payment to captain for IFQ and shares (for all fish caught, and residual profit on their IFQ);

(v) *BSAI crab crew residence—(A) Employees with crew license.* Record the Alaska Commercial Crew license number or the State of Alaska Commercial Fisheries Entry Commission (CFEC) gear operator permit number, and location of crew residence (city and state);

(B) *Employees without crew license.* Record the locations where they reside and the number of employees that are from each residential location as follows:

(1) If Alaska, enter primary city of residence;

(2) If state other than Alaska, enter primary state of residence; or

(3) If country other than United States, enter primary country of residence.

(vi) *BSAI crab-specific vessel costs.* Insurance premiums (hull, property and indemnity, and pollution), insurance deductible fees, pots purchased, line and other gear purchases, pounds and cost of bait by species, gallons and cost of fuel, lubrication and hydraulic fluids, food and provisions for crew, other crew costs, freight costs of supplies shipped to you for the vessel, freight costs for landed crab, storage, observer costs, fish taxes, other crab-specific costs (specify), and fishing cooperative costs.

(vii) *Vessel-specific costs.* Record the total annual costs for each category. If the reported total cost is not exclusively for BSAI crab operations, place an "X" in the COST RELATED TO MORE THAN JUST CRAB FISHING column. The agency or contracted analyst will prorate this amount over all fishing activities. Indicate capitalized expenditures for vessel, gear and equipment (city and state where purchased); R&M expenses for vessel, gear and equipment (city and state where repairs were made); and other vessel-specific costs (specify).

(viii) *Labor payment details.* (A) Indicate with an "X" in the appropriate column whether the following expenses were deducted, directly charged, or not deducted or directly charged from the total revenue before calculating the

§ 680.6

50 CFR Ch. VI (10-1-08 Edition)

crew payments in BSAI crab fisheries: fuel and lubrication, food and provisions, bait, fish tax, observer costs, CDQ fish, IFQ leases, freight, gear loss, and other (specify);

(B) Indicate percentage of the net share that is applied to boat share and crew share (including captain).

(ix) *Annual totals for all fisheries.* For the calendar year, record the total days at sea, gross revenue, round pounds caught (excluding discards), and labor costs for your fishing activities in all fisheries in which you participated (crab, groundfish, etc.).

(c) *Catcher/processor historical EDR—*  
 (1) *Requirement.* Any owner or leaseholder of a catcher/processor that harvested or processed BSAI crab in the calendar years 1998, 2001, or 2004 must

submit to the DCA, at the address provided on the form, an EDR for historical data for each of the specified calendar years, if they:

- (i) Received an allocation of QS, PQS, IFQ, or IPQ under this program;
- (ii) Did not qualify for and receive QS, PQS, IFQ, or IPQ, but are participants at any time since January 23, 2004, in the BSAI crab fisheries.

(2) *Time limit.* Any owner or leaseholder of the catcher/processor described in paragraph (c)(4)(ii)(B) of this section must submit the historical EDR to the DCA by June 30, 2005, at the address provided on the form.

(3) *Instructions.* Instructions for submitting a catcher/processor historical EDR and certification page are specified in the following table:

If you were . . .	And . . .	You must complete and submit . . .
(i) The catcher/processor owner described in paragraph of this section.	(A) You processed BSAI crab in the vessel described at paragraph (c)(4)(ii)(B) of this section during 1998, 2001, or 2004.  (B) No one processed BSAI crab in the vessel described at paragraph (c)(4)(ii)(B) of this section during 1998, 2001, or 2004.  (C) You leased your catcher/processor to another party, and processed no BSAI crab in the vessel described at paragraph (c)(4)(ii)(B) of this section during 1998, 2001, or 2004.  (D) You leased your catcher/processor for a portion of the year to another party, but processed some BSAI crab in the vessel described at paragraph (c)(4)(ii)(B) of this section during 1998, 2001, or 2004.	Entire EDR for each year that BSAI crab was processed.  EDR certification pages for each year that no one processed BSAI crab.  (1) EDR certification pages.  (2) Provide the name, business address, and telephone number of the person to whom you leased the catcher/processor during 1998, 2001, or 2004.  (1) Entire EDR for each year that BSAI crab was processed.  (2) Provide the name, business address, and telephone number of the person to whom you leased the catcher/processor during 1998, 2001, or 2004.
(ii) The leaseholder described in paragraph (c)(1) of this section.	You processed BSAI crab in the vessel described at paragraph (c)(4)(ii)(B) of this section during 1998, 2001, or 2004.	Entire EDR for each year that BSAI crab was processed.

(4) *EDR certification pages.* (i) The owner or leaseholder must submit the EDR certification page either:

- (A) *As part of the entire EDR.* The owner or leaseholder must submit the completed EDR certification pages as part of the entire EDR and must attest to the accuracy and completion of the EDR by signing and dating the certification pages; or
- (B) *As a separate document.* If the owner or leaseholder did not process

BSAI crab in 1998, 2001, or 2004, he or she must submit the completed EDR certification pages only, and must attest that he or she meets the conditions exempting him or her from submitting the EDR, by signing and dating the certification pages, for each year of 1998, 2001, or 2004 that this applies.

- (ii) The owner or leaseholder must submit the following information on the certification pages;

## Fishery Conservation and Management

## § 680.6

(A) *Calendar year of EDR.* Calendar year corresponding to 1998, 2001, or 2004;

(B) *Catcher/processor information.* Catcher/processor name, USCG documentation number, ADF&G processor code, crab LLP license number(s), current estimated market value of vessel and equipment, and replacement value of vessel and equipment.

(C) *Owner information.* Name of company, partnership, or sole proprietorship and business telephone number, facsimile number, and e-mail address (if available).

(D) *Designated representative.* Any owner or leaseholder may appoint a designated representative who is an individual for responding to questions on the EDR and must ensure that the designated representative complies with the regulations in this part. The designated representative is the primary contact person for the DCA on issues relating to data required in the EDR.

(E) *Person completing this report.* (1) Indicate whether the person completing this report is the owner, leaseholder, or designated representative;

(2) If the owner is the person completing this report, check the correct box. If the name and address of the owner provided in paragraph (c)(4)(ii)(C) of this section are the same as the name and address of the person completing the EDR, the information does not need to be repeated here; and

(3) Name of person, title, and business telephone number, facsimile number, and e-mail address (if available).

(5) *EDR.* The owner or leaseholder must record the following information on an EDR.

(i) *BSAI crab activity chart.* Complete a crab activity chart by entering the following information: CR fishery code; dates covered (beginning and ending day, month and year); number of days at sea; number of crab processing days, and number of pots lost (if applicable).

(ii) *BSAI crab production.* CR fishery code, raw crab pounds, product code, process code, crab size, crab grade, box size, finished pounds, and whether custom processed (yes or no).

(iii) *Crab harvesting labor costs.* CR fishery code, number of crew earning shares, total crew share payment, and captain's share payment.

(iv) *Crab processing labor costs.* CR fishery code, number of crew with pay determined by processing work, average number of crab processing positions, and total processing labor payment.

(v) *BSAI crab crew residence.* For employees that participated in BSAI crab harvesting and processing, record the locations where they reside and the number of employees that are from each residential location, as follows:

(A) If Alaska, enter primary city of residence;

(B) If state other than Alaska, enter primary state of residence;

(C) If country other than United States, enter primary country of residence;

(vi) *BSAI crab custom processing done for you.* CR fishery code, raw crab pounds supplied to custom processors, raw crab pounds purchased from custom processors, product code, process code, crab size, crab grade, box size, finished pounds, and processing fee.

(vii) *Raw crab purchases from delivering vessels.* CR fishery code, crab size, crab grade, raw crab pounds purchased, and gross payment.

(viii) *CDQ Crab Costs (leases).* CR fishery code, pounds leased, and total cost. If you did not participate in CDQ or IFQ fisheries, indicate N/A.

(ix) *Annual BSAI crab sales.* Record the following information on crab sales to affiliated entities and to unaffiliated entities: species code, product code, process code, crab size, crab grade, box size, finished pounds, and FOB Alaska Revenues.

(x) *BSAI crab-specific vessel costs.* Insurance premiums (hull, property and indemnity, and pollution); insurance deductible fees; total of fisheries taxes which includes the Alaska fisheries business tax, Alaska fisheries resource landing tax, SMAA taxes, and other local sales tax on raw fish; pots purchased (quantity and cost); line and other crab fishing gear purchases; bait (by each CR fishery code, species, pounds and cost); fuel (by CR fishery code, gallons and cost); lubrication and hydraulic fluids; food and provisions for crew; other crew costs; processing and packaging materials, equipment and supplies; re-packing costs, broker fees and promotions for BSAI crab

§ 680.6

50 CFR Ch. VI (10–1–08 Edition)

sales (by CR fishery code); observer costs (by CR fishery code); freight costs for supplies to the vessel; freight and handling costs for processed crab products from the vessel; product storage; gear storage; and other crab-specific costs (specify).

(xi) *Vessel-specific costs.* Record the total annual costs for each category. If the reported total cost is not exclusively for BSAI crab operations, place an “X” in the COST RELATED TO MORE THAN JUST CRAB FISHING column. The agency or contracted analyst will prorate this amount over all fishing activities. Indicate capitalized expenditures for vessel, gear and equipment; R&M expenses for vessel, gear and equipment (city and state where repairs were made); number of employees and salaries for foremen, managers, and other employees not included in direct labor costs; and other vessel-specific costs (specify).

(xii) *BSAI crab custom processing performed for others.* CR Fishery code, product code, process code, and processing revenue.

(xiii) *Annual totals for all fisheries.* For the calendar year, record the total processing days, total days at sea, gross revenue, finished pounds processed, round pounds caught (excluding discards), and labor costs for your fishing and processing activities in all fish-

eries in which you participated (crab, groundfish, etc.).

(xiv) *Labor payment details.* (A) Indicate with an “X” in the appropriate column whether the following expenses were deducted, directly charged, or not deducted or directly charged from the total revenue before calculating the crew payments in BSAI fisheries: fuel and lubrication, food and provisions, bait, fish tax, observer costs, CDQ fish, freight, gear loss, and other (specify).

(B) Indicate percentage of the net share that was applied to boat share and harvesting crew share (including captain).

(C) If processing workers were paid on a share system, indicate percentage of the net share (if applicable) that was applied to processing workers based on product value or net share.

(d) *Catcher/processor annual EDR—(1) Requirement.* On or before June 28 of each year, any owner or leaseholder of a catcher/processor that landed or processed crab from a CR fishery must submit to the DCA, at the address provided on the form, an EDR for annual data for the previous calendar year. For the year 2005, the annual EDR is due on or before June 28, 2006.

(2) *Instructions.* Instructions for submitting a catcher/processor annual EDR and certification page are specified in the following table:

If you are . . .	And . . .	You must complete and submit . . .
(i) The catcher/processor owner.	(A) You processed BSAI crab in the vessel described at paragraph (d)(3)(ii)(B) of this section during this calendar year. (B) No one processed BSAI crab in the vessel described at paragraph (d)(3)(ii)(B) of this section during this calendar year. (C) You leased all of your IPQ to another party, and processed no BSAI crab in the vessel described at paragraph (d)(3)(ii)(B) of this section during this calendar year. (D) You leased portions of your IPQ to another party, but processed some BSAI crab in the vessel described at paragraph (d)(3)(ii)(B) of this section during this calendar year.	Entire EDR. EDR certification pages. (1) EDR certification pages. (2) Provide the name, address, and telephone number of the person to whom you leased the IPQ during this calendar year. (1) Entire EDR. (2) Provide the name, address, and telephone number of the person to whom you leased the IPQ during this calendar year.
(ii) The leaseholder described in paragraph (d)(1) of this section.	You processed BSAI crab in the described in vessel described at paragraph paragraph (d)(3)(ii)(B) of this section this section during this calendar year.	Entire EDR.

## Fishery Conservation and Management

## § 680.6

(3) *EDR certification pages.* (i) The owner or leaseholder must submit the EDR certification pages either:

(A) *As part of the entire EDR.* The owner or leaseholder must submit the completed EDR certification pages as part of the entire EDR and must attest to the accuracy and completion of the EDR by signing and dating the certification pages; or

(B) *As a separate document.* The owner or leaseholder must submit the completed EDR certification pages only, and must attest that they meet the conditions exempting them from submitting the EDR, by signing and dating the certification pages.

(ii) The owner or leaseholder must submit the following information on the certification pages:

(A) *Calendar year of EDR.* Calendar year for the reporting year;

(B) *Catcher/processor information.* Catcher/processor name, USCG documentation number, ADF&G processor code, RCR permit number, crab LLP license number(s), current estimated market value of vessel and equipment, and replacement value of vessel and equipment.

(C) *Owner information.* Name of company, partnership, or sole proprietorship and business telephone number, facsimile number, and e-mail address (if available).

(D) *Designated representative.* Any owner or leaseholder may appoint a designated representative who is an individual for responding to questions on the EDR and must ensure that the designated representative complies with the regulations in this part. The designated representative is the primary contact person for the DCA on issues relating to data required in the EDR.

(E) *Person completing this report.* (1) Indicate whether the person completing this report is the owner, leaseholder, or designated representative;

(2) If the owner is the person completing this report, check the correct box. If the name and address of the owner provided in paragraph (d)(3)(ii)(C) of this section are the same as the name and address of the person completing the EDR, the information does not need to be repeated here; and

(3) Name of person, title, and business telephone number, facsimile number, and e-mail address (if available).

(4) *EDR.* The owner or leaseholder must record the following information on an EDR.

(i) *BSAI Crab activity chart.* Complete a crab activity chart by entering the following information: CR fishery code, dates covered (beginning and ending day, month and year), number of days at sea, number of crab processing days, and number of pots lost (if applicable).

(ii) *BSAI crab production.* CR fishery code, species code, raw crab pounds, product code, process code, crab size, crab grade, box size, finished pounds, and whether custom processed (Yes or No).

(iii) *Harvesting labor costs.* Record the following information for crew if they harvest crab only, or harvest and process crab.

(A) *Standard crew payment (shares) for non-IFQ contributing crew and/or captains.* CR fishery code, number of crew earning shares, total crew share payment, and captain's share payment.

(B) *Payments to IFQ-holding crew and/or captains.* CR fishery code, number of crew contributing IFQ shares, pounds of IFQ contributed by crew, total payment to crew for IFQ and shares, pounds of IFQ contributed by captain, and payment to captain for IFQ and shares.

(iv) *Crab processing labor costs.* CR fishery code, number of crew with pay determined by processing work, average number of crab processing positions, and total processing labor payment.

(v) *BSAI crab crew residence—(A) Employees with crew license.* Record the Alaska Commercial Crew license number or the State of Alaska Commercial Fisheries Entry Commission (CFEC) gear operator permit number, and location of crew residence (city and state);

(B) *Employees without crew license.* Record the locations where they reside and the number of employees that are from each residential location as follows:

(1) If Alaska, enter primary city of residence;

(2) If state other than Alaska, enter primary state of residence; or

§ 680.6

50 CFR Ch. VI (10-1-08 Edition)

(3) If country other than United States, enter primary country of residence.

(vi) *BSAI crab custom processing done for you.* CR fishery code, species code, raw crab pounds supplied to custom processors, raw crab pounds purchased from custom processors, product code, process code, crab size, crab grade, box size, finished pounds, and processing fee.

(vii) *Raw crab purchases from delivering vessels.* CR fishery code, species code, crab size, crab grade, raw crab pounds purchased, and gross payment.

(viii) *CDQ and IFQ crab costs (leases).* For CDQ and IFQ leases enter CR fishery code, species code, pounds leased, and total cost. If you did not participate in CDQ or IFQ fisheries, indicate N/A.

(ix) *Annual BSAI crab sales.* For affiliated entities and unaffiliated entities enter species code, product code, process code, crab size, crab grade, box size, finished pounds, and FOB Alaska Revenues.

(x) *BSAI crab-specific vessel costs.* Insurance premiums (hull, property and indemnity, and pollution); insurance deductible fees; total of fisheries taxes which include the Alaska fisheries business tax, Alaska fisheries resource landing tax, SMAA taxes, and other local sales tax on raw fish; pots purchased by city and state (quantity and cost); line and other crab fishing gear purchases by city, state, and cost; bait (by each CR fishery code by city and state, species, pounds, and cost); fuel in gallons and cost by CR fishery code, city and state; lubrication and hydraulic fluids by city and state; food and provisions for crew; other crew costs; processing and packaging materials, equipment and supplies by city and state; re-packing costs; broker fees and promotions for BSAI crab sales (by CR fishery code); observer costs (by CR fishery code); freight costs for products to the vessel; freight and handling costs for processed crab products from the vessel; product storage; gear storage; other crab-specific costs (specify), and fishing cooperative costs.

(xi) *Vessel-specific costs.* Record the total annual costs for each category. If the reported total cost is not exclusively for BSAI crab operations, place

an "X" in the COST RELATED TO MORE THAN JUST CRAB FISHING column. The agency or contracted analyst will prorate this amount over all fishing activities. Indicate capitalized expenditures for vessel, gear and equipment (city and state where purchased); R&M expenses for vessel, gear and equipment (city and state where repairs were made); number of employees and salaries for foremen, managers and other employees not included in direct labor costs; and other vessel-specific costs (specify).

(xii) *BSAI crab custom processing performed for others.* CR fishery code, species code, product code, process code, and processing revenue.

(xiii) *Annual totals for all fisheries.* For the calendar year, record the total processing days, total days at sea, gross revenue, finished pounds processed, round pounds caught (excluding discards), and labor costs for your fishing and processing activities in all fisheries in which you participated (crab, groundfish, etc.).

(xiv) *Labor payment details.* (A) Indicate with an "X" in the appropriate column whether the following expenses were deducted, directly charged, or not deducted or directly charged from the total revenue before calculating the crew payments in BSAI fisheries: fuel and lubrication, food and provisions, bait, fish tax, observer costs, CDQ fish, IFQ leases, freight, gear loss, and other (specify).

(B) Indicate percentage of the net share that is applied to boat share and harvesting crew share (including captain).

(C) If processing workers are paid on a share system, indicate percentage of the net share (if applicable) that is applied to processing workers based on product value or net share.

(e) *Stationary floating crab processor (SFCP) historical EDR—(1) Requirement.* Any owner or leaseholder of an SFCP that processed CR crab in the calendar years 1998, 2001, or 2004 must submit to the DCA, at the address provided on the form, an EDR for historical data for each of the specified calendar years, if they:

(i) Received an allocation of QS, PQS, IFQ, or IPQ under this program;

**Fishery Conservation and Management**

**§ 680.6**

(ii) Did not qualify for and receive QS, PQS, IFQ, or IPQ, but are participants at any time since January 23, 2004, in the BSAI crab fisheries.

(2) *Time limit.* Any owner or leaseholder of the SFCP described in paragraph (e)(4)(ii)(B) of this section must

submit the historical EDR to the DCA by June 30, 2005, at the address provided on the form.

(3) *Instructions.* Instructions for submitting an SFCP historical EDR and certification page are specified in the following table:

If you were . . .	And . . .	You must complete and submit . . .
(i) The SFCP owner described in paragraph (e)(1) of this section.	<p>(A) You processed BSAI crab in the SFCP described at paragraph (e)(4)(ii)(B) of this section during 1998, 2001, or 2004.</p> <p>(B) No one processed BSAI crab in the SFCP described at paragraph (e)(4)(ii)(B) of this section during 1998, 2001, or 2004.</p> <p>(C) You leased your SFCP to another party, and processed no BSAI crab in the SFCP described at paragraph (e)(4)(ii)(B) of this section during 1998, 2001, or 2004.</p> <p>(D) You leased your SFCP a portion of the time to another party, but processed some BSAI crab in the SFCP described at paragraph (e)(4)(ii)(B) of this section during 1998, 2001, or 2004.</p>	<p>Entire EDR for each year that BSAI crab was processed.</p> <p>EDR certification pages for each year that no one processed BSAI crab.</p> <p>(1) EDR certification pages.</p> <p>(2) Provide the name, address, and telephone number of the person to whom you leased the SFCP during 1998, 2001, or 2004.</p> <p>(1) Entire EDR for each year that BSAI crab was processed.</p> <p>(2) Provide the name, address, and telephone number of the person to whom you leased the SFCP during 1998, 2001, or 2004.</p>
(ii) The leaseholder described in paragraph (e)(1) of this section.	You operated the SFCP described at paragraph (e)(4)(ii)(B) of this section and processed some BSAI crab during 1998, 2001, or 2004.	Entire EDR for each year that BSAI crab was processed.

(4) *EDR certification pages.* (i) The owner or leaseholder must submit the EDR certification pages either:

(A) *As part of the entire EDR.* The owner or leaseholder must submit the completed EDR certification pages as part of the entire EDR and must attest to the accuracy and completion of the EDR by signing and dating the certification pages; or

(B) *As a separate document.* If the owner or leaseholder did not process BSAI crab in 1998, 2001, or 2004, he or she must submit the completed EDR certification pages only, and must attest that he or she meets the conditions exempting him or her from submitting the EDR, by signing and dating the certification pages, for each year of 1998, 2001, or 2004 that this applies.

(ii) The owner or leaseholder must submit the following information on the certification pages:

(A) *Calendar year of EDR.* Calendar years corresponding to 1998, 2001, or 2004;

(B) *SFCP information.* SFCP name, USCG documentation number, ADF&G processor code, current estimated market value of vessel and equipment, and replacement value of vessel and equipment.

(C) *Owner information.* Name of company, partnership, or sole proprietorship and business telephone number, facsimile number, and e-mail address (if available).

(D) *Designated representative.* Any owner or leaseholder may appoint a designated representative, who is an individual for responding to questions on the EDR, and must ensure that the designated representative complies with the regulations in this part. The designated representative is the primary contact person for the DCA on issues relating to data required in the EDR.

(E) *Person completing this report.* (1) Indicate whether the person completing this report is the owner, leaseholder, or designated representative;

(2) If the owner is the person completing this report, check the correct box. If the name and address of the owner provided in paragraph (e)(4)(ii)(C) of this section are the same as the name and address of the person completing the EDR, the information does not need to be repeated here; and

(3) Name of person, title, business telephone number, facsimile number, and e-mail address (if available).

(5) *EDR*. The owner or leaseholder must record the following information on an EDR.

(i) *BSAI Crab activity chart*. Complete a crab activity chart by entering the following information: CR fishery code, number of crab processing days, dates covered (beginning and ending day, month and year), raw crab pounds purchased, product code, process code, crab size, crab grade, box size, finished pounds, and whether custom processed (Yes or No).

(ii) *Crab processing labor costs*. CR fishery code, average number of crab positions, total man-hours, and total labor payment.

(iii) *BSAI Crab crew residence*. For employees that participated in BSAI crab processing, record the locations where they reside and the number of employees that are from each residential location, as follows:

(A) If Alaska, enter primary city of residence.

(B) If state other than Alaska, enter primary state of residence.

(C) If country other than United States, enter primary country of residence.

(iv) *BSAI crab custom processing done for you*. CR fishery code, raw crab pounds supplied to custom processors, raw crab pounds purchased from custom processors, product code, process code, crab size, crab grade, box size, finished pounds, and processing fee.

(v) *Raw crab purchases from delivering vessels*. CR fishery code, crab size, crab grade, raw crab pounds purchased, and gross payment.

(vi) *Annual BSAI crab sales*. Record the following information on crab sales to affiliated entities and to unaffiliated entities: species code, product code, process code, crab size, crab grade, box size, finished pounds, and FOB Alaska Revenues.

(vii) *BSAI crab-specific vessel data*. Total of fisheries taxes which include the Alaska fisheries business tax, SMAA taxes, and other local sales tax on raw fish; processing and packaging materials, equipment, and supplies; food and provisions; other costs for direct crab labor; insurance deductible fees; re-packing costs; broker fees and promotions for BSAI crab sales (by CR fishery code); observer costs (by CR fishery code); freight costs for supplies to the vessel; freight and handling costs for processed crab products from the vessel; product storage; and other crab-specific costs (specify).

(viii) *Vessel-specific costs*. Record the total annual costs for each category. If the reported total cost is not exclusively for BSAI crab operations, place an "X" in the COST RELATED TO MORE THAN JUST CRAB FISHING column. The agency or contracted analyst will prorate this amount over all fishing activities. Indicate capitalized expenditures for vessel, gear and equipment; R&M expenses for vessel, gear and equipment (city and state where repairs were made); number of employees and salaries for foremen, managers and other employees not included in direct labor costs; and other vessel-specific costs (specify).

(ix) *BSAI crab custom processing performed for others*. CR fishery code, product code, process code, and processing revenue.

(x) *Annual totals for all fisheries*. For the calendar year, record the total processing days, gross revenue, finished pounds processed, and processing labor costs for your fishing activities in all fisheries in which you participated (crab, groundfish, etc.).

(f) *Stationary floating crab processor (SFCP) annual EDR—(1) Requirement*. On or before June 28 of each year, any owner or leaseholder of an SFCP that processed crab from a CR fishery must submit to the DCA, at the address provided on the form, an EDR for annual data for the previous calendar year. For the year 2005, the annual EDR is due on or before June 28, 2006.

(2) *Instructions*. Instructions for submitting an SFCP annual EDR and certification page are specified in the following table:

**Fishery Conservation and Management**

**§ 680.6**

If you are . . .	And . . .	You must complete and submit . . .
(i) The SFCP owner.	(A) You processed BSAI crab in the SFCP described at paragraph (f)(3)(ii)(B) of this section during this calendar year. (B) No one processed BSAI crab in the SFCP described at paragraph (f)(3)(ii)(B) of this section during this calendar year. (C) You leased all of your IPQ to another party and processed no BSAI crab in the SFCP described at paragraph (f)(3)(ii)(B) of this section during this calendar year.  (D) You leased a portion of your IPQ to another party, but processed some BSAI crab in the SFCP described at paragraph (f)(3)(ii)(B) of this section during this calendar year.	Entire EDR.  EDR certification pages.  (1) EDR certification pages.  (2) Provide the name, address, and telephone number of the person to whom you leased the IPQ during this calendar year. (1) Entire EDR.  (2) Provide the name, address, and telephone number of the person to whom you leased the IPQ during this calendar year.
(ii) The leaseholder described in paragraph (f)(1) of this section.	You operated the SFCP described at paragraph (f)(3)(ii)(B) of this section and processed some BSAI crab during this paragraph calendar year.	Entire EDR.

(3) *EDR certification pages.* (i) The owner or leaseholder must submit the EDR certification pages either:

(A) *As part of the entire EDR.* The owner or leaseholder must submit the completed EDR certification pages as part of the entire EDR and must attest to the accuracy and completion of the EDR by signing and dating the certification pages; or

(B) *As a separate document.* The owner or leaseholder must submit the completed EDR certification pages only, and must attest that they meet the conditions exempting them from submitting the EDR, by signing and dating the certification pages (see paragraph (e)(2) of this section).

(ii) The owner or leaseholder must submit the following information on the certification pages:

(A) *Calendar year of EDR.* Calendar year of the reporting year;

(B) *SFCP information.* SFCP name, USCG documentation number, ADF&G processor code, RCR permit number, current estimated market value of vessel and equipment, and replacement value of vessel and equipment.

(C) *Owner information.* Name of company, partnership, or sole proprietorship and business telephone number, facsimile number, and e-mail address (if available).

(D) *Designated representative.* Any owner or leaseholder may appoint a

designated representative who is an individual for responding to questions on the EDR and must ensure that the designated representative complies with the regulations in this part. The designated representative is the primary contact person for the DCA on issues relating to data required in the EDR.

(E) *Person completing the report.* (1) Indicate whether the person completing this report is the owner, leaseholder, or designated representative;

(2) If the owner is the person completing this report, check the correct box. If the name and address of the owner provided in paragraph (f)(3)(ii)(C) of this section are the same as the name and address of the person completing the EDR, the information does not need to be repeated here; and

(3) Name of person, title, and business telephone number, facsimile number, and e-mail address (if available).

(4) *EDR.* The owner or leaseholder must record the following information on an EDR.

(i) *BSAI Crab activity chart.* Complete a crab activity chart by entering the following information: CR fishery code, number of crab processing days, dates covered (beginning and ending day, month and year), raw crab pounds purchased, product code, process code, crab size, crab grade, box size, finished pounds, and whether custom processed (Yes or No).

(ii) *Crab processing labor costs.* CR fishery code, average number of crab processing positions, total man-hours, and total processing labor payment.

(iii) *BSAI Crab employee residence.* For employees that participated in BSAI crab processing, record the locations where they reside and the number of employees that are from each residential location, as follows:

(A) If Alaska, enter primary city of residence.

(B) If state other than Alaska, enter primary state of residence.

(C) If country other than United States, enter primary country of residence.

(iv) *BSAI crab custom processing done for you.* CR fishery code, species code, raw crab pounds supplied to custom processors, raw crab pounds purchased from custom processors, product code, process code, crab size, crab grade, box size, finished pounds, and processing fee.

(v) *Raw crab purchases from delivering vessels.* CR fishery code, species code, crab size, crab grade, raw crab pounds purchased, and gross payment.

(vi) *Annual BSAI crab sales.* For affiliated entities and unaffiliated entities enter species code, product code, process code, crab size, crab grade, box size, finished pounds, and FOB Alaska Revenues.

(vii) *BSAI crab-specific vessel costs.* Total of fisheries taxes which includes the Alaska fisheries business tax, SMAA taxes, and other local sales tax on raw fish; processing and packaging materials, equipment and supplies by city and state; food and provisions; other costs for direct crab labor; insurance deductible fees; re-packing costs; broker fees and promotions for BSAI crab sales (by CR fishery code); observer costs (by CR fishery code); freight costs for supplies to the vessel; freight and handling costs for processed crab products from the vessel; product storage; and other crab-specific costs (specify).

(viii) *Vessel-specific costs.* Record the total annual costs for each category. If

the reported total cost is not exclusively for BSAI crab operations, place an "X" in the COST RELATED TO MORE THAN JUST CRAB FISHING column. The agency or contracted analyst will prorate this amount over all fishing activities. Indicate fuel, electricity, lubrication and hydraulic fluids; capitalized expenditures for vessel, gear and equipment (city and state where purchased); R&M for vessel, gear and equipment (city and state where repairs were made); number of employees and salaries for foremen, managers and other employees not included in direct labor costs; and other vessel-specific costs (specify).

(ix) *BSAI crab custom processing performed for others.* CR fishery code, species code, product code, process code, and processing revenue.

(x) *Annual totals for all fisheries.* For the calendar year, record the total processing days, gross revenue, finished pounds processed, and labor costs for your fishing activities in all fisheries in which you participated (crab, groundfish, etc.).

(g) *Shoreside processor historical EDR—*  
 (1) *Requirement.* Any owner or leaseholder of a shoreside processor who processed CR crab in the calendar years 1998, 2001, or 2004 must submit to the DCA, at the address provided on the form, an EDR for historical data for each of the specified calendar years, if they:

(i) Received an allocation of QS, PQS, IFQ, or IPQ under this Program;

(ii) Did not qualify for and receive QS, PQS, IFQ, or IPQ, but are participants at any time since January 23, 2004, in the BSAI crab fisheries.

(2) *Time limit.* Any owner or leaseholder of the shoreside processor described in paragraph (g)(4)(ii)(B) of this section must submit the historical EDR to the DCA by June 30, 2005, at the address provided on the form.

(3) *Instructions.* Instructions for submitting a shoreside processor historical EDR and certification page are specified in the following table:



(5) *EDR*. The owner or leaseholder must record the following information on an EDR.

(i) *BSAI crab activity chart*. Complete a crab activity chart by entering the following information: CR fishery code, number of crab processing days, dates covered (beginning and ending day, month and year), raw crab pounds purchased, product code, process code, crab size, crab grade, box size, finished pounds, and whether custom processed (Yes or No).

(ii) *Crab processing labor costs*. CR fishery code, average number of crab processing positions, total man-hours, and total processing labor payment.

(iii) *BSAI Crab crew residence*. For employees that participated in BSAI crab processing, record the locations where they reside and the number of employees that are from each residential location, as follows:

(A) If Alaska, enter primary city of residence.

(B) If state other than Alaska, enter primary state of residence.

(C) If country other than United States, enter primary country of residence.

(iv) *BSAI crab custom processing done for you*. CR fishery code, raw crab pounds supplied to custom processors, raw crab pounds purchased from custom processors, product code, process code, crab size, crab grade, box size, finished pounds, and processing fee.

(v) *Raw crab purchases from delivering vessels*. CR fishery code, crab size, crab grade, raw crab pounds purchased, and gross payment.

(vi) *Annual BSAI crab sales*. For affiliated entities and unaffiliated entities enter species code, product code, process code, crab size, crab grade, box size, finished pounds, and FOB Alaska Revenues.

(vii) *BSAI crab-specific plant costs*. Total fisheries taxes which include the Alaska fisheries business tax, SMAA taxes, and other local sales tax on raw fish; processing and packaging materials, equipment and supplies; food and

provisions; other costs for direct crab labor; insurance deductible fees; re-packing costs, broker fees and promotions for BSAI crab sales by CR fishery code; observer costs by CR fishery code; freight costs for supplies to the plant; freight and handling costs for processed crab products from the plant; product storage; water, sewer, and waste disposal; and other crab specific costs (specify).

(viii) *Plant-specific costs*. Record the total annual costs for each category. If the reported total cost is not exclusively for BSAI crab operations, place an “X” in the COST RELATED TO MORE THAN JUST CRAB FISHING column. The agency or contracted analyst will prorate this amount over all vessel activities: fuel, electricity, lubrication, and hydraulic fluids; capitalized expenditures for plant, and equipment; R&M for existing plant and equipment; number of employees and salaries for foremen, managers and other employees not included in direct labor costs; and other plant-specific costs (specify).

(ix) *BSAI crab custom processing done for others*. CR fishery code, product code, process code, and processing revenue.

(x) *Annual totals for all fisheries*. For the calendar year, record the total processing days, gross revenue, finished pounds processed, and labor costs for your fishing activities in all fisheries in which you participated (crab, groundfish, etc.).

(h) *Shoreside processor annual EDR—*  
 (1) *Requirement*. On or before June 28 of each year, any owner or leaseholder of a shoreside processor that processed crab from a CR fishery must submit to the DCA, at the address provided on the form, an EDR for annual data for the previous year. For the year 2005, the annual EDR is due on or before June 28, 2006.

(2) *Instructions*. Instructions for submitting a shoreside processor annual EDR and certification page are specified in the following table:

If you are . . .	And . . .	You must complete and submit . . .
(i) The shoreside processor owner.	(A) You processed BSAI crab in the plant described at paragraph (h)(3)(ii)(B) of this section during this calendar year.	Entire EDR.

**Fishery Conservation and Management**

**§ 680.6**

If you are . . .	And . . .	You must complete and submit . . .
(ii) The leaseholder described in paragraph (h)(1) of this section.	(B) No one processed BSAI crab in the plant described at paragraph (h)(3)(ii)(B) of this section during this calendar year. (C) You leased all of your IPQ to another party, and processed no BSAI crab in the plant described at paragraph (h)(3)(ii)(B) of this section during this calendar year.	EDR certification pages.  (1) EDR certification pages.  (2) Provide the name, address, and telephone number of the person to whom you leased the IPQ during this calendar year. (7) Entire EDR.
	(D) You leased portions of your IPQ to another party, but processed some BSAI crab in the plant described at paragraph (h)(3)(ii)(B) of this section during this calendar year.  You operated the plant described at paragraph (h)(3)(ii)(B) of this section and processed some BSAI crab during this calendar year.	(2) Provide the name, address, and telephone number of the person to whom you leased the IPQ during this calendar year. (7) Entire EDR.  Entire EDR.

(3) *EDR certification pages.* (i) The owner or leaseholder must submit the EDR certification pages either:

(A) *As part of the entire EDR.* The owner or leaseholder must submit the completed EDR certification pages as part of the entire EDR and must attest to the accuracy and completion of the EDR by signing and dating the certification pages; or

(B) *As a separate document.* The owner or leaseholder must submit the completed EDR certification pages only, and must attest that they meet the conditions exempting them from submitting the EDR, by signing and dating the certification pages.

(ii) The owner or leaseholder must submit the following information on the certification pages:

(A) *Calendar year of EDR.* Calendar year for the reporting year;

(B) *Shoreside processor information.* Shoreside processor name, RCR permit number, ADF&G processor code, physical location of land-based plant (street address, city, state, zip code), borough assessed value of plant and equipment, current estimated market value of plant and equipment, and year assessed.

(C) *Owner information.* Name of company, partnership, or sole proprietorship and business telephone number, facsimile number, and e-mail address (if available);

(D) *Designated representative.* Any owner or leaseholder may appoint a designated representative who is an in-

dividual for responding to questions on the EDR and must ensure that the designated representative complies with the regulations in this part. The designated representative is the primary contact person for the DCA on issues relating to data required in the EDR.

(E) *Person completing the report.* (1) Indicate whether the person completing this report is the owner, leaseholder, or designated representative;

(2) If the owner is the person completing this report, check the correct box. If the name and address of the owner provided in paragraph (h)(3)(ii)(C) of this section are the same as the name and address of the person completing the EDR, the information does not need to be repeated here; and

(3) Name of person, title, and business telephone number, facsimile number, and e-mail address (if available).

(4) *EDR.* The owner or leaseholder must record the following information on an EDR.

(i) *BSAI Crab activity chart.* Complete a crab activity chart by entering the following information: CR fishery code, number of crab processing days, dates covered (beginning and ending day, month and year), raw crab pounds purchased, product code, process code, crab size, crab grade, box size, finished pounds, and whether custom processed (Yes or No).

(ii) *Crab processing labor costs.* CR fishery code, average number of crab processing positions, total man-hours, and total processing labor payment.

§ 680.7

50 CFR Ch. VI (10-1-08 Edition)

(iii) *BSAI Crab employee residence.* For employees that participated in BSAI crab processing, record the locations where they reside and the number of employees that are from each residential location, as follows:

(A) If Alaska, enter primary city of residence.

(B) If state other than Alaska, enter primary state of residence.

(C) If country other than United States, enter primary country of residence.

(iv) *BSAI crab custom processing done for you.* CR fishery code, species code, raw crab pounds supplied to custom processors, raw crab pounds purchased from custom processors, product code, process code, crab size, crab grade, box size, finished pounds, and processing fee.

(v) *Raw crab purchases from delivering vessels.* CR fishery code, species code, crab size, crab grade, raw crab pounds purchased, and gross payment.

(vi) *Annual BSAI crab sales.* For affiliated entities and unaffiliated entities enter species code, product code, process code, crab size, crab grade, box size, finished pounds, and FOB Alaska Revenues.

(vii) *BSAI crab-specific plant costs.* Total of fisheries taxes which include the Alaska fisheries business tax, SMAA taxes, and other local sales tax on raw fish; processing and packaging materials, equipment and supplies by city and state; food and provisions; other costs for direct crab labor; insurance deductible fees; re-packing costs; broker fees and promotions for BSAI crab sales by CR fishery code; observer costs by CR fishery code; freight costs for supplies to the plant; freight and handling costs for processed crab products from the plant; product storage; water, sewer, and waste disposal; and other crab specific costs (specify).

(viii) *Plant-specific costs.* Record the total annual costs for each category. If the reported total cost is not exclusively for BSAI crab operations, place an "X" in the COST RELATED TO MORE THAN JUST CRAB FISHING column. The agency or contracted analyst will prorate this amount over all plant activities: fuel, electricity, lubrication, and hydraulic fluids; capitalized expenditures for plant and equip-

ment by city and state; R&M for existing plant and equipment by city and state; number of employees and salaries for foremen, managers and other employees not included in direct labor costs; and other plant-specific costs (specify).

(ix) *BSAI crab custom processing performed for others.* CR fishery code, species code, product code, process code, and processing revenue.

(x) *Annual totals for all fisheries.* For the calendar year, record the total processing days, gross revenue, finished pounds processed, and labor costs for your fishing activities in all fisheries in which you participated (crab, groundfish, etc.).

(i) *Verification of data.* (1) The DCA shall conduct verification of information with the owner or leaseholder.

(2) The owner or leaseholder must respond to inquiries by the DCA within 20 days of the date of issuance of the inquiry.

(3) The owner or leaseholder must provide copies of additional data to facilitate verification by the DCA. The DCA auditor may review and request copies of additional data provided by the owner or leaseholder, including but not limited to: previously audited or reviewed financial statements, worksheets, tax returns, invoices, receipts, and other original documents substantiating the data.

(j) *DCA authorization.* The DCA is authorized to request voluntary submission of economic data specified in this section from persons who are not required to submit an EDR under this section.

[70 FR 10241, Mar. 2, 2005, as amended at 70 FR 33395, June 8, 2005; 71 FR 38114, July 5, 2006]

§ 680.7 Prohibitions.

In addition to the general prohibitions specified in § 600.725 of this chapter, it is unlawful for any person to do any of the following:

(a) *Receiving and processing CR crab.* (1) Process any CR crab that has not been weighed by an RCR on:

(i) A scale approved by the State in which the RCR is located and that meets the requirements described in § 680.23(f); or

## Fishery Conservation and Management

## § 680.7

(ii) Onboard a catcher/processor RCR on a scale approved by NMFS as described in §680.23(e).

(2) Receive CR crab harvested under an IFQ permit in any region other than the region for which the IFQ permit is designated.

(3) Use IPQ on board a vessel outside of the territorial sea or internal waters of the State of Alaska.

(4) Use IPQ in any region other than the region for which the IPQ is designated.

(5) Receive any crab harvested under a Class A IFQ permit in excess of the total amount of unused IPQ held by the RCR.

(6) Receive crab harvested under a Class B IFQ permit on a vessel if that vessel was used to harvest and process any crab in that crab QS fishery during the same crab fishing season.

(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.

(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 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.

(b) *Landing CR crab.* (1) Remove retained and unprocessed CR crab from a vessel at any location other than to an RCR operating under an approved catch monitoring plan as described in §680.23(g) unless that crab is accompanied by a signed landing receipt showing the crab was properly landed.

(2) Remove any CR crab processed at sea from any vessel before completing a landing report, as defined at §680.5(c), for all such CR crab onboard.

(3) Resume fishing for CR crab or take CR crab on board a vessel once a landing has commenced and until all CR crab are landed.

(4) Fail to remove all processed crab harvested under a CPO or a CPC IFQ permit to an onshore location within

the United States, accessible by road or regularly scheduled air service, and to weigh that crab product on a scale approved by the State in which the crab is weighed.

(5) Make an IFQ crab landing except by an individual who holds either a crab IFQ permit or a crab IFQ hired master permit issued under §680.4 in his or her name.

(6) Make an IFQ crab landing without the following on board: a copy of the crab IFQ permit to be debited for the landing; and, if applicable, a copy of the crab IFQ hired master permit issued under §680.4 in the name of the person making the landing.

(7) For a Crab IFQ hired master to make an IFQ crab landing on any vessel other than the vessel named on the Crab IFQ hired master permit.

(c) *Harvest crab.* (1) Harvest any CR crab with any vessel not named on a valid Federal crab vessel permit.

(2) Harvest CR crab with any vessel that does not use functioning VMS equipment as required by §680.23.

(3) Harvest on any vessel more IFQ crab than are authorized under §680.42.

(4) Harvest crab under a CVC or a CPC IFQ permit unless the person named on the IFQ permit is on board that vessel.

(5) Harvest crab under a CPO or CPC permit unless all scales used to weigh crab, or used by an observer for sampling crab, have passed an inseason scale test according to §680.23(e)(1).

(6) For any person who is not an entity defined in §680.40(c)(5)(ii), (c)(5)(iii), or (c)(5)(iv) to:

(i) Hold converted CPO QS.

(ii) Use the CPO IFQ derived from that converted CPO QS outside of a crab harvesting cooperative.

(d) *Recordkeeping and reporting.* (1) Fail to submit information on any report, application, or statement required under this part.

(2) Submit false information on any report, application, or statement required under this part.

(e) *Permits.* (1) Retain IFQ crab without a valid crab IFQ permit for that fishery on board the vessel.

(2) Retain IFQ crab on a vessel in excess of the total amount of unharvested crab IFQ, for a crab QS fishery, that is currently held by all

## § 680.8

crab IFQ permit holders or Crab IFQ Hired Masters aboard that vessel.

(f) *IPQ*. Use IPQ as collateral or otherwise leverage IPQ to acquire an ownership interest in Class B IFQ.

(g) *General*. (1) Possess, buy, sell, or transport any crab harvested or landed in violation of any provision of this part.

(2) Violate any other provision under this part.

(h) *Inseason action*. Conduct any fishing contrary to notification of inseason action closure, or adjustment issued under § 680.22.

[70 FR 10241, Mar. 2, 2005, as amended at 70 FR 33395, June 8, 2005; 73 FR 29982, May 23, 2008]

### § 680.8 Facilitation of enforcement.

See § 600.730 of this chapter.

### § 680.9 Penalties.

(a) Any person committing, or a fishing vessel used in the commission of, a violation of the Magnuson-Stevens Act, or any regulation issued under the Magnuson-Stevens Act, is subject to the civil and criminal penalty provisions, permit sanctions, and civil forfeiture provisions of the Magnuson-Stevens Act, to part 600 of this chapter, to 15 CFR part 904 (Civil Procedures), and to other applicable law. Penalties include but are not limited to permanent or temporary sanctions to PQS, QS, IPQ, IFQ, Crab IFQ hired master, Federal crab vessel permit, or RCR permits.

(b) In the event a holder of any IPQ is found by a court of competent jurisdiction, either in an original action in that court or in a proceeding to enforce or review the findings or orders of any Government agency having jurisdiction under the antitrust laws, to have violated any of the provisions of antitrust laws in the conduct of the licensed activity, the Secretary of Commerce may revoke all or a portion of such IPQ. The antitrust laws of the United States include, but are not limited to, the following Acts:

- (1) The Sherman Act, 15 U.S.C. 1-7;
- (2) The Wilson Tariff Act, 15 U.S.C. 8-11;
- (3) The Clayton Act, 15 U.S.C. 12-27; and

## 50 CFR Ch. VI (10-1-08 Edition)

(4) The Federal Trade Commission Act, 15 U.S.C. 12 and 45(a).

### Subpart B—Management Measures

#### § 680.20 Arbitration System.

(a) *Applicability*—(1) *Arbitration System*. All CVO QS, Arbitration IFQ, Class A IFQ holders, PQS and IPQ holders must enter the contracts as prescribed in this section that establish the Arbitration System. Certain parts of the Arbitration System are voluntary for some parties, as specified in this section. All contract provisions will be enforced by parties to those contracts.

(2) *Open negotiation*. Any holder of uncommitted IFQ may negotiate with any holder of uncommitted IPQ, the price and delivery terms for that season or for future seasons for any uncommitted IFQ and uncommitted IPQ. Uncommitted IFQ holders and uncommitted IPQ holders may freely contact each other and initiate open negotiations.

(b) *Eligibility for Arbitration System*—(1) *Arbitration Organization*. The following persons are the only persons eligible to join an Arbitration Organization:

- (i) Holders of CVO QS,
- (ii) Holders of PQS,
- (iii) Holders of Arbitration IFQ,
- (iv) Holders of Class A IFQ affiliated with a PQS or IPQ holder, and
- (v) Holders of IPQ.

(2) *Persons eligible to use negotiation and Binding Arbitration procedures*. The following persons are the only persons eligible to enter contracts with a Contract Arbitrator to use the negotiation and Binding Arbitration procedures described in paragraph (h) of this section to resolve price and delivery disputes or negotiate remaining contract terms not previously agreed to by IFQ and IPQ holders under other negotiation approaches:

- (i) Holders of Arbitration IFQ, and
- (ii) Holders of IPQ.
- (3) *Persons ineligible to use negotiation and Binding Arbitration procedures*. Holders of IFQ that are affiliated with holders of PQS or IPQ are ineligible to

enter contracts with a Contract Arbitrator to use the negotiation and Binding Arbitration procedures described in paragraph (h) of this section to resolve price and delivery disputes or negotiate remaining contract terms not previously agreed to by IFQ and IPQ holders under other negotiation approaches.

(c) *Preseason requirements for joining an Arbitration Organization.* All holders of CVO QS, PQS, Arbitration IFQ, Class A IFQ affiliated with a PQS or IPQ holder, and IPQ must join and maintain a membership in an Arbitration Organization as specified in paragraph (d) of this section. All holders of QS, PQS, IFQ, or IPQ identified in the preceding sentence must join an Arbitration Organization at the following times:

(1) For QS holders and PQS holders except as provided for in paragraph (c)(3) of this section, not later than May 1 of each year for the crab fishing year that begins on July 1 of that year.

(2) For IFQ holders and IPQ holders, not later than 15 days after the issuance of IFQ and IPQ for that crab QS fishery if that IFQ or IPQ holder does not also hold QS or PQS.

(3) During 2005, QS and PQS holders must join an Arbitration Organization as described in paragraph (d) of this section not later than August 15, 2005.

(4) Persons receiving QS, PQS, IFQ, or IPQ by transfer after these dates must join an Arbitration Organization at the time of receiving the QS, PQS, IFQ, or IPQ by transfer.

(d) *Formation process for an Arbitration Organization.* (1) Arbitration Organizations must be formed to select and contract a Market Analyst, Formula Arbitrator, Contract Arbitrator(s), and establish the Arbitration System, including the payment of costs of arbitration, described in this section for each crab QS fishery. All persons defined in paragraph (a)(1) of this section must join an Arbitration Organization.

(i) *Arbitration QS/IFQ Arbitration Organization.* Holders of Arbitration QS and Arbitration IFQ must join an Arbitration QS/IFQ Arbitration Organization. This Arbitration Organization may not have members who are not holders of Arbitration QS or Arbitration IFQ. Arbitration QS holders and

Arbitration IFQ holders may join separate Arbitration QS/IFQ Arbitration Organizations. The mechanism for forming an Arbitration Organization is determined by the members of the organization.

(ii) *PQS/IPQ Arbitration Organization.* Holders of PQS or IPQ must join a PQS/IPQ Arbitration Organization. This Arbitration Organization may not have members who are not holders of PQS or IPQ. PQS holders and IPQ holders may join separate PQS/IPQ Arbitration Organizations. The mechanism for forming an Arbitration Organization is determined by the members of the organization.

(iii) *Affiliated QS/IFQ Arbitration Organization.* Holders of CVO QS or Class A IFQ affiliated with a PQS or IPQ holder must join an Affiliated QS/IFQ Arbitration Organization. This Arbitration Organization may not have members who are not holders of QS or IFQ affiliated with a PQS or IPQ holder. CVO QS holders and Class A IFQ holders may join separate Affiliated QS/IFQ Arbitration Organizations. The mechanism for forming an Arbitration Organization is determined by the members of the organization.

(iv) *Limitation on joining an Arbitration Organization.* For a crab QS fishery during a crab fishing year, a person who holds:

(A) PQS/IPQ may join only one PQS/IPQ Arbitration Organization;

(B) Affiliated QS/IFQ may join only one Affiliated QS/IFQ Arbitration Organization; and

(C) Arbitration QS/IFQ may join only one Arbitration QS/IFQ Organization.

(2) Each Arbitration Organization must submit a complete Annual Arbitration Organization report to NMFS. A complete report must include:

(i) A copy of the business license of the Arbitration Organization;

(ii) A statement identifying the members of the organization and the amount of Arbitration QS and Arbitration IFQ, Non-Arbitration QS and Non-Arbitration IFQ, or PQS and IPQ held by each member and represented by that Arbitration Organization;

(iii) QS, PQS, IFQ, and IPQ ownership information on the members of the organization;

§ 680.20

50 CFR Ch. VI (10–1–08 Edition)

(iv) Management organization information, including:

(A) The bylaws of the Arbitration Organization;

(B) A list of key personnel of the management organization including, but not limited to, the board of directors, officers, representatives, and any managers;

(v) The name of the Arbitration Organization, permanent business mailing addresses, name of contact persons and additional contact information of the managing personnel for the Arbitration Organization, resumes of management personnel; and

(vi) A copy of all minutes of any meeting held by the Arbitration Organization or any members of the Arbitration Organization.

(3) An Arbitration Organization, with members who are QS or PQS holders, must submit a complete Annual Arbitration Organization Report to NMFS by electronic mail to the Regional Administrator, NMFS, or by mail addressed to the Regional Administrator, NMFS, Post Office Box 21668, Juneau, Alaska 99802 by:

(i) August 20, 2005 for the crab fishing year beginning on July 1, 2005.

(ii) May 1 of each subsequent year for the crab fishing year beginning on July 1 of that year.

(4) An Arbitration Organization, with members who are IFQ or IPQ holders, must submit a complete Annual Arbitration Organization Report to NMFS by electronic mail to the Regional Administrator, NMFS, or by mail addressed to the Regional Administrator, NMFS, Post Office Box 21668, Juneau, Alaska 99802 by not later than 15 days after the issuance of IFQ and IPQ for that crab QS fishery.

(e) *Role of Arbitration Organization(s) and annual requirements*—(1) *General*. The members of each Arbitration Organization must enter into a contract that specifies the terms and conditions of participation in the organization.

(i) The contract among members of an Arbitration QS/IFQ Arbitration Organization, or a PQS/IPQ Arbitration Organization shall include the terms, conditions, and provisions specified in paragraph (e)(2) of this section.

(ii) The contract among members of an Affiliated QS/IFQ Arbitration Orga-

nization shall include the terms, conditions, and provisions in paragraph (e)(3) of this section.

(2) *Provisions for Arbitration QS/IFQ Arbitration Organizations, and PQS/IPQ Arbitration Organizations*—(i) *Selection of Market Analyst, Formula Arbitrator, and Contract Arbitrator(s)*. A provision authorizing the Arbitration Organization to act on behalf of its members in the selection of and contracting with the Market Analyst, Formula Arbitrator, and Contract Arbitrator(s) under paragraph (e)(4) of this section.

(ii) *Confidentiality of information*. A provision that a member that is a party to a Binding Arbitration proceeding shall sign a confidentiality agreement with the party with whom it is arbitrating stating they will not disclose at any time to any person any information received from the Contract Arbitrator or any other party in the course of the arbitration. That confidentiality agreement shall specify the potential sanctions for violating the agreement.

(iii) *Provision of information to members*. A provision requiring the Arbitration Organization to provide to its members:

(A) A copy of the contracts for the Market Analyst, Formula Arbitrator, and Contract Arbitrator for each fishery in which the member participates; and

(B) A copy of the Market Report and the Non-Binding Price Formula for each fishery in which the member participates within 5 days of its release.

(iv) *Information release*. (A) A provision requiring that the Arbitration Organization deliver to NMFS any data, information, and documents generated pursuant to this section.

(B) In the case of a PQS/IPQ Arbitration Organization(s):

(1) A provision that requires the PQS/IPQ Arbitration Organization to provide for the delivery of the names of and contact information for its members who hold uncommitted IPQ, and to identify the regional designations and amounts of such uncommitted IPQ, to Arbitration QS/IFQ Arbitration Organizations either directly or through

## Fishery Conservation and Management

## § 680.20

a third-party data provider so the information may be provided to any persons that hold uncommitted Arbitration IFQ for purposes of Share Matching, Binding Arbitration, and Post Arbitration Opt-in;

(2) A provision that prohibits the disclosure of any information received under this provision to any person except those Arbitration QS/IFQ Arbitration Organizations, or their third-party data provider so that information may be provided to holders of uncommitted Arbitration IFQ. The provision will require that information concerning uncommitted IPQ be updated within 24 hours of a change of any such information, including any commitment of IPQ, and that information be provided to those persons that hold uncommitted Arbitration IFQ. This provision may include a mechanism to provide information to uncommitted Arbitration IFQ holders through a secure Web site, or through other electronic means;

(3) A provision that requires the PQS/IPQ Arbitration Organization to arrange for the delivery to all holders of uncommitted Arbitration IFQ through the Arbitration QS/IFQ Arbitration Organizations holders or their third-party data provider the terms of a decision of a Contract Arbitrator in a Binding Arbitration proceeding involving a member that holds uncommitted IPQ within 24 hours of notice of that decision. This provision may include a mechanism to provide information to uncommitted Arbitration IFQ holders through a secure Web site, or through other electronic means; and

(4) A provision that requires the holders of uncommitted IPQ to provide information concerning such uncommitted IPQ as necessary for the PQS/IPQ Arbitration Organization to comply with this paragraph and prohibits the disclosure of any such information by such holder to any person, except as directed in this paragraph.

(C) In the case of a Arbitration QS/IFQ Organization(s):

(1) A provision that requires Arbitration QS/IFQ Arbitration Organizations holders, or their third-party data provider to provide information concerning uncommitted IPQ from PQS/IPQ Arbitration Organization(s) as nec-

essary for the Arbitration IFQ holder to use that information in a timely manner.

(2) A provision that prohibits the disclosure of any such information concerning uncommitted IPQ from PQS/IPQ Arbitration Organization to any person, except as directed therein.

(D) Third-party Data Provider provision. Notwithstanding any provision in this section, an Arbitration Organization required to supply or receive information under this section must hire administrative personnel or may contract with a person who will arrange for the receipt and delivery of information as required. Any such third party that receives such information cannot be affiliated with or employed by or related to any QS, PQS, IFQ, or IPQ holder in any crab QS fishery and must enter a contract that:

(1) Prohibits such third person from releasing any information received to any person except as specifically provided by this section; and

(2) Prohibits such third person from entering taking any employment from or establishing any relationship, except under a contract meeting the requirements of this section for a period of 3 years after the termination of the contract.

(v) *Costs.* A provision that authorizes the Arbitration Organization to enter into a contract with all other Arbitration Organizations for the payment of the costs of arbitration as specified under this section.

(A) The Arbitration Organizations must establish a contract that requires the payment of all costs of the Market Analyst, Formula Arbitrator, and Contract Arbitrator(s), dissemination of information concerning uncommitted IPQ to holders of uncommitted Arbitration IFQ, and the costs of such persons associated with lengthy season approach, share matching approach, Binding Arbitration, quality and performance disputes, to be shared equally so that IPQ holders pay 50 percent of the costs and Arbitration IFQ holders and Class A IFQ holders pay 50 percent of the costs.

(B) Each person shall pay an amount of the cost based on the amount of IPQ or IFQ held by that person at the time

of application to an Arbitration Organization.

(C) PQS holders shall advance all costs and shall collect the contribution of IFQ holders at landing subject to terms mutually agreed to by the Arbitration Organizations.

(vi) *Negotiation methods.* A provision that prohibits the Arbitration Organization from engaging in any contract negotiations on behalf of its members, except for those necessary to hire the Market Analyst, Formula Arbitrator, and Contract Arbitrator(s).

(vii) *Enforcement of the contract.* Violations of the contract shall be enforced under civil law.

(3) *Provisions applying to Affiliated QS/IFQ Arbitration Organizations.* The provisions that allow for the provision of information to members, payment of costs, limits on the transfer of QS, PQS, IFQ, and IPQ, and enforcement of the contract as described under paragraphs (e)(2)(iv), (v), (vii), and (viii) will apply to the contract among members of an Affiliated QS/IFQ Arbitration Organization(s).

(4) *Process for selection of Market Analyst, Formula Arbitrator, and Contract Arbitrator(s).* (i) For each crab fishing year, QS holders who are members of Arbitration QS/IFQ Arbitration Organization(s) and PQS holders who are members of PQS/IPQ Arbitration Organization(s), by mutual agreement, will select one Market Analyst, one Formula Arbitrator, and Contract Arbitrator(s) for each crab QS fishery. The number of Contract Arbitrators selected for each fishery will be subject to the mutual agreement of those Arbitration Organizations. The selection of the Market Analyst and the Formula Arbitrator must occur in time to ensure the Market Report and non-binding price formula are produced within the time line established in paragraph (e)(4)(ii) of this section.

(ii) The Arbitration Organizations representing Arbitration QS holders and PQS holders in a crab fishery shall establish by mutual agreement the contractual obligations of the Market Analyst, Formula Arbitrator, and Contract Arbitrator(s) for each fishery, which shall provide that the Market Report and Non-Binding Price Formula are produced not later than 50 days

prior to the first crab fishing season for that crab QS fishery in that crab fishing year except as provided in paragraph (e)(6) of this section. The contractual obligations of the Market Analyst, the Formula Arbitrator and Contract Arbitrators will be enforced by the parties to the contract.

(iii) The same person may be chosen for the positions of Market Analyst and Formula Arbitrator for a fishery.

(iv) A person selected to be a Contract Arbitrator may not be the Market Analyst or Formula Arbitrator, and shall not be affiliated with, employed by, or otherwise associated with, the Market Analyst or Formula Arbitrator, for that fishery.

(5) *Notification to NMFS.* Not later than June 1 for that crab fishing year, except as provided in paragraph (e)(6) of this section, the Arbitration Organizations representing the holders of Arbitration QS and PQS in each fishery shall notify NMFS of the persons selected as the Market Analyst, Formula Arbitrator, and Contract Arbitrator(s) for the fishery by electronic mail addressed to the Regional Administrator, NMFS, or by mail addressed to the Regional Administrator, NMFS, Post Office Box 21668, Juneau, Alaska 99802. The Arbitration Organizations shall include a list of Arbitration Organizations that mutually agreed to the selection of the Market Analyst, Formula Arbitrator, and Contract Arbitrator(s) and signatures of representatives of those Arbitration Organizations and a copy of the contract with Market Analyst, the Formula Arbitrator, and each Contract Arbitrator. The notification must include a curriculum vitae and other relevant biographical material for each of these individuals.

(6) *First-year implementation.* During 2005, the selection of and establishment of the contractual obligations of the Market Analyst, Formula Arbitrator, and Contract Arbitrator(s) as required under this section shall occur not later than September 1, 2005.

(7) *IFQ and IPQ issuance and selection of the Market Analyst, Formula Arbitrator, and Contract Arbitrator(s).* NMFS will not issue CVO IFQ and IPQ for a

## Fishery Conservation and Management

## § 680.20

crab QS fishery until Arbitration Organizations establish by mutual agreement contracts with a Market Analyst, Formula Arbitrator, and Contract Arbitrator(s) for that fishery and notify NMFS.

(f) *Roles and standards for the Market Analyst and process for producing the Market Report.* (1) For each crab QS fishery, the Arbitration QS/IFQ Arbitration Organizations and the PQS/IPQ Arbitration Organizations shall establish a contract with the Market Analyst to produce a Market Report for the fishery. The terms of this contract must specify that the Market Analyst must produce a Market Report that shall provide an analysis of the market for products of that fishery.

(2) The contract with the Market Analyst must specify that:

(i) The Market Analyst shall base the Market Report on:

(A) A survey of the market for crab products produced by the fishery; and

(B) Information provided by the IPQ and IFQ holders regarding market conditions and expectations.

(ii) To the extent IPQ and IFQ holders provide information requested by the Market Analyst, they must provide such information directly to the Market Analyst and not to any other IPQ holder or IFQ holder, except that IFQ holders that are members of any single FCMA cooperative may share such information with other members of the same FCMA cooperative who are authorized to participate in the arbitration system.

(iii) The Market Analyst:

(A) May meet with IFQ holders who are members of any single FCMA cooperative collectively;

(B) Shall meet with IPQ holders individually;

(C) Shall meet with distinct crab FCMA cooperatives individually; and

(D) Shall meet with IFQ holders who are not members of the same FCMA cooperatives individually.

(iv) The information provided to the Market Analyst by IPQ and IFQ holders must be historical information based on activities occurring more than three months prior to the generation of the Market Report.

(v) The Market Analyst shall keep confidential the identity of the source

of any particular information contained in the report. The Market Analyst may note generally the sources from which it gathered information. The report shall:

(A) Include only data that is based on information regarding activities occurring more than three months prior to the generation of the Market Report;

(B) Include only statistics for which there are at least five providers reporting data upon which each statistic is based and for which no single provider's data represents more than 25 percent of a weighted basis of that statistic; and

(C) Sufficiently aggregate any information disseminated in the report such that it would not identify specific price information by an individual provider of information.

(vi) The Market Report shall consider the following factors:

(A) Current ex-vessel prices, including ex-vessel prices received for crab harvested under Class A IFQ, Class B IFQ, and CVC IFQ permits;

(B) Consumer and wholesale product prices for the processing sector and the participants in the arbitration (recognizing the impact of sales to affiliates on wholesale pricing);

(C) Innovations and developments of the harvesting and processing sectors and the participants in the arbitration (including new product forms);

(D) Efficiency and productivity of the harvesting and processing sectors (recognizing the limitations on efficiency and productivity arising out of the management program structure);

(E) Quality (including quality standards of markets served by the fishery and recognizing the influence of harvest strategies on the quality of landings);

(F) The interest of maintaining financially healthy and stable harvesting and processing sectors;

(G) Safety and expenditures for ensuring adequate safety;

(H) Timing and location of deliveries; and

(I) The cost of harvesting and processing less than the full IFQ or IPQ allocation (underages) to avoid penalties for overharvesting IFQ and a mechanism for reasonably accounting for deadloss.

(vii) There shall only be one annual Market Report for each fishery.

(viii) The Market Analyst shall not issue interim or supplemental reports for each fishery.

(3) The Market Analyst shall not disclose any information to any person not required under this section.

(4) In 2005, the Market Report shall be produced not later than September 30, 2005 or 25 days prior to the first crab fishing season for that crab QS fishery whichever is later in that crab fishing year as required under this section.

(i) In all subsequent years, the Market Report shall be produced not later than 50 days prior to the first crab fishing season for that crab QS fishery.

(ii) The contract with the Market Analyst must specify that the Market Analyst will provide in that crab fishing year to:

(A) Each Arbitration Organization in that fishery;

(B) NMFS by electronic mail to the Regional Administrator, NMFS, or addressed to the Regional Administrator, NMFS, Post Office Box 21668, Juneau, Alaska 99802; and

(C) The Formula Arbitrator and any Contract Arbitrator(s) for the fishery.

(g) *Roles and standards for the Formula Arbitrator.* (1) For each crab QS fishery, the Arbitration QS/IFQ Arbitration Organizations and the PQS/IPQ Arbitration Organizations shall establish a contract with the Formula Arbitrator to develop a Non-Binding Price Formula.

(2) The contract with the Formula Arbitrator must specify that:

(i) The Formula Arbitrator will conduct a single annual fleet-wide analysis of the markets for crab to establish a Non-Binding Price Formula under which a fraction of the weighted average first wholesale prices for crab products from the fishery may be used to set an ex-vessel price; and

(ii) The Non-Binding Price Formula shall:

(A) Be based on the historical distribution of first wholesale revenues between fishermen and processors in the aggregate based on arm's length first wholesale prices and ex-vessel prices, taking into consideration the size of the harvest in each year; and

(B) Establish a price that preserves the historical division of revenues in the fishery while considering the following:

(1) Current ex-vessel prices, including ex-vessel prices received for crab harvested under Class A, Class B, and CVC IFQ permits;

(2) Consumer and wholesale product prices for the processing sector and the participants in arbitrations (recognizing the impact of sales to affiliates on wholesale pricing);

(3) Innovations and developments of the harvesting and processing sectors and the participants in arbitrations (including new product forms);

(4) Efficiency and productivity of the harvesting and processing sectors (recognizing the limitations on efficiency and productivity arising out of the management program structure);

(5) Quality (including quality standards of markets served by the fishery and recognizing the influence of harvest strategies on the quality of landings);

(6) The interest of maintaining financially healthy and stable harvesting and processing sectors;

(7) Safety and expenditures for ensuring adequate safety;

(8) Timing and location of deliveries; and

(9) The cost of harvesting and processing less than the full IFQ or IPQ allocation (underages) to avoid penalties for overharvesting IFQ and a mechanism for reasonably accounting for deadloss.

(C) Include identification of various relevant factors such as product form, delivery time, and delivery location.

(D) Consider the "highest arbitrated price" for the fishery from the previous crab fishing season, where the "highest arbitrated price" means the highest arbitrated price for arbitrations of IPQ and Arbitration IFQ which represent a minimum of at least 7 percent of the IPQ resulting from the PQS in that fishery. For purposes of this process, the Formula Arbitrator may aggregate up to three arbitration findings to collectively equal a minimum of 7 percent of the IPQ. When arbitration findings are aggregated with 2 or more entities, the lesser of the arbitrated prices of

## Fishery Conservation and Management

## § 680.20

the arbitrated entities included to attain the 7 percent minimum be considered for the highest arbitrated price.

(iii) The Non-Binding Price Formula may rely on any relevant information available to the Formula Arbitrator, including, but not limited to,

(A) Information provided by the QS, PQS, IPQ and IFQ holders in the fishery, and

(B) The Market Report for the fishery.

(iv) The Formula Arbitrator:

(A) May meet with IFQ holders who are members of any single FCMA cooperative collectively;

(B) Shall meet with IPQ holders individually;

(C) Shall meet with distinct FCMA cooperatives individually; and

(D) Shall meet with IFQ holders who are not members of the same FCMA cooperative individually.

(v) The Formula Arbitrator may request any relevant information from QS, PQS, IPQ, and IFQ holders in the fishery, but the Formula Arbitrator shall not have subpoena power.

(vi) The Formula Arbitrator may obtain information from persons other than QS, PQS, IPQ, and IFQ holders in the fishery, if those persons agree to provide such data. Any information that is provided must be based on activities occurring more than three months prior to the date of submission to the Formula Arbitrator.

(vii) The Formula Arbitrator shall keep confidential the information that is not publicly available and not disclose the identity of the persons providing specific information.

(viii) (A) In 2005, the non-binding price formula shall be produced not later than September 30, 2005 or 25 days prior to the first crab fishing season for that crab QS fishery whichever is later in that crab fishing year as required under this section.

(B) In all subsequent years, the non-binding price formula shall be produced not later than 50 days prior to the first crab fishing season for that crab QS fishery.

(C) The contract with the Formula Arbitrator must specify that the Formula Arbitrator will provide the non-binding price formula in that crab fishing year to:

(1) Each Arbitration Organization in that fishery;

(2) NMFS by electronic mail to the Regional Administrator, NMFS, or addressed to the Regional Administrator, NMFS, Post Office Box 21668, Juneau, Alaska 99802; and

(3) The Market Analyst and all Contract Arbitrators in the fishery.

(ix) The Formula Arbitrator shall not disclose any information to any person not required under this section, except as permitted by paragraph (j) of this section.

(h) *Roles and standards for the Contract Arbitrator(s)*—(1) *General*. For each crab QS fishery, the Arbitration QS/IFQ Arbitration Organizations and PQS/IPQ Arbitration Organizations shall establish a contract with all Contract Arbitrators in that fishery that specifies that each Contract Arbitrator may be selected to resolve a dispute concerning the terms of delivery, price, or other factors in the fishery.

(2) *Selection of Contract Arbitrators*. The contract with the Contract Arbitrator shall specify the means by which the Contract Arbitrator will be selected to resolve specific disputes. This contract must specify that for any dispute for which the Contract Arbitrator is selected, the Contract Arbitrator will comply with the last best offer arbitration method as set forth in this section.

(3) *Negotiation and Binding Arbitration Procedure*. The contract with the Contract Arbitrator(s) shall specify the following approaches for negotiation and Binding Arbitration among members of the Arbitration Organizations:

(i) *Restrictions on collective negotiation*. An IFQ and an IPQ holder may negotiate individually. Groups of IFQ holders may negotiate collectively with an IPQ holder only under the following provisions:

(A) Members of an FCMA cooperatives may participate collectively with other members of the same FCMA cooperative in Binding Arbitration except as otherwise provided under this section.

(B) Members of different FCMA cooperatives shall not participate collectively in Binding Arbitration.

(C) IPQ holders shall not participate collectively. Only one IPQ holder shall

enter into Binding Arbitration with any IFQ holder or IFQ holder(s).

(D) An Arbitration Organization must not negotiate on behalf of a member. This shall not prohibit the members of an Arbitration IFQ Arbitration Organization from negotiation if the Arbitration Organization qualifies as an FCMA cooperative.

(ii) *Open negotiations.* At any time prior to the date of the first crab fishing season of a crab fishing year for that crab QS fishery, any holder of uncommitted Arbitration IFQ may negotiate with any holder of uncommitted IPQ, the price and delivery terms for that season for any uncommitted IFQ and uncommitted IPQ.

(A) Uncommitted Arbitration IFQ holders and Uncommitted IPQ holders may freely contact each other and initiate open negotiations.

(B) If Arbitration IFQ holders and IPQ holders do not reach an agreement on price, delivery terms, or other terms after committing shares, an Arbitration IFQ holder may initiate Binding Arbitration in accordance with the procedures specified in this section in order to resolve disputes in those price, delivery terms, or other terms.

(C) Once IFQ or IPQ has been committed, the IFQ holder and IPQ holder cannot engage in open negotiation using those shares.

(iii) *Lengthy season approach.* (A) Prior to the date of the first crab fishing season for that crab QS fishery in that crab fishing year a committed IPQ holder and one or more committed Arbitration IFQ holders may choose to adopt a Lengthy Season approach. The Lengthy Season approach is an alternative method to the Binding Arbitration proceedings.

(B) A Lengthy Season approach allows a committed IPQ holder and a committed Arbitration IFQ holder to agree to postpone negotiation of specific contract terms until a time during the crab fishing year as agreed upon by the Arbitration IFQ holder and IPQ holder participating in the negotiation. The Lengthy Season approach allows the Arbitration IFQ holders and IPQ holder involved in the negotiation to postpone Binding Arbitration, if necessary, until a time during the crab fishing year. If the parties ready a final

agreement on the contract terms, Binding Arbitration is not necessary.

(C) If a committed IPQ holder and one or more committed Arbitration IFQ holder(s) are unable to reach an agreement on whether to adopt a Lengthy Season approach, they may request mediation to assist the parties in determining whether to adopt a Lengthy Season approach. The parties may request a Contract Arbitrator to act as a mediator. If the mediation proves unsuccessful or is not selected, the Arbitration IFQ holder may initiate enter Binding Arbitration to determine whether to adopt a lengthy season approach.

(1) Binding Arbitration may begin immediately with the same Contract Arbitrator.

(2) If the Contract Arbitrator serves as a mediator in an unsuccessful mediation, either party may request another Contract Arbitrator for the Binding Arbitration.

(iv) *Share matching.* (A) At any time 120 hours (five days) after NMFS issues IFQ and IPQ for that crab QS fishery in that crab fishing year, holders of uncommitted Arbitration IFQ may choose to commit the delivery of harvests of crab to be made with that uncommitted Arbitration IFQ to an uncommitted IPQ holder. The issuance of IFQ and IPQ for a crab QS fishery occurs on the time and date that IFQ and IPQ amounts for that crab QS fishery are posted on the NMFS, Alaska Region website at <http://www.fakr.noaa.gov>.

(B) To commit Arbitration IFQ, the holder of uncommitted IFQ must offer an amount of Arbitration IFQ:

(1) Not less than 50 percent of the Arbitration IFQ holder's total uncommitted Arbitration IFQ, or an amount of uncommitted Arbitration IFQ equal to the total amount of uncommitted IPQ available, whichever is less, if the Arbitration IFQ holder is not an FCMA cooperative; and

(2) Not less than 25 percent of the Arbitration IFQ holder's total uncommitted Arbitration IFQ, or an amount of uncommitted Arbitration IFQ equal to the total amount of uncommitted IPQ available, whichever is less, if the Arbitration IFQ holder is an FCMA cooperative.

(C) Any holder of uncommitted IPQ must accept all proposed Arbitration IFQ commitments, up to the amount of its uncommitted IPQ. The commitment of IPQ will take place on receipt of notice from the holder of uncommitted Arbitration IFQ of the intention to commit that IFQ.

(D) After matching, an Arbitration IFQ holder and an IPQ holder may decide to enter mediation to reach agreement on contract terms. The Arbitration IFQ holder and IPQ holder may request a Contract Arbitrator to act as a mediator to facilitate an agreement.

(1) If the mediation proves unsuccessful, or if mediation is not selected, the Arbitration IFQ holder may initiate Binding Arbitration which may begin immediately with the same Contract Arbitrator.

(2) If the Contract Arbitrator serves as a mediator in an unsuccessful mediation, the Arbitration IFQ holder may request another Contract Arbitrator for the Binding Arbitration.

(v) *Initiation of Binding Arbitration.* If an Arbitration IFQ holder intends to initiate Binding Arbitration, the Arbitration IFQ holder must initiate the Binding Arbitration procedure not later than 360 hours (15 days) after NMFS issues IFQ and IPQ for that crab QS fishery in that crab fishing year. Binding Arbitration is initiated after the committed Arbitration IFQ holder notifies a committed IPQ holder and selects a Contract Arbitrator. Binding Arbitration may be initiated to resolve price, terms of delivery, and other disputes. There will be only one Binding Arbitration Proceeding for an IPQ holder but multiple Arbitration IFQ holders may participate in this proceeding. This limitation on the timing of Binding Arbitration proceedings does not include proceedings that arise due to:

- (A) The lengthy season approach;
- (B) Performance disputes; and
- (C) Quality disputes.

(vi) *Joining a Binding Arbitration proceeding.* Any uncommitted Arbitration IFQ holder may join a Binding Arbitration proceeding as a party by committing the shares to the arbitration and providing notice to the IPQ holder and the Contract Arbitrator(s). An Arbitration IFQ holder may join a Binding Ar-

bitration proceeding only if uncommitted IPQ is available. Once shares are committed to a Binding Arbitration Proceeding they cannot be uncommitted. The contract with the Contract Arbitrator may specify the terms and timing of joining the proceedings.

(vii) *Arbitration schedule meeting.* The Contract Arbitrator shall meet with all parties to a Binding Arbitration proceeding as soon as possible once a Binding Arbitration proceeding has been initiated for the sole purpose of establishing a schedule for the Binding Arbitration. This schedule shall include the date by which the IPQ holder and Arbitration IFQ holder(s) must submit their last best offer and any supporting materials, and any additional meetings or mediation if agreed to by all parties. This meeting will discuss the schedule of the Binding Arbitration proceedings and not address terms of last best offers.

(viii) *Terms of last best offers.* The Contract Arbitrator will meet with the parties to the Binding Arbitration proceeding to determine the matters that must be included in the last best offer, which may include a fixed price or a price over a time period specified by the parties, a method for adjusting prices over a crab fishing year, or an advance price paid at the time of delivery.

(ix) *Submission of last best offers.* The parties to a Binding Arbitration proceeding shall each submit to the Contract Arbitrator(s) a last best offer defining all the terms specified for inclusion in a last best offer by the Contract Arbitrator. An Arbitration IFQ holder that is an FCMA cooperative may submit a last best offer that defines terms for the delivery of crab harvested by members of that FCMA cooperative with IFQ held by the cooperative. An Arbitration IFQ holder that is not an FCMA cooperative may submit a last best offer that defines the term of delivery of crab harvested with IFQ held by that person. The IPQ holder that is a party to the proceeding shall submit a single offer that defines terms for delivery of crab harvested with all IFQ that are subject to the proceedings.

(x) *Arbitration decisions.* The Contract Arbitrator(s) shall decide among each offer received from an Arbitration IFQ

holder and the offer received from the IPQ holder. Each arbitration decision shall result in a binding contract between the IPQ holder and the Arbitration IFQ holder defined by the terms of the offer selected by Contract Arbitrator(s). An arbitration decision applies to all committed IFQ and committed IPQ in that arbitration.

(xi) *Announcement of decisions.* (A) If last best offers are submitted at least 15 days before the first crab fishing season for that crab fishing year for that crab QS fishery, arbitration decisions shall be issued no later than 10 days before the first crab fishing season for that crab fishing year for that crab QS fishery. Otherwise, the Contract Arbitrator will notify the parties of the arbitration decision within 5 days of the parties submitting their last best offers.

(B) The Contract Arbitrator will notify the parties by providing each Arbitration IFQ holder and IPQ holder that is a party to the Binding Arbitration proceeding, a copy of any decision. The decision is binding on the parties to the Binding Arbitration proceeding.

(4) *Basis for the Arbitration decision.* The contract with the Contract Arbitrator shall specify that the Contract Arbitrator will be subject to the following provisions when deciding which last best offer to select.

(i) The Contract Arbitrator's decision shall:

(A) Be based on the historical distribution of first wholesale revenues between fishermen and processors in the aggregate based on arm's length first wholesale prices and ex-vessel prices, taking into consideration the size of the harvest in each year; and

(B) Establish a price that preserves the historical division of revenues in the fishery while considering the following:

(1) Current ex-vessel prices, including ex-vessel prices received for crab harvested under Class A IFQ, Class B IFQ, and CVC IFQ permits;

(2) Consumer and wholesale product prices for the processing sector and the participants in the arbitration (recognizing the impact of sales to affiliates on wholesale pricing);

(3) Innovations and developments of the harvesting and processing sectors

and the participants in the arbitration (including new product forms);

(4) Efficiency and productivity of the harvesting and processing sectors (recognizing the limitations on efficiency and productivity arising out of the management program structure);

(5) Quality (including quality standards of markets served by the fishery and recognizing the influence of harvest strategies on the quality of landings);

(6) The interest of maintaining financially healthy and stable harvesting and processing sectors;

(7) Safety and expenditures for ensuring adequate safety;

(8) Timing and location of deliveries; and

(9) The cost of harvesting and processing less than the full IFQ or IPQ allocation (underages) to avoid penalties for overharvesting IFQ and a mechanism for reasonably accounting for deadloss.

(C) Consider the Non-Binding Price Formula established in the fishery by the Formula Arbitrator.

(ii) The Contract Arbitrator's decision may rely on any relevant information available to the Contract Arbitrator, including, but not limited to:

(A) Information provided by the QS, PQS, IPQ and IFQ holders in the fishery regarding the factors identified in paragraph (h)(4)(i) of this section; and

(B) The Market Report for the fishery.

(iii) Each of the Arbitration IFQ holders and the IPQ holders that is party to the proceeding may provide the Contract Arbitrator with additional information to support its last best offer. The Contract Arbitrator must receive and consider all data submitted by the parties.

(iv) The Contract Arbitrator may request specific information from the Arbitration IFQ holder(s) and IPQ holder that will be useful in reaching a final decision. The Contract Arbitrator will not have subpoena power and it is in the sole discretion of the person from whom information is requested as to whether to provide the requested information.

(5) *Limits on the release of data.* The parties to a Binding Arbitration proceeding shall be precluded from full access to the information provided to the Contract Arbitrator.

(i) Arbitration IFQ holders that are party to an arbitration proceeding shall have access only to information provided directly by the IPQ holder to the Contract Arbitrator for that Binding Arbitration proceeding.

(ii) IPQ holders that are party to an arbitration proceeding shall have access only to information provided directly by an Arbitration IFQ holder to the Contract Arbitrator for that Binding Arbitration proceeding.

(iii) The Contract Arbitrator shall keep confidential the information provided by any QS, PQS, IFQ, or IPQ holders in the fishery and not disclose the identity of the persons providing specific information except as provided in paragraph (h)(6) of this section.

(iv) The Arbitration IFQ holders and IPQ holders shall not release information received in a Binding Arbitration proceeding to persons who were not party to that Binding Arbitration proceeding other than the final result of that arbitration proceeding except as provided for in paragraph (h)(6) of this section.

(6) *Information provided to NMFS.* The Contract Arbitrator must provide any information, documents, or data required under this paragraph to NMFS via mail to the Administrator, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802-1668, or electronically not later than 30 days prior to the end of the crab fishing year for which the open negotiation or arbitration applied. The contract with the Contract Arbitrator must specify that the Contract Arbitrator provide NMFS with:

(i) A copy of any minutes from any meeting attended by that Contract Arbitrator between or among any PQS or IPQ holders concerning any negotiations under this section;

(ii) Any last-best offers made during the Binding Arbitration process, including all contract details, the names of other participants in the arbitration, and whether the bid was accepted by the Contract Arbitrator; and

(iii) A copy of any information, data, or documents given by the Contract

Arbitrator to any person who is not a party to the particular arbitration for which that information was provided. The Contract Arbitrator must identify the arbitration to which the information, data, or documents apply, and the person to whom those information, data, or documents were provided.

(7) *Enforcement of Binding Arbitration decisions.* The decision of the Contract Arbitrator for Binding Arbitration shall be enforced among the parties to that arbitration.

(8) *Failure of Contract Arbitrator(s).* Except as provided for in paragraph (h)(6) of this section, the failure of a Contract Arbitrator to perform shall be enforced by the Arbitration Organizations.

(9) *Post Binding Arbitration opt-in.* (i) An Arbitration IFQ holder with uncommitted IFQ, may opt-in to any contract that results from a completed a Binding Arbitration procedure with any IPQ holder that has uncommitted IPQ.

(A) All the terms from the arbitrated contract will apply. The Contract Arbitrator may determine fees and a time frame by which a Post Binding Arbitration opt-in may occur if those terms are not specified in the arbitrated contract.

(B) Once exercised, the opt-in results in a contract that is binding on both the Arbitration IFQ and IPQ holder.

(ii) To initiate the opt-in process, the holder of uncommitted Arbitration IFQ will notify the holder of uncommitted IPQ in writing of its intent to opt-in.

(iii) Holders of uncommitted Arbitration IFQ may opt-in to a contract resulting from a completed Binding Arbitration procedure with a person that holds uncommitted IPQ for that fishery.

(iv) If the IPQ holder and the Arbitration IFQ holder are unable to resolve a dispute regarding whether the opt-in offer is consistent with the original contract from the completed Binding Arbitration procedure, the dispute may be decided by the Contract Arbitrator to the original arbitration that resulted in the contract to which the Arbitration IFQ holder is seeking to opt-in. The Contract Arbitrator will decide only whether the proposed opt-in terms are consistent with the original contract.

**§ 680.21**

**50 CFR Ch. VI (10–1–08 Edition)**

(10) *Performance disputes.* If an IPQ holder and an Arbitration IFQ holder are unable to resolve disputes regarding the obligations to perform specific contract provisions after substantial negotiations or when time is of the essence, the issues of that dispute shall be submitted for Binding Arbitration before a Contract Arbitrator for that fishery.

(i) Binding Arbitration resulting from a performance dispute can occur at any point during or after the crab fishing year. The dispute must be raised by the IPQ holder or the Arbitration IFQ holder. Arbitration of that performance dispute must be initiated prior to the date of the first crab fishing season for the following crab fishing year in that crab QS fishery.

(ii) Performance dispute arbitration shall follow the applicable procedures described for a Binding Arbitration in paragraph (h)(3) of this section, except that the time frame for the procedure applicable to a performance dispute will be determined by the Contract Arbitrator once the dispute has been raised.

(iii) If a party fails to abide by the arbitration decision, a party may pursue available contract remedies.

(iv) The costs of arbitrating performance disputes shall be provided from the general fees collected by the Arbitration Organizations pursuant to paragraph (e) of this section.

(v) The Contract Arbitrator may assign fees to any party bringing frivolous complaints. Any such fees shall be paid by the party and not from the fees collected under paragraph (e)(2)(vi) of this section.

(11) *Quality disputes.* When disputes regarding the quality of the harvested crab arise within the context of an existing contract, the parties may settle the disputes within the context of the arbitration system according to the following:

(i) In cases where the IPQ holder and Arbitration IFQ holder(s) have agreed to a formula-based price for crab but where they cannot reach an agreement on the quality and price of the crab, the IPQ holder and Arbitration IFQ holder(s) will receive their share of the value of the amount of crab delivered based on the provisions of the contract.

(ii) In quality disputes where the Arbitration IFQ holders prefer to use actual ex-vessel price and not a formula-based price and a dispute arises regarding crab quality and price, the dispute should be referred to a mutually agreeable independent quality specialist firm. This independent quality specialist firm will determine the quality of the crab. This information will be used as the basis for subsequent price determinations. The IPQ holder and Arbitration IFQ holder(s) with this quality dispute shall share the cost of hiring the specialist firm and agree to abide by its findings according to the terms of their agreement.

[70 FR 10241, Mar. 2, 2005, as amended at 70 FR 33395, June 8, 2005; 70 FR 75421, Dec. 20, 2005; 71 FR 40033, July 14, 2006; 73 FR 35088, June 20, 2008]

**§ 680.21 Crab harvesting cooperatives.**

This section governs the formation and operation of crab harvesting cooperatives. The regulations in this section apply only to crab harvesting cooperatives that have formed for the purpose of applying for and fishing under a crab harvesting cooperative IFQ permit issued by NMFS. Members of crab harvesting cooperatives that are not FCMA cooperatives should consult counsel before commencing any activity if the members are uncertain about the legality under the antitrust laws of the crab harvesting cooperative's proposed conduct.

(a) *Formation of crab harvesting cooperatives.* The following requirements apply to the formation of crab harvesting cooperatives.

(1) *Membership requirements.* A crab harvesting cooperative is limited to QS holders that hold any amount of CPO, CVO, CPC, or CVC QS, and that NMFS has determined are eligible to receive crab IFQ.

(i) *Minimum number of members.* Each crab harvesting cooperative must include at least four unique QS holding entities. A unique QS holding entity is a QS holder or group of affiliated QS holders that are not affiliated with any other QS holders or QS holding entities in the crab harvesting cooperative. For the purpose of this paragraph, the term "affiliation" is defined at § 680.2.

(ii) *Voluntary nature of membership.* Membership in a crab harvesting cooperative is voluntary. No person may be required to join a crab harvesting cooperative, and no crab harvesting cooperative may be required to accept a member who the crab harvesting cooperative chooses not to accept.

(iii) *Membership in more than one crab harvesting cooperative.* (A) A QS holder may join one crab harvesting cooperative per CR fishery.

(B) Upon joining a crab harvesting cooperative for a CR fishery, NMFS will convert all of a QS holder's QS holdings for that CR fishery to crab harvesting cooperative IFQ.

(2) *Legal and organizational requirements.* A crab harvesting cooperative must meet the following legal and organizational requirements before it is eligible to apply for a crab harvesting cooperative IFQ permit:

(i) *Registered business entity.* Each crab harvesting cooperative must be formed as a partnership, corporation, or other legal business entity that is registered under the laws of one of the 50 states or the District of Columbia.

(ii) *Appointment of a designated representative.* Each crab harvesting cooperative must appoint an individual as designated representative to act on the crab harvesting cooperative's behalf and serve as contact point for NMFS for questions regarding the operation of the crab harvesting cooperative. The designated representative may be a member of the crab harvesting cooperative or some other individual authorized by the crab harvesting cooperative to act on its behalf.

(b) *Application for annual crab harvesting cooperative IFQ permits.* A crab harvesting cooperative IFQ permit is an annual permit issued to a crab harvesting cooperative that establishes an annual catch limit of crab that is based on the collective QS holdings of the members of the crab harvesting cooperative that have been contributed by the members. A crab harvesting cooperative IFQ permit will list the IFQ amount, by fishery, held by the crab harvesting cooperative and identify the members of the crab harvesting cooperative. Each crab harvesting cooperative will be issued a separate IFQ permit for each type of QS held by a mem-

ber (or members) of the crab harvesting cooperative.

(1) *August 1 application deadline.* A completed application for an annual crab harvesting cooperative IFQ permit must be submitted annually by each crab harvesting cooperative and received by NMFS no later than August 1, together with the signed annual application for crab IFQ/IPQ permit forms of all the members of the crab harvesting cooperative.

(2) *Contents of application for annual crab harvesting cooperative IFQ permit.* A completed application also must contain the following information:

(i) *Cooperative identification.* Enter the crab harvesting cooperative's legal name; type of business entity under which the crab harvesting cooperative is organized; state in which the crab harvesting cooperative is legally registered as a business entity; printed name of the crab harvesting cooperative's designated representative; the permanent business address, telephone number, facsimile number, and e-mail address (if available) of the crab harvesting cooperative or its designated representative; and the signature of the crab harvesting cooperative's designated representative and date signed.

(ii) *Members of the cooperative.* Full name and NMFS Person ID of each member of the crab harvesting cooperative.

(iii) *Additional documentation.* For the application to be considered complete, the following documents must be attached to the application: the completed and signed annual application for crab IFQ/IPQ permit for all members of the crab harvesting cooperative, a copy of the business license issued by the state in which the crab harvesting cooperative is registered as a business entity, a copy of the articles of incorporation or partnership agreement of the crab harvesting cooperative, and a copy of the crab harvesting cooperative agreement signed by the members of the crab harvesting cooperative (if different from the articles of incorporation or partnership agreement of the crab harvesting cooperative).

(3) *Issuance of crab harvesting cooperative IFQ permits.* Upon receipt of a completed application for an annual crab harvesting cooperative IFQ permit that

is subsequently approved, NMFS will issue one-year crab harvesting cooperative IFQ permits to the crab harvesting cooperative. The crab harvesting cooperative IFQ permits will list the crab IFQ amounts that are generated by the aggregate QS holdings of all members of the crab harvesting cooperative for each fishery, region, sector, and Class A/B IFQ categories. Issuance by NMFS of a crab harvesting cooperative IFQ permit is not a determination that the crab harvesting cooperative is formed or is operating in compliance with antitrust law.

(4) *Appeals.* A crab harvesting cooperative or person that is adversely affected by an initial administrative determination (IAD) that is associated with the issuance of a crab harvesting cooperative IFQ permit may appeal the IAD using the appeals procedures described in § 680.43.

(c) *Restrictions on fishing under a crab harvesting cooperative IFQ permit.* The following restrictions govern fishing for IFQ crab under a crab harvesting cooperative IFQ permit:

(1) *Maintenance of permit on board.* A copy of a crab harvesting cooperative IFQ permit must be maintained on board any vessel that is being used to harvest crab under the permit.

(2) *Persons eligible to harvest crab under a crab harvesting cooperative IFQ permit.* The only person eligible to harvest crab under a crab harvesting cooperative IFQ permit is the crab IFQ hired master under § 680.4(g) who is operating a vessel in which at least a 10 percent ownership share is held by a member of the crab harvesting cooperative to whom the IFQ permit is issued.

(3) *Liability.* Each member of a crab harvesting cooperative is responsible for ensuring that members of the crab harvesting cooperative and crab IFQ hired masters of the crab harvesting cooperative comply with all regulations applicable to fishing for CR crab.

(d) *Transfers by members of a crab harvesting cooperative.* The following requirements address transfers of QS and IFQ by members of a crab harvesting cooperative.

(1) *Transfer of QS.* A member of a crab harvesting cooperative may acquire or divest QS at any time using the trans-

fer procedures described in § 680.41. However, transfers of QS that occur after the August 1 deadline for crab harvesting cooperative IFQ permit applications will not be reflected in the type or amount of IFQ permit issued to the crab harvesting cooperative for the current fishing season.

(2) *Transfer of individually held IFQ.* A member of a crab harvesting cooperative may acquire or divest individually held IFQ using the transfer procedures described in § 680.41. However, any vessel used to harvest IFQ not held by a crab harvesting cooperative loses the vessel use cap exemption.

(3) *Transfer of crab harvesting cooperative IFQ prohibited.* A member of a crab harvesting cooperative may not acquire or divest crab harvesting cooperative IFQ. Crab harvesting cooperative IFQ may only be transferred between two crab harvesting cooperatives.

(e) *Transfers by crab harvesting cooperatives.* The following requirements address transfers of QS, IFQ, PQS, and IPQ by crab harvesting cooperatives that have been issued crab harvesting cooperative IFQ permits.

(1) *Acquisition of QS, PQS, and IPQ prohibited.* A crab harvesting cooperative that has been issued a crab harvesting cooperative IFQ permit is prohibited from acquiring any amount of QS, PQS, or IPQ for the valid duration of the crab harvesting cooperative IFQ permit. A crab harvesting cooperative that acquires any amount of QS, PQS, or IPQ becomes ineligible to receive a crab harvesting cooperative IFQ permit.

(2) *Transfer of crab harvesting cooperative IFQ.* A crab harvesting cooperative may transfer its IFQ only to another crab harvesting cooperative. Crab harvesting cooperatives wishing to engage in an inter-cooperative transfer must complete an application for inter-cooperative transfer to transfer crab IFQ between crab harvesting cooperatives. A crab harvesting cooperative is prohibited from transferring any amount of crab harvesting cooperative IFQ to any entity that is not a crab harvesting cooperative operating under a crab harvesting cooperative IFQ permit.

(3) *Use caps.* Inter-cooperative transfers of IFQ will apply to the individual

use caps of crab harvesting cooperative members through the designation of the crab harvesting cooperative members conducting the transfer.

(f) *Application for inter-cooperative transfer.* An application for inter-cooperative transfer is to be used only to apply for a transfer of crab harvesting cooperative IFQ from one crab harvesting cooperative to another crab harvesting cooperative. A complete application must also contain the following information:

(1) *Identification of transferor.* Enter the name; NMFS Person ID; date of incorporation; Tax ID number; name of crab harvesting cooperative's designated representative; permanent business mailing address; and business telephone number, facsimile number, and e-mail address (if available) of the crab harvesting cooperative transferor. A temporary mailing address for each transaction may also be provided in addition to the permanent business mailing address.

(2) *Identification of crab harvesting cooperative member.* Enter the name and NMFS Person ID of the member to whose use cap the crab harvesting cooperative IFQ will be applied.

(3) *Identification of transferee.* Enter the name; NMFS Person ID; date of incorporation; Tax ID number; name of crab harvesting cooperative's designated representative; permanent business mailing address; and business telephone number, facsimile number, and e-mail address (if available) of the crab harvesting cooperative transferee. A temporary mailing address for each transaction may also be provided in addition to the permanent business mailing address.

(4) *Identification of crab harvesting cooperative member.* Enter the name and NMFS person ID of the member from whose use cap the crab harvesting cooperative IFQ will be removed.

(5) *Crab harvesting cooperative IFQ to be transferred.* Identify the crab harvesting cooperative IFQ being transferred, including the type of crab harvesting cooperative IFQ being transferred, crab harvesting cooperative permit number and year that permit was issued. Indicate (YES or NO) whether all remaining pounds for the current fishing year are to be transferred; if

NO, specify number of pounds to be transferred.

(6) *Transferor information.* Indicate (YES or NO) whether a broker is being used for this transaction. If YES, indicate the dollar amount to be paid in brokerage fees or percentage of total price. Enter the total amount being paid for the IFQ in this transaction, including all fees, and the price per pound of IFQ.

(7) *Certification of transferor.* The crab harvesting cooperative transferor's designated representative must sign and date the application certifying that all information is true, correct, and complete to the best of his or her knowledge and belief. Only an application with an original, notarized signature will be accepted. Also enter the printed name of the crab harvesting cooperative transferor's representative or authorized representative. If the application is completed by an authorized representative, proof of authorization to act on behalf of the transferor must accompany the application. A Notary Public must sign the application, enter the date commission expires, and affix notary stamp or seal.

(8) *Certification of transferee.* The crab harvesting cooperative transferee's representative must sign and date the application certifying that all information is true, correct, and complete to the best of his or her knowledge and belief. Only an application with an original, notarized signature will be accepted. Also enter the printed name of the crab harvesting cooperative transferee's representative or authorized representative. If the application is completed by an authorized representative, proof of authorization to act on behalf of the transferee must accompany the application. A Notary Public must sign the application, enter the date commission expires, and affix notary stamp or seal.

(g) *Inseason changes to crab harvesting cooperative membership.* The following requirements address inseason changes to crab harvesting cooperative membership.

(1) *Eligible membership changes.* A crab harvesting cooperative may add a new member if that person becomes eligible to join the crab harvesting cooperative through the acquisition of any amount

of the QS upon which the crab harvesting cooperative's annual IFQ permit was based, provided that the person acquiring the QS in question has been determined by NMFS to be eligible to hold IFQ. Likewise, a crab harvesting cooperative may remove a member if that person no longer holds any of the QS upon which the crab harvesting cooperative's annual IFQ permit was based.

(2) *Inseason membership changes are voluntary.* A crab harvesting cooperative is not required to add or remove members during the fishing season to reflect inseason transfers of QS. Each crab harvesting cooperative is free to establish its own process for deciding whether or not to admit new members or to remove existing members during the fishing season to reflect changes in the QS holdings. No crab harvesting cooperative is required to admit a new QS holder that the crab harvesting cooperative chooses not to admit, regardless of whether the person in question has acquired any amount of QS upon which the crab harvesting cooperative's annual IFQ is based. If a crab harvesting cooperative chooses to make inseason membership changes, then it must comply with paragraph (g)(3) of this section.

(3) *Application for an inseason change in cooperative membership.* To change crab harvesting cooperative membership, a crab harvesting cooperative must submit to NMFS a revised application for an annual crab harvesting cooperative IFQ permit together with any revised supporting documents that are required to be submitted with the application. The revised application for an annual crab harvesting cooperative IFQ permit must be accompanied by a cover letter that indicates the revisions that have been made. Upon approval of the membership change, NMFS will issue a revised crab harvesting cooperative IFQ permit that reflects the change. A new member may not fish on behalf of a cooperative except as a crab IFQ hired master until NMFS issues a revised crab harvesting cooperative IFQ permit that reflects the change in membership.

(4) *Successors-in-interest.* If a member of a crab harvesting cooperative dies (in the case of an individual) or dis-

solves (in the case of a business entity), the QS held by that person will be transferred to the legal successor-in-interest. However, the crab harvesting cooperative IFQs generated by that person's QS holdings remain under the control of the crab harvesting cooperative for the valid duration of the crab harvesting cooperative IFQ permit. Each crab harvesting cooperative is free to establish its own internal procedures for admitting a successor-in-interest during the fishing season to reflect the transfer of QS due to the death or dissolution of a QS holder. The regulations in this section do not require any crab harvesting cooperative to admit a successor-in-interest that the cooperative chooses not to admit. If a crab harvesting cooperative chooses to admit the successor-in-interest for membership, then the crab harvesting cooperative must comply with paragraph (g)(3) of this section.

[70 FR 10241, Mar. 2, 2005, as amended at 70 FR 33395, June 8, 2005; 73 FR 35088, June 20, 2008]

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

The regulations in this section restrict the owners of vessels with a history of participation in the Bering Sea snow crab fishery from using the increased flexibility provided by the CR Program to expand their level of participation in GOA groundfish fisheries. These restrictions are commonly known as "sideboards."

(a) *Vessels and LLP licenses subject to sideboard restrictions.* The sideboard fishing restrictions described in this section are based on a vessel's fishing history and apply both to the fishing vessel itself and to any LLP license generated by that vessel's fishing history. The criteria used to determine which vessels and LLP licenses are subject to GOA groundfish sideboard fishing restrictions are as follows:

(1) *Vessels subject to GOA groundfish sideboard directed fishing closures.* Any vessel that NMFS has determined meets one or both of the following criteria is subject to GOA groundfish sideboard directed fishing closures issued under paragraph (e) of this section.

(i) Any non-AFA vessel that made a legal landing of Bering Sea snow crab (*C. opilio*) between January 1, 1996, and December 31, 2000, that generated any amount of Bering Sea snow crab (*C. opilio*) fishery QS; and

(ii) Any vessel named on an LLP license that was generated in whole or in part by the fishing history of a vessel meeting the criteria in paragraph (a)(1)(i) of this section.

(2) *Vessels prohibited from directed fishing for Pacific cod in the GOA.* Any vessel that NMFS has determined meets either of the following two criteria is prohibited from directed fishing for Pacific cod in the GOA:

(i) Any vessel subject to GOA groundfish sideboard closures under paragraph (a)(1)(i) of this section that landed less than 50 mt (110,231 lb), in round weight equivalents, of groundfish harvested from the GOA between January 1, 1996, and December 31, 2000, or

(ii) Any vessel named on an LLP license that was generated in whole or in part by the fishing history of a vessel meeting the criteria in paragraph (a)(2)(i) of this section.

(3) *Vessels exempt from Pacific cod sideboard closures in the GOA.* Any vessel that NMFS has determined meets one or both 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 100,000 lb (45,359 kg), in raw weight equivalents, of Bering Sea snow crab and more than 500 mt (1,102,311 lb), in round weight equivalents, of Pacific cod from the GOA between January 1, 1996, and December 31, 2000; and

(ii) Any vessel named on an LLP license that was generated in whole or in part by the fishing history of a vessel meeting the criteria in paragraph (a)(3)(i) of this section.

(b) *Notification of affected vessel owners and LLP license holders.* After NMFS determines which vessels and LLP licenses meet the criteria described in paragraph (a) of this section, NMFS will inform each vessel owner and LLP license holder in writing of the type of sideboard restriction and issue a revised Federal Fisheries Permit and/or LLP license that displays the restric-

tion on the face of the permit or license.

(c) *Appeals.* A vessel owner or LLP license holder who believes that NMFS has incorrectly identified his or her vessel or LLP license as meeting the criteria for a GOA groundfish sideboard restriction may request reconsideration. All requests for reconsideration must be submitted in writing to the RAM Division, Alaska Region, NMFS, together with any documentation or evidence supporting the request. If the request for reconsideration is denied, affected persons may appeal using the procedures described at § 680.43.

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

(1) *Pacific cod.* The sideboard ratios for Pacific cod are calculated by dividing the aggregate retained catch of Pacific cod 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 paragraphs (a)(2) or (a)(3) of this section by the total retained catch of Pacific cod by all groundfish vessels between 1996 and 2000.

(2) *Groundfish other than Pacific cod.* The sideboard ratios for groundfish species and species groups other than Pacific cod and fixed-gear sablefish 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.

(e) *Conversion of sideboard ratios into annual harvest limits.* NMFS will convert sideboard ratios into annual harvest limits according to the following procedures.

(1) *Annual harvest limits.* Annual harvest limits for each groundfish species, except fixed-gear sablefish, will be established by multiplying the sideboard ratios calculated under paragraph (d) of this section by the interim and final TACs in each area for which a TAC is

specified. If a TAC is further apportioned by season, the sideboard harvest limit also will be apportioned by season in the same ratio as the overall TAC. The resulting harvest limits expressed in metric tons will be published in the annual GOA groundfish harvest specification notices.

(2) *Sideboard directed fishing allowance.* (i) If the Regional Administrator determines that a harvest limit for a species or species group has been or will be reached, the Regional Administrator may establish a sideboard directed fishing allowance for the species or species group applicable only to the group of crab vessels to which the sideboard limit applies.

(ii) If the Regional Administrator determines that a harvest limit is insufficient to support a directed fishery for that species or species group, then the Regional Administrator may set the sideboard directed fishing allowance at zero for that species or species group.

(3) *Directed fishing closures.* Upon attainment of a sideboard directed fishing allowance, the Regional Administrator will publish notification in the FEDERAL REGISTER prohibiting directed fishing for the species or species group in the specified subarea, regulatory area, or district. A directed fishing closure is effective for the duration of the fishing year or season.

(f) *Sideboard protections in the State of Alaska parallel groundfish fisheries.* Vessels subject to the sideboard restrictions under paragraph (a) of this section, with a Federal Fisheries Permit or LLP license, shall be subject to the regulations of this section while participating in any groundfish fishery in State waters adjacent to the GOA opened by the State of Alaska and for which the State of Alaska adopts a Federal fishing season.

[70 FR 10241, Mar. 2, 2005, as amended at 71 FR 38301, July 6, 2006]

**§ 680.23 Equipment and operational requirements.**

(a) *Catcher vessel requirements.* A catcher vessel used to harvest CR crab must:

(1) Carry and use a VMS as described in paragraph (d) of this section;

(2) Land all retained crab to an RCR operating under an approved catch

monitoring plan as described in paragraph (g) of this section;

(b) *Catcher/processor requirements.* A catcher/processor used to harvest CR crab must:

(1) Carry and use a VMS as described in paragraph (d) of this section;

(2) Weigh all retained crab to be processed on board, in its raw form, on a scale approved by NMFS as described in paragraph (e) of this section;

(3) Land all retained crab not processed on board at an RCR;

(4) Land all product processed on board at a shoreside location in the United States accessible by road or regularly scheduled air service and weigh that product on a scale approved by a state in which CR crab is landed; and

(5) Provide an approved observer platform scale and test weights that meet the requirements in paragraph (e) of this section.

(c) *RCR requirements.* An RCR must:

(1) Ensure that all CR crab landings are weighed on a scale approved by the State in which the landing takes place.

(2) Ensure that all crab landing and weighing be conducted as specified in an approved crab monitoring plan as described in paragraph (g) of this section, and that a copy of the crab monitoring plan is made available to NMFS personnel or authorized officer upon demand.

(d) *Vessel Monitoring System (VMS) requirements—(1) General requirements.* General VMS requirements concerning the approval and installation of VMS components and the responsibilities of vessel owners and operators are detailed at § 679.28(f)(1) through (5).

(2) *VMS transmission requirements.* A vessel's transmitter must be transmitting if:

(i) The vessel is operating in any reporting area (see definitions at § 679.2) off Alaska;

(ii) The vessel has crab pots or crab pot hauling equipment, or a crab pot launcher onboard; and

(iii) The vessel has or is required to have a Federal crab vessel permit for that crab fishing year.

(e) *Scales approved by NMFS.* To be approved by NMFS, a scale used to weigh crab at sea must meet the type

evaluation and initial inspection requirements set forth in § 679.28(b)(1) and (2). Once a scale is installed on a vessel and approved by NMFS for use, it must be reinspected annually as described in § 679.28(b) by requesting a scale inspection from NMFS. Each scale must be tested daily and meet the maximum permissible error (MPE) requirements described in paragraph (e)(1) of this section.

(1) *At-sea scale tests.* To verify that the scale meets the MPEs specified in this paragraph, the vessel operator must test each scale or scale system used to weigh CR crab one time during each 24-hour period when use of the scale is required. The vessel owner must ensure that these tests are performed in an accurate and timely manner.

(i) *Belt scales.* The MPE for the daily at-sea scale tests is plus or minus 3 percent of the known weight of the test material. The scale must be tested by weighing at least 400 kg (882 lb) of crab or an alternative material supplied by the scale manufacturer on the scale under test. The known weight of the test material must be determined by weighing it on a platform scale approved for use under § 679.28 (b)(7).

(ii) *Automatic hopper scales.* An automatic hopper scale must be tested at its minimum and maximum capacity with approved test weights. Test weights must be placed in the bottom of the hopper unless an alternative testing method is approved by NMFS. The MPE for the daily at-sea scale tests is plus or minus 2 percent of the weight of the approved test weights.

(iii) *Platform scales used for observer sampling.* A platform scale used for observer sampling must be tested at 10, 25, and 50 kg (or 20, 50, and 100 lb if the scale is denominated in pounds) using approved test weights. The MPE for the daily at-sea scale test is plus or minus 0.5 percent if the scale is used to determine the known weight of test material for the purpose of testing a belt scale. If the scale is not used for that purpose, the MPE for the daily at-sea scale test is plus or minus 1 percent.

(iv) *Approved test weights.* Each test weight must have its weight stamped on or otherwise permanently affixed to

it. The weight of each test weight must be annually certified by a National Institute of Standards and Technology approved metrology laboratory or approved for continued use by the NMFS authorized inspector at the time of the annual scale inspection.

(v) *Requirements for all scale tests.* (A) Notify the observer at least 15 minutes before the time that the test will be conducted, and conduct the test while the observer is present.

(B) Conduct the scale test and record the following information on the at-sea scale test report form:

- (1) Vessel name;
- (2) Month, day, and year of test;
- (3) Time test started to the nearest minute;
- (4) Known weight of test weights;
- (5) Weight of test weights recorded by scale;
- (6) Percent error as determined by subtracting the known weight of the test weights from the weight recorded on the scale, dividing that amount by the known weight of the test weights, and multiplying by 100; and
- (7) Sea conditions at the time of the scale test.

(C) Maintain the test report form on board the vessel until the end of the crab fishing year during which the tests were conducted, and make the report forms available to observers, NMFS personnel, or an authorized officer. In addition, the vessel owner must retain the scale test report forms for 3 years after the end of the crab fishing year during which the tests were performed. All scale test report forms must be signed by the vessel operator.

(2) *Scale maintenance.* The vessel owner must ensure that the vessel operator maintains the scale in proper operating condition throughout its use, that adjustments made to the scale are made so as to bring the performance errors as close as practicable to a zero value, and that no adjustment is made that will cause the scale to weigh inaccurately.

(3) *Printed reports from the scale.* The vessel owner must ensure that the printed reports are provided as required by this paragraph. Printed reports from the scale must be maintained on board the vessel until the end of the year during which the reports

were made and be made available to NMFS or NMFS authorized personnel. In addition, the vessel owner must retain printed reports for 3 years after the end of the year during which the printouts were made.

(i) *Reports of catch weight and cumulative weight.* Reports must be printed at least once every 24 hours prior to submitting a CR crab landing report as described in §680.5. Reports must also be printed before any information stored in the scale computer memory is replaced. Scale weights must not be adjusted by the scale operator to account for the perceived weight of water, mud, debris, or other materials. Scale printouts must show:

(A) The vessel name and Federal crab vessel permit number;

(B) The weight of each load in the weighing cycle (hopper scales only);

(C) The date and time the information was printed;

(D) The total amount weighed since the last printout was made; and

(E) The total cumulative weight of all crab or other material weighed on the scale.

(ii) *Printed report from the audit trail.* The printed report must include the information specified in sections 2.3.1.8, 3.3.1.7, and 4.3.1.8 of appendix A to 50 CFR part 679. The printed report must be provided to the authorized scale inspector at each scale inspection and must also be printed at any time upon request of NMFS staff or other NMFS-authorized personnel.

(iii) *Platform scales used for observer sampling.* A platform scale used for observer sampling is not required to produce a printed record unless that scale is also used to obtain raw weight for a CR crab landing report.

(4) *Scale installation requirements.* Unless otherwise approved by NMFS, a scale used to obtain raw weight for a CR crab landing report must be installed such that:

(i) From the location where the observer samples unsorted crab, the observer can ensure that all crab are being weighed;

(ii) The scale may not be installed in a manner that facilitates bypassing. It must not be possible for the scale inspector and an assistant to bypass the

scale with 100 kg (220 lb) of test material in less than 20 seconds.

(f) *Scales approved by the state.* Scale requirements in this paragraph are in addition to those requirements set forth by the State in which the scale is approved, and nothing in this paragraph may be construed to reduce or supersede the authority of the State to regulate, test, or approve scales within the State. Scales used to weigh CR crab that are also required to be approved by the State must meet the following requirements:

(1) *Verification of approval.* The scale must display a valid State sticker indicating that the scale was inspected and approved within the previous 12 months.

(2) *Visibility.* An RCR must ensure that the scale and scale display are visible simultaneously. NMFS personnel or NMFS authorized personnel, including observers, must be allowed to observe the weighing of crab on the scale and be allowed to read the scale display at all times.

(3) *Printed scale weights.* (i) An RCR must ensure that printouts of the scale weight of each delivery or offload are made available to NMFS personnel or to NMFS authorized personnel, including observers, at the time printouts are generated. An RCR must maintain printouts on site until the end of the fishing year during which the printouts were made and make them available upon request by an authorized officer for 3 years after the end of the fishing year during which the printout was made.

(ii) A scale used to weigh any portion of a landing of CR crab or an offload of CR crab product must produce a printed record for each landing, or portion of each landing, weighed on that scale. The printed record must include:

(A) The RCR's name;

(B) The weight of each load in the weighing cycle;

(C) The total weight of crab in each landing, or portion of the landing that was weighed on that scale;

(D) The date and time the information is printed; and

(E) The name and ADF&G vessel registration number of the vessel making the delivery. The scale operator may

write this information on the scale printout in ink at the time of landing.

(4) *Inseason scale testing.* Scales used to weigh CR crab must be tested by RCR personnel when testing is requested by NMFS-staff or by NMFS-authorized personnel.

(i) *Inseason testing criteria.* To pass an inseason test, NMFS staff or NMFS-authorized personnel will verify that the scale display and printed information are clear and easily read under all conditions of normal operation, that weight values are visible on the display until the value is printed, and that the scale does not exceed the maximum permissible errors specified in the following table:

Test load in scale divisions	Maximum error in scale divisions
(A) 0–500 .....	1
(B) 501–2,000 .....	2
(C) 2,001–4,000 .....	3
(D) > 4,000 .....	4

(ii) *Test weight requirements.* Scales must be tested with the amount and type of weight specified for each scale type in the following tables under paragraphs (f)(4)(ii)(A) through (f)(4)(ii)(D) of this section:

(A) Automatic hopper 0 to 150 kg (0 to 300 lb) capacity.

Certified test weights	Other test material
(1) Minimum weight or 10 kg (20 lb), whichever is greater.	Minimum.
(2) Maximum .....	Maximum.

(B) Automatic hopper > 150 kg (300 lb) capacity.

Certified test weights	Other test material
(1) Minimum weight or 10 kg (20 lb), whichever is greater.	Minimum.
(2) 25 percent of maximum of 150 kg (300 lb), whichever is greater.	Maximum.

(C) Platform, flatbed or hanging scales less than 150 kg (300 lb) capacity.

Certified test weights	Other test material
(1) 10 kg (20 lb) .....	Not Acceptable.
(2) Midpoint .....	Not Acceptable.
(3) Maximum .....	Not Acceptable.

(D) Platform, flatbed or hanging scales > 150 kg (300 lb) capacity.

Certified test weights	Other test material
(1) 10 kg (20 lb) .....	Not Acceptable.
(2) 12.5 percent of maximum or 75 kg (150 lb), whichever is greater.	50 percent of maximum or 75 kg (150 lb), whichever is greater.
(3) 25 percent of maximum or 150 kg (300 lb), whichever is greater.	75 percent of maximum or 150 kg (300 lb), whichever is greater.

(iii) *Certified test weights.* An RCR must ensure that there are sufficient test weights on-site to test each scale used to weigh CR crab. Each test weight used for inseason scale testing must have its weight stamped on or otherwise permanently affixed to it. The weight of each test weight must be certified by a National Institute of Standards and Technology approved metrology laboratory every 2 years.

(iv) *Other test material.* When permitted in paragraph (f)(4)(ii) of this section, a scale may be tested with test material other than certified test weights.

(g) *Crab Monitoring Plans (CMP).* A CMP is a plan submitted by an RCR for each location or processing vessel where the RCR wishes to take deliveries of CR crab. The CMP must detail how the RCR will meet the catch monitoring standards detailed in paragraph (g)(5) of this section. An RCR that processes only CR crab harvested under a CPO or CPC IFQ permit is not required to prepare a CMP.

(1) *CMP Approval.* NMFS will approve a CMP if it meets all the performance standards specified in paragraph (g)(5) of this section. The location or vessel identified in the CMP may be inspected by NMFS prior to approval of the CMP to ensure that the location conforms to the elements addressed in the CMP. If NMFS disapproves a CMP, the plant owner or manager may resubmit a revised CMP or file an administrative appeal as set forth under the administrative appeals procedures described in §679.43.

(2) *Inspection scheduling.* The time and place of a CMP inspection may be arranged by submitting a written request for an inspection to NMFS, Alaska Region. An inspection must be requested no less than 10 working days before the requested inspection date. NMFS staff will conduct CMP inspections in any port located in the United

§ 680.23

50 CFR Ch. VI (10–1–08 Edition)

States that can be reached by regularly scheduled commercial air service. The inspection request must include:

- (i) Name and signature of the person submitting the application and the date of the application;
- (ii) Address, telephone number, facsimile number, and e-mail address (if available) of the person submitting the application; and
- (iii) A proposed CMP detailing how the RCR will meet each of the standards in paragraph (g)(5) of this section.

(3) *Approval period.* NMFS will approve a CMP for 1 year if it meets the performance standards specified in paragraph (e)(2) of this section. An owner or manager must notify NMFS in writing if changes are made in plant operations or layout that do not conform to the CMP.

(4) *Changing an approved CMP.* An RCR may change an approved CMP by submitting a CMP addendum to NMFS. Depending on the nature and magnitude of the change requested, NMFS may require a CMP inspection as described in paragraph (g)(2) of this section. A CMP addendum must contain:

- (i) Name and signature of the person submitting the addendum;
- (ii) Address, telephone number, facsimile number and e-mail address (if available) of the person submitting the addendum; and
- (iii) A complete description of the proposed CMP change.

(5) *CMP standards—(i) Crab sorting and weighing requirements.* All crab, including crab parts and crab that are dead or otherwise unmarketable, delivered to the RCR must be sorted and weighed by species. The CMP must detail how and where crab are sorted and weighed.

(ii) *Scales used for weighing crab.* The CMP must identify by serial number each scale used to weigh crab and describe the rationale for its use.

(iii) *Scale testing procedures.* Scales identified in the CMP must be accurate within the limits specified in paragraph (f)(4)(i) of this section. For each scale identified in the CMP a testing plan must be developed that:

- (A) Describes the procedure the plant will use to test the scale;
- (B) Lists the test weights and equipment required to test the scale;

(C) Lists where the test weights and equipment will be stored; and

(D) Lists the names of the personnel responsible for conducting the scale testing.

(iv) *Printed record.* An RCR must ensure that the scale produces a complete and accurate printed record of the weight of each species in a landing. All of the crab in a delivery must be weighed on a scale capable of producing a complete printed record as described in paragraph (e)(3) of this section. A printed record of each landing must be printed before the RCR submits a CR crab landing report.

(v) *Observation area.* Each CMP must designate an observation area. The observation area is a location designated on the CMP where an individual may monitor the offloading and weighing of crab. The observation area must meet the following standards:

(A) *Access to the observation area.* The observation area must be freely accessible to observer, NMFS staff or enforcement aides at any time during the effective period of the CMP.

(B) *Monitoring the offloading and weighing of crab.* From the observation area, an individual must have an unobstructed view or otherwise be able to monitor the entire offload of crab between the first location where crab are removed from the boat and a location where all sorting has taken place and each species has been weighed.

(C) *Other requirements.* The observation area must be sheltered from the weather and not exposed to unreasonable safety hazards.

(vi) *Plant liaison.* The CMP must designate a plant liaison. The plant liaison is responsible for:

(A) Orienting new observers, NMFS staff and enforcement aides to the plant;

(B) Assisting in the resolution of observer concerns; and

(C) Informing NMFS if changes must be made to the CMP.

(vii) *Drawing to scale of delivery location.* The CMP must be accompanied by a drawing to scale of the delivery location or vessel showing:

- (A) Where and how crab are removed from the delivering vessel;
- (B) The observation area;

## Fishery Conservation and Management

## § 680.40

(C) The location of each scale used to weigh crab; and

(D) Each location where crab is sorted.

(viii) *Single geographic location.* All offload and weighing locations detailed in a CMP must be located on the same vessel or in the same geographic location. If a CMP describes facilities for the offloading of vessels at more than one location, it must be possible to see all locations simultaneously.

[70 FR 10241, Mar. 2, 2005, as amended at 70 FR 75421, Dec. 20, 2005]

### § 680.30 [Reserved]

### Subpart C—Quota Management Measures

#### § 680.40 Quota Share (QS), Processor QS (PQS), Individual Fishing Quota (IFQ), and Individual Processor Quota (IPQ) issuance.

(a) *Crab QS and Crab QS fisheries.* The Regional Administrator will issue crab QS for the crab QS fisheries defined in paragraph (a)(1) of this section. The Regional Administrator will annually issue IFQ based on the amount of QS a person holds. Crab harvested and retained in each crab QS fishery may be harvested and retained only by persons holding the appropriate crab IFQ for that crab QS fishery.

(1) *Allocations.* With the exception of the WAI golden king crab fishery, the Regional Administrator shall annually apportion 10 percent of the TAC specified by the State of Alaska for each of the fisheries described in Table 1 to this part to the Western Alaska CDQ program. Ten percent of the TAC in the Western Aleutian Islands golden king crab fishery will be allocated to the Adak community entity. The remaining TACs for the crab QS fisheries will be apportioned for use by QS holders in each fishery.

(2) *Official crab rationalization record.* The official crab rationalization record will be used to determine the amount of QS that is to be allocated for each crab QS fishery. The official crab rationalization record is presumed to be correct. An applicant for QS has the burden to prove otherwise. For the purposes of creating the official crab ra-

tionalization record the Regional Administrator will presume the following:

(i) An LLP license is presumed to have been used onboard the same vessel from which that LLP is derived, unless documentation is provided establishing otherwise.

(ii) If more than one person is claiming the same legal landings or legal processing activities, then each person eligible to receive QS or PQS based on those activities will receive an equal share of any resulting QS or PQS unless the applicants can provide written documentation establishing an alternative means for distributing the QS or PQS.

(iii) For the purposes of determining eligibility for CPO QS, a person is presumed to have processed BSAI crab in 1998 or 1999 if the vessel on which the applicant's LLP license is based processed such crab in those years.

(b) *QS sectors and regional designations—(1) General.* The Regional Administrator shall initially assign to qualified persons, crab QS that are specific to the crab QS fisheries defined in paragraph (a)(1) of this section. The crab QS amount issued will be based on legal landings made on vessels authorized to participate in those fisheries in four QS sectors:

(i) *Catcher Vessel Owner (CVO) QS* shall be initially issued to qualified persons defined in paragraph (b)(3) of this section based on legal landings of unprocessed crab.

(ii) *Catcher Vessel Crew (CVC) QS* shall be initially issued to qualified persons defined in paragraph (b)(3) of this section based on legal landings of unprocessed crab.

(iii) *Catcher/Processor Owner (CPO) QS* shall be initially issued to qualified persons defined in paragraph (b)(3) of this section based on legal landings of crab that were harvested and processed on the same vessel.

(iv) *Catcher/Processor Crew (CPC) QS* shall be initially issued to qualified persons defined in paragraph (b)(3) of this section based on legal landings of crab that were harvested and processed on the same vessel.

(2) *Regional designations.* (i) Regional designations apply to:

(A) *North QS* if the legal landings that gave rise to the QS for a crab QS

§ 680.40

50 CFR Ch. VI (10–1–08 Edition)

fishery were landed in the Bering Sea subarea north of 56°20' N. lat.; or

(B) *South QS* if the legal landings that gave rise to the QS for a crab QS fishery were not landed in the North Region, and all CVO QS allocated to the WAI crab QS fishery; or

(C) *West QS* for a portion of the QS allocated to the WAG crab QS fishery subject to the provisions under § 680.40(c)(4).

(ii) Regional designations do not apply (Undesignated QS) to:

(A) Crab QS for the EBT or WBT crab QS fishery;

(B) Crab QS for that portion of the WAG QS fishery not regionally designated for the West region;

(C) CVC QS;

(D) CPO QS unless that QS is transferred to the CVO QS sector, in which case the regional designation is made by the recipient of the resulting CVO QS at the time of transfer; and

(E) CPC QS.

(iii) The regional designations that apply to each of the crab QS fisheries are specified in the following table:

Crab QS Fishery	North Region	South Region	West Region	Undesignated Region
(A) EAG	X	X		
(B) WAG			X	X
(C) EBT				X
(D) WBT				X
(E) BSS	X	X		
(F) BBR	X	X		
(G) PIK	X	X		
(H) SMB	X	X		
(I) WAI		X		

(iv) The regional designation ratios applied to QS and PQS for each crab QS fishery will be established based on the regional designations determined on August 1, 2005. QS or PQS issued after this date will be issued in the same ratio.

(3) *Qualified person* means, for the purposes of QS issuance, a person, as defined in § 679.2, who at the time of application for QS meets the following criteria for each of the QS sectors:

(i) *CVO QS*. Holds one or more permanent, fully transferable crab LLP licenses and is a citizen of the United States;

(ii) *CPO QS*. (A) Holds one or more permanent, fully transferable crab LLP licenses with a Catcher/Processor designation and is a citizen of the United States; and

(B) Harvested and processed at sea any crab species in any BSAI crab fishery during the years 1998 or 1999.

(iii) *CVC QS and CPC QS*. (A) Is an individual who is a citizen of the United

States, or his or her successor-in-interest if that individual is deceased;

(B) Has historical participation in the fishery demonstrated by being the individual named on a State of Alaska Interim Use Permit for a QS crab fishery and made at least one legal landing per year for any 3 eligibility years under that permit based on data from fish tickets maintained by the State of Alaska. The qualifying years are described in Column C of Table 7 to this part.

(C) Has recent participation in the fishery demonstrated by being the individual named on a State of Alaska Interim Use Permit for a QS crab fishery and made at least one legal landing under that permit in any 2 of 3 seasons based on data from fish tickets maintained by the State of Alaska. Those seasons are defined in Column D of Table 7 to this part; except that the requirement for recent participation does not apply if:

## Fishery Conservation and Management

## § 680.40

(1) The legal landings that qualify the individual for QS in the PIK crab QS fishery were made from a vessel that was less than 60 feet length overall; or

(2) If the individual who is otherwise eligible to receive an initial issuance of QS died while working as part of a harvesting crew in any U.S. commercial fishery.

(4) *Qualification for initial allocation of QS*—(i) *Qualifying year*. The qualifying years for each crab QS fishery are described in Column B of Table 7 to this part.

(ii) *Legal landing of crab* means, for the purpose of initial allocation of QS, crab harvested during the qualifying years specified in Column B of Table 7 to this part and landed in compliance with state and Federal permitting, landing, and reporting regulations in effect at the time of the landing.

(A) Legal landings exclude any deadloss, test fishing, fishing conducted under an experimental, exploratory, or scientific activity permit, or the fishery conducted under the Western Alaska CDQ Program.

(B) Landings made onboard a vessel that gave rise to a crab LLP license or made under the authority of an LLP license are non-severable from the crab LLP license until QS has been issued for those legal landings, except as provided for in paragraph (c)(2)(vii) of this section.

(C) Landings may only be used once for each QS sector for the purposes of allocating QS.

(D) Landings made from vessels which are used for purposes of receiving compensation through the BSAI Crab Capacity Reduction Program may not be used for the allocation of CVO QS or CPO QS.

(E) Legal landings for purposes of allocating QS for a crab QS fishery only include those landings that resulted in the issuance of an LLP license endorsed for that crab QS fishery, or landings that were made in that crab QS fishery under the authority of an LLP license endorsed for that crab QS fishery, except as provided for in paragraph (c)(2)(vii) of this section.

(iii) *Documentation*. Evidence of legal landings shall be limited to State of Alaska fish tickets.

(c) *Calculation of QS allocation*—(1) *General*. (i) For each permanent, fully transferable crab LLP license under which an applicant applies, CVO and CPO QS will be based on legal landings that resulted in the issuance of that license or from legal landings that were made under the authority of that license.

(ii) For each State of Alaska Interim Use Permit under which an applicant applies for CVC QS or CPC QS, the initial allocation of QS will be based on the legal landings that were made under the authority of that permit.

(2) *Computation for initial issuance of QS*. (i) Based on the official crab rationalization record the Regional Administrator shall derive the annual harvest denominator (AHD) that represents the amount of legally landed crab in each crab QS fishery in each qualifying year as established in Column B of Table 7 to this part.

(ii) The initial QS pool is described in Table 8 to this part.

(iii) A person's initial allocation of QS shall be based on a percentage of the legal landings for the applicable sector in each crab QS fishery:

(A) Associated with crab LLP licenses held by the applicant for CVO or CPO QS; or

(B) Authorized under a State of Alaska Interim Use Permit held by the applicant for CVC or CPC QS.

(iv) The Regional Administrator shall calculate the allocation of CVO and CPO QS for each crab QS fishery "f" based on each fully transferable LLP license "l" held by a qualified person by the following formulas:

(A) Sum legal landings for each qualifying year, as described in Column B of Table 7 to this part, and divide that amount by the AHD for that year as follows:

$$(\sum \text{legal landings}_{lr} / \text{AHD}_r) \times 100 = \text{Percentage of the AHD}_{lr}$$

(B) In those fisheries where only a subset of the qualifying years are applied, the Regional Administrator will use the years that yield the highest percentages of each AHD as calculated in paragraph (c)(2)(iv)(A) of this section.

(C) Sum the highest percentages of the AHD's for that license as calculated under paragraph (c)(2)(iv)(B) of this section and divide by the number in Column E of Table 7 to this part (Subset of Qualifying Years). This yields the Average Percentage as presented in the following equation:

$$\sigma \text{ Percentages of the AHD}_{if} / \text{Subset of Qualifying Years}_f = \text{Average Percentage}_{if}$$

(D) Divide the Average percentage in paragraph (c)(2)(iv)(C) of this section for a license and fishery by the Sum of all Average Percentages for all licenses for that fishery as presented in the following equation:

$$\text{Average Percentage}_{if} / \sigma \text{ Average Percentage}_f = \text{Percentage of the Total Percentages}_{if}$$

(E) Multiply the Percentage of the Total Percentages in paragraph (c)(2)(iv)(D) of this section by the Initial QS Pool as described in Table 8 to this part. This yields the unadjusted number of QS units derived from a license for a fishery.

(F) Multiply the unadjusted number of QS units in paragraph (c)(2)(iv)(E) of this section by 97 percent. This yields the number of QS units to be allocated.

(G) Determine the percentage of legal landings in the subset of qualifying years associated with a LLP license with a catcher/processor designation that were processed on that vessel and multiply the amount calculated in paragraph (c)(2)(iv)(F) of this section by this percentage. This yields the amount of CPO QS to be allocated.

(H) Determine the percentage of legal landings in the subset of qualifying years associated with a LLP license that were not processed on that vessel and multiply the amount calculated in paragraph (c)(2)(iv)(F) of this section by this percentage. This yields the amount of CVO QS to be allocated.

(I) Determine the percentage of legal landings associated with an LLP license in the subset of qualifying years that were delivered in each region as defined in paragraph (b)(2) of this section. The amount calculated in paragraph (c)(2)(iv)(H) of this section is multiplied by the percentage for each region.

(J) The percentage calculated in paragraph (c)(2)(iv)(I) of this section may be adjusted according to the provisions at paragraphs (c)(3) and (c)(4) of this section.

(v) As shown in the formulas under this paragraph (c)(2)(v), the allocation of CVC and CPC QS for each crab QS fishery "f" based on each State of Alaska Interim Use Permit "i" held by each qualified person shall be calculated by the Regional Administrator as follows:

(A) Sum legal landings for each qualifying year as described in Column B of Table 7 to this part and divide that amount by the AHD for that year using the following equation:

$$(\sigma \text{ legal landings}_{if} / \text{AHD}_f) \times 100 = \text{Percentage of the AHD}_{if}$$

(B) In those fisheries where only a subset of the qualifying years are applied, the Regional Administrator will use the years that yield the highest percentages of the AHD as calculated in paragraph (c)(2)(v)(A) of this section.

(C) Sum the highest percentages of the AHDs for that license calculated under paragraph (c)(2)(v)(B) of this section and divide by the number in Column E of Table 7 to this part (Subset of Qualifying Years). This yields the Average Percentage as presented in the following equation:

$$\sigma \text{ Percentages of the AHD}_{if} / \text{Subset of Qualifying Years}_f = \text{Average Percentage}_{if}$$

(D) Divide the Average Percentage in paragraph (c)(2)(v)(C) of this section for a permit and fishery by the Sum of all Average Percentages for all permits for that fishery as presented in the following equation:

$$\text{Average Percentage}_{if} / \sigma \text{ Average Percentage}_f = \text{Percentage of the Total Percentages}_{if}$$

(E) Multiply the Percentage of the Total Percentages in paragraph (c)(2)(v)(D) of this section by the Initial QS Pool as described in Table 8 to this part. This yields the unadjusted number of QS units derived from a permit for a fishery.

(F) Multiply the unadjusted number of QS units in paragraph (c)(2)(v)(E) of this section by 3 percent. This yields the number of QS units to be allocated.

(G) Determine the percentage of legal landings in the subset of qualifying years associated with a permit that were processed on that vessel and multiply the amount calculated in paragraph (c)(2)(v)(F) of this section by this percentage. This yields the amount of CPC QS to be allocated.

(H) Determine the percentage of legal landings in the subset of qualifying years associated with a permit that were not processed on that vessel and multiply the amount calculated in paragraph (c)(2)(v)(F) of this section by this percentage. This yields the amount of CVC QS to be allocated.

(I) Determine the percentage of legal landings associated with a permit in the subset of qualifying years that were delivered in each region as defined in paragraph (b)(2) of this section. The amount calculated in paragraph (c)(2)(v)(H) of this section is multiplied by the percentage for each region.

(J) The percentage calculated in paragraph (c)(2)(v)(I) of this section may be adjusted according to the provisions at paragraphs (c)(3) and (c)(4) of this section. The amount calculated in paragraph (c)(2)(v)(H) of this section is multiplied by the percentage for each region. These regional QS designations do not apply to CVC QS.

(vi) *Sunken vessel provisions.* (A) If a person applies for CVO QS or CPO QS based, in whole or in part, on the activities of a vessel that sank, the Regional Administrator shall presume landings for that vessel for the crab fishing years between the time of vessel loss and the replacement of the vessel under §679.40(k)(5)(v). These presumed landings shall be equivalent to 50 percent of the average legal landings for the qualifying years established in Column B of Table 7 to this part unaffected by the sinking. If the vessel sank during a qualifying year, the legal landings for that year will not be used as the basis for presumed landings;

(B) If a person applies for CVO QS or CPO QS based, in whole or in part, on the activities of a vessel that sank and:

(1) The person who owned the vessel that sank would have been denied eligibility to replace a sunken vessel under the provisions of Public Law 106-554; and

(2) The vessel that sank was replaced with a newly constructed vessel, with that vessel under construction no later than June 10, 2002. For purposes of this section a vessel is considered under construction once the keel for that vessel has been laid; and

(3) The newly constructed vessel participated in any Bering Sea crab fishery no later than October 31, 2002;

(4) Then the Regional Administrator shall presume landings for that vessel for the crab fishing years between the time of vessel loss and the replacement of the vessel. These presumed landings shall be equivalent to 50 percent of the average legal landings for the qualifying years established in Column B of Table 7 to this part unaffected by the sinking. If the vessel sank during a qualifying year, the legal landings for that year will not be used as the basis for presumed landings.

(vii) *LLP license history exemption.* An applicant for CVO or CPO QS who:

(A) Deployed a vessel in a crab QS fishery under the authority of an interim or permanent fully transferable LLP license; and

(B) Prior to January 1, 2002, received by transfer, as authorized by NMFS, a permanent fully transferable LLP license for use in that crab QS fishery to insure that a vessel would remain authorized to participate in the fishery, may choose to use as the legal landings which are the basis for QS allocation on his or her application for crab QS or PQS either:

(1) The legal landings made on that vessel for that crab QS fishery prior to the transfer of the permanent fully transferable LLP license for use on that vessel; or

(2) The legal landings made on the vessel that gave rise to the permanent fully transferable LLP license and the legal landings made under the authority of that same LLP license in that crab QS fishery prior to January 1, 2002.

(C) If the history described in paragraph (c)(2)(vii)(B)(1) of this section is being used by another person for an allocation with an LLP license, then the allocation in paragraph (c)(2)(vii) will be based on the legal landings as described under paragraph (c)(2)(vii)(B)(2) of this section.

(3) *Adjustment of CVO and CVC QS allocation for North and South regional designation.* The Regional Administrator may adjust the regional designation of QS to ensure that it is initially allocated in the same proportion as the regional designation of PQS for that crab QS fishery. A person who would receive QS based on the legal landings in only one region, will receive QS with only that regional designation. A person who would receive QS with more than one regional designation for that crab QS fishery would have his or her QS holdings regionally adjusted on a pro rata basis as follows:

(i) Determine the ratio of the Initial PQS pool in the North and South regions.

(ii) Multiply the Initial QS pool by the ratio of North and South PQS. This will yield the target QS pool for each region.

(iii) Sum the QS for all persons who are eligible to receive North QS yielding the unadjusted North QS pool, and sum the QS for all persons who are eligible to receive South QS yielding the unadjusted South QS pool.

(iv) To calculate the amount of QS available for adjustment, subtract the amount of QS for persons receiving North only QS from the unadjusted North QS pool and subtract the amount of QS for persons receiving South only QS from the unadjusted South QS pool, as presented in the following equations:

(A) Unadj. North QS - North QS only = North QS for [North & South] QS holders.

(B) Unadj. South QS - South QS only = South QS for [North & South] QS holders.

(v) Determine which region becomes the gaining region if the target QS pool is greater than the unadjusted QS pool.

(vi) Subtract the gaining region unadjusted QS pool from the gaining region target QS pool to calculate the number of QS units that need to be applied to the gaining region. This amount is the Adjustment Amount as presented in the following equation:

Unadj. gaining region QS - Target gaining region QS pool = Adjustment Amount

(vii) Divide the Adjustment Amount by the unadjusted losing region QS pool for North and South QS holders. This yields the regional adjustment factor (RAF) for each person as presented in the following equation:

Adj. Amount/unadjusted losing region QS pool for [North & South] QS holders = RAF

(viii) For each person (p) who holds both North and South Region QS, the QS adjustment (QS Adj. (p)) to that person's Unadjusted losing region QS is expressed in the following equation as:

QS adj. p = Unadjusted losing region QS p × RAF

(ix) The QS adjustment for person (p) is made by subtracting the QS adjustment from that person's unadjusted losing region QS amount and added to that person's unadjusted gaining region QS. These adjustments will yield the regional adjustment QS amounts for that person.

(4) *Regional designation of Western Aleutian Islands golden king crab.* Fifty percent of the CVO QS that is issued in the WAG crab QS fishery will be initially issued with a West regional designation. The West regional designation applies to QS for delivery west of 174° W. longitude. The remaining 50 percent of the CVO QS initially issued for this fishery is not subject to regional designation (Undesignated QS). A person (p) who would receive QS based on the legal landings in only one region will receive QS with only that regional designation. A person who would receive QS with more than one regional designation for that crab QS fishery would have his or her QS holdings regionally adjusted on a pro rata basis as follows:

(i) The West QS pool is equal to 50 percent of the initial QS pool.

(ii) The Undesignated QS pool is equal to 50 percent of the initial QS pool.

(iii) Sum the QS for all persons who are eligible to receive West QS yielding the unadjusted West QS pool, and sum the QS for all persons who are eligible to receive undesignated QS yielding the unadjusted undesignated QS pool.

(iv) To calculate the amount of QS available for adjustment, subtract the

**Fishery Conservation and Management**

**§ 680.40**

amount of QS for persons receiving West only QS from the unadjusted West QS pool and subtract the amount of QS for persons receiving undesignated only QS from the unadjusted undesignated QS pool, as presented in the following equation:

(A)  $\text{Unadj. West QS} - \text{West QS only} = \text{West QS for [West \& Undesignated] QS holders.}$

(B)  $\text{Unadj. Undesignated QS} - \text{Undesignated QS only} = \text{Undesignated QS for [West \& Undesignated] QS holders.}$

(v) Subtract the gaining region Unadjusted QS pool from the gaining region Target QS pool to calculate the number of QS units that will need to be applied to the gaining region. This amount is the Adjustment Amount as presented in the following equation:

$\text{Target gaining region QS pool} - \text{unadjusted region QS} = \text{Adjustment Amount}$

(vi) Divide the Adjustment Amount by the unadjusted losing region QS pool for West and Undesignated QS holders. This yields the regional adjustment factor (RAF) for each person as presented in the following equation:

$\text{Adj. Amount/unadjusted losing region QS pool for West \& Undesignated QS holders} = \text{RAF}$

(vii) For each person (p) who holds both unadjusted West and Undesignated Region QS, the QS adjustment (QS Adj. p) to that person's Unadjusted West QS is expressed in the following equation as:

$\text{QS adj. p} = \text{Unadjusted West QS p} \times \text{RAF}$

(viii) The QS adjustment for person (p) is made by subtracting the QS adjustment for that person's unadjusted losing region QS amount and subtracted from that person's unadjusted gaining region QS. These adjustments will yield the regional adjustment QS amounts for that person.

(5) *Issuance of converted CPO QS.* (i) For each crab fishing year, the Regional Administrator may issue converted CPO QS for the BBR or BSS crab QS fishery with a North Region designation to an entity described in paragraph (c)(5)(ii), (c)(5)(iii), or (c)(5)(iv) of this section if NMFS has

approved an application for converted CPO QS/IFQ for that crab fishing year.

(ii) Entity A is comprised only of Yardarm Knot, Inc. (NMFS ID # 675).

(iii) Entity B is comprised only of Blue Dutch, LLC (NMFS ID # 3163).

(iv) Entity C is comprised only of Trident Seafoods, Inc. (NMFS ID # 8184).

(v) NMFS will issue Entity A, B, or C, described in paragraphs (c)(5)(ii) through (c)(5)(iv) of this section, one unit of converted CPO for each unit of CVO QS and 0.9 units of PQS indicated in an approved application for converted CPO QS/IFQ.

(vi) For each crab fishing year, the Regional Administrator will not issue CPO QS for the BBR or BSS crab QS fishery:

(A) To Entity A described in paragraph (c)(5)(ii) of this section that is greater than the amount of converted CPO QS that may be derived from the amount of PQS units with a North Region designation initially issued by NMFS to Yardarm Knot, Inc. (NMFS ID # 675), and any affiliates of Yardarm Knot, Inc., as listed on an annual application for converted CPO QS/IFQ for that crab fishing year;

(B) To Entity B described in paragraph (c)(5)(iii) of this section that is greater than the amount of converted CPO QS that may be derived from the amount of PQS units with a North Region designation initially issued by NMFS to Blue Dutch, LLC, (NMFS ID # 3163) under paragraph (e)(3) of this section and any affiliates of Blue Dutch, LLC, as listed on an annual application for annual application for converted CPO QS/IFQ for that crab fishing year; and

(C) To Entity C described in paragraph (c)(5)(iv) of this section that is greater than the amount of converted CPO QS that may be derived from the amount of CVO QS units with a North Region designation initially issued by NMFS to Trident Seafoods, Inc. (NMFS ID # 8184), and any affiliates of Trident Seafoods, Inc., as listed on an annual application for converted CPO QS/IFQ for that crab fishing year;

(vii) CPO IFQ derived from converted CPO QS may be issued to a crab harvesting cooperative only if the entity described in paragraph (c)(5)(ii),

(c)(5)(iii), or (c)(5)(iv) of this section holding the converted CPO QS is a member of that crab harvesting cooperative.

(6) *Offloading requirements for CPO IFQ derived from converted CPO QS.* Any crab harvested under a CPO IFQ permit derived from converted CPO QS must be offloaded in the Bering Sea subarea north of 56°20' N. lat.

(d) *Crab PQS and Crab PQS Fisheries—*  
 (1) *General.* The Regional Administrator shall initially assign to qualified persons defined in paragraph (d)(3) of this section crab PQS specific to crab QS fisheries defined in paragraph (a)(1) of this section. The crab PQS amount issued will be based on total legal processing of crab made in those crab QS fisheries. PQS shall yield annual IPQ as defined under paragraph (j) of this section.

(2) *Regional designations.* For each crab QS fishery, PQS shall be initially regionally designated based on the legal processing that gave rise to the PQS as follows:

(i) *North PQS* if the processing that gave rise to the PQS for a crab QS fishery occurred in the Bering Sea subarea north of 56°20' N. lat.; or

(ii) *South PQS* if the processing that gave rise the PQS for a crab QS fishery did not occur in the North Region, and PQS allocated to the WAI crab QS fishery; or

(iii) *West PQS* for a portion of the PQS allocated to the WAG crab QS fishery subject to the provisions under paragraph (e)(2) of this section; or

(iv) *Undesignated.* Regional designations do not apply to:

(A) That portion of the WAG crab QS fishery that is not regionally designated as West Region PQS; and

(B) The EBT or WBT crab QS fishery.

(v) The specific regional designations that apply to PQS in each of the crab QS fisheries are described in paragraph (b)(2)(iii) of this section.

(3) *Qualified person,* for the purposes of PQS issuance, means a person, as defined at §679.2, who at the time of application for PQS is a U.S. citizen, or a U.S. corporation, partnership, association, or other entity, and who:

(i) Legally processed any crab QS species established in paragraph (a)(1) of this section during 1998 or 1999 as

demonstrated on the official crab rationalization record; or

(ii) Did not legally process any crab QS species during 1998 or 1999 according to the official crab rationalization record, but who:

(A) Processed BSS crab QS species in each crab season for that fishery during the period from 1988 through 1997; and

(B) From January 1, 1996, through June 10, 2002, invested in a processing facility, processing equipment, or a vessel for use in processing operations, including any improvements made to existing facilities with a total expenditure in excess of \$1,000,000; or

(C) Is the person to whom the history of legal processing of crab has been transferred by the express terms of a written contract that clearly and unambiguously provides that such legal processing of crab has been transferred. This provision would apply only if that applicant for PQS:

(1) Legally processed any crab QS species established in paragraph (a)(1) of this section during 1998 or 1999, as demonstrated on the official crab rationalization record; or

(2) Received history of crab processing that was legally processed during 1998 or 1999, as demonstrated on the official crab rationalization record.

(iii) Qualified persons, or their successors-in-interest, must exist at the time of application for PQS.

(iv) A former partner of a dissolved partnership or a former shareholder of a dissolved corporation who would otherwise be a qualified person may apply for PQS in proportion to his or her ownership interest in the dissolved partnership or corporation.

(v) A person who has acquired a processing corporation, partnership, or other entity that has a history of legal processing of crab is presumed to have received by transfer all of that history of legal processing of crab unless a clear and unambiguous written contract establishes otherwise.

(4) *Qualification for initial allocation of PQS—*(i) *Years.* The qualifying years for each crab QS fishery are designated in Table 9 to this part.

## Fishery Conservation and Management

## § 680.40

(ii) *Ownership interest.* Documentation of ownership interest in a dissolved partnership or corporation, association, or other entity shall be limited to corporate documents (e.g., articles of incorporation) or notarized statements signed by each former partner, shareholder or director, and specifying their proportions of interest.

(iii) *Legal processing of crab* means, for the purpose of initial allocation of PQS, raw crab pounds processed in the crab QS fisheries designated under paragraph (a)(1) of this section in compliance with state and Federal permitting, landing, and reporting regulations in effect at the time of the landing. Legal processing excludes any deadloss, processing of crab harvested in a test fishery or under a scientific, education, exploratory, or experimental permit, or under the Western Alaska CDQ Program.

(iv) *Documentation.* Evidence of legal processing shall be limited to State of Alaska fish tickets, except that:

(A) NMFS may use information from a State of Alaska Commercial Operators Annual Report, State of Alaska fishery tax records, or evidence of direct payment from a receiver of crab to a harvester if that information indicates that the buyer of crab differs from the receiver indicated on State of Alaska fish ticket records; however:

(B) Information on State of Alaska fish tickets shall be presumed to be correct for the purpose of determining evidence of legal processing of crab. An applicant will have the burden of proving the validity of information submitted in an application that is inconsistent with the information on the State of Alaska fish ticket.

(e) *Calculation of PQS allocation—(1) Computation for initial issuance of PQS.*

(i) The Regional Administrator shall establish the Total Processing Denominator (TPD) which represents the amount of legally processed raw crab pounds in each crab QS fishery in all qualifying years.

(ii) For each crab QS fishery, the percentage of the initial PQS pool that will be distributed to each qualified person shall be based on their percentage of the TPD according to the following procedure:

(A) Sum the raw crab pounds purchased for each person for all qualifying years.

(B) Divide the sum calculated in paragraph (e)(1)(ii)(A) of this section by the TPD. Multiply by 100. This yields a person's percentage of the TPD.

(C) Sum the TPD percentages of all persons.

(D) Divide the percentage for a person calculated in paragraph (e)(1)(ii)(B) of this section by the sum calculated in paragraph (e)(1)(ii)(C) of this section for all persons. This yields a person's percentage of the TPD.

(E) Multiply the amount calculated in paragraph (e)(1)(ii)(D) of this section by the PQS pool for that crab QS fishery as that amount is defined in Table 8 to this part.

(F) Determine the percentages of legally processed crab that were processed in each region. The percentages calculated in paragraph (e)(1)(ii)(E) of this section are multiplied by the amount determined within each regional designation. Regional designations will apply to that PQS according to the provisions established in paragraphs (d)(2) and (e)(2) of this section.

(2) *Regional designation of Western Aleutian Islands golden king crab.* (i) Fifty percent of the PQS that is issued in the WAG crab QS fishery will be issued with a West regional designation. The West regional designation applies to PQS for processing west of 174° N. long. The remaining 50 percent of the PQS issued for this fishery is Undesignated region PQS.

(ii) A person will receive only West PQS if, at the time of application, that person owns a crab processing facility that is located in the West region. A person will receive West region and Undesignated Region PQS if, at the time of application, that person does not own a crab processing facility located in the West region. Expressed algebraically, for any person (p) allocated both West region PQS and undesignated region PQS the formula is as follows:

$$(A) PQS_{West} = PQS \times 0.50$$

$$(B) PQS_{Und.} = PQS \times 0.50$$

$$(C) PQS_{West} \text{ for } PQS_{West \ \& \ Und. \ holders} = PQS_{West} - PQS_{West \ \text{only}}$$

§ 680.40

50 CFR Ch. VI (10-1-08 Edition)

(D)  $PQS_{West} \text{ for Person}_p \text{ West \& Und.} = PQS_p \times PQS_{West} \text{ for PQS}_{West \& Und.} \text{ holders} / (PQS_{West} \text{ for PQS}_{West \& Und.} \text{ holders} + PQS_{Und.})$

(E)  $PQS_{Und.} \text{ for Person}_p = PQS_p - PQS_{West} \text{ for Person}_p$

(iii) For purposes of the allocation of PQS in the WAG crab fishery:

(A) Ownership of a processing facility is defined as:

- (1) A sole proprietor; or
- (2) A relationship between two or more entities in which a person directly or indirectly owns a 10 percent or greater interest in another, or a third entity directly or indirectly owns a 10 percent or greater interest in both.

(B) A processing facility is a shore-side crab processor or a stationary floating crab processor.

(3) *PQS issued to Blue Dutch, LLC.* (i) Pursuant to Public Law 109-241, NMFS issued 3,015,229 units of PQS for the BBR crab QS fishery and 7,516,253 units of PQS for the BSS crab QS fishery.

(ii) PQS units issued to Blue Dutch, LLC, under paragraph (e)(3)(i) of this section were assigned a regional designation according to the procedures established in paragraph (b)(2)(iv) of this section.

(iii) PQS units issued to Blue Dutch, LLC, under paragraph (e)(3)(i) of this section may not be transferred to any other person.

(f) *Application for crab QS or PQS process—(1) General.* The Regional Administrator will issue QS and/or PQS to an applicant if a complete application for crab QS or PQS is submitted by or on behalf of the applicant during the specified application period, and if the applicant meets all criteria for eligibility as specified at paragraphs (b)(3) and (d)(3) of this section.

(i) The Regional Administrator will send application materials to the person identified by NMFS as an eligible applicant based on the official crab rationalization record. An application form may also be obtained from the Internet or requested from the Regional Administrator.

(ii) An application for crab QS or PQS may be submitted by mail to NMFS, Alaska Region, Restricted Access Management, P.O. Box 21668, Juneau, AK 99802, by facsimile (907-586-7354), or by hand delivery to the NMFS,

709 West 9th Street, room 713, Juneau, AK.

(iii) An application that is post-marked, faxed, or hand delivered after the ending date for the application period for the Crab QS Program specified in the FEDERAL REGISTER will be denied.

(2) *Contents of application.* A complete application for crab QS or PQS must be signed by the applicant, or the individual representing the applicant, and include the following, as applicable:

(i) *Type of QS or PQS for which the person is applying.* Select the type of QS or PQS for which the applicant is applying.

(A) If applying for CVO QS or CPO QS, submit information required in paragraphs (f)(2)(ii) through (f)(2)(iv) of this section;

(B) If applying for CVC QS or CPC QS, submit information required in paragraphs (f)(2)(ii), (f)(2)(iii) and (f)(2)(v) of this section;

(C) If applying for PQS, submit information required in paragraphs (f)(2)(ii), (f)(2)(iii) and (f)(2)(vi) of this section.

(ii) *Applicant information.* (A) Enter the applicant's name, NMFS person ID (if applicable), tax ID or social security number (required), permanent business mailing address, business telephone number, facsimile number, and e-mail (if available);

(B) Indicate (YES or NO) whether applicant is a U.S. citizen; if YES, enter his or her date of birth. You must be a U.S. citizen or U.S. corporation, partnership, or other business entity to obtain CVO, CPO, CVC, or CPC QS.

(C) Indicate (YES or NO) whether applicant is a U.S. corporation, partnership, association, or other business entity; if YES, enter the date of incorporation;

(D) Indicate (YES or NO) whether applicant is deceased; if YES, enter date of death. A copy of the death certificate must be attached to the application;

(E) Indicate (YES or NO) whether applicant described in paragraph (f)(2)(ii)(C) of this section is no longer in existence; if YES, enter date of dissolution and attach evidence of dissolution to the application;

## Fishery Conservation and Management

## § 680.40

(iii) *Fishery and QS/PQS type.* Indicate the crab QS fishery and type of QS/PQS for which applying.

(iv) *CVO or CPO QS.* (A) For vessels whose catch histories are being claimed for purposes of the crab QS program, enter the following information: name of the vessel, ADF&G vessel registration number, USCG documentation number, moratorium crab permit number(s), and crab LLP license number(s) held by the applicant and used on that vessel, qualifying years or seasons fished by fishery, and dates during which those permits were used on that vessel.

(B) Indicate (YES or NO) whether applicant is applying for QS for any crab QS fishery for which the applicant purchased an LLP license prior to January 1, 2002, in order to remain in that fishery. If YES, include LLP crab license number, and the vessel's name, ADF&G vessel registration number, and USCG documentation number.

(C) Indicate (YES or NO) whether QS is being claimed based on the fishing history of a vessel that was lost or destroyed. If YES, include the name, ADF&G registration number, and USCG documentation number of the lost or destroyed vessel, the date the vessel was lost or destroyed, and evidence of the loss or destruction.

(D) Indicate (YES or NO) whether the lost or destroyed vessel described in paragraph (f)(2)(iv)(C) of this section was replaced with a newly constructed vessel. If YES, include the name, ADF&G vessel registration number, and USCG documentation number of the replacement vessel, date of vessel construction, and date vessel entered fishery(ies). Indicate (YES or NO) if the replacement vessel participated in a Bering Sea crab fishery by October 31, 2002. If YES, provide documentation of the replacement vessel's participation by October 31, 2002, in a Bering Sea crab fishery.

(E) If the applicant is applying for CPO QS, indicate (YES or NO) whether the applicant processed crab from any of the crab QS fisheries listed on Table 1 to this part on board a vessel authorized by one of the LLP licenses listed in paragraph (f)(2)(iv)(A) of this section in 1998 or 1999. If YES, enter information for the processed crab, including

harvest area, date of landing, and crab species.

(v) *CVC or CPC QS.* (A) Indicate (YES or NO) whether applicant had at least one landing in three of the qualifying years for each crab species for which the applicant is applying for QS (see Table 7 to this part).

(B) Indicate (YES or NO) whether applicant has recent participation in a crab QS fishery as defined in Table 7 to this part.

(C) If the answer to paragraph (f)(2)(v)(A) or paragraph (f)(2)(v)(B) of this section is YES, enter State of Alaska Interim Use Permit number and the name, ADF&G vessel registration number, and USCG documentation number of vessel on which harvesting occurred. Select the qualifying years or seasons fished by QS fishery, and the dates during which those permits were used on that vessel;

(D) Indicate (YES or NO) whether a person is applying as the successor-in-interest to an eligible applicant. If YES, attach to the application documentation proving the person's status as a successor-in-interest and evidence of the death of the eligible applicant.

(vi) *Processor QS.* (A) Indicate (YES or NO) whether applicant processed any of the crab species included in the Crab QS program (see Table 1 to this part) in 1998 or 1999.

(B) If answer to paragraph (f)(2)(vi)(A) of this section is YES, enter the facility name and ADF&G processor code for each processing facility where crab, from any of the crab QS fisheries listed in Table 1 of this part, were processed and the qualifying years or seasons by fishery for which applicant is claiming eligibility for PQS.

(C) If answer to paragraph (f)(2)(vi)(A) of this section is NO, indicate (YES or NO) whether applicant is claiming eligibility under hardship provisions;

(D) If answer to paragraph (f)(2)(vi)(C) of this section is YES, both of the following provisions must apply to a processor to obtain hardship provisions. Attach documentation of the following circumstances:

(I) Applicant processed QS crab during 1998 or 1999, or processed BSS crab

in each season between 1988 and 1997; and

(2) Applicant invested a total expenditure in excess of \$1,000,000 for any processing facility, processing equipment, or a vessel for use in processing operations, including any improvements made to existing facilities from January 1, 1996, to June 10, 2002;

(E) Indicate (YES or NO) whether applicant has entered into a Community Right of First Refusal (ROFR) contract consistent with paragraph (f)(3) of this section pertaining to the transfer of any PQS and/or IPQ subject to ROFR and issued as a result of this application.

(F) Contract that the legal processing history and rights to apply for and receive PQS based on that legal processing history have been transferred or retained; and

(G) Any other information deemed necessary by the Regional Administrator.

(H) If applicant is applying to receive PQS for the WAG crab QS fishery, indicate (YES or NO) whether applicant owns a crab processing facility in the West region (*see* paragraph (b)(2) (iii) of this section).

(vii) *Applicant signature and certification.* The applicant must sign and date the application certifying that all information is true, correct, and complete to the best of his/her knowledge and belief. If the application is completed by an authorized representative, then authorization must accompany the application.

(3) *Notice and contract provisions for community right of first refusal (ROFR) for initial issuance of PQS.* (i) To be complete, an application for PQS from a person based on legal processing that occurred in an ECC, other than Adak, must also include an affidavit signed by the applicant stating that notice has been provided to the ECC of the applicant's intent to apply for PQS. If the ECC designates an entity to represent it in the exercise of ROFR under § 680.41(1), then the application also must include an affidavit of completion of a contract for ROFR that includes the terms enacted under section 313(j) of the Magnuson-Stevens Act. The affidavit must be signed by the applicant for initial allocation of PQS and the

ECC entity designated under § 680.41(1)(2). A list of contract terms is available from the NMFS Alaska Region Web site at <http://www.fakr.noaa.gov>. A copy of these contract terms also will be made available by mail or facsimile by contacting the Regional Administrator at 907-586-7221.

(ii) To be complete, an application for crab QS or PQS from a person based on legal processing that occurred in the GOA north of a line at 56°20' N. lat. must also include an affidavit signed by the applicant stating that notice has been provided to the City of Kodiak and Kodiak Island Borough of the applicant's intent to apply for PQS. If the City of Kodiak and Kodiak Island Borough designate an entity to represent it in the exercise of ROFR under § 680.41(1), then the application also must include an affidavit of completion of a contract for ROFR that includes the terms enacted under the Consolidated Appropriations Act of 2004 (Pub. L. 108-199) and that is signed by the applicant for initial allocation of PQS and the ECC entity designated by the City of Kodiak and Kodiak Island Borough under § 680.41(1)(2). A list of contract terms is available from the NMFS Alaska Region Web site at <http://www.fakr.noaa.gov>. A copy of these contract terms also will be made available by mail or facsimile by contacting the Regional Administrator at (907) 586-7221.

(4) *Application evaluation.* The Regional Administrator will evaluate Applications for Crab QS or PQS submitted during the specified application period and compare all claims in an application with the information in the official crab rationalization record. Claims in an application that are consistent with information in the official crab rationalization record will be accepted by the Regional Administrator. Inconsistent claims in the Applications for Crab QS or PQS, unless verified by documentation, will not be accepted. An applicant who submits inconsistent claims, or an applicant who fails to submit the information specified in paragraph (f)(2) of this section, will be provided a single 30-day evidentiary period as provided in paragraph (f)(5) of

this section to submit the specified information, submit evidence to verify his or her inconsistent claims, or submit a revised application with claims consistent with information in the official crab rationalization record. An applicant who submits claims that are inconsistent with information in the official crab rationalization record has the burden of proving that the submitted claims are correct.

(5) *Additional information or evidence.* The Regional Administrator will evaluate additional information or evidence to support an applicant's inconsistent claims submitted prior to or within the 30-day evidentiary period. If the Regional Administrator determines that the additional information or evidence meets the applicant's burden of proving that the inconsistent claims in his or her application are correct, the official crab rationalization record will be amended and the information will be used in determining whether the applicant is eligible for QS or PQS. However, if the Regional Administrator determines that the additional information or evidence does not meet the applicant's burden of proving that the inconsistent claims in his or her application are correct, the applicant will be notified by an IAD, that the applicant did not meet the burden of proof to change the information in the official crab rationalization record.

(6) *30-day evidentiary period.* The Regional Administrator will specify by letter a single 30-day evidentiary period during which an applicant may provide additional information or evidence to support the claims made in his or her application, or to submit a revised application with claims consistent with information in the official crab rationalization record, if the Regional Administrator determines that the applicant did not meet the burden of proving that the information on the application is correct through evidence provided with the application. Also, an applicant who fails to submit information as specified in paragraphs (b)(3)(iii) and (b)(3)(iv) of this section will have 30 days to provide that information. An applicant will be limited to one 30-day evidentiary period per application. Additional information or evidence, or a revised application, re-

ceived after the 30-day evidentiary period specified in the letter has expired will not be considered for purposes of the IAD.

(7) *Right of First Refusal (ROFR) contract provisions.* If an ECC designates an entity to represent it in the exercise of ROFR under §680.41(1), then the Regional Administrator will not prepare an IAD on unverified claims or issue PQS until an affidavit is received from the applicant confirming the completion of a civil contract for ROFR as required under section 313(j) of the Magnuson-Stevens Act.

(8) *Initial administrative determinations (IAD).* The Regional Administrator will prepare and send an IAD to the applicant following the expiration of the 30-day evidentiary period if the Regional Administrator determines that the information or evidence provided by the applicant fails to support the applicant's claims and is insufficient to rebut the presumption that the official crab rationalization record is correct, or if the additional information, evidence, or revised application is not provided within the time period specified in the letter that notifies the applicant of his or her 30-day evidentiary period. The IAD will indicate the deficiencies in the application, including any deficiencies with the information, the evidence submitted in support of the information, or the revised application. The IAD will also indicate which claims cannot be approved based on the available information or evidence. An applicant who receives an IAD may appeal pursuant to §679.43. An applicant who avails himself or herself of the opportunity to appeal an IAD will not receive crab QS or PQS until after the final resolution of that appeal in the applicant's favor.

(g) *Annual allocation of IFQ.* IFQ is assigned based on the underlying QS. The Regional Administrator shall assign crab IFQs to each person who holds QS and submits a complete annual application for crab IFQ/IPQ permit as described under §680.4. IFQ will be assigned to a crab QS fishery with the appropriate regional designation, QS sector, and IFQ class. This amount will represent the maximum amount of crab that may be harvested from the specified crab QS fishery by the person

to whom it is assigned during the specified crab fishing year, unless the IFQ assignment is changed by the Regional Administrator because of an approved transfer, revoked, suspended, or modified under 15 CFR part 904.

(h) *Calculation of annual IFQ allocation*—(1) *General*. The annual allocation of IFQ to any person (p) in any crab QS fishery (f) will be based on the TAC of crab for that crab QS fishery less the allocation to the Western Alaska CDQ Program (“CDQ Reserve”) and Western Aleutian Islands golden king crab fishery. Expressed algebraically, the annual IFQ allocation formula is as follows:

(i)  $IFQ_{TAC_r} = TAC_r - (CDQ\ reserve_r + Allocation\ for\ the\ Western\ Aleutian\ Island\ golden\ king\ crab\ fishery)$

(ii)  $IFQ_{p_f} = IFQ_{TAC_r} \times (QS_{p_f} / QS_{pool_r})$ .

(2) *Class A/B IFQ*. (i) QS shall yield Class A or Class B IFQ if:

(A) Initially assigned to the CVO QS sector; or

(B) Transferred to the CVO QS sector from the CPO QS sector.

(ii) The Class A/B IFQ TAC is the portion of the TAC assigned as Class A/B IFQ under paragraphs (h)(2)(i)(A) and (B) of this section.

(3) *Class A/B IFQ issuance ratio*. (i) Class A and Class B IFQ shall be assigned on an annual basis such that the total amount of Class A and B IFQ assigned in a crab fishing year in each crab QS fishery for each region will be in a ratio of 90 percent Class A IFQ and 10 percent Class B IFQ.

(ii) The Regional Administrator will determine the amount of Class A and Class B IFQ that is assigned to each QS holder. The Class A IFQ is calculated by allocating 90 percent of the Class A/B IFQ TAC (TAC a) to Class A IFQ. A portion of the IFQ TAC a is allocated to persons eligible to hold only Class A IFQ (TAC a only), the remaining IFQ TAC (TAC r) is allocated for harvest by a person (p) eligible to receive both Class A IFQ and Class B IFQ. Expressed algebraically, for an individual person (p) eligible to hold both Class A and Class B IFQ the annual allocation formula is as follows:

(A)  $TAC_a = Class\ A/B\ IFQ\ TAC \times 0.90$

(B)  $TAC_r = TAC_a - TAC_{a\ only}$

(C)  $IFQ_{ap} = TAC_r / (Class\ A/B\ IFQ\ TAC - TAC_{a\ only}) \times IFQ_p$

(D)  $IFQ_{bp} = IFQ_p - IFQ_{ap}$

(4) *Class A IFQ and Class B IFQ issuance to IPQ holders*. If a person holds IPQ and IFQ, then that person will be issued Class A IFQ only for the amount of IFQ equal to the amount of IPQ held by that person. Any remaining IFQ held by that person will be issued as Class A and Class B IFQ in a ratio so that the total Class A and Class B IFQ issued in that crab QS fishery is issued as 90 percent Class A IFQ and 10 percent Class B IFQ;

(5) *Class A IFQ and Class B IFQ issuance to persons affiliated with IPQ holders*. If an IPQ holder holds IPQ in excess of the amount of IFQ held by that person, all IFQ holders affiliated with that IPQ holder will receive only Class A IFQ in proportion to the amount of IFQ held by those affiliated persons relative to that amount of IPQ held by that IPQ holder. Any remaining IFQ held by persons affiliated with the IPQ holder will be issued as Class A and Class B IFQ in a ratio so that the total Class A and Class B IFQ issued in that fishery is issued as 90 percent Class A IFQ and 10 percent Class B IFQ.

(6) *CVC IFQ*. (i) QS that is initially allocated to the CVC QS sector shall yield CVC IFQ.

(ii) CVC IFQ is not subject to regional designation.

(7) *CPO IFQ*. (i) QS that is initially allocated to the CPO QS sector shall yield CPO IFQ.

(ii) CPO IFQ is not subject to regional designation.

(8) *CPC IFQ*. (i) QS that is initially allocated to the CPC QS sector shall yield CPC IFQ.

(ii) CPC IFQ is not subject to regional designation.

(9) *QS amounts for IFQ calculation*. For purposes of calculating IFQ for any crab fishing year, the amount of a person’s QS and the amount of the QS pool for any crab QS fishery will be the amounts on record with the Alaska Region, NMFS, at the time of calculation.

(10) *Class A IFQ*. (i) The amount of Class A IFQ issued in excess of the IPQ issuance limits for the BSS or BBR crab QS fisheries, as described in paragraph (j)(3) of this section, will be issued to all Class A IFQ recipients on a pro rata basis in proportion to the

## Fishery Conservation and Management

## § 680.41

amount of Class A IFQ held by each person.

(ii) Any amount of Class A IFQ that is issued in excess of the IPQ issuance limits for the BSS or BBR crab QS fisheries, as described in paragraph (j)(3) of this section, is not required to be delivered to an RCR with unused IPQ.

(i) *Annual allocation of IPQ.* IPQ is assigned based on the underlying PQS. The Regional Administrator shall assign crab IPQs to each person who submits a complete annual application for crab IFQ/IPQ permit as described under § 680.4. Each assigned IPQ will be specific to a crab QS fishery with the appropriate regional designation. This amount will represent the maximum amount of crab that may be received from the specified crab QS fishery by the person to whom it is assigned during the specified crab fishing year, unless the IPQ assignment is changed by the Regional Administrator because of an approved transfer, revoked, suspended, or modified under 15 CFR part 904.

(j) *Calculation of annual IPQ allocation*—(1) *General.* The annual allocation of TAC to PQS and the resulting IPQ in any crab QS fishery (f) is the Class A IFQ TAC (TAC<sub>a</sub>). A person's annual IPQ is based on the amount of PQS held by a person (PQS p) divided by the PQS pool for that crab QS fishery for all PQS holders (PQS pool f). Expressed algebraically, the annual IPQ allocation formula is as follows:

$$IPQ_{pf} = TAC_{af} \times PQS_{pf} / PQS_{pool_f}$$

(2) *PQS amounts for IPQ calculation.* For purposes of calculating IPQs for any crab fishing year, the amount of a person's PQS and the amount of the PQS pool for any crab PQS fishery will be the amounts on record with the Alaska Region, NMFS, at the time of calculation.

(3) *IPQ issuance limits.* The amount of IPQ issued in any crab fishing year shall not exceed:

(i) 157,500,000 raw crab pounds (71,441.5 mt) in the BSS crab QS fishery; and

(ii) 18,000,000 raw crab pounds (8,164.7 mt) in the BBR crab QS fishery.

(4) *IPQ issued to Blue Dutch, LLC*—(i) *BBR IPQ.* For each crab fishing year that the total allowable catch for BBR CR crab is greater than 15,732,480 lb

(7,136.2 mt), NMFS will issue IPQ for the 3,015,229 units of PQS issued to Blue Dutch, LLC, pursuant to Public Law 109-241.

(ii) *BSS IPQ.* For each crab fishing year that the total allowable catch for BSS CR crab is greater than 21,350,640 lb (9,684.6 mt), NMFS will issue IPQ for the 7,516,253 units of PQS issued to Blue Dutch, LLC, pursuant to Public Law 109-241.

(k) *Timing for issuance of IFQ or IPQ.* IFQ and IPQ will be issued once the TAC for that crab QS fishery in that crab fishing year has been specified by the State of Alaska. All IFQ and IPQ for all persons will be issued once for a crab fishing year for a crab QS fishery. QS issued after NMFS has issued annual IFQ for a crab QS fishery for a crab fishing year will not result in IFQ for that crab QS fishery for that crab fishing year.

(l) *Harvesting and processing privilege.* QS and PQS allocated or permits issued pursuant to this part do not represent either an absolute right to the resource or any interest that is subject to the "takings" provision of the Fifth Amendment of the U.S. Constitution. Rather, such QS, PQS, or permits represent only a harvesting or processing privilege that may be revoked or amended pursuant to the Magnuson-Stevens Act and other applicable law. IPQs do not create a right, title, or interest in any crab until that crab is purchased from a fisherman.

[70 FR 10241, Mar. 2, 2005, as amended at 70 FR 33395, June 8, 2005; 70 FR 75421, Dec. 20, 2005; 71 FR 32864, June 7, 2006; 73 FR 29983, May 23, 2008; 73 FR 30320, May 27, 2008; 73 FR 35088, June 20, 2008]

### § 680.41 Transfer of QS, PQS, IFQ and IPQ.

(a) *General.* (1) Transfer of crab QS, PQS, IFQ, or IPQ means any transaction, approved by NMFS, requiring QS or PQS, or the use thereof in the form of IFQ or IPQ, to pass from one person to another, permanently or for a fixed period of time, except that:

(2) A crab IFQ hired master permit issued by NMFS, as described in § 680.4, is not a transfer of crab QS or IFQ; and

(3) The use of IFQ assigned to a crab harvesting cooperative and used within

§ 680.41

50 CFR Ch. VI (10-1-08 Edition)

that cooperative is not a transfer of IFQ.

(b) *Transfer applications.* An application is required to transfer any amount of QS, PQS, IFQ, or IPQ. The Regional Administrator shall provide applications to any person on request or on the Internet at <http://www.fakr.noaa.gov/>. Any transfer application will not be approved until the necessary eligibility application in paragraph (c) of this section has been submitted and approved by NMFS.

(1) *Application for transfer of crab QS/IFQ or PQS/IPQ.* This application, as described in paragraph (h) of this section, is required to transfer any amount of QS, PQS, IFQ, or IPQ from an entity that is not an ECCO or a crab harvesting cooperative.

(2) *Application for transfer of crab QS/IFQ to or from an ECCO.* This application, as described in paragraph (k) of this section, is required to transfer any amount of QS or IFQ to or from an entity that is an ECCO.

(3) *Application for inter-cooperative transfer.* This application, as described in § 680.21, is required to transfer any amount of IFQ from an entity that is a crab harvesting cooperative to another crab harvesting cooperative.

(4) *Application deadline.* The Regional Administrator will not approve any transfers of QS, PQS, IFQ, or IPQ in any crab QS fishery from August 1 until the date of the issuance of IFQ or IPQ for that crab QS fishery.

(5) *Notification of approval or disapproval of applications.* (i) Applicants submitting any application under this section will be notified by mail of the Regional Administrator's approval of an application. The Regional Administrator will notify applicants if an application submitted under this section is disapproved. This notification of disapproval will include an explanation why the application was not approved.

(ii) *Reasons for disapproval.* Reasons for disapproval of an application include, but are not limited to:

(A) Lack of U.S. citizenship, where U.S. citizenship is required.;

(B) Failure to meet minimum requirements for sea time as a member of a harvesting crew;

(C) An incomplete application, including fees and an EDR, if required;

(D) An untimely application; or

(E) Fines, civil penalties, or other payments due and owing, or outstanding permit sanctions resulting from Federal fishery violations.

(6) *QS, PQS, IFQ, or IPQ accounts.* QS, PQS, IFQ, or IPQ accounts affected by a transfer approved by the Regional Administrator will change on the date of approval. Any necessary IFQ or IPQ permits will be sent with the notification of approval if the receiver of the IFQ or IPQ permit has completed an annual application for crab IFQ/IPQ permit for the current fishing year as required under § 680.4.

(c) *Eligibility to receive QS, PQS, IFQ, or IPQ by transfer.* Persons, other than persons initially issued QS or PQS, must establish eligibility to receive QS, PQS, IFQ, or IPQ by transfer.

(1) To be eligible to receive QS, PQS, IFQ, or IPQ by transfer, a person must first meet the requirements specified in the following table:

Quota type	Eligible person	Eligibility requirements
(i) PQS not issued under § 680.40(e)(3)(i).	Any person .....	None.
(ii) IPQ .....	Any person .....	None.
(iii) CVO or CPO QS.	(A) A person initially issued QS. (B) An individual.  (C) A corporation, partnership, or other entity.  (D) An ECCO  (E) A CDQ group. N/A .....	No other eligibility requirements.  who is a U.S. citizen with at least 150 days of sea time as part of a harvesting crew in any U.S. commercial fishery. with at least one individual member who is a U.S. citizen and who: (1) owns at least 20 percent of the corporation, partnership, or other entity; and (2) has at least 150 days of sea time as part of a harvesting crew in any U.S. commercial fishery. that meets the eligibility requirements described under paragraph (j) of this section. No other eligibility requirements. Converted CPO QS may not be transferred.
(iv) Converted CPO QS.	N/A .....	Converted CPO QS may not be transferred.
(v) CPO IFQ derived from Converted CPO QS.	N/A .....	CPO IFQ derived from Converted CPO may not be transferred.

**Fishery Conservation and Management**

**§ 680.41**

Quota type	Eligible person	Eligibility requirements
(vi) CVO or CPO IFQ.	All eligible persons for CVO or CPO QS.	according to the requirements in paragraph (c)(1)(iii) of this section.
(vii) CVC or CPC QS.	An individual ..	who is a U.S. citizen with: (A) at least 150 days of sea time as part of a harvesting crew in any U.S. commercial fishery; and (B) recent participation in a CR crab fishery in the 365 days prior to submission of the application for eligibility.
(viii) CVC or CPC IFQ.	All eligible persons for CVC or CPC QS.	according to the requirements in paragraph (c)(1)(v) of this section.

(2) *Application for eligibility to receive QS/IFQ and PQS/IPQ by transfer.* (i) This application is required to establish a person's eligibility to receive QS, PQS, IFQ, or IPQ by transfer, if the person is not an ECCO. See paragraph (j) of this section for eligibility to transfer of QS/IFQ to or from an ECCO. The Regional Administrator shall provide an application to any person on request or on the Internet at <http://www.fakr.noaa.gov/>.

(ii) *Contents.* A complete Application for Eligibility to Receive QS/IFQ or PQS/IPQ by Transfer must include the following:

(A) Type of QS, IFQ, PQS, or IPQ for which the applicant is seeking eligibility. Indicate type of QS, IFQ, PQS, IPQ for which applicant is seeking eligibility.

(1) If seeking CVO or CPO QS/IFQ, complete paragraphs (c)(2)(ii)(B), (c)(2)(ii)(D) if applicable, (c)(2)(ii)(E), and (c)(2)(ii)(F) of this section;

(2) If seeking CVC or CPC QS/IFQ, complete paragraphs (c)(2)(ii)(B), (c)(2)(ii)(C), (c)(2)(ii)(E), and (c)(2)(ii)(F) of this section;

(3) If seeking PQS/IPQ, complete paragraphs (c)(2)(ii)(B) and (c)(2)(ii)(F) of this section;

(B) *Applicant information.* (1) Enter applicant's name and NMFS Person ID, applicant's date of birth or, if not an individual, date of incorporation; applicant's social security number or tax ID number; applicant's permanent business mailing address and any temporary business mailing address the ap-

plicant wishes to use, and the applicant's business telephone number, business facsimile number, and e-mail address (if available).

(2) Indicate (YES or NO) whether the applicant is a U.S. citizen or U.S. corporation, partnership or other business entity. Applicants for CVO, CPO, CVC or CPC QS (and associated IFQ) must be U.S. Citizens or U.S. Corporations, Partnerships or Other Business Entity. Applicants for PQS (and associated IPQ) are not required to be U.S. Citizens.

(C) *Eligibility for CVC or CPC QS/IFQ.* Indicate (YES or NO) whether this application is intended for a person who wishes to buy CVC or CPC QS/IFQ. If YES, provide evidence of at least one delivery of a crab species in any CR crab fishery in the 365 days prior to submission of this application. Acceptable evidence of such delivery shall be limited to an ADF&G fish ticket imprinted with applicant's State of Alaska permit card and signed by the applicant, an affidavit from the vessel owner, or a signed receipt for an IFQ crab landing on which applicant was acting as the permit holder's crab IFQ hired master.

(D) *U.S. Corporations, partnerships, or business entities.* (1) Indicate (YES or NO) whether this application is submitted by a CDQ Group. If YES, complete paragraph (c)(2)(ii)(F) of this section;

(2) Indicate (YES or NO) whether this application is submitted on behalf of a corporation, partnership or other business entity (not including CDQ groups). If YES: At least one member of the corporation, partnership or other business entity must submit documentation showing at least 20 percent interest in the corporation, partnership, or other entity and must provide evidence of at least 150 days as part of a harvesting crew in any U.S. commercial fishery. Identify the individual member and provide this individual's commercial fishing experience, name, NMFS person ID, and social security number, and business mailing address, business telephone number, and business facsimile number.

(E) *Commercial fishing experience.* (1) Species; enter any targeted species in a U.S. commercial fishery;

§ 680.41

50 CFR Ch. VI (10–1–08 Edition)

(2) Gear Type; enter any gear type used to legally harvest in a U.S. commercial fishery;

(3) Location; enter actual regulatory, statistical, or geographic harvesting location;

(4) Starting date and ending date of claimed fishing period (MMYY);

(5) Number of actual days spent harvesting;

(6) Duties performed while directly involved in the harvesting of (be specific);

(7) Name and ADF&G vessel registration number or USCG documentation number of the vessel upon which above duties were performed;

(8) Name of vessel owner;

(9) Name of vessel operator;

(10) Reference name. Enter the name of a person (other than applicant) who is able to verify the above experience;

(11) Reference's relationship to applicant;

(12) Reference's business mailing address and telephone number.

(F) *Applicant certification.* (1) Printed name and signature of applicant and date signed;

(2) Notary Public signature, date commission expires, and notary stamp or seal.

(G) Verification that the applicant applying for eligibility to receive crab QS/IFQ or PQS/IPQ by transfer has submitted an EDR, if required to do so under § 680.6;

(H) A non-profit entity seeking approval to receive crab QS or IFQ by transfer on behalf of a ECC must first complete an Application to Become an ECCO under paragraph (j) of this section.

(d) *Transfer of CVO, CPO, CVC, CPC QS or PQS—(1) General.* PQS or QS may be transferred, with approval of the Regional Administrator, to persons qualified to receive PQS or QS by transfer. However, the Regional Administrator will not approve a transfer of any type of PQS or QS that would cause a person to exceed the maximum amount of PQS or QS allowable under the use limits provided for in § 680.42, except as provided for under paragraph (f) of this section.

(2) *CVO QS.* CVO QS may be transferred to any person eligible to receive

CVO or CPO QS as defined under paragraph (c) of this section.

(3) *CPO QS.* Persons holding CPO QS may transfer CPO QS as CVO QS and PQS to eligible recipients under the following provisions:

(i) Each unit of CPO QS shall yield 1 unit of CVO QS, and 0.9 units of PQS; and

(ii) The CVO QS and PQS derived from the transfer of CPO QS may be transferred separately, except that these shares must receive the same regional designation. The regional designation shall be determined at the time of transfer by the person receiving the CVO QS.

(4) *CVC or CPC QS.* CVC or CPC QS may be transferred to any person eligible to receive CVC or CPC QS as defined under paragraph (c) of this section. CVC and CPC QS may only be used in the sector for which it is originally designated.

(e) *Transfer of IFQ or IPQ by Lease—*  
(1) *IFQ derived from CVO or CPO QS.* IFQ derived from CVO or CPO QS may be transferred by lease until June 30, 2010. IFQ derived from CVO or CPO QS must be leased:

(i) If the IFQ will be used on a vessel on which the QS holder has less than a 10 percent ownership interest; or

(ii) If the IFQ will be used on a vessel on which the QS holder or the holder of a crab IFQ hired master permit, under § 680.4, is not present.

(2) *Ownership of a vessel, for the purposes of this section, means:*

(i) A sole proprietor; or

(ii) A relationship between 2 or more entities in which one directly or indirectly owns a 10 percent or greater interest in a vessel.

(3) *IFQ derived from CVC QS or CPC QS.* (i) IFQ derived from CVC or CPC QS may be transferred by lease only until June 30, 2008, unless the IFQ permit holder demonstrates a hardship.

(ii) In the event of a hardship, as described at paragraph (e)(2)(iii) in this section, a holder of CVC or CPC QS may lease the IFQ derived from this QS for the term of the hardship. However, the holder of CVC or CPC QS may not lease the IFQ under this provision for more than 2 crab fishing years total in any 10 crab fishing year period. Such transfers are valid only during the crab

## Fishery Conservation and Management

## § 680.41

fishing year for which the IFQ permit is issued and the QS holder must re-apply for any subsequent transfers.

(iii) NMFS will not approve transfers of IFQ under this provision unless the QS holder can demonstrate a hardship by an inability to participate in the crab QS fisheries because:

(A) Of a medical condition of the QS holder. The QS holder is required to provide documentation of the medical condition from a licensed medical doctor who verifies that the QS holder cannot participate in the fishery because of the medical condition.

(B) Of a medical condition involving an individual who requires the QS holder's care. The QS holder is required to provide documentation of the individual's medical condition from a licensed medical doctor. The QS holder must verify that he or she provides care for that individual and that the QS holder cannot participate in the fishery because of the medical condition of that individual.

(C) Of the total or constructive physical loss of a vessel. The QS holder must provide evidence that the vessel was lost and could not be replaced in time to participate in the fishery for which the person is claiming a hardship.

(4) *IPQ derived from PQS*. IPQ derived from PQS may be leased.

(f) *Transfer of QS, PQS, IFQ or IPQ with restrictions*. If QS, PQS, IFQ or IPQ must be transferred as a result of a court order, operation of law, or as part of a security agreement, but the person receiving the QS, PQS, IFQ or IPQ by transfer does not meet the eligibility requirements of this section, the Regional Administrator will approve, with restrictions, an Application for transfer of crab QS/IFQ or PQS/IPQ. The Regional Administrator will not assign IFQ or IPQ resulting from the restricted QS or PQS to any person. IFQ or IPQ with restrictions may not be used for harvesting or processing species covered under the CR program. The QS, PQS, IFQ or IPQ will remain restricted until:

(1) The person who received the QS, PQS, IFQ or IPQ with restrictions meets the eligibility requirements of this section and the Regional Adminis-

trator approves an application for eligibility for that person; or

(2) The Regional Administrator approves the application for transfer from the person who received the QS, PQS, IFQ or IPQ with restrictions to a person who meets the eligibility requirements of this section.

(g) *Survivorship transfer privileges*. (1) On the death of an individual who holds QS or PQS, the surviving spouse or, in the absence of a surviving spouse, a beneficiary designated pursuant to paragraph (g)(3) of this section, receives all QS, PQS and IFQ or IPQ held by the decedent by right of survivorship, unless a contrary intent was expressed by the decedent in a will. The Regional Administrator will approve an application for transfer to the surviving spouse or designated beneficiary when sufficient evidence has been provided to verify the death of the individual.

(2) A QS or PQS holder may provide the Regional Administrator with the name of the designated beneficiary from the QS or PQS holder's immediate family to receive survivorship transfer privileges in the event of the QS or PQS holder's death and in the absence of a surviving spouse.

(3) The Regional Administrator will approve, for 3 calendar years following the date of the death of an individual, an Application for transfer of crab QS/IFQ or PQS/IPQ from the surviving spouse or, in the absence of a surviving spouse, a beneficiary from the QS or PQS holder's immediate family designated pursuant to this section, to a person eligible to receive IFQ or IPQ under the provisions of this section, notwithstanding the limitations on transfers of IFQ and IPQ in this section and the use limitations under § 680.42.

(h) *Application for transfer of crab QS/IFQ or PQS/IPQ*—(1) *General*. (i) An Application for transfer of crab QS/IFQ or PQS/IPQ must be approved by the Regional Administrator before the transferee may use the IFQ or IPQ to harvest or process crab QS species.

(ii) Persons who submit an Application for transfer of crab QS/IFQ or PQS/IPQ for approval will receive notification of the Regional Administrator's decision to approve or disapprove the application, and if applicable, the

§ 680.41

50 CFR Ch. VI (10-1-08 Edition)

reason(s) for disapproval, by mail, unless another communication mode is requested on the application.

(2) *Contents.* A complete Application for transfer of crab QS/IFQ or PQS/IPQ must include the following information:

(i) *Type of transfer.* (A) Indicate type of transfer requesting.

(B) Indicate (YES or NO) whether this is a transfer of IFQ or IPQ only due to a hardship (medical emergency, etc.). If YES, provide documentation supporting the need for such transfer (doctor's statement, etc.).

(C) If requesting transfer of PQS/IPQ for use outside an ECC that has designated an entity to represent it in exercise of ROFR under paragraph (1), the application must include an affidavit signed by the applicant stating that notice of the desired transfer has been provided to the ECC entity under civil contract terms referenced under § 680.40(f)(3) for the transfer of any PQS or IPQ subject to ROFR.

(ii) *Transferor information.* (A) The transferor is the person currently holding the QS, PQS, IFQ, or IPQ.

(B) Enter the transferor's name and NMFS Person ID, social security number or tax ID number, transferor's permanent business mailing address and any temporary mailing address the transferor wishes to use, business telephone, business facsimile, and business e-mail address (if available).

(iii) *Transferee information.* (A) The transferee is person receiving QS, PQS or IFQ, IPQ by transfer.

(B) Enter the transferee's name and NMFS Person ID, social security number or tax ID number, transferee's permanent business mailing address and any temporary mailing address the transferee wishes to use, business telephone, business facsimile, and business e-mail address (if available);

(iv) *Transfer of QS or PQS and IFQ or IPQ.* Complete the following information if QS or PQS and IFQ or IPQ are to be transferred together or if transferring only QS or PQS:

(A) QS species;

(B) QS type;

(C) Range of serial numbers to be transferred (shown on QS certificate) numbered to and from;

(D) Number of QS units to be transferred;

(E) Transferor (seller) IFQ or IPQ permit number;

(F) Indicate (YES or NO) whether remaining IFQ or IPQ pounds for the current fishing year should be transferred; if NO, specify the number of pounds to be transferred;

(G) If this is a transfer of CPO QS, indicate whether being transferred as CPO QS or CVO QS and PQS;

(H) If CPO QS is being transferred as both CVO QS and PQS, specify number of units of each; and

(I) If CPO QS is being transferred as CVO QS, select region for which the QS is designated.

(v) *Transfer of IFQ or IPQ only.* Complete the following information if transferring IFQ or IPQ only:

(A) QS species;

(B) IFQ/IPQ type;

(C) Range of serial numbers shown on QS certificate, numbered to and from;

(D) Number of IFQ or IPQ pounds to be transferred;

(E) Transferor (seller) IFQ or IPQ permit number; and

(F) Crab fishing year of the transfer.

(vi) *Price paid for the QS, PQS and/or IFQ, IPQ.* The transferor must provide the following information.

(A) Indicate whether (YES or NO) a broker was used for this transaction; If YES, provide dollar amount paid in brokerage fees or percentage of total price.

(B) Provide the total amount paid for the QS/IFQ or PQS/IPQ in this transaction, including all fees.

(C) Provide the price per unit of QS (price divided by QS units) and the price per pound (price divided by IFQ or IPQ pounds) of IFQ or IPQ.

(D) Indicate all reasons that apply for transferring the QS/IFQ or PQS/IPQ.

(vii) *Method of financing for the QS, PQS and/or IFQ, IPQ.* The transferee must provide the following information.

(A) Indicate (YES or NO) whether QS/IFQ or PQS/IPQ purchase will have a lien attached; if YES, provide the name of lien holder.

(B) Indicate one primary source of financing for this transfer.

## Fishery Conservation and Management

## § 680.41

(C) Indicate the sources used to locate the QS, PQS and/or IFQ, IPQ being transferred.

(D) Indicate the relationship, if any, between the transferor and the transferee.

(E) Indicate (YES or NO) whether an agreement exists to return the QS/IFQ or PQS/IPQ to the transferor or any other person, or with a condition placed on resale; If YES, provide written explanation.

(F) Attach a copy of the terms of agreement for the transfer, the bill of sale for QS or PQS, or lease agreement for IFQ or IPQ.

(G) Indicate whether an EDR was submitted, if required by §680.6, and whether all fees have been paid, as required under §680.44.

(viii) *Notary information*—(A) *Certification of transferor*. (1) Printed name and signature of transferor or authorized agent and date signed. If authorized agent, proof of authorization to act on behalf of the transferor must be provided with the application; and

(2) Notary Public signature, date commission expires, and notary stamp or seal

(B) *Certification of transferee*. (1) Printed name and signature of transferee or authorized agent and date signed. If authorized agent, proof of authorization to act on behalf of the transferee must be provided with the application; and

(2) Notary Public signature, date commission expires, and notary stamp or seal.

(ix) *Attachments to the application and other conditions to be met*. (A) Indicate whether the person applying to make or receive the QS, PQS, IFQ or IPQ transfer has submitted an EDR, if required to do so under §680.6, and has paid all fees, as required by §680.44; and

(B) All individuals applying to receive CVC QS or IFQ or CPC QS or IFQ by transfer must submit proof of at least one delivery of a crab species in any CR crab fishery in the 365 days prior to submission to NMFS of the Application for Transfer of QS/IFQ or PQS/IPQ. Proof of this landing is:

(1) Signature of the applicant on an ADF&G Fish Ticket; or

(2) An affidavit from the vessel owner attesting to that individual's participa-

tion as a member of a fish harvesting crew on board a vessel during a landing of a crab QS species within the 365 days prior to submission of an Application for transfer of crab QS/IFQ or PQS/IPQ.

(i) *Approval criteria for an Application for transfer of crab QS/IFQ or PQS/IPQ*. Except as provided in paragraph (f) of this section, an application for transfer of QS/IFQ or PQS/IPQ will not be approved until the Regional Administrator has determined that:

(1) The person applying to receive the QS, PQS, IFQ or IPQ meets the requirements of eligibility in paragraph (c) of this section;

(2) The person applying for transfer and the person applying to receive QS or IFQ/IPQ have their original notarized signatures on the application;

(3) No fines, civil penalties, or other payments due and owing, or outstanding permit sanctions, resulting from Federal fishery violations involving either party exist;

(4) The person applying to receive QS, PQS, IFQ or IPQ currently exists;

(5) The transfer would not cause the person applying to receive the QS, PQS, IFQ or IPQ to exceed the use limits in §680.42;

(6) The person applying to make or receive the QS, PQS, IFQ or IPQ transfer has paid all IFQ or IPQ fees described under §680.44; or has timely appealed the IAD of underpayment as described under §680.44;

(7) The person applying to make or receive the QS, PQS, IFQ or IPQ transfer has submitted an EDR, if required to do so under §680.6;

(8) In the case of an application for transfer of PQS or IPQ for use outside an ECC that has designated an entity to represent it in exercise of ROFR under paragraph (1), the Regional Administrator will not act upon the application for a period of 10 days. At the end of that time period, the application will be approved pending meeting the criteria set forth in this paragraph (i).

(9) In the case of an application for transfer of PQS for use within an ECC that has designated an entity to represent it in exercise of ROFR under paragraph (1), The Regional Administrator will not approve the application unless either the ECC entity provides

§ 680.41

50 CFR Ch. VI (10-1-08 Edition)

an affidavit to the Regional Administrator that the ECC wishes to permanently waive ROFR for the PQS or the proposed recipient of the PQS provides an affidavit affirming the completion of a contract for ROFR that includes the terms enacted under section 313(j) of the Magnuson-Stevens Act and referenced under § 680.40(f)(3).

(10) Other pertinent information requested on the application for transfer has been supplied to the satisfaction of the Regional Administrator.

(j) *Transfer of crab QS/IFQ to or from and ECCO*—(1) *Designation of an ECCO*.

(i) The appropriate governing body of each ECC may designate a non-profit organization to serve as the ECCO for that ECC. To transfer and hold QS on the behalf of that ECC, this designation must be submitted by the non-profit organization in its Application to Become an ECCO.

(ii) If the non-profit entity is approved by NMFS to serve as the ECCO, then the appropriate governing body of the ECC must authorize the transfer of any QS from the ECCO.

(iii) The appropriate governing body for purposes of designating a non-profit organization for the Application to Become an ECCO, or acknowledging the transfer of any QS from an ECCO in each ECC is as follows:

(A) If the ECC is also a community eligible to participate in the Western Alaska CDQ Program, then the CDQ group is the appropriate governing body;

(B) If the ECC is not a CDQ community and is incorporated as a municipality and is not within an incorporated borough, then the municipal government is the appropriate governing body;

(C) If the ECC is not a CDQ community and is incorporated as a municipality and also within an incorporated borough, then the municipality and borough jointly serve as the appropriate governing body and both must agree to designate the same non-profit organization to serve as the ECCO or acknowledge the transfer of QS from the ECCO; and

(D) If the ECC is not a CDQ community and is not incorporated as a municipality and is in a borough, then the

borough in which the ECC is located is the appropriate governing body.

(iv) The appropriate governing body in each ECC may designate only one non-profit organization to serve as the ECCO for that community at any one time.

(2) *Application to become an ECCO*. Prior to initially receiving QS or IFQ by transfer on behalf of a specific ECC, a non-profit organization that intends to represent that ECC as a ECCO must submit an application to become an ECCO and have that application approved by the Regional Administrator. The Regional Administrator shall provide an application to become an ECCO to any person on request or on the Internet at <http://www.fakr.noaa.gov/>.

(i) *Contents of application*—(A) *Applicant identification*. (1) Enter the name of the non-profit organization, taxpayer ID number, and NMFS Person ID, applicant's permanent business mailing address and any temporary business mailing address the applicant wishes to use, and the name of contact person, business telephone number, business facsimile number, and e-mail address (if available);

(2) Name of community or communities represented by the non-profit organization; and

(3) Name of contact person for the governing body of each community represented.

(B) Required attachments to the application. (1) The articles of incorporation under the laws of the State of Alaska for that non-profit organization;

(2) A statement indicating the ECC(s) represented by that non-profit organization for purposes of holding QS;

(3) The bylaws of the non-profit organization;

(4) A list of key personnel of the management organization including, but not limited to, the board of directors, officers, representatives, and any managers;

(5) Additional contact information of the managing personnel for the non-profit organization and resumes of management personnel;

(6) A description of how the non-profit organization is qualified to manage

## Fishery Conservation and Management

## § 680.41

QS on behalf of the ECC it is designated to represent, and a demonstration that the non-profit organization has the management skills and technical expertise to manage QS and IFQ; and

(7) A statement describing the procedures that will be used to determine the distribution of IFQ to residents of the ECC represented by that non-profit organization, including procedures used to solicit requests from residents to lease IFQ and criteria used to determine the distribution of IFQ leases among qualified community residents and the relative weighting of those criteria.

(C) *Applicant certification.* (1) Printed name of applicant or authorized agent, notarized signature, and date signed. If authorized agent, proof of authorization to act on behalf of the applicant must be provided with the application.

(2) Notary Public signature and date when commission expires, and notary seal or stamp.

(ii) [Reserved]

(k) *Application for transfer of crab QS/IFQ to or from an ECCO.* (1) An application for transfer of crab QS/IFQ to or from an ECCO must be approved by the Regional Administrator before the transferee may use the IFQ to harvest crab QS species.

(2) An application for transfer of crab QS/IFQ to or from an ECCO will not be approved until the Regional Administrator has reviewed and approved the transfer agreement signed by the parties to the transaction. Persons who submit an application for transfer of crab QS/IFQ to or from an ECCO for approval will receive notification of the Regional Administrator's decision to approve or disapprove the application, and if applicable, the reason(s) for disapproval, by mail, unless another communication mode is requested on the application.

(3) *Contents.* A complete application for transfer of crab QS/IFQ to or from an ECCO includes the following:

(i) *General requirements.* (A) This form may only be used if an ECCO is the proposed transferor or the proposed transferee of the QS or IFQ.

(B) The party to whom an ECCO is seeking to transfer the QS/IFQ must be eligible to receive QS/IFQ by transfer.

(C) If the ECCO is applying to permanently transfer QS, a representative of the community on whose behalf the QS is held must sign the application.

(D) If authorized representative represents either the transferor or transferee, proof of authorization to act on behalf of transferor or transferee must be attached to the application.

(ii) *Transferor information.* Enter the transferor's (person currently holding the QS or IFQ) name, NMFS Person ID, social security number or Tax ID, permanent business mailing address, business telephone, business facsimile, and business e-mail address. If transferor is an ECCO, enter the name of ECC represented by the ECCO. The transferor may also provide a temporary address for each transaction in addition to the permanent business mailing address.

(iii) *Transferee information.* Enter the transferee's (person receiving QS or IFQ by transfer) name, NMFS Person ID, social security number or Tax ID, permanent business mailing address, business telephone, business facsimile, and business e-mail. If transferee is an ECCO, name of the community (ECC) represented by the ECCO. The transferee may also provide a temporary address for each transaction in addition to the permanent business mailing address.

(iv) *Identification of QS/IFQ to be transferred.* Complete the following information if QS and IFQ are to be transferred together or if transferring only QS:

(A) QS species;

(B) QS type;

(C) Number of QS or IFQ units to be transferred;

(D) Total QS units;

(E) Number of IFQ pounds;

(F) Range of serial numbers to be transferred (shown on QS certificate) numbered to and from;

(G) Name of community to which QS are currently assigned; and

(H) Indicate (YES or NO) whether remaining IFQ pounds for the current fishing year should be transferred; if NO, specify the number of pounds to be transferred.

(v) *Transfer of IFQ only.* (A) IFQ permit number and year of permit, and

(B) Actual number of IFQ pounds to be transferred.

§ 680.41

50 CFR Ch. VI (10-1-08 Edition)

(vi) *Transferor Information, if an ECCO.* Reason(s) for transfer:

- (A) ECCO management and administration;
- (B) Fund additional QS purchase;
- (C) Participation by community residents;
- (D) Dissolution of ECCO; and
- (E) Other (specify).

(vii) *Price paid for QS, PQS, and/or IFQ, IPQ (Transferor).* The transferor must provide the following information:

- (A) Whether (YES or NO) a broker was used for this transaction; If YES, provide dollar amount paid in brokerage fees or percentage of total price;
- (B) Provide the total amount paid for the QS/IFQ in this transaction, including all fees;
- (C) Provide the price per unit of QS (price divided by QS units) and the price per pound (price divided by IFQ) of IFQ; and
- (D) Indicate all reasons that apply for transferring the QS/IFQ.

(viii) *Price paid for QS, PQS, and/or IFQ, IPQ (Transferee).* The transferee must provide the following information:

- (A) Indicate (YES or NO) whether QS/IFQ purchase will have a lien attached; if YES, provide the name of lien holder;
- (B) Indicate one primary source of financing for this transfer;
- (C) Indicate the sources used to locate the QS or IFQ being transferred;
- (D) Indicate the relationship, if any, between the transferor and the transferee;
- (E) Indicate (YES or NO) whether an agreement exists to return the QS or IFQ to the transferor or any other person, or with a condition placed on resale; If YES, explain; and
- (F) Attach a copy of the terms of agreement for the transfer, the bill of sale for QS, or lease agreement for IFQ.

(ix) *Notary information—(A) Certification of transferor.* (1) Printed name and signature of transferor or authorized agent and date signed. If authorized agent, proof of authorization to act on behalf of the transferor must be provided with the application.

- (2) Notary Public signature, date commission expires, and notary stamp or seal.

(B) *Certification of transferee.* (1) Printed name and signature of transferor or authorized agent and date signed. If authorized agent, proof of authorization to act on behalf of the transferee must be provided with the application.

- (2) Notary Public signature, date commission expires, and notary stamp or seal.

(C) *Certification of authorized representative of community.* (1) Printed name, title and signature of authorized community representative, date signed, and printed name of community.

- (2) Notary Public signature, date commission expires, and notary stamp or seal;

(4) *Attachments to the application and other conditions to be met.* (i) Indicate whether the person applying to make or receive the QS, PQS, IFQ or IPQ transfer has submitted an EDR, if required to do so under § 680.6, and paid all fees, as required by § 680.44.

(ii) A copy of the terms of agreement for the transfer, the bill of sale for QS or PQS, or lease agreement for IFQ or IPQ.

(iii) An affirmation that the individual receiving IFQ from an ECCO has been a permanent resident in the ECC for a period of 12 months prior to the submission of the Application for Transfer QS/IFQ to or from an ECCO on whose behalf the ECCO holds QS.

(5) *Approval criteria for an application for transfer of crab QS/IFQ to or from an ECCO.* In addition to the criteria required for approval under paragraph (i) of this section, the following criteria are also required:

(i) The ECCO applying to receive or transfer crab QS has submitted a complete annual report(s) required by § 680.5;

(ii) The ECCO applying to transfer crab QS has provided information on the reasons for the transfer as described in paragraph (e) of this section; and

(iii) An individual applying to receive IFQ from an ECCO is a permanent resident of the ECC in whose name the ECCO is holding QS.

(1) *Eligible crab community right of first refusal (ROFR)—(1) Applicability—(i) Exempt Fisheries.* PQS and IPQ issued for

## Fishery Conservation and Management

## § 680.42

the EBT, WBT, WAG, or WAI crab QS fisheries are exempt from ROFR provisions.

(ii) *Eligible Crab Communities (ECCs)*. The ROFR extends to the ECCs, other than Adak, and their associated governing bodies. The ROFR may be exercised by the ECC entity representing that ECC.

(2) *Community representation*—(i) *CDQ Communities*. ECC entity for purposes of exercise of ROFR for any ECC that is also a CDQ community shall be the CDQ group to which the ECC is a member.

(ii) *Non-CDQ communities*. (A) Any ECC, other than Adak, that is a non-CDQ community may designate an ECC entity that will represent the community in the exercise of ROFR at least 30 days prior to the ending date for the initial application period for the crab QS program specified in the FEDERAL REGISTER.

(B) The ECC entity eligible to exercise the right of first refusal on behalf of an ECC will be identified by the governing body(s) of the ECC. If the ECC is incorporated under the laws of the State of Alaska, and not within an incorporated borough, then the municipality is the governing body; if the ECC is incorporated and within an incorporated borough, then the municipality and borough are the governing bodies and must agree to designate the same ECC entity; if the ECC is not incorporated and in an incorporated borough, then the borough is the governing body.

(C) Each ECC may designate only one ECC entity to represent that community in the exercise of ROFR at any one time through a statement of support from the governing body of the ECC. That statement of support identifying the ECC entity must be submitted to the Regional Administrator, NMFS, Post Office Box 21668, Juneau, Alaska 99802, at least 30 days prior to the ending date of the initial application period for the crab QS program under § 680.40.

(D) The ECC ROFR is not assignable by the ECC entity.

(3) *Restrictions on transfer of PQS or IPQ out of North Gulf of Alaska communities*—(i) *Applicability*. Any community

in the Gulf of Alaska north of a line at 56°20' N. lat.

(ii) *Notification of PQS or IPQ transfer*. A PQS holder submitting an application to transfer PQS or IPQ for use in processing outside any community identified under paragraph (1)(3)(i) must notify the ECC entity designated by the City of Kodiak and Kodiak Island Borough under paragraph (1)(2) of this section 10 days prior to the intended transfer of PQS or IPQ for use outside the community. At the end of that time period, the application will be approved pending meeting the criteria set forth in paragraph (i) of this section.

[70 FR 10241, Mar. 2, 2005, as amended at 71 FR 32864, June 7, 2006; 73 FR 29983, May 23, 2008]

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

(a) *QS and IFQ use caps*—(1) *General*. Separate and distinct QS and IFQ use caps apply to all QS and IFQ categories pertaining to a given crab QS fishery with the following provisions:

(i) A person who receives an initial allocation of QS that exceeds the use cap listed in paragraph (a)(2) of this section may not receive QS by transfer unless and until that person's holdings are reduced to an amount below the use cap.

(ii) A person will not be issued QS in excess of the use cap established in this section based on QS derived from landings attributed to an LLP license obtained via transfer after June 10, 2002 unless;

(A) The person applies to receive QS based on an LLP transferred after June 10, 2002 but prior to November 24, 2004, and

(B) The person will receive the amount of QS associated with that transferred LLP in excess of the use cap established in this section for a crab QS fishery solely because of the adjustment to legal landings available for QS allocation resulting from the BSAI Crab Capacity Reduction Program.

(iii) QS and IFQ use caps shall be based on the initial QS pools used to determine initial allocations of QS.

§ 680.42

50 CFR Ch. VI (10-1-08 Edition)

(2) Except for non-individual persons who hold PQS, as provided for in paragraph (a)(1)(ii) of this section, or a CDQ group, as provided for in paragraph (a)(3) of this section, a person, individually or collectively, may not:

(i) Hold QS in amounts in excess of the amounts specified in the following table, unless that person's QS was received in the initial allocation:

Fishery	CVO/CPO Use Cap in QS Units	CVC/CPC Use Cap in QS Units
(A) Percent of the initial QS pool for BBR	1.0% = 3,880,000.	2.0% = 240,000
(B) Percent of the initial QS pool for BSS	1.0% = 9,700,000.	2.0% = 600,000
(C) Percent of the initial QS pool for EBT	1.0% = 1,940,000.	2.0% = 120,000
(D) Percent of the initial QS pool for WBT	1.0% = 1,940,000.	2.0% = 120,000
(E) Percent of the initial QS pool for PIK	2.0% = 582,000	4.0% = 36,000
(F) Percent of the initial QS pool for SMB	2.0% = 582,000	4.0% = 36,000
(G) Percent of the initial QS pool for EAG	10.0% = 970,000.	20.0% = 60,000
(H) Percent of the initial QS pool for WAG	10.0% = 3,880,000.	20.0% = 240,000
(I) Percent of the initial QS pool for WAI	10.0% = 5,820,000.	20.0% = 360,000

(ii) Use IFQ in excess of the amount of IFQ that results from the QS caps in paragraph (a)(2)(i) of this section, unless that IFQ results from QS that was received by that person in the initial allocation of QS for that crab QS fishery.

(3) A CDQ Group, individually or collectively, may not:

(i) Hold QS in excess of more than the amounts of QS specified in the following table:

Fishery	CDQ CVO/CPO Use Cap in QS Units
(A) 5.0 percent of the initial QS pool for BBR	19,400,000
(B) 5.0 percent of the initial QS pool for BSS	48,500,000
(C) 5.0 percent of the initial QS pool for EBT	9,700,000
(D) 5.0 percent of the initial QS pool for WBT	9,700,000

Fishery	CDQ CVO/CPO Use Cap in QS Units
(E) 10.0 percent of the initial QS pool for PIK	2,910,000
(F) 10.0 percent of the initial QS pool for SMB	2,910,000
(G) 20.0 percent of the initial QS pool for EAG	1,940,000
(H) 20.0 percent of the initial QS pool for WAG	7,760,000
(I) 20.0 percent of the initial QS pool for WAI	11,640,000

(ii) Use IFQ in excess of the amount of IFQ that results from the QS caps in paragraph (a)(3)(i) of this section, unless that IFQ results from QS that was received by that person in the initial allocation of QS for that crab QS fishery.

(4) A person who is not an individual and who holds PQS may not:

(i) Hold QS in excess of the amounts specified in the following table:

Fishery	CVO/CPO Use Cap in QS Units
(A) 5.0 percent of the initial QS pool for BBR	19,400,000
(B) 5.0 percent of the initial QS pool for BSS	48,500,000
(C) 5.0 percent of the initial QS pool for EBT	9,700,000
(D) 5.0 percent of the initial QS pool for WBT	9,700,000
(E) 5.0 percent of the initial QS pool for PIK	1,455,000
(F) 5.0 percent of the initial QS pool for SMB	1,455,000
(G) 5.0 percent of the initial QS pool for EAG	485,000
(H) 5.0 percent of the initial QS pool for WAG	1,940,000
(I) 5.0 percent of the initial QS pool for WAI	2,910,000

(ii) Use IFQ in excess of the amount of IFQ that results from the QS caps in paragraph (a)(4)(i) of this section, unless that IFQ results from QS that was received by that person in the initial allocation of QS for that crab QS fishery.

(iii) A non-individual person that holds PQS, and all affiliates of that person, is limited to a QS and IFQ use

## Fishery Conservation and Management

## § 680.42

cap that is calculated based on the sum of all QS or IFQ held by that PQS holder and all QS or IFQ held by any affiliate of the PQS holder.

(5) IFQ that is used by a crab harvesting cooperative is not subject to the use caps in this paragraph (a) except as provided for in paragraph (a)(7) of this section.

(6) Non-individual persons holding QS will be required to provide, on an annual basis, a list of persons with an ownership interest in the non-individual QS holder. This list of owners shall be provided to the individual level and will include the percentage of ownership held by each individual. This annual submission of information must be submitted as part of the complete annual application for crab IFQ/IPQ permit.

(7) In a calendar year, an entity as described in §680.40(c)(5)(ii), (c)(5)(iii), or (c)(5)(iv), may not use more than 1,000,000 lb (453.6 mt) of IFQ derived from converted CPO QS in the BBR or BSS crab QS fisheries.

(b) *PQS and IPQ Use Caps.* (1) A person may not:

(i) Hold more than 30 percent of the initial PQS pool in any crab QS fishery unless that person received an initial allocation of PQS in excess of this limit. A person will not be issued PQS in excess of the use caps established in this section based on PQS derived from the transfer of legal processing history after June 10, 2002.

(ii) Use IPQ in excess of the amount of IPQ that results from the PQS caps in paragraph (b)(1)(i) of this section unless that IPQ is yielded from PQS that was received by that person in the initial allocation of PQS for that crab QS fishery.

(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.

(3) Non-individual persons holding PQS will be required to provide, on an annual basis, a list of persons with an ownership interest in the non-individual PQS holder. This list of owners shall be provided to the individual level and will include the percentage of ownership held by each individual. This annual submission of information must be submitted as part of the complete

annual application for crab IFQ/IPQ permit. A person will be considered to be a holder of PQS for purposes of applying the PQS use caps in this paragraph if that person:

(i) Is the sole proprietor of an entity that holds PQS; or

(ii) Directly or indirectly owns a 10 percent or greater interest in an entity that holds PQS.

(iii) A person that holds PQS is limited to a PQS use cap that is calculated based on the sum of all PQS held by that PQS holder and all PQS held by any affiliate of the PQS holder.

(iv) A person that holds IPQ is limited to an IPQ use cap that is calculated based on the sum of all IPQ held by that IPQ holder and all IPQ held by any affiliate of the IPQ holder.

(4) Before July 1, 2007, IPQ for the BSS, BBR, PIK, SMB, and EAG crab QS fisheries may not be used to process crab derived from PQS based on activities in an ECC, except in the geographic boundaries established in paragraph (b)(4)(iv) of this section, except that, before July 1, 2007:

(i) Ten percent of the IPQs that are issued for a crab QS fishery or an amount of IPQ that yields up to 500,000 raw crab pounds (226.7 mt) on an annual basis, whichever is less, may be leased for use in processing crab outside that ECC. The amount of IPQ that is issued on an annual basis for use in that ECC and the amount that may be leased outside that ECC will be established annually and will be divided on a pro rata basis among all PQS permit holders issued IPQ for use in that ECC for that year.

(ii) IPQ in excess of the amounts specified in paragraph (c)(7)(i) of this section may be used outside the ECC for which that IPQ is designated if an unavoidable circumstance prevents crab processing within that ECC. For purposes of this section, an unavoidable circumstance exists if the specific intent to conduct processing for a crab QS species in that ECC was thwarted by a circumstance that was:

(A) Unavoidable;

(B) Unique to the IPQ permit holder, or to the processing facility used by the IPQ permit holder in that ECC;

(C) Unforeseen and reasonably unforeseeable to the IPQ permit holder;

(D) The circumstance that prevented the IPQ permit holder from processing crab in that ECC actually occurred; and

(E) The IPQ permit holder took all reasonable steps to overcome the circumstance that prevented the IPQ permit holder from conducting processing for that crab QS fishery in that ECC.

(iii) This provision does not exempt any IPQ permit holder from any regional designation that may apply to that IPQ.

(iv) Geographic boundaries for use of IPQ outside ECCs for purposes of paragraph (b)(4) of this section:

(A) Akutan, False Pass, King Cove, or Port Moller: IPQ may not be used outside of the boundaries of the Aleutians East Borough as those boundaries are established by the State of Alaska;

(B) Kodiak: IPQ may not be used outside of the boundaries of the Kodiak Island Borough as those boundaries are established by the State of Alaska;

(C) Adak: IPQ may not be used outside of the boundaries of the City of Adak as those boundaries are established by the State of Alaska;

(D) Unalaska/Dutch Harbor: IPQ may not be used outside of the boundaries of the City of Unalaska as those boundaries are established by the State of Alaska.

(E) St. George: IPQ may not be used outside of the boundaries of the City of St. George as those boundaries are established by the State of Alaska.

(F) St. Paul: IPQ may not be used outside of the boundaries of the City of St. Paul as those boundaries are established by the State of Alaska.

(5) Any person harvesting crab under a Class A CVO or Class A CVC IFQ Permit, except as provided under paragraph (b)(4) of this section, must deliver that crab:

(i) Only to RCRs with unused IPQ for the same crab QS fishery; and

(ii) Only to an RCR in the region for which the QS and IFQ is designated.

(6) Any person harvesting crab under a Class B IFQ, CPO IFQ, CVC IFQ, or CPC IFQ permit may deliver that crab to any RCR.

(c) *Vessel limitations.* (1) Except for vessels that participate solely in a crab harvesting cooperative as described under §680.21 and under the provisions

described in paragraph (c)(4) of this section, no vessel may be used to harvest CVO or CPO IFQ in excess of the following percentages of the TAC for that crab QS fishery for that crab fishing year:

(i) 2.0 percent for BSS;

(ii) 2.0 percent for BBR;

(iii) 2.0 percent for EBT;

(iv) 2.0 percent for WBT;

(v) 4.0 percent for PIK;

(vi) 4.0 percent for SMB;

(vii) 20.0 percent for EAG;

(viii) 20.0 percent for WAG; or

(ix) 20.0 percent for the WAI crab QS fishery west of 179° W. long.

(2) CVC or CPC IFQ used on a vessel will not be included in determining whether a vessel use cap is met.

(3) A single person who receives an initial allocation of QS that results in IFQ that is in excess of the vessel use caps, in paragraph (c)(1) of this section, that person may catch and retain crab harvested with the resulting IFQ with a single vessel. However, this provision does not apply to IFQ resulting from QS derived from transfer of an LLP crab license that occurred after June 10, 2002. Two or more persons may not catch and retain their IFQ with one vessel in excess of these limitations.

(4) A vessel use cap would not apply to a vessel if all of the CVO or CPO IFQ used on that vessel in a crab fishing year is held by a crab harvesting cooperative. This exemption is forfeited if that vessel is used to harvest any amount of CVO or CPO IFQ not held by a crab harvesting cooperative during the same crab fishing year.

(5) A person holding a CVC or CPC IFQ permit is required to be aboard the vessel upon which their IFQ is being harvested.

(6) A person holding CVO or CPO QS does not have to be aboard the vessel being used to harvest their IFQ if they hold at least a 10 percent ownership interest in the vessel upon which the IFQ is to be harvested and are represented on board the vessel by a crab IFQ hired master employed by that QS holder as authorized under §680.4.

(7) Ownership of a vessel means, for purposes of this section:

(i) A sole proprietor; or

## Fishery Conservation and Management

## § 680.44

(ii) A person that directly or indirectly owns a 10 percent or greater interest in an entity that owns a vessel.

[70 FR 10241, Mar. 2, 2005, as amended at 70 FR 33395, June 8, 2005; 70 FR 75421, 75422, Dec. 20, 2005; 71 FR 32865, June 7, 2006; 73 FR 29983, May 23, 2008; 73 FR 35088, June 20, 2008]

### § 680.43 Determinations and appeals.

See § 679.43 of this chapter.

### § 680.44 Cost recovery.

(a) *Cost recovery fees*—(1) *Responsibility*. The person documented on the IFQ, IPQ, CDQ, RCR, Commercial Fisheries Entry Commission (CFEC), or State of Alaska Commissioner's permit as the permit holder at the time of a CR crab landing must comply with the requirements of this section.

(i) Subsequent transfer of IFQ, IPQ, CDQ, or QS does not affect the permit holder's liability for noncompliance with this section.

(ii) Non-renewal of an RCR permit does not affect the permit holder's liability for noncompliance with this section.

(2) *Fee liability determination*. (i) All CR allocation holders and RCR permit holders will be subject to a fee liability for any CR crab debited from a CR allocation during a crab fishing year.

(ii) Fee liability must be calculated by multiplying the applicable fee percentage by the ex-vessel value of the CR crab received by the RCR at the time of receipt, except as provided by paragraph (b)(3) of this section.

(iii) NMFS will provide a summary to all RCR permit holders during the last quarter of the crab fishing year. The summary will explain the fee liability determination including the current fee percentage, details of raw crab pounds debited from CR allocations by permit, port or port-group, species, date, and prices.

(3) *Fee collection*. (i) All RCRs who receive CR crab are responsible for submitting the cost recovery payment for all CR crab received.

(ii) All RCRs who receive CR crab in a crab fishing year must maintain and submit records for any crab cost recovery fees collected under the corresponding RCR permit.

(4) *Payment*—(i) *Payment due date*. An RCR permit holder must submit any

crab cost recovery fee liability payment(s) to NMFS at the address provided in paragraph (a)(4)(iii) of this section no later than July 31 of the crab fishing year following the crab fishing year in which the payment for a CR crab landing was made.

(ii) *Payment recipient*. Make payment payable to NMFS.

(iii) *Payment address*. Mail payment and related documents to the Administrator, Alaska Region, NMFS, Attn: Operations, Management, & Information Division (OMI), P.O. Box 21668, Juneau, AK 99802-1668, Facsimile (907-586-7354). Payments may also be submitted electronically to NMFS via forms available from RAM or on the RAM area of the Alaska Region Home Page at <http://www.fakr.noaa.gov/ram>.

(iv) *Payment method*. Payment must be made in U.S. dollars by personal check drawn on a U.S. bank account, money order, bank certified check, or credit card.

(b) *Ex-vessel value determination and use*—(1) *General*. An RCR permit holder must use either the ex-vessel value determined for shoreside processors or the ex-vessel value determined for at-sea Catcher/Processors (CP), depending on their activity. Ex-vessel value includes all cash, services, or other goods-in-kind exchanged for CR crab.

(2) *Shoreside ex-vessel value*. Shoreside processing facilities must use the price paid at the time of purchase as ex-vessel value for the purposes of calculating fee liability. Shoreside processing facilities must include any subsequent retroactive payments as adjustments to the initial calculation of fee liability.

(3) *Catcher/processor ex-vessel value*—(i) *General*. Catcher/processors must use the corresponding CP standard price(s) for the purposes of calculating fee liability.

(ii) *CP standard prices*. As part of the summary described in paragraph (a)(2)(iii) of this section, the Regional Administrator will provide CP standard prices calculated for the current year during the last quarter of each crab fishing year. The CP standard prices will be described in U.S. dollars per raw crab pound, for CR crab debited from CR allocations during the current crab fishing year.

(iii) *Effective period.* CP standard prices established by NMFS shall apply to all landings made in the same crab fishing year as the CP standard price provided for that year and shall replace any CP standard prices previously provided by NMFS.

(iv) *Determination.* NMFS will calculate the CP standard prices to reflect, as closely as possible, the current crab fishing year's average shoreside processor price by fishery and by species, and any variations in reported shoreside ex-vessel values of CR crab. The Regional Administrator will base CP standard prices on the following types of information:

(A) Landed pounds by CR crab, port-group, and month;

(B) Total shoreside ex-vessel value by CR crab, port-group, and month; and

(C) Price adjustments, including retroactive payments.

(4) *Fee liability calculation.* All RCRs must base all fee liability calculations on the ex-vessel value that correlates to CR crab that is debited from a CR allocation and recorded in raw crab pounds.

(c) *Crab fee percentage*—(1) *Established percentage.* The crab fee percentage is the amount as determined by the factors and methodology described in paragraph (c)(2) of this section. This amount will be announced by publication in the FEDERAL REGISTER in accordance with paragraph (c)(3) of this section. This amount must not exceed 3 percent pursuant to 16 U.S.C. 1854(d)(2)(B).

(i) The calculated crab fee percentage will be divided equally between the harvesting and processing sectors.

(ii) Catcher/Processors must pay the full crab fee percentage determined by the fee percentage calculation for all CR crab debited from a CR allocation.

(2) *Calculating fee percentage value.* Each year NMFS shall calculate and publish the fee percentage according to the following factors and methodology:

(i) *Factors.* NMFS must use the following factors to determine the fee percentage:

(A) The catch to which the crab cost recovery fee will apply;

(B) The ex-vessel value of that catch; and

(C) The costs directly related to the management and enforcement of the Crab Rationalization Program.

(ii) *Methodology.* NMFS must use the following equations to determine the fee percentage:

Harvesting and Processing Sectors:  
 $[100 (DPC / V)] 0.5$   
 Catcher/Processors:  $100 (DPC / V)$

where:

“DPC” is the direct program costs for the Crab Rationalization Program for the previous fiscal year, and

“V” is the ex-vessel value of the catch subject to the crab cost recovery fee liability for the current year.

(3) *Publication*—(i) *General.* During the first quarter of each crab fishing year, NMFS shall calculate the crab fee percentage based on the calculations described in paragraph (c)(2) of this section.

(ii) *Effective period.* The calculated IFQ fee percentage remains in effect through the end of the crab fishing year in which it was determined.

(4) *Applicable percentage.* The RCR permit holder must use the crab fee percentage in effect at the time a CR crab is debited from a CR allocation to calculate the crab cost recovery fee liability for such CR crab. The RCR permit holder must use the crab fee percentage in effect at the time a CR crab is debited from a CR allocation to calculate the crab cost recovery fee liability for any retroactive payments for that CR crab.

(d) *Underpayment of fee liability.* (1) Under § 680.4, an applicant will not receive new IFQ, IPQ, or RCR permits until he or she submits a complete application. A complete application shall include full payment of an applicant's complete crab cost recovery fee liability as reported by the RCR.

(2) If an RCR fails to submit full payment for crab cost recovery fee liability by the date described in paragraph (a)(4) of this section, the Regional Administrator may:

(i) At any time thereafter send an IAD to the RCR permit holder stating that the RCR permit holder's estimated fee liability, as indicated by his or her own submitted information, is the crab cost recovery fee liability due from the RCR permit holder.

**Fishery Conservation and Management**

**Pt. 680, Table 1**

(ii) Disapprove any transfer of IFQ, IPQ, QS, or PQS to or from the RCR permit holder in accordance with §680.41.

(3) If an RCR fails to submit full payment by the application deadline described at §680.4, no IFQ or IPQ permit will be issued to that RCR for that crab fishing year.

(4) Upon final agency action determining that an RCR permit holder has not paid his or her crab cost recovery fee liability, the Regional Administrator may continue to withhold issuance of any new IFQ, IPQ, or RCR permit for any subsequent crab fishing years. If payment is not received by the 30th day after the final agency action, the matter will be referred to the appropriate authorities for purposes of collection.

(e) *Over payment.* Upon issuance of final agency action, any amount submitted to NMFS in excess of the crab cost recovery fee liability determined to be due by the final agency action will be returned to the RCR permit holder unless the permit holder requests the agency to credit the excess amount against the permit holder's future crab cost recovery fee liability.

(f) *Appeals and requests for reconsideration.* An RCR permit holder who receives an IAD may either appeal the IAD pursuant to 50 CFR 679.43 or request reconsideration. Within 60 days from the date of issuance of the IAD, the Regional Administrator may undertake reconsideration of the IAD on his or her own initiative. If a request for reconsideration is submitted or the Regional Administrator initiates reconsideration, the 60-day period for appeal under 50 CFR 679.43 will begin anew upon issuance of the Regional Administrator's reconsidered IAD. The Regional Administrator may undertake only one reconsideration of the IAD, if any. If an RCR permit holder fails to file an appeal of the IAD pursuant to 50 CFR 679.43 or request reconsideration within the time period provided, the IAD will become the final agency action. In any appeal or reconsideration of an IAD made under this section, an RCR permit holder has the burden of proving his or her claim.

(g) *Fee submission form.* An RCR must submit an RCR permit holder fee submission form according to §680.5(g).

[70 FR 10241, Mar. 2, 2005, as amended at 71 FR 44232, Aug. 4, 2006]

TABLE 1 TO PART 680—CRAB RATIONALIZATION (CR) FISHERIES

Fishery Code	CR Fishery	Geographic Area
BBR	Bristol Bay red king crab ( <i>Paralithodes camtschaticus</i> ).	In waters of the EEZ with: (1) A northern boundary of 58°30' N. lat., (2) A southern boundary of 54°36' N. lat., and (3) A western boundary of 168° W. long. and including all waters of Bristol Bay.
BSS	Bering Sea Snow crab ( <i>Chionoecetes opilio</i> ).	In waters of the EEZ with: (1) A northern and western boundary of the Maritime Boundary Agreement Line as that line is described in the text of and depicted in the annex to the Maritime Boundary Agreement between the United States and the Union of Soviet Socialist Republics signed in Washington, June 1, 1990, and as the Maritime Boundary Agreement Line as depicted on NOAA Chart No. 513 (6th edition, February 23, 1991) and NOAA Chart No. 514 (6th edition, February 16, 1991), and (2) A southern boundary of 54°30' N. lat. to 171° W. long., and then south to 54°36' N. lat.
EAG	Eastern Aleutian Islands golden king crab ( <i>Lithodes aequispinus</i> ).	In waters of the EEZ with: (1) An eastern boundary the longitude of Scotch Cap Light (164°44' W. long.) to 53°30' N. lat., then West to 165° W. long., (2) A western boundary of 174° W. long., and (3) A northern boundary of a line from the latitude of Cape Sarichef (54°36' N. lat.) westward to 171° W. long., then north to 55°30' N. lat., then west to 174° W. long.

Fishery Code	CR Fishery	Geographic Area
EBT	Eastern Bering Sea Tanner crab ( <i>Chionoecetes baird</i> ).	In waters of the EEZ with: (1) <i>A western boundary</i> the longitude of 166° W. long., (2) <i>A northern boundary</i> of the Maritime Boundary Agreement Line as that line is described in the text of and depicted in the annex to the Maritime Boundary Agreement between the United States and the Union of Soviet Socialist Republics signed in Washington, June 1, 1990, and as the Maritime Boundary Agreement Line as depicted on NOAA Chart No. 513 (6th edition, February 23, 1991) and NOAA Chart No. 514 (6th edition, February 16, 1991), and (3) <i>A southern boundary</i> of 54°30' N. lat.
PIK	Pribilof red king and blue king crab ( <i>Paralithodes camtschaticus</i> and <i>P. platypus</i> ).	In waters of the EEZ with: (1) <i>A northern boundary</i> of 58°30' N. lat., (2) <i>An eastern boundary</i> of 168° W. long., and (3) <i>A southern boundary</i> line from 54°36' N. lat., 168° W. long., to 54°36' N. lat., 171° W. long., to 55°30' N. lat., 171° W. long., to 55°30' N. lat., 173°30' E. lat., and then westward to the Maritime Boundary Agreement Line as that line is described in the text of and depicted in the annex to the Maritime Boundary Agreement between the United States and the Union of Soviet Socialist Republics signed in Washington, June 1, 1990, and as the Maritime Boundary Agreement Line as depicted on NOAA Chart No. 513 (6th edition, February 23, 1991) and NOAA Chart No. 514 (6th edition, February 16, 1991).
SMB	St. Matthew blue king crab ( <i>Paralithodes platypus</i> ).	In waters of the EEZ with: (1) <i>A northern boundary</i> of 62° N. lat., (2) <i>A southern boundary</i> of 58°30' N. lat., and (3) <i>A western boundary</i> of the Maritime Boundary Agreement Line as that line is described in the text of and depicted in the annex to the Maritime Boundary Agreement between the United States and the Union of Soviet Socialist Republics signed in Washington, June 1, 1990, and as the Maritime Boundary Agreement Line as depicted on NOAA Chart No. 513 (6th edition, February 23, 1991) and NOAA Chart No. 514 (6th edition, February 16, 1991).
WAG	Western Aleutian Islands golden king crab ( <i>Lithodes aequispinus</i> ).	In waters of the EEZ with: (1) <i>An eastern boundary</i> the longitude 174° W. long., (2) <i>A western boundary</i> the Maritime Boundary Agreement Line as that line is described in the text of and depicted in the annex to the Maritime Boundary Agreement between the United States and the Union of Soviet Socialist Republics signed in Washington, June 1, 1990, and as the Maritime Boundary Agreement Line as depicted on NOAA Chart No. 513 (6th edition, February 23, 1991) and NOAA Chart No. 514 (6th edition, February 16, 1991), and (3) <i>A northern boundary</i> of a line from the latitude of 55°30' N. lat., then west to the U.S.-Russian Convention line of 1867.
WAI	Western Aleutian Islands red king crab ( <i>Paralithodes camtschaticus</i> ).	In waters of the EEZ with: (1) <i>An eastern boundary</i> the longitude 179° W. long., (2) <i>A western boundary</i> of the Maritime Boundary Agreement Line as that line is described in the text of and depicted in the annex to the Maritime Boundary Agreement between the United States and the Union of Soviet Socialist Republics signed in Washington, June 1, 1990, and as the Maritime Boundary Agreement Line as depicted on NOAA Chart No. 513 (6th edition, February 23, 1991) and NOAA Chart No. 514 (6th edition, February 16, 1991), and (3) <i>A northern boundary</i> of a line from the latitude of 55°30' N. lat., then west to the Maritime Boundary Agreement Line as that line is described in the text of and depicted in the annex to the Maritime Boundary Agreement between the United States and the Union of Soviet Socialist Republics signed in Washington, June 1, 1990, and as the Maritime Boundary Agreement Line as depicted on NOAA Chart No. 513 (6th edition, February 23, 1991) and NOAA Chart No. 514 (6th edition, February 16, 1991).
WBT	Western Bering Sea Tanner crab ( <i>Chionoecetes baird</i> ).	In waters of the EEZ with: (1) <i>An eastern boundary</i> the longitude of 166° W. long., (2) <i>A northern and western boundary</i> of the Maritime Boundary Agreement Line as that line is described in the text of and depicted in the annex to the Maritime Boundary Agreement between the United States and the Union of Soviet Socialist Republics signed in Washington, June 1, 1990, and as the Maritime Boundary Agreement Line as depicted on NOAA Chart No. 513 (6th edition, February 23, 1991) and NOAA Chart No. 514 (6th edition, February 16, 1991), and (3) <i>A southern boundary</i> of 54°30' N. lat. to 171° W. long., and then south to 54°36' N. lat.

Fishery Conservation and Management

Pt. 680, Table 6

TABLE 2 TO PART 680—CRAB SPECIES CODE

Species code	Common name	Scientific name
900 .....	Box .....	<i>Lopholithodes mandtii</i> .
910 .....	Dungeness .....	<i>Cancer magister</i> .
921 .....	Red king crab .....	<i>Paralithodes camtschaticus</i> .
922 .....	Blue king crab .....	<i>Paralithodes platypus</i> .
923 .....	Golden (brown) king crab .....	<i>Lithodes aequispinus</i> .
924 .....	Scarlet king crab .....	<i>Lithodes couesi</i> .
931 .....	Tanner crab .....	<i>Chionoecetes bairdi</i> .
932 .....	Snow crab .....	<i>Chionoecetes opilio</i> .
933 .....	Grooved Tanner crab .....	<i>Chionoecetes tanneri</i> .
934 .....	Triangle Tanner crab .....	<i>Chionoecetes angulatus</i> .
940 .....	Korean horsehair crab .....	<i>Erimacrus isenbeckii</i> .
951 .....	Multispinus crab .....	<i>Paralomis multispinus</i> .
953 .....	Verrilli crab .....	<i>Paralomis verrilli</i> .

TABLE 3A TO PART 680—CRAB DELIVERY CONDITION CODES  
 [The condition of the fish or shellfish at the point it is weighed and recorded on the ADF&G fish ticket]

Code	Description
01 .....	Whole crab, live.
79 .....	Deadloss.

TABLE 3B TO PART 680—CRAB DISPOSITION OR PRODUCT CODES

Code	Description
80 .....	Sections.
95 .....	Personal use—not sold.
97 .....	Other retained product (specify condition).

TABLE 3C TO PART 680—CRAB PRODUCT CODES FOR ECONOMIC DATA REPORTS

Code	Description
01 .....	Whole crab.
80 .....	Sections.
81 .....	Meats.
97 .....	Other (specify).

TABLE 4 TO PART 680—CRAB PROCESS CODES

Process code	Description
0 .....	Other (specify).
1 .....	Fresh.
2 .....	Frozen.
3 .....	Salted/brined.
6 .....	Cooked.
7 .....	Live.
18 .....	Fresh/vacuum pack.
21 .....	Frozen/block.
22 .....	Frozen/shatter pack.
28 .....	Frozen/vacuum pack.

TABLE 5 TO PART 680—CRAB SIZE CODES

Size code	Description
1 .....	Standard or large sized crab or crab sections.
2 .....	Smaller size crab or crab sections, e.g., snow crab less than 4 inches.

TABLE 6 TO PART 680—CRAB GRADE CODES

Grade/code	Description
1 .....	Standard or premium quality crab or crab sections.

Grade/code	Description
2 .....	Lower quality product, e.g., dirty shelled crab or a pack that is of lower quality than No. 1 crab.

TABLE 7 TO PART 680—INITIAL ISSUANCE OF CRAB QS BY CRAB QS FISHERY

Column A: Crab QS Fisheries	Column B: Qualifying Years for QS	Column C: Eligibility Years for CVC and CPC QS	Column D: Recent Participation Seasons for CVC and CPC QS	Column E: Subset of Qualifying Years
For each crab QS fishery the Regional Administrator shall calculate (see §680.40(c)(2):	QS for any qualified person based on that person's total legal landings of crab in each of the crab QS fisheries for any:	In addition, each person receiving CVC and CPC QS must have made at least one landing per year, as recorded on a State of Alaska fish ticket, in any three years during the base period described below:	In addition, each person receiving CVC or CPC QS, must have made at least one landing, as recorded on a State of Alaska fish ticket, in at least 2 of the last 3 fishing seasons in each of the crab QS fisheries as those seasons are described below:	The maximum number of qualifying years that can be used to calculate QS for each QS fishery is:
1. Bristol Bay red king crab (BBR)	4 years of the 5-year QS base period beginning on: (1) November 1–5, 1996; (2) November 1–5, 1997; (3) November 1–6, 1998; (4) October 15–20, 1999; (5) October 16–20, 2000.	3 years of the 5-year QS base period beginning on: (1) November 1–5, 1996; (2) November 1–5, 1997; (3) November 1–6, 1998; (4) October 15–20, 1999; (5) October 16–20, 2000.	(1) October 15–20, 1999. (2) October 16–20, 2000. (3) October 15–18, 2001.	4 years
2. Bering Sea snow crab (BSS)	4 years of the 5-year period beginning on: (1) January 15, 1996 through February 29, 1996; (2) January 15, 1997 through March 21, 1997; (3) January 15, 1998 through March 20, 1998; (4) January 15, 1999 through March 22, 1999; (5) April 1–8, 2000.	3 years of the 5-year period beginning on: (1) January 15, 1996 through February 29, 1996; (2) January 15, 1997 through March 21, 1997; (3) January 15, 1998 through March 20, 1998; (4) January 15, 1999 through March 22, 1999; (5) April 1–8, 2000.	(1) April 1–8, 2000. (2) January 15, 2001 through February 14, 2001. (3) January 15, 2002 through February 8, 2002.	4 years
3. Eastern Aleutian Islands golden king crab (EAG)	5 years of the 5-year base period beginning on: (1) September 1, 1996 through December 25, 1996; (2) September 1, 1997 through November 24, 1997; (3) September 1, 1998 through November 7, 1998; (4) September 1, 1999 through October 25, 1999; (5) August 15, 2000 through September 24, 2000.	3 years of the 5-year base period beginning on: (1) September 1, 1996 through December 25, 1996; (2) September 1, 1997 through November 24, 1997; (3) September 1, 1998 through November 7, 1998; (4) September 1, 1999 through October 25, 1999; (5) August 15, 2000 through September 25, 2000.	(1) September 1 1999 through October 25, 1999. (2) August 15, 2000 through September 24, 2000. (3) August 15, 2001 through September 10, 2001.	5 years
4. Eastern Bering Sea Tanner crab (EBT)	4 of the 6 seasons beginning on: (1) November 15, 1991 through March 31, 1992; (2) November 15, 1992 through March 31, 1993; (3) November 1–10, 1993, and November 20, 1993 through January 1, 1994; (4) November 1–21, 1994; (5) November 1–16, 1995; (6) November 1–5, 1996 and November 15–27, 1996.	3 of the 6 seasons beginning on: (1) November 15, 1991 through March 31, 1992; (2) November 15, 1992 through March 31, 1993; (3) November 1–10, 1993, and November 20, 1993 through January 1, 1994; (4) November 1–21, 1994; (5) November 1–16, 1995; (6) November 1–5, 1996 and November 15–27, 1996.	In any 2 of the last 3 seasons prior to June 10, 2002 in the Eastern Aleutian Island golden (brown) king crab, Western Aleutian Island golden (brown) king crab, Bering Sea snow crab, or Bristol Bay red king crab fisheries.	4 years

**Fishery Conservation and Management**

**Pt. 680, Table 8**

<b>Column A:</b> Crab QS Fisheries	<b>Column B:</b> Qualifying Years for QS	<b>Column C:</b> Eligibility Years for CVC and CPC QS	<b>Column D:</b> Recent Participation Seasons for CVC and CPC QS	<b>Column E:</b> Subset of Qualifying Years
5. Pribilof red king and blue king crab (PIK)	4 years of the 5-year period beginning on: (1) September 15–21, 1994; (2) September 15–22, 1995; (3) September 15–26, 1996; (4) September 15–29, 1997; (5) September 1–28, 1998.	3 years of the 5-year period beginning on: (1) September 15–21, 1994; (2) September 15–22, 1995; (3) September 15–26, 1996; (4) September 15–29, 1997; (5) September 15–28, 1998.	In any 2 of the last 3 seasons prior to June 10, 2002 in the Eastern Aleutian Island golden (brown) king crab, Western Aleutian Island golden (brown) king crab, Bering Sea snow crab, or Bristol Bay red king crab fisheries, except that persons applying for an allocation to receive QS based on legal landings made aboard a vessel less than 60 feet (18.3 m) LOA at the time of harvest are exempt from this requirement.	4 years
6. St. Matthew blue king crab (SMB)	4 years of the 5-year period beginning on: (1) September 15–22, 1994; (2) September 15–20, 1995; (3) September 15–23, 1996; (4) September 15–22, 1997; (5) September 15–26, 1998.	3 years of the 5-year period beginning on: (1) September 15–22, 1994; (2) September 15–20, 1995; (3) September 15–23, 1996; (4) September 15–22, 1997; and (5) September 15–26, 1998.	In any 2 of the last 3 seasons prior to June 10, 2002 in the Eastern Aleutian Island golden (brown) king crab, Western Aleutian Island golden (brown) king crab, Bering Sea snow crab, or Bristol Bay red king crab fisheries.	4 years
7. Western Aleutian Islands brown king crab (WAG)	5 of the 5 seasons beginning on: (1) September 1, 1996 through August 31, 1997; (2) September 1, 1997 through August 21, 1998; (3) September 1, 1998 through August 31, 1999; (4) September 1, 1999 through August 14, 2000; (5) August 15, 2000 through March 28, 2001.	3 of the 5 seasons beginning on: (1) September 1, 1996 through August 31, 1997; (2) September 1, 1997 through August 31, 1998; (3) September 1, 1998 through August 31, 1999; (4) September 1, 1999 through August 14, 2000; (5) August 15, 2000 through March 28, 2001.	(1) September 1, 1999 through August 14, 2000. (2) August 15, 2000 through March 28, 2001. (3) August 15 2001 through March 30, 2002.	5 years
8. Western Aleutian Islands red king crab (WAI)	3 of the 4 seasons beginning on: (1) November 1, 1992 through January 15, 1993; (2) November 1, 1993 through February 15, 1994; (3) November 1–28, 1994; (4) November 1, 1995 through February 13, 1996.	3 of the 4 seasons beginning on: (1) November 1, 1992 through January 15, 1993; (2) November 1, 1993 through February 15, 1994; (3) November 1–28, 1994; (4) November 1, 1995 through February 13, 1996.	In any 2 of the last 3 seasons prior to June 10, 2002 in the Eastern Aleutian Island golden (brown) king crab, Western Aleutian Island golden (brown) king crab, Bering Sea snow crab, or Bristol Bay red king crab fisheries.	3 years
9. Western Bering Sea Tanner crab (WBT)	4 of the 6 seasons beginning on: (1) November 15, 1991 through March 31, 1992; (2) November 15, 1992 through March 31, 1993; (3) November 1–10, 1993, and November 20, 1993 through January 1, 1994; (4) November 1–21, 1994; (5) November 1–16, 1995; (6) November 1–5, 1996 and November 15–27, 1996.	3 of the 6 seasons beginning on: (1) November 15, 1991 through March 31, 1992; (2) November 15, 1992 through March 31, 1993; (3) November 1–10, 1993, and November 20, 1993 through January 1, 1994; (4) November 1–21, 1994; (5) November 1–16, 1995; (6) November 1–5, 1996 and November 15–27, 1996.	In any 2 of the last 3 seasons prior to June 10, 2002 in the Eastern Aleutian Island golden (brown) king crab, Western Aleutian Island golden (brown) king crab, Bering Sea snow crab, or Bristol Bay red king crab fisheries.	4 years

[71 FR 32867, June 7, 2006]

**TABLE 8 TO PART 680—INITIAL QS AND PQS POOL FOR EACH CRAB QS FISHERY**

Crab QS Fishery	Initial QS Pool	Initial PQS Pool
BBR Bristol Bay red king crab	400,000,000	400,000,000

Pt. 680, Table 9

50 CFR Ch. VI (10-1-08 Edition)

Crab QS Fishery	Initial QS Pool	Initial PQS Pool
BSS Bering Sea snow crab ( <i>C. opilio</i> )	1,000,000,000	1,000,000,000
EAG Eastern Aleutian Islands golden king crab	10,000,000	10,000,000
EBT Eastern Bering Sea Tanner crab ( <i>C. bairdi</i> )	200,000,000	200,000,000
PIK Pribilof Islands red and blue king crab	30,000,000	30,000,000
SMB St. Matthew blue king crab	30,000,000	30,000,000
WAG Western Aleutian Islands golden king crab	40,000,000	40,000,000
WAI Western Aleutian Islands red king crab	60,000,000	60,000,000
WBT Western Bering Sea Tanner crab ( <i>C. bairdi</i> )	200,000,000	200,000,000

TABLE 9 TO PART 680—INITIAL ISSUANCE OF CRAB PQS BY CRAB QS FISHERY

Column A: For each crab QS fishery:	Column B: The Regional Administrator shall calculate PQS for any qualified person based on that person's total legal purchase of crab in each of the crab QS fisheries for any...
Bristol Bay red king crab (BBR)	<i>3 years of the 3-year QS base period beginning on:</i> (1) November 1–5, 1997; (2) November 1–6, 1998; and (3) October 15–20, 1999.
Bering Sea snow crab (BSS)	<i>3 years of the 3-year period beginning on:</i> (1) January 15, 1997 through March 21, 1997; (2) January 15, 1998 through March 20, 1998; and (3) January 15, 1999 through March 22, 1999.
Eastern Aleutian Island golden king crab (EAG)	<i>4 years of the 4-year base period beginning on:</i> (1) September 1, 1996 through December 25, 1996; (2) September 1, 1997 through November 24, 1997; (3) September 1, 1998 through November 7, 1998; and (4) September 1, 1999 through October 25, 1999.
Eastern Bering Sea Tanner crab (EBT)	Equivalent to 50 percent of the total legally processed crab in the Bering Sea snow crab fishery during the qualifying years established for that fishery, and 50 percent of the total legally processed crab in the Bristol Bay red king crab fishery during the qualifying years established for that fishery.
Pribilof Islands red and blue king crab (PIK)	<i>3 years of the 3-year period beginning on:</i> (1) September 15–26, 1996; (2) September 15–29, 1997; and (3) September 15–28, 1998.
St. Matthew blue king crab (SMB)	<i>3 years of the 3-year period beginning on:</i> (1) September 15–23, 1996; (2) September 15–22, 1997; and (3) September 15–26, 1998.
Western Aleutian Island golden king crab (WAG)	<i>4 years of the 4-year base period beginning on:</i> (1) September 1, 1996 through August 31, 1997; (2) September 1, 1997 through August 31, 1998; (3) September 1, 1998 through August 31, 1999; and (4) September 1, 1999 through August 14, 2000.
Western Aleutian Islands red king crab (WAI)	Equivalent to the total legally processed crab in the Western Aleutian Islands golden (brown) king crab fishery during the qualifying years established for that fishery.
Western Bering Sea Tanner crab (WBT)	Equivalent to 50 percent of the total legally processed crab in the Bering Sea snow crab fishery during the qualifying years established for that fishery, and 50 percent of the total legally processed crab in the Bristol Bay red king crab fishery during the qualifying years established for that fishery.

[71 FR 32867, June 7, 2006]