

## § 680.1

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

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### 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

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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;

(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.

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*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 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 crab IFQ derived from QS initially issued to persons who historically held CFEC crab permits and signed fish tickets for qualifying landings based on pounds delivered raw; to annually harvest, but not process, CR crab onboard the vessel used to harvest that crab.

(2) *Catcher vessel owner (CVO) IFQ* means crab IFQ derived from QS initially issued to persons who held LLP crab permits and had qualifying landings based on pounds delivered raw; to annually harvest, but not process, CR crab onboard the vessel used to harvest that crab.

(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 crab IFQ derived from QS initially issued to persons who held LLP crab permits and had qualifying landings derived from landings processed at sea, to annually harvest and process CR crab.

(4) *Catcher/processor crew (CPC) IFQ* means crab IFQ derived from QS initially issued to persons who historically held CFEC crab permits and signed fish tickets for qualifying landings based on landings processed at sea, to annually harvest and process CR crab.

*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 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.

*Fishing trip for purposes of § 680.7(e)(2)* means the period beginning when a vessel operator commences harvesting crab in a crab QS fishery and ending when the vessel operator offloads or transfers any processed or unprocessed crab in that crab QS fishery from that vessel.

*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/processors, 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/IPQ 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 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.

*Sideboards* (see § 680.22).

*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.

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*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.

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#### § 680.3 Relation to other laws.

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

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(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 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