(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.

(12) 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.

§ 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.
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 member (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
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 transfer 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 transfer of crab harvesting cooperative IFQ—(1) Completed application. NMFS will process an application for transfer of crab harvesting cooperative individual fishing quota (IFQ) provided that a paper or electronic request form is completed by the applicant, with all applicable fields accurately filled in, and all required additional documentation is attached.

(ii) Electronic submittal. The transferor’s designated representative must log into the system and create a transfer request as indicated on the computer screen. By using the transferor’s NMFS ID, password, and Transfer Key and submitting the transfer request, the designated representative certifies that all information is true, correct, and complete.
(3) Certification of transferee—(1) Non-
electronic submittal. The transferee’s
designated representative must sign
and date the application certifying
that all information is true, correct,
and complete.

(ii) Electronic submittal. The trans-
feree’s designated representative must
log into the system and accept the
transfer request as indicated on the
computer screen. By using the trans-
feree’s NMFS ID, password, and Trans-
fer Key, the designated representative
certifies that all information is true,
correct, and complete.

(4) Submittal information. An applica-
tion for transfer of crab harvesting co-
operative IFQ crab QS or PQS may be
submitted to NMFS as instructed on
the application. Forms are available on
the NMFS Alaska Region website at
http://alaskafisheries.noaa.gov, or by
contacting NMFS at 800–304–4846, Op-
tion 2.

(g) Inseason changes to crab harvesting
coopereative membership. The following
requirements address inseason changes
to crab harvesting cooperative mem-
bership.

(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 har-
vesting cooperative’s annual IFQ per-
mit 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 co-
operative is required to admit a new
 QS holder that the crab harvesting co-
operative chooses not to admit, regard-
less 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 member-
ship, a crab harvesting cooperative
must submit to NMFS a revised applica-
tion 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 revi-
sions that have been made. Upon ap-
proval of the membership change,
NMFS will issue a revised crab har-
vesting cooperative IFQ permit that re-

d
cs the change. A new member may
not fish on behalf of a cooperative ex-
cpt as a crab IFQ hired master until
NMFS issues a revised crab harvesting
coooperative 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-in-
terest. However, the crab harvesting
cooperative IFQs generated by that
person’s QS holdings remain under the
control of the crab harvesting coopera-
tive for the valid duration of the crab
harvesting cooperative IFQ permit.
Each crab harvesting cooperative is
free to establish its own internal proce-
dures for admitting a successor-in-in-
terest during the fishing season to re-

d 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 coopera-
tive to admit a successor-in-interest
that the cooperative chooses not to
admit. If a crab harvesting cooperative
choose to admit the successor-in-in-
terest for membership, then the crab
§ 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 closures under paragraph (a)(1)(i) of this section that landed less than 750,000 lb (340.2 mt), in raw weight equivalents, of Bering Sea snow crab and more than 680 mt (1,499,143 lb), in round weight equivalents, of Pacific cod harvested from the GOA between January 1, 1996, and December 31, 2000; and

(ii) Any LLP license that:

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

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

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

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

(ii) Any LLP license that:

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

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

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

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

(ii) Any LLP license that:

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

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