§ 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.

(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 each member of 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.

(b) 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 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
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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 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.

(2) Certification of transferor—(i) Non-electronic submittal. The transferor’s designated representative must sign and date the application certifying that all information is true, correct, and complete. The transferor’s designated representative must submit the paper application as indicated on the application.

(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—(i) 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 transferee’s designated representative must log into the system and accept the transfer request as indicated on the computer screen. By using the transferee’s NMFS ID, password, and Transfer Key, the designated representative certifies that all information is true, correct, and complete.

(4) Submittal information. An application for transfer of crab harvesting cooperative 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, Option 2.

(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
§ 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.