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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 680

RIN 0648-BG84

Fisheries of the Exclusive Economic Zone off Alaska; Bering Sea and Aleutian Islands Management Area; Bering Sea and Aleutian Islands Crab Rationalization Program

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability of fishery management plan amendment; request for comments.

SUMMARY: The North Pacific Fishery Management Council (Council) submitted Amendment 48 to the Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs (Crab FMP) to NMFS for review. If approved, Amendment 48 would revise the Crab FMP to specify how NMFS determines the amount of limited access privileges held and used by groups in the Western Alaska Community Development Quota Program (CDQ Program) for the purposes of managing the excessive share limits under the Crab Rationalization (CR) Program. Amendment 48 is necessary to make the Crab FMP consistent with Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requirements and NMFS' current method of managing excessive share limits for CDQ groups in the CR Program. This action is intended to promote the goals and objectives of the Magnuson-Stevens Act, the Crab FMP, and other applicable laws.

DATES: Submit comments on or before [*INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER*].

ADDRESSES: Submit comments on this document, identified by NOAA-NMFS-2017-0038, by any one of the following methods.

- Federal e-Rulemaking Portal: Go to www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2017-0038, click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.
- Mail: Submit written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Mail comments to P.O. Box 21668, Juneau, AK 99802-1668.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period may not be considered by NMFS. All comments received are a part of the public record and will be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous).

Electronic copies of the Regulatory Impact Review (RIR) and the Categorical Exclusion prepared for Amendment 48 may be obtained from <http://www.regulations.gov> or from the NMFS Alaska Region website at <http://alaskafisheries.noaa.gov>.

The Environmental Impact Statement (EIS), RIR, Final Regulatory Flexibility Analysis, and Social Impact Assessment prepared for the CR Program are available from the NMFS Alaska Region Web site at <http://alaskafisheries.noaa.gov>.

FOR FURTHER INFORMATION CONTACT: Keeley Kent, 907-586-7228.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Act requires that each regional fishery management council submit any fishery management plan amendment it

prepares to NMFS for review and approval, disapproval, or partial approval by the Secretary of Commerce. The Magnuson-Stevens Act also requires that NMFS, upon receiving a fishery management plan amendment, immediately publish a notice in the *Federal Register* announcing that the amendment is available for public review and comment. This notice announces that proposed Amendment 48 to the Crab FMP is available for public review and comment.

NMFS manages the king and Tanner crab fisheries in the U.S. exclusive economic zone of the Bering Sea and Aleutian Islands (BSAI) under the Crab FMP. The Council prepared, and NMFS approved, the Crab FMP under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801 *et seq.* Regulations governing U.S. fisheries and implementing the Crab FMP appear at 50 CFR parts 600 and 680.

The CR Program was implemented on April 1, 2005 (70 FR 10174). The CR Program established a limited access privilege program for nine crab fisheries in the BSAI and assigned quota share (QS) to persons based on their historic participation in one or more of those nine BSAI crab fisheries during a specific period. Each year, a person who holds QS may receive an exclusive harvest privilege for a portion of the annual total allowable catch. This annual exclusive harvest privilege is called individual fishing quota (IFQ).

NMFS also issued processor quota share (PQS) under the CR Program. Each year PQS yields an exclusive privilege to process a portion of the IFQ in each of the nine BSAI crab fisheries. This annual exclusive processing privilege is called individual processor quota (IPQ). Only a portion of the QS issued yields IFQ that is required to be delivered to a processor with IPQ; this IFQ is called Class A IFQ. Each year there is a one-to-one match of the pounds of Class A IFQ with the total pounds of IPQ issued in each crab fishery.

The CDQ Program was established by the Council and NMFS in 1992, and in 1996, authorization for the Program was incorporated into the Magnuson-Stevens Act. The purpose

of the CDQ Program is 1) to provide eligible western Alaska villages with the opportunity to participate and invest in fisheries in the BSAI, 2) to support economic development in western Alaska, 3) to alleviate poverty and provide economic and social benefits for residents of western Alaska, and 4) to achieve sustainable and diversified local economies in western Alaska (16 U.S.C. 1855(i)(1)(A)).

Section 305(i) of the Magnuson-Stevens Act describes the CDQ Program and identifies the villages eligible to participate in the CDQ Program through the six entities specified in Section 305(i)(1)(D) as the CDQ groups (16 U.S.C. 1855(i)). Regulations at 50 CFR 679.2 define the term “CDQ group” as an entity identified as eligible for the CDQ Program under 16 U.S.C. 1855(i)(1)(D). The CDQ Program receives annual apportionments of total allowable catches (TACs) for a variety of commercially valuable species in the BSAI groundfish, crab, and halibut fisheries, which are in turn allocated among the six different CDQ groups. In addition to their allocations under the CDQ Program, CDQ groups participate in the AFA and CR Program fisheries by purchasing QS and PQS or through ownership of vessels or processors that participate in the fisheries. The CDQ groups have purchased both QS and PQS under the CR Program.

Section 303A(c)(5)(D) of the Magnuson-Stevens Act requires the Council and NMFS to establish excessive share limits for limited access privilege (LAP) programs to prevent excessive accumulation of privileges by participants in the LAP programs (16 U.S.C. 1853a(c)(5)(D)). The intent of these limits is to prevent excessive consolidation in the harvesting and processing sectors in order to maintain an appropriate distribution of economic and social benefits for fishery participants and communities. Because determination of excessive shares must consider the specific circumstances of each fishery, the Council has implemented different excessive share limits in the LAP programs in Alaska’s fisheries, including the CR Program.

The excessive share limit regulations prohibit a person from holding and using more than a specific portion of the LAPs allocated under the CR Program. Under 50 CFR 679.2, “person” includes individuals, corporations, partnerships, associations, and other non-individual entities. To monitor holdings and use of LAPs, NMFS determines what portion of a program’s harvesting and processing privileges a person holds and uses to ensure that no person holds or uses more privileges than authorized by the excessive share limit established for each LAP.

NMFS determines a person’s holding and use of a LAP by summing 1) the amount directly held and used by that person, and 2) the amount held and used by that person indirectly through an ownership interest in or control of another entity that also holds and uses the LAP. Businesses that hold and use LAPs in the CR Program are often composed of multiple owners that have ownership interests in multiple fishing businesses. In cases where a LAP is held by a business entity with more than one owner, NMFS applies the excessive share limits (also called holding and use limits or caps) to each entity that has an ownership interest in or control of the LAP to monitor whether those entities each exceed the established caps. Ownership attribution refers to the method NMFS uses to assess the relationships between different entities that participate in LAP programs.

NMFS uses two ownership attribution methods to assess these relationships. The two methods for attribution are the “individual and collective” rule and the “10-percent rule.” Under the individual and collective rule, a person is attributed holding or use of LAPs proportionally to their ownership in or control of other entities that hold or use LAPs. For example, if Company A owns or controls 15 percent of Company B that holds LAPs, Company A would be attributed 15 percent of the holding or use of those LAPs. In contrast, under the 10-percent rule, a person is attributed 100 percent of an entity’s LAPs if that person owns or otherwise controls ten percent or more of that entity. Thus, if Company A owns or

controls 10 percent or more of Company B, then all of Company B's holdings of LAPs are attributed to Company A. The individual and collective rule is less restrictive than the 10-percent rule because a person is only attributed holding or use in proportion to how much that person owns or controls of other entities, rather than attributing 100 percent of the other entity's LAP holdings once the 10-percent threshold is met.

When the Council recommended the CR Program, it expressed concern about the potential for excessive consolidation of QS and PQS, in which too few persons control all of the QS or PQS and the resulting annual IFQ and IPQ. The Council determined that excessive consolidation could have adverse effects on crab markets, price setting negotiations between harvesters and processors, employment opportunities for harvesting and processing crew, tax revenue to communities in which crab are landed, and other factors considered and described in the CR Program EIS. To address this concern, the CR Program includes limits on the amount of QS and PQS that a person can hold and the amount of IFQ and IPQ that a person can use. To facilitate the monitoring of these limits, NMFS requires holders of QS and PQS that are non-individual entities to annually submit information on their ownership structure, down to the individual level, and on each owner's percentage holdings in the entity. Holding and use limits for QS and IFQ vary across CR Program fisheries because of different fleet characteristics and the differences in historic dependency of participants on the different crab fisheries. Under 50 CFR 680.42(a)(2), NMFS applies holding and use limits on QS and IFQ using the individual and collective rule for all participants, including CDQ groups, as was recommended by the Council for monitoring harvesting privileges.

For processing privileges, the CR Program limits a person to holding no more than 30 percent of the PQS initially issued in the fishery, and to using no more than the amount of IPQ resulting from 30 percent of the PQS initially issued in a given fishery, with a limited exemption for persons receiving more than 30 percent of the initially-issued PQS (50 CFR

680.42(b)). The rationale for holding and use limits is described in the CR Program EIS and the final rule implementing the CR Program (70 FR 10174, 10175; March 2, 2005). Under 50 CFR 680.42(b)(3), NMFS applies holding and use limits on PQS and IPQ using the 10-percent rule, as was recommended by the Council and as was addressed in the preamble to the proposed rule for the CR Program (69 FR 63200, 63219 & 63226; October 29, 2004).

When the CR Program was implemented, NMFS used the 10-percent rule to monitor PQS and IPQ holding and use limits in the CR Program for all program participants, including CDQ groups. In 2006, the Coast Guard and Maritime Transportation Act of 2006 (Public Law 109–241; the Coast Guard Act) revised the Magnuson-Stevens Act to specify that CDQ groups would be subject to excessive share ownership, harvesting, or processing limitations only to the extent of their proportional ownership (16 U.S.C. 1855(i)(1)(F)(i)). Since the 2006 amendment to the Magnuson-Stevens Act, NMFS has used the individual and collective rule for CDQ groups to monitor excessive share limits for CDQ groups in the CR Program. The individual and collective rule allows CDQ groups to hold and use more PQS and IPQ than non-CDQ persons because non-CDQ persons will remain subject to the more restrictive ownership attribution method (the 10-percent rule).

Amendment 48 would revise the Crab FMP to make it consistent with NMFS' ownership attribution process for calculating holding and use of PQS and IPQ to monitor excessive share limits for CDQ groups in the CR Program. Amendment 48 would revise Section 2.7.1 under Chapter 11 of the FMP in the *Processing Sector Elements* section of the Crab FMP to specify that PQS and IPQ holding and use caps for CDQ groups are applied using the individual and collective rule, without continuing to use the 10-percent rule for determining whether an entity is included in calculating a CDQ group's holding and use caps. For example, if a CDQ group holds 15 percent of a company that holds or uses PQS or IPQ, Amendment 48 to the Crab FMP would clarify that the CDQ group would be attributed 15

percent of the holding or use of that PQS or IPQ. Amendment 48 would not revise the Crab FMP for the QS and IFQ holding and use limits under the CR Program because NMFS uses the individual and collective rule to monitor QS and IFQ holding and use limits for all program participants, including CDQ groups. NMFS has used the individual and collective rule to determine holding and use of PQS and IPQ by CDQ groups since enactment of the Coast Guard Act; however, NMFS has not revised the Crab FMP to reflect this statutory change or NMFS' current process.

Amendment 48 would benefit CDQ groups and the public by revising the Crab FMP for consistency with the Magnuson-Stevens Act. Amendment 48 would also update the Crab FMP to specify the method NMFS currently uses to determine holding and use of processing privileges by CDQ groups for purposes of monitoring excessive share limits for the CR Program.

Public comments are solicited on proposed Amendment 48 to the Crab FMP through the end of the comment period (see **DATES**). NMFS intends to publish in the *Federal Register* and seek public comment on a proposed rule that would implement Amendment 48, following NMFS' evaluation of the proposed rule under the Magnuson-Stevens Act. Public comments on the proposed rule must be received by the end of the comment period on Amendment 48 to be considered in the approval/disapproval decision on Amendment 48. All comments received by the end of the comment period on Amendment 48, whether specifically directed to the amendment or the proposed rule will be considered in the amendment approval/disapproval decision. Comments received after that date will not be considered in the approval/disapproval decision on the amendment. To be considered,

comments must be received, not just postmarked or otherwise transmitted, by the last day of the comment period.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 31, 2017.

Emily H. Menashes,
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Office of Sustainable Fisheries,
National Marine Fisheries Service.

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