

NOTICE OF OFFICE OF MANAGEMENT AND BUDGET ACTION

Diana Hynek  
Departmental Paperwork Clearance Officer  
Office of the Chief Information Officer  
14th and Constitution Ave. NW.  
Room 6625  
Washington, DC 20230

09/15/2005

In accordance with the Paperwork Reduction Act, OMB has taken the following action on your request for the extension of approval of an information collection received on 07/21/2005.

TITLE: Alaska Region Logbook Family of Forms

AGENCY FORM NUMBER(S): None

ACTION : APPROVED WITHOUT CHANGE

OMB NO.: 0648-0213

EXPIRATION DATE: 09/30/2008

BURDEN:	RESPONSES	HOURS	COSTS(\$,000)
Previous	95,174	41,219	199
New	92,342	38,990	187
Difference	-2,832	-2,229	-12
Program Change		0	0
Adjustment		-2,229	-12

TERMS OF CLEARANCE: None

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OMB Authorizing Official	Title
Donald R. Arbuckle	Deputy Administrator, Office of Information and Regulatory Affairs

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# PAPERWORK REDUCTION ACT SUBMISSION

**Please read the instructions before completing this form. For additional forms or assistance in completing this form, contact your agency's Paperwork Clearance Officer. Send two copies of this form, the collection instrument to be reviewed, the supporting statement, and any additional documentation to: Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW, Washington, DC 20503.**

1. Agency/Subagency originating request	2. OMB control number <span style="float: right;">b. <input type="checkbox"/> None</span> a. _____ - _____
3. Type of information collection ( <i>check one</i> ) a. <input type="checkbox"/> New Collection b. <input type="checkbox"/> Revision of a currently approved collection c. <input type="checkbox"/> Extension of a currently approved collection d. <input type="checkbox"/> Reinstatement, without change, of a previously approved collection for which approval has expired e. <input type="checkbox"/> Reinstatement, with change, of a previously approved collection for which approval has expired f. <input type="checkbox"/> Existing collection in use without an OMB control number For b-f, note Item A2 of Supporting Statement instructions	4. Type of review requested ( <i>check one</i> ) a. <input type="checkbox"/> Regular submission b. <input type="checkbox"/> Emergency - Approval requested by _____ / _____ / _____ c. <input type="checkbox"/> Delegated
7. Title	5. Small entities Will this information collection have a significant economic impact on a substantial number of small entities? <input type="checkbox"/> Yes <input type="checkbox"/> No
8. Agency form number(s) ( <i>if applicable</i> )	6. Requested expiration date a. <input type="checkbox"/> Three years from approval date b. <input type="checkbox"/> Other Specify: _____ / _____
9. Keywords	
10. Abstract	
11. Affected public ( <i>Mark primary with "P" and all others that apply with "x"</i> ) a. ___ Individuals or households d. ___ Farms b. ___ Business or other for-profit e. ___ Federal Government c. ___ Not-for-profit institutions f. ___ State, Local or Tribal Government	12. Obligation to respond ( <i>check one</i> ) a. <input type="checkbox"/> Voluntary b. <input type="checkbox"/> Required to obtain or retain benefits c. <input type="checkbox"/> Mandatory
13. Annual recordkeeping and reporting burden a. Number of respondents _____ b. Total annual responses _____ 1. Percentage of these responses collected electronically _____ % c. Total annual hours requested _____ d. Current OMB inventory _____ e. Difference _____ f. Explanation of difference 1. Program change _____ 2. Adjustment _____	14. Annual reporting and recordkeeping cost burden ( <i>in thousands of dollars</i> ) a. Total annualized capital/startup costs _____ b. Total annual costs (O&M) _____ c. Total annualized cost requested _____ d. Current OMB inventory _____ e. Difference _____ f. Explanation of difference 1. Program change _____ 2. Adjustment _____
15. Purpose of information collection ( <i>Mark primary with "P" and all others that apply with "X"</i> ) a. ___ Application for benefits e. ___ Program planning or management b. ___ Program evaluation f. ___ Research c. ___ General purpose statistics g. ___ Regulatory or compliance d. ___ Audit	16. Frequency of recordkeeping or reporting ( <i>check all that apply</i> ) a. <input type="checkbox"/> Recordkeeping b. <input type="checkbox"/> Third party disclosure c. <input type="checkbox"/> Reporting 1. <input type="checkbox"/> On occasion 2. <input type="checkbox"/> Weekly 3. <input type="checkbox"/> Monthly 4. <input type="checkbox"/> Quarterly 5. <input type="checkbox"/> Semi-annually 6. <input type="checkbox"/> Annually 7. <input type="checkbox"/> Biennially 8. <input type="checkbox"/> Other (describe) _____
17. Statistical methods Does this information collection employ statistical methods <input type="checkbox"/> Yes <input type="checkbox"/> No	18. Agency Contact (person who can best answer questions regarding the content of this submission)  Name: _____ Phone: _____

## 19. Certification for Paperwork Reduction Act Submissions

On behalf of this Federal Agency, I certify that the collection of information encompassed by this request complies with 5 CFR 1320.9

**NOTE:** The text of 5 CFR 1320.9, and the related provisions of 5 CFR 1320.8(b)(3), appear at the end of the instructions. *The certification is to be made with reference to those regulatory provisions as set forth in the instructions.*

The following is a summary of the topics, regarding the proposed collection of information, that the certification covers:

- (a) It is necessary for the proper performance of agency functions;
- (b) It avoids unnecessary duplication;
- (c) It reduces burden on small entities;
- (d) It used plain, coherent, and unambiguous terminology that is understandable to respondents;
- (e) Its implementation will be consistent and compatible with current reporting and recordkeeping practices;
- (f) It indicates the retention period for recordkeeping requirements;
- (g) It informs respondents of the information called for under 5 CFR 1320.8(b)(3):
  - (i) Why the information is being collected;
  - (ii) Use of information;
  - (iii) Burden estimate;
  - (iv) Nature of response (voluntary, required for a benefit, mandatory);
  - (v) Nature and extent of confidentiality; and
  - (vi) Need to display currently valid OMB control number;
- (h) It was developed by an office that has planned and allocated resources for the efficient and effective management and use of the information to be collected (see note in Item 19 of instructions);
- (i) It uses effective and efficient statistical survey methodology; and
- (j) It makes appropriate use of information technology.

If you are unable to certify compliance with any of the provisions, identify the item below and explain the reason in Item 18 of the Supporting Statement.

Signature of Senior Official or designee

Date

Agency Certification (signature of Assistant Administrator, Deputy Assistant Administrator, Line Office Chief Information Officer, head of MB staff for L.O.s, or of the Director of a Program or StaffOffice)

Signature

Date

Signature of NOAA Clearance Officer

Signature

Date

**SUPPORTING STATEMENT  
ALASKA REGION LOGBOOK FAMILY OF FORMS  
OMB CONTROL NO.: 0648-0213**

**INTRODUCTION**

The Magnuson-Stevens Fishery Conservation and Management Act in 1976 (Magnuson-Stevens Act) authorizes the North Pacific Fishery Management Council (Council) to prepare and amend fishery management plans for any fishery in waters under its jurisdiction. Beginning with the passage of the Magnuson-Stevens Fishery, the Secretary of Commerce (Secretary) has undertaken a set of objectives for the conservation and management of marine fishery resources. Under this stewardship role of one of the Nation's natural resources, the Secretary was given certain regulatory authorities to ensure the most beneficial uses of these resources. One of the regulatory steps taken to carry out the conservation and management objectives is the requirement for recordkeeping and reporting (R&R) by users of the resources.

National Marine Fisheries Service (NMFS) manages the groundfish fisheries in the exclusive economic zone (EEZ) off the Coast of Alaska under the Fishery Management Plan for Groundfish of the Gulf of Alaska (GOA) and the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands (BSAI). Regulations governing U.S. fisheries and implementing the groundfish FMPs appear at 50 CFR part 679.

NMFS manages the crab fisheries in the waters off the coast of Alaska under the Fishery Management Plan for Bering Sea and Aleutian Islands Crab (Crab FMP). Amendments 18 and 19 amend the Crab FMP to include the Crab Rationalization Program (Program). Regulations implementing the Crab FMP appear at 50 CFR part 680. Regulations at 50 CFR part 679 also pertain.

**JUSTIFICATION**

**1. Explain the circumstances that make the collection of information necessary.**

This collection-of-information supports the collection of groundfish fishery data and supporting information from the fishing industry through the use of daily cumulative production logbooks (DCPL) and daily fishing logbooks (DFL). NMFS provides 6 different types of logbook for use by the industry to record and report groundfish information:

- Catcher vessel trawl gear DFL,
  - Catcher vessel longline and pot gear DFL,
  - Mothership DCPL,
  - Shoreside processor DCPL,
  - Catcher/processor trawl gear DCPL, and a
  - Catcher/processor longline and pot gear DCPL.
- Catcher vessels under 60 ft length overall are not required to maintain DFLs.

The information collected is intended to enhance the effectiveness of analyses through data for which the industry is the best or only source, including: Fishing effort, retained groundfish catch, discard amounts, employment, and product information. To minimize the recordkeeping

costs associated with fishery management requirements, the DCPLs and DFLs are designed to provide a convenient method to enter information that serves both the business needs of the fishing industry and data base requirements of NMFS.

The 0648-0213 groundfish recordkeeping and reporting system incorporates and integrates information from the GOA and BSAI groundfish fisheries, the Western Alaska Community Development Quota (CDQ) Program (0648-0269), the Individual Fishing Quota (IFQ) Program for Pacific Halibut and Sablefish (0648-0272), the American Fisheries Act Recordkeeping and Reporting Requirements (0401), the Alaska Seabird Avoidance Program (0474), the Prohibited Species Donation Program (0316), the License Limitation Groundfish Program (0334), the Aleutian Islands Pollock Fishery Requirements (0513), and the Crab Rationalization Program (0648-0514 through -0518).

Groundfish is regulated under 50 CFR part 679. Groundfish is recorded in DFLs by catcher vessels and in DCPLs by catcher/processors, motherships, shoreside processors, and stationary floating processors (SFPs) as target species, as incidental species, discarded species, and as prohibited species, depending on the circumstances (0648-0213). The information recorded in the DCPLs is summarized for each weekly reporting period on a weekly production report (WPR) submitted to NMFS. Shoreside processors and SFPs are required to use or have the option to use (depending on circumstances) the electronic version of the logbook, called the Shoreside Processor Electronic Logbook Report (SPELR) (0648-0401). If the SPELR is used, the WPR is not required and the yellow pages of the DCPL are not sent quarterly to OLE. Catcher vessels using trawl gear have the option to use a commercially available, electronic version of the DFL called the electronic logbook (ELB). If the ELB is used, the yellow pages of the DFL are not sent quarterly to OLE.

Sablefish is regulated under 50 CFR part 679. Sablefish is recorded in trawl DFLs and DCPLs as a prohibited species or as an incidental catch, depending on the circumstances (0648-0213). Sablefish is managed separately as an IFQ target species under the IFQ program (0648-0272) by NMFS and catch is recorded in the longline and pot gear DFL (for catcher vessels 60 ft or greater length overall (LOA)) or in the Alaska Region Science Center Sablefish logbook for catcher vessels (for catcher vessels less than 60 ft LOA) and in the longline and pot gear DCPL for catcher/processors. Sablefish individual quota information is sent to NMFS by internet access (0648-0272).

Pacific halibut is regulated under 50 CFR part 300 by the International Pacific Halibut Commission (IPHC) and under 50 CFR part 679 by NMFS. Pacific halibut is recorded as a target species in the longline and pot gear DFL (for catcher vessels greater than or equal to 60 ft LOA) or in one of IPHC's three types of halibut catch logbook, and in the catcher/processor longline and pot gear DCPLs. Pacific halibut is recorded in the trawl gear DFLs and DCPLs as a prohibited species in the groundfish fisheries. Pacific halibut caught as prohibited species may be recorded using disposition codes and donated for needy persons when delivered to an authorized shoreside processor (0648-0316). Pacific halibut individual quota information is sent to NMFS, IPHC, and State of Alaska Department of Fish and Game (ADF&G) by internet access (0648-0272).

Various species of crab are regulated under 50 CFR part 680 and also 50 CFR part 679 by NMFS and under State regulations by ADF&G. Crab is recorded as a target species in the longline and

pot gear DFL (for catcher vessels 60 ft or greater LOA) and in the longline and pot gear DCPLs for catcher/processors. Crab individual quota information is sent to NMFS and ADF&G by internet access (0648-0515).

**2. Explain how, by whom, how frequently, and for what purpose the information will be used. If the information collected will be disseminated to the public or used to support information that will be disseminated to the public, then explain how the collection complies with all applicable Information Quality Guidelines.**

The data is used during boardings and site visits by NOAA Fisheries Office for Enforcement (OLE) and United States Coast Guard (USCG) to ensure conservation of groundfish, compliance to regulations, and reporting accuracy by industry. The Council and NMFS Alaska Fisheries Science Center use the data for biological and economic evaluation of management measures and stock assessment. The NMFS Observer Program for vessel position coordinates and observer coverage information uses the data.

The NMFS Inseason Branch monitors and manages the fisheries for each calendar year (beginning January 1) through openings and closures, as well as reallocation of quotas. Quotas and allotments are designated by species, reporting area, gear type, season, inshore/offshore component, by CDQ, and by IFQ. In addition, the NMFS Inseason Branch aggregates, analyzes, evaluates, and summarizes the groundfish data and NMFS Restricted Access Program aggregates, analyzes, evaluates, and summarizes the IFQ halibut and IFQ sablefish data in response to public inquiries, agency requests, media requests, and submittals to national data archives, including the NMFS Statistics Division for preparation of the Fisheries of the United States.

**a. Catcher Vessel trawl gear DFL**

The operator of a catcher vessel 60 ft LOA or greater, using trawl gear, and required to have a Federal fisheries permit must maintain a DFL for trawl gear. Although the number of fishing days shown in the analysis is less than 364 days, information for each day of a fishing year must be recorded in the DFL as either active or inactive. The yellow copies of the DFL must be submitted to OLE each quarter.

An alternative method of recordkeeping and reporting is provided to the fishing industry through software for an electronic catcher vessel. This method uses daily paper copies to be printed from the computer and used by the operator and observer. An estimated 10 catcher vessels are voluntarily using this electronic method.

**Catcher Vessel trawl gear DFL**

- page number
- date
- vessel name and ADF&G vessel registration number
- Federal fisheries permit number
- name and signature of operator
- whether in inactive period
  - if YES, start and end dates and reason for inactivity
- gear type
- Federal reporting area of catch
- whether harvest occurred in *C. opilio* Bycatch Limitation Zone (COBLZ) or

Red King Crab Savings Area (RKCSA)  
 number of observers onboard  
 name and cruise number of each observer aboard  
 crew size  
 whether in a separate management program  
   if YES, enter identification number  
 catch by haul information  
   haul number  
   time and begin position of gear deployment  
   date, time, and end position of gear retrieval  
   average sea depth and average gear depth  
   target species code  
   haul weight (lb or mt)  
 discard/disposition information  
   whether deliveries are unsorted cod ends or presorted at sea  
   If presorted at sea, enter discard/disposition species information  
     whether records in pounds or metric tons  
     daily total, balance forward, and cumulative total since last delivery  
     species and product codes  
 delivery information  
   delivery date  
   ADF&G fish ticket number  
   recipient's name and ADF&G processor code

<b>Catcher vessel trawl gear DFL, Respondent</b>	
Estimated number of respondents 345 paper DFLs + 10 ELBs	<b>355</b>
<b>Total annual responses</b> (34 x 355) Average 34 fishing days/catcher vessel/year	<b>12,070</b>
<b>Total Burden Hours</b> for all responses (3519 + 58) DFL (345 x 34 x .30 = 3519) Average recording DFL time/catcher vessel (18 min = .30 hr) ELB (10 x 34 x .17 = 58) Average recording ELB time/catcher vessel (10 min = 0.17)	<b>3,577 hr</b>
<b>Total personnel cost</b> Cost for maintenance of DFL (\$25 x 3,577 hr = 89425)	<b>\$89,425</b>
<b>Total miscellaneous cost</b> Cost to submit DFL sheets by mail (\$2.50 x 4 qtr x 345)	<b>\$3,450</b>

<b>Catcher Vessel trawl gear DFL, Federal Government</b>	
<b>Total annual responses</b>	12,070
<b>Total Burden Hours</b> (345 + 69) Time requirement for review, data entry, and filing of each quarterly submittal (3 min = .05 hr) Time requirement for handling all 4 quarters (345 x 4 x .05=69) Time requirement to prepare and mail one DFL (30 min = .5 hr) Time requirement for mailing all DFLs (345 x .5 x 2/yr =345)	414 hr
<b>Total Personnel cost</b> (\$25 x 69 hr for receipt and data handling = \$1725) (\$25 x 345 hr for mailing = \$8625)	\$10,350
<b>Total Miscellaneous Cost</b> (\$12 x 345 x 2/yr for printing of DFLs = \$8280) (\$5 x 345 x 2/yr for postage to mail DFLs = \$3450)	\$11,730

## **b. Catcher vessel, longline or pot gear DFL**

### Groundfish fisheries

The operator of a catcher vessel greater than or equal to 60 ft LOA using longline or pot gear to harvest groundfish and that retains any groundfish from the GOA or BSAI, must maintain a longline and pot gear DCPL.

### IFQ halibut, CDQ halibut, and IFQ sablefish fisheries.

The operator of a catcher vessel greater than or equal to 60 ft LOA using longline or pot gear to harvest IFQ sablefish, IFQ halibut, or CDQ halibut from the GOA or BSAI, must maintain a longline and pot gear DCPL.

### Crab Rationalization (CR) fisheries.

The operator of a catcher vessel greater than or equal to 60 ft LOA using pot gear to harvest CR crab from the BSAI, must maintain a longline and pot gear DCPL.

Although the number of fishing days shown in the analysis is less than 364 days, information for each day of a fishing year must be recorded in the DFL as either active or inactive. The yellow copies of the DFL must be submitted to OLE each quarter.

The DFL is used by participants to record daily fishing activities in order to stay within fishing quotas. The DFL is used by OLE and the USCG to perform onboard audits to ensure appropriate and accurate recordkeeping.

## **Catcher vessel, longline or pot gear DFL**

Page number

Name and ADF&G vessel registration number of vessel

Federal fisheries permit number or Federal crab vessel permit number of vessel

Name and signature of operator

Whether inactive

If YES, enter start and end dates and reason for inactivity

Federal reporting area of catch

Number of observers onboard

Name and cruise number of observer(s)

Crew size

Indicate type of harvest gear.

If hook and line

Whether fixed hook (conventional or tub), autoline, or snap gear

Length of skate (ft)

Hook size, spacing (ft), and number of hooks per skate

Bird avoidance gear code

Operator IFQ permit number

Crew IFQ permit number(s)

CDQ group number

Halibut CDQ permit number

Indicate whether in a special Management program.

If YES, check type and enter identification number

Catch by set information

set number

date and time gear set

Date and time of gear hauled

location of set

- buoy or bag number (optional)
- begin and end position in lat and long (to the nearest minute)
- Begin and end depth (fathoms)
- Enter gear ID from top of page
- number of skates or pots set
- number of skates or pots lost (if applicable)
- target species code
- weight of IFQ or CDQ halibut (pounds)
- weight of IFQ sablefish in round weight, western cut or eastern cut
- Number of IFQ sablefish (optional)
- Weight of CR crab in pounds
- Number of CR crab
- Haul weight of catch (circle lb or mt)
- Discard/disposition information
  - date of discard/disposition
  - whether records in pounds or metric tons
  - daily total, balance forward, and cumulative total since last delivery
  - species and product codes
- Delivery information
  - date of delivery
  - ADF&G fish ticket number
  - recipient's name or IFQ registered buyer
  - unloading port

<b>Catcher vessel longline and pot gear DFL, Respondent</b>	
Estimated number of respondents	<b>360</b>
<b>Total annual responses</b> (360 x 34)	<b>12240</b>
Average recording time/catcher vessel (28 min = .47 hr)	
Average 34 fishing days/catcher vessel/year	
<b>Total Burden Hours</b> for all responses (12240 x .47)	<b>5753 hr</b>
<b>Total personnel cost</b> (468000 + 143825)	<b>\$143,825</b>
Cost for maintenance of DFL (\$25 x 5753 hr = 143825)	
<b>Total miscellaneous cost</b>	
Cost to mail DFL sheets (\$2.50 x 4 qtr x 360)	<b>\$3600</b>

<b>Catcher Vessel longline and pot gear DFL, Federal Government</b>	
<b>Total annual responses</b>	12240
<b>Total Burden Hours</b> (360 + 360)	720
Time requirement for filing and retaining each response (15 min = .25 hr)	
Time requirement for filing and retaining all DFLs (360 x 4 x .25=360)	
Time requirement to prepare and mail one DFL (30 min = .5 hr)	
Time requirement for mailing all DFLs (360 x .5 x 2/yr=360)	
<b>Total Personnel cost</b> (\$25 x 720)	\$18,000
<b>Total Miscellaneous Cost</b>	
(\$12 x 360 x 2/yr for printing DFLs = \$8640)	
(\$5 x 360 x 2/yr for postage to mail DFLs = \$3,600)	\$12,240

**c. Catcher/processor trawl gear DCPL**

The operator of a catcher/processor using trawl gear and required to have a Federal fisheries permit must maintain a DCPL for trawl gear. Although the number of fishing and processing days shown in the analysis is less than 364 days, information for each day of a fishing year must be recorded in the DCPL as either active or inactive. The yellow copies of the DCPL must be submitted to OLE each quarter

**Catcher/processor trawl gear DCPL**

- page number
- date
- vessel name and ADF&G processor code
- Federal fisheries permit number
- name and signature of operator
- whether inactive
  - if YES, start and end dates and reason not active
- gear type
- Federal reporting area and whether harvest occurred in COBLZ or RKCSA
- number of observers onboard
- name and cruise number of each observer aboard
- crew size
- whether in a separate management program
  - if YES, enter identification number
- catch-by-haul information
  - haul number
  - time and begin position of gear deployment
  - date, time, and end position of gear retrieval
  - average sea depth and average gear depth
  - target species code
  - haul weight of catch (lb or mt)
  - species code and estimated round catch weight of Improved Retention/Improved Utilization (IR/IU) species
- discard/disposition species information
  - whether records in pounds or metric tons
  - enter daily total, balance forward, and weekly cumulative total by species and product codes
- production information
  - whether records in pounds or metric tons
  - enter daily total, balance forward; and weekly cumulative total by species and product codes

<b>Catcher/processor trawl gear DCPL, Respondent</b>	
Estimated number of respondents	<b>32</b>
<b>Total annual responses</b> (32 x 200)	<b>6400</b>
Average 200 receiving or processing days/processor/year	
<b>Total Burden Hours</b> for all responses (.50 x 6400)	<b>3200</b>
Average recording time/catcher processor (30 min = .50 hr)	
<b>Total personnel cost</b> (80000 + 33280)	<b>\$80,000</b>
Cost for maintenance of DCPL (\$25 x 3200 = 80000)	
<b>Total miscellaneous cost</b>	
Cost to submit DCPL sheets by mail (\$2.50 x 4 qtr x 32)	<b>\$320</b>

<b>Catcher/processor trawl gear DCPL, Federal Government</b>	
<b>Total annual responses</b>	6400
<b>Total Burden Hours</b> (32 + 7)	39 hr
Time requirement for review, data entry, and filing of each quarterly submittal (3 min = .05 hr)	
Time requirement for handling all responses (32 x 4 x .05=6.4)	
Time requirement to prepare and mail one DCPL (30 min = .5 hr)	
Time requirement to mail all DCPLs (32 x .5 x 2/yr =32)	
<b>Total Personnel cost</b>	\$2,575
(\$25 x 39 hr for receipt and data handling = \$975)	
(\$25 x 32 x 2/yr for mailing = \$1,600)	
<b>Total Miscellaneous Cost</b>	\$1,088
(\$12 x 32 x 2/yr for printing of DCPLs = \$768)	
(\$5 x 32 x 2/yr for postage to mail DCPLs = \$320)	

**d. Catcher/processor, longline or pot gear DCPL**

Groundfish fisheries

The operator of a catcher/processor using longline or pot gear to harvest groundfish and that retains any groundfish from the GOA or BSAI, must maintain a longline and pot gear DCPL.

IFQ halibut, CDQ halibut, and IFQ sablefish fisheries.

The operator of a catcher/processor using longline or pot gear to harvest IFQ sablefish, IFQ halibut, or CDQ halibut from the GOA or BSAI, must maintain a longline and pot gear DCPL.

Crab Rationalization (CR) fisheries.

The operator of a catcher/processor using pot gear to harvest CR crab from the BSAI, must maintain a longline and pot gear DCPL

Although the number of fishing and processing days shown in the analysis is less than 364 days, information for each day of a fishing year must be recorded in the DCPL as either active or inactive. The yellow copies of the DCPL must be submitted to OLE each quarter.

**Catcher/processor, longline, or pot gear DCPL**

page number

date

name and ADF&G processor code of catcher/processor

Federal crab vessel permit number or Federal fisheries permit number

operator name and signature

whether inactive

if YES, start and end dates and reason not active

Federal reporting area of catch

number of observers onboard

name and cruise number of each observer aboard

crew size

Operator IFQ permit number

Crew IFQ permit number(s)

CDQ group number

Halibut CDQ permit number

Whether in a separate management program

If YES, indicate appropriate program and enter identifying number

Indicate gear type

If gear type is hook and line

Whether fixed hook (conventional or tub), autoline, or snap gear

Length of skate (ft)

Hook size, spacing (ft), and number of hooks per skate

Bird avoidance gear code

Catch by set

set number

date and time gear set

date and time gear hauled

location of set

buoy or bag number (optional)

begin position of set; end position of haul

begin and end depth

gear ID (transfer alpha letter from gear type box)

number of skates or pots set

- number of skates or pots lost (if applicable)
- species code and estimated round catch weight of IR/IU species
- target species code
- weight of CDQ or IFQ halibut (pounds)
- Number and weight of IFQ sablefish in round weight, western cut, or eastern cut
- Number and weight of CR crab
- Haul weight of catch
- Production information
  - whether records in pounds or numbers
  - enter daily total, balance forward, and weekly cumulative total of products by species and product codes
- Discard/disposition information
  - date of discard
  - whether records in pounds or numbers
  - daily total, balance forward and weekly cumulative total
  - species and product codes

<b>Catcher/processor longline and pot gear DCPL, Respondent</b>	
Estimated number of respondents	<b>78</b>
<b>Total annual responses</b> (200 x 78)	<b>15600</b>
Average 200 receiving or processing days/processor/year	
<b>Total Burden Hours</b> for all responses (15600 x .68)	<b>10608 hr</b>
Average recording time/catcher processor (41 min = .68 hr)	
<b>Total personnel cost</b>	<b>\$265,200</b>
Cost for maintenance of DCPL (\$25 x 10608 =265200)	
<b>Total miscellaneous cost</b>	
Cost to submit DCPL sheets by mail (\$2.50 x 4 qtr x 78)	<b>\$780</b>

<b>Catcher/processor longline and pot gear DCPL, Federal Government</b>	
<b>Total annual responses</b>	15600
<b>Total Burden Hours</b> (39 + 32)	71 hr
Time requirement for review, data entry, and filing of each quarterly submittal (6 min = .1 hr)	
Time requirement for handling all responses (78 x 4 x .1=31.2)	
Time requirement to prepare and mail one DCPL (30 min = .5 hr)	
Time requirement for mailing all DCPLs (78 x .5=39)	
<b>Total Personnel cost</b>	\$2,750
(\$25 x 32 hr for receipt and data handling = \$800)	
(\$25 x 39 hr x 2/yr for mailing = \$1,950)	
<b>Total Miscellaneous Cost</b>	\$2,652
(\$12 x 78 x 2/yr for printing of DCPLs = \$1872)	
(\$5 x 78 x 2/yr for postage to mail DCPLs = \$780)	

**e. Mothership DCPL**

The operator of a mothership required to have a Federal fisheries permit must maintain a mothership DCPL. Although the number of receiving and processing days shown in the analysis is less than 364 days, information for each day of a fishing year must be recorded in the DCPL as either active or inactive. The yellow copies of the DCPL must be submitted to OLE each quarter.

**Mothership DCPL**

- page number
- date
- mothership name and ADF&G processor code
- name and signature of operator

Federal fisheries permit number  
 whether inactive  
   if YES, start and end dates and reason for inactivity  
 crew size  
 gear type of harvester  
 Federal reporting area of catch  
 if harvest with trawl gear whether in COBLZ or RKCSA  
 number of observers onboard  
 name and cruise number of each observer aboard  
 whether in a separate management program  
   If YES, enter identification number  
 delivery information  
   whether records are in pounds or metric tons  
   whether catcher vessel or buying station delivery  
   whether received discard report  
   catcher vessel or buying station name and ADF&G vessel registration number  
   receipt time  
   receipt position in latitude and longitude  
   total haul weight of catch  
   species code and round catch weight of IR/IU species  
   fish ticket number issued to catcher vessel  
 discard/disposition information  
   whether records in pounds or metric tons  
   daily total, balance forward, and weekly cumulative total  
   species and product codes  
 production information  
   whether records in pounds or metric tons  
   daily total, balance forward, and weekly cumulative total of products  
   species and product codes

<b>Mothership DCPL, Respondent</b>	
Estimated number of respondents	<b>37</b>
<b>Total annual responses</b> (37 x 200)	<b>7400</b>
Average 200 receiving or processing days/mothership/year	
<b>Total Burden Hours</b> for all responses (7400 x .52)	
Average recording time/mothership (31 min = .52 hr)	<b>3848</b>
<b>Total personnel cost</b> (96200 + 38480)	<b>\$96,200</b>
Cost for maintenance of DCPL (\$25 x 3848 = 96200)	
<b>Total miscellaneous cost</b>	<b>\$370</b>
Cost to submit DCPL sheets by mail (\$2.50 x 4 qtr x 37)	

<b>Mothership DCPL, Federal Government</b>	
<b>Total annual responses</b>	7400
<b>Total Burden Hours</b> (15 + 37)	52
Time requirement for review, data entry, and filing of each quarterly submittal (6 min = .1 hr)	
Time requirement for handling all responses (37 x 4 x .1=14.8)	
Time requirement to prepare and mail one DCPL (30 min = .5 hr)	
Time requirement for mailing all DCPLs (37 x .5 x 2=37)	
<b>Total Personnel cost</b>	\$300
(\$25 x 15 hr for receipt and data handling = \$375)	
(\$25 x 37 hr for mailing = \$925)	
<b>Total Miscellaneous Cost</b>	
(\$12 x 37 x 2/yr for printing of DCPLs = \$888)	\$1,258
(\$5 x 37 x 2/yr for postage to mail DCPLs = \$370)	

## **f. Shoreside processor DCPL**

The manager of a shoreside processor or SFP required to have a Federal processor permit or that receives groundfish from vessels issued a Federal fisheries permit must maintain a shoreside processor DCPL. Managers are required to use or have the option to use (depending on circumstances) to use the DCPL described below or the SPELR (see 0648-0401).

Although the number of receiving and processing days shown in the analysis is less than 364 days, information for each day of a fishing year must be recorded in the DCPL as either active or inactive. The yellow copies of the DCPL must be submitted to OLE each quarter.

### **Shoreside processor DCPL**

#### Part I

page number

week ending date

processor name and ADF&G processor code

Federal processor permit number

name and signature of manager

whether inactive

If YES, start and end dates and reason for inactivity

number of observers present

name and cruise number of each observer onsite

Federal reporting area of harvest

if harvested with trawl gear whether in COBLZ or RKCSA

gear type of harvester

whether in a separate management program

If YES, enter identification number

delivery information

date of delivery

Whether catcher vessel or buying station delivery

whether received discard report

catcher vessel or buying station name and ADF&G vessel registration number

delivery completed receipt time

Estimated retained groundfish delivery weight

ADF&G fish ticket number issued to catcher vessel

If a shoreside processor located in a state other than Alaska and receiving unprocessed groundfish from a catcher vessel, record in the DCPL and WPR the fish ticket numbers issued for that non-Alaska state along with the two-character abbreviation for that state.

If a shoreside processor located in a state other than Alaska where no fish ticket system is available and receiving unprocessed groundfish from a catcher vessel, record in the DCPL the catch receipt number issued to the catcher vessel.

landings information

whether records in pounds or metric tons

daily total and weekly cumulative total of landings

species and product codes

discard/disposition information

whether records in pounds or metric tons

daily total and weekly cumulative total

species and product codes

#### Part II--production information

processor name and ADF&G processor code

Federal processor permit number

name and signature of manager

whether records in pounds or metric tons

week ending date  
management area  
daily total of products and weekly cumulative total  
species and product codes

<b>Shoreside processor DCPL, Respondent</b>	
Estimated number of respondents (58 – 45 using SPELR)	<b>13</b>
<b>Total annual responses</b>	<b>2600</b>
Average 200 receiving and processing days/processor/year	
<b>Total Burden Hours</b> for all responses (2600 x .52)	
Average recording time/processor (31 min = .52 hr)	<b>1352</b>
<b>Total personnel cost</b>	
Cost for maintenance of DCPL (\$25 x 1352 = 65000)	<b>\$33,800</b>
Cost to file and retain one DCPL (1 hr/wk x 52 x \$25=1300)	
Cost to file and retain all DCPLs (\$1300 x 13= \$16900)	
<b>Total miscellaneous cost</b>	
Cost to submit DCPL sheets by mail (\$2.50 x 4 qtr x 13)	<b>\$130</b>

<b>Shoreside processor DCPL, Federal Government</b>	
<b>Total annual responses</b>	2600
<b>Total Burden Hours</b> (14 + 10)	24
Time requirement for review, data entry, and filing of each quarterly submittal (6 min = .1 hr)	
Time requirement for handling all responses (13 x 4 x .1=10)	
Time requirement to prepare and mail one DCPL (31 min = .52 hr)	
Time requirement for mailing all DCPLs (13 x .52 x 2/yr=13.52)	
<b>Total Personnel cost</b>	\$600
(\$25 x 10 hr for receipt and data handling = \$250)	
(\$25 x 14 hr for mailing = \$350)	
<b>Total Miscellaneous Cost</b>	\$442
(\$12 x 13 x 2/yr for printing of DCPL = \$312)	
(\$5 x 13 x 2 for postage to mail each DCPL = \$130)	

### Check-in/check-out report.

The operator of a catcher/processor or mothership and the manager of a shoreside processor or SFP are required to submit a check-in report (BEGIN message) prior to participation in a groundfish fishery and to submit a check-out report (CEASE message) upon completion of that participation, as indicated in the following tables. A check-in report is used to determine participation in each fishery, to monitor fishing effort by species in a given reporting area, and to locate vessels for fisheries enforcement purposes. A check-out report is submitted by a processor upon completion of active status and triggers the fact that no more weekly production reports will be issued from this processor.

**Note: MS = mothership, C/P = catcher/processor, SS = shoreside processor, and SFP = stationary floating processor**

<b>CHECK-IN REPORT</b>		
<b>Submit a separate BEGIN message for ...</b>	<b>If you are a ...</b>	<b>Within this time limit</b>
Each reporting area of groundfish harvest, except 300, 400, 550, or 690	C/P using trawl gear	Before gear deployment
	C/P using longline or pot gear	Before gear deployment. May be checked in to more than one area simultaneously.

<b>CHECK-IN REPORT</b>		
<b>Submit a separate BEGIN message for ...</b>	<b>If you are a ...</b>	<b>Within this time limit</b>
	MS	Before receiving groundfish. May be checked in to more than one area simultaneously.
	MS	Must check-in to reporting area(s) where groundfish were harvested.
COBLZ or RKCSA	C/P using trawl gear	Prior to fishing. Submit one check-in for the COBLZ or RKCSA and another check-in for the area outside the COBLZ or RKCSA.
	MS, SS, SFP	Before receiving groundfish harvested with trawl gear, submit one check-in for the COBLZ or RKCSA and another check-in for the area outside the COBLZ or RKCSA.
Gear Type	C/P	If in the same reporting area but using more than one gear type, prior to fishing submit a separate check-in for each gear type.
	MS	If harvested in the same reporting area but using more than one gear type, prior to receiving groundfish submit a separate check-in for each gear type.
CDQ	C/P	If in the same reporting area but using more than one gear type, prior to fishing submit a separate check-in for each gear type.
	MS, SS, SFP	Prior to receiving groundfish CDQ. If receiving groundfish under more than one CDQ number, use a separate check-in for each number.
Exempted or Research Fishery	C/P	If in an exempted or research fishery, prior to fishing submit a separate check-in for each type.
	MS, SS, SFP	If receiving groundfish from an exempted or research fishery, prior to receiving submit a separate check-in for each type.
Processor Type	C/P, MS	If a catcher/processor is functioning simultaneously as a mothership in the same reporting area, before functioning as either processor type.
Change of fishing year	C/P, MS, SS, SFP	If continually active through the end of one fishing year and at the beginning of a second fishing year, submit a check-in for each reporting area to start the year on January 1.
Aleutian Islands Pollock (AIP)	C/P	Prior to AI pollock fishing.
	SS, SFP	Before receiving AI pollock
Change of position	SFP	Before SFP moves to new coordinates

<b>CHECK-OUT REPORTS</b>		
<b>Submit a separate CEASE message for ...</b>	<b>If you are a ...</b>	<b>Within this time limit</b>
COBLZ or RKCSA	C/P using trawl gear	Upon completion of gear retrieval for groundfish, submit a separate check-out for the COBLZ or RKCSA and another check-out for the area outside the COBLZ or RKCSA.
	MS	If receiving groundfish harvested with trawl gear, upon completion of receipt of groundfish, submit a separate check-out for the COBLZ or RKCSA and another check-out for the area outside the COBLZ or RKCSA.
Processor Type	C/P, MS	Upon completion of simultaneous activity as both catcher/ processor and mothership, a separate check-out, one for catcher/processor and one for mothership.
Gear Type	C/P	Upon completion of gear retrieval for groundfish, submit a separate check-out for each gear type for which a check-in was submitted.
	MS	Upon completion of receipt of groundfish, submit a separate check-out for each gear type for which a check-in was submitted.

<b>CHECK-OUT REPORTS</b>		
<b>Submit a separate CEASE message for ...</b>	<b>If you are a ...</b>	<b>Within this time limit</b>
CDQ	C/P	Within 24 hours after groundfish CDQ fishing for each CDQ group has ceased.
	MS, SS, SFP	Within 24 hours after receipt groundfish CDQ has ceased for each CDQ group.
Exempted or Research Fishery	C/P	If groundfish are caught during an exempted or research fishery, submit a separate check-out for each type for which a check-in was submitted.
	MS, SS, SFP	Upon completion of receipt of groundfish under an exempted or research fishery, submit a separate check-out for each type for which a check-in was submitted.
Reporting Area	C/P using longline or pot gear	Upon completion of gear retrieval and within 24 hours after departing each reporting area.
	C/P using trawl gear	Within 24 hours after departing a reporting area but prior to checking-in another reporting area.
	SS, SFP	Within 48 hours after the end of the applicable weekly reporting period that a shoreside processor or stationary floating processor ceases to receive or process groundfish from that area for the fishing year.
	MS, SS, SFP	If receipt of groundfish from a reporting area is expected to stop for a period of time (month(s)) during the fishing year and then start up again, may submit check-out report for that reporting area.
	MS	Within 24 hours after receipt of fish is complete from that reporting area.
Change of fishing year	C/P, MS, SS, SFP	If a check-out report was not previously submitted during a fishing year for a reporting area, submit on December 31, a check-out report for each reporting area.
Interruption of production	SS, SFP	If receipt of groundfish from a reporting area is expected to stop for a period of time (month(s)) during the fishing year and then start up again, the manager may choose to submit a check-out report that reporting area.
AIP	C/P	Within 24 hours after completion of gear retrieval for AI pollock.
	SS, SFP	Within 48 hours after the end of the applicable weekly reporting period that a shoreside processor or SFP ceases to receive or process AI pollock for the fishing year.
	MS	Within 24 hours after receipt of AIP pollock has ceased.
Change of position	SFP	Within 24 hours after moving location but prior to check-in another location

### **g. Mothership or Catcher/processor check-in/check-out report**

The operator of a mothership or catcher/processor is required to submit to NMFS a check-in report prior to receipt of groundfish and a check-out report when it ceases operation in a reporting area of the EEZ off Alaska. A check-in report is used to determine participation in each fishery, to monitor fishing effort by species in a given reporting area, and to locate vessels for fisheries enforcement purposes. A check-out report is submitted by a processor upon completion of active status and triggers the fact that no more weekly production reports will be issued from this processor.

#### **Mothership or Catcher/processor check-in/check-out report**

whether an original or revised report  
vessel name and ADF&G processor code

Federal fisheries permit number  
 whether in a separate management program  
     If YES, enter identification number  
 processor type  
 gear type of harvester  
 representative name, telephone number and FAX number  
 COMSAT number (if available)  
 BEGIN message  
     Date and time of check-in  
     Federal reporting area, latitude, and longitude of vessel position  
         If a catcher/processor, where gear is deployed  
         If a mothership, the position where harvest received  
     If caught with trawl gear, whether harvest was in COBLZ or RKCSA  
     Primary and secondary target species codes  
 CEASE message  
     Date and time of check-out  
     Federal reporting area, latitude, and longitude of vessel position  
         If a catcher/processor, where departed the reporting area  
         If a mothership, the position where the last harvest was received  
     If caught with trawl gear, whether harvest was in COBLZ or RKCSA

<b>Mothership or Catcher/processor Check-in/out Report, Respondent</b>	
Estimated number of respondents (37 motherships + 32 C/P trw + 78 C/P lngln)	<b>147</b>
<b>Total annual responses</b> (147 x 30)	<b>4410</b>
No. responses per respondent = 30	
<b>Total Burden Hours</b> (4410 x .12)	<b>529</b>
Hours per response (7 min = .12)	
<b>Total personnel cost</b> (\$25 x 529)	<b>\$13,225</b>
<b>Total miscellaneous cost</b>	<b>\$21,581</b>
Cost to make copies of form (.05 x 4410=220.50)	
Cost to submit report	
By FAX (\$6 x 113 x 30 = 20340)	
By e-mail (\$1 x 34 x 30 = 1020)	

<b>Mothership or Catcher/processor Check-in/out Report, Federal Government</b>	
<b>Total annual responses</b>	4410
<b>Total Burden Hours</b> for all responses (4410 x .17)	750
Hours per response (10 min = .17)	
<b>Total personnel cost</b> (\$25 x 750)	\$18,750
<b>Total miscellaneous cost</b>	0

#### **h. Shoreside processor check-in/check-out report**

The manager of a shoreside processor or SFP is required to submit to NMFS a check-in report prior to receipt of groundfish and a check-out report after ceasing operation for harvests from a reporting area of the EEZ off Alaska. A check-in report is used to determine participation in each fishery and to monitor fishing effort by species in a given reporting area. A check-out report is submitted by a processor upon completion of active status and triggers the fact that no more weekly production reports will be issued from this processor. Thirteen of the 58 shoreside processors use electronic submittal for the WPRs. This decreases the budget and cost for this item.

**Shoreside processor check-in/check-out report**

- whether an original or revised report
- processor name and ADF&G processor code
- Federal processor permit number
- whether in a special management program
  - if YES, enter identification number
- representative name, telephone number, and FAX number
- if check-in report
  - date when shoreside processor will begin to receive groundfish
  - whether report is the first of a fishing year or a restart after plant check-out report
- if check-out report
  - date when shoreside processor will cease to receive or process groundfish.
- If SFP, give latitude and longitude of position where receiving groundfish
- fish or fish product held at plant
  - species codes, product codes, and product weight (lb or mt)

<b>Shoreside processor Check-in/out Report, Respondent</b>	
Estimated number of respondents	<b>58</b>
<b>Total annual responses</b> (58 x 30)	<b>1740</b>
No. responses per respondent = 30	
<b>Total Burden Hours</b> (1740 x .13)	<b>226</b>
Hours per response (8 min = .13)	
<b>Total personnel cost</b> (\$25 x 226)	<b>\$5,650</b>
<b>Total miscellaneous cost</b>	<b>\$8,490</b>
Cost to submit report	
By FAX (\$6 x 45 x 30 = 8100)	
By e-mail (\$1 x 13 x 30 = 390)	

<b>Shoreside processor Check-in/out Report, Federal Government</b>	
<b>Total annual responses</b>	1740
<b>Total Burden Hours</b> for FAX responses (45 x 30 x .17)	230
Hours per response (10 min = .17)	
<b>Total personnel cost</b> (\$25 x 230)	\$5,750
<b>Total miscellaneous cost</b>	0

**WPR.**

The operator of a mothership or catcher/processor and the manager of a shoreside processor or SFP (except for those shoreside processors and SFPs using the SPELR (see 0648-0401)), are required to submit to NMFS a WPR on a weekly basis. If a shoreside processor or SFP uses the SPELR, no WPR is required. The operator of a catcher/processor may choose to submit the WPR electronically rather than by FAX.

The WPR summarizes one weekly reporting period recorded in the DCPL. The information collected on a WPR is used to monitor species quotas and prohibited species caps and to project fishery closure dates. The WPR data allows efficient and effective management of fishery quotas. If a fishery quota is exceeded, the fishery will suffer. If a fishery quota is underachieved, the fishing industry will suffer.

**i. Mothership or catcher/processor WPR**

- whether an original or revised report
- week ending date
- processor name and ADF&G processor code
- Federal fisheries permit number
- whether in a special management program

if YES, enter identification number  
 gear type of harvester  
 processor type  
 representative name, e-mail address, telephone number, FAX number, and date signed  
 Federal reporting area where groundfish were harvested  
 if caught with trawl gear, whether harvest was in COBLZ or RKCSA  
 product weight of fish product, described by species and product codes and product designations  
 weight or PSC number of discards/dispositions, described by species and product codes  
 If a mothership, ADF&G fish ticket numbers issued to catcher vessels.

<b>Mothership or Catcher/processor WPR, Respondent</b>	
Estimated number of respondents (78 CP longline/pot + 37 mothership + 32 CP trawl)	<b>147</b>
<b>Total annual responses</b> (147 x 36)	<b>5292</b>
No. responses per respondent = 36	
<b>Total Burden Hours</b> (5292 x .28)	<b>1482</b>
Hours per response (17 min = .28)	
<b>Total personnel cost</b> (\$25 x 1482)	<b>\$37,050</b>
<b>Total miscellaneous cost</b>	<b>\$25,632</b>
Cost to submit report	
By FAX (\$6 x 113 x 36 = 24408)	
By e-mail (\$1 x 34 x 36 = 1224)	

<b>Mothership or Catcher/processor WPR, Federal Government</b>	
<b>Total annual responses</b>	5292
<b>Total Burden Hours</b> for FAX responses (113 x 36 x .5)	2034
Hours per response (30 min = .5)	
<b>Total personnel cost</b> (\$25 x 2034)	\$50,850
<b>Total miscellaneous cost</b>	0

### **j. Shoreside processor WPR**

whether an original or revised report  
 week ending date  
 processor name and ADF&G processor code  
 Federal processor permit number  
 whether in a special management program  
 if YES, enter identification number  
 representative name, e-mail address, telephone number, FAX number, and date signed

#### Part I

gear type of harvester  
 landings information  
 Reporting area where groundfish were harvested  
 if caught with trawl gear, whether harvest was in COBLZ or RKCSA  
 weight of landings, described by species and product codes  
 discard/disposition information  
 Reporting area where discard occurred  
 if caught with trawl gear, whether harvest was in COBLZ or RKCSA  
 weight or PSC number of discards/disposition, described by species and product codes

#### Part II -- product information

management area  
 weight of fish product, described by species and product codes and product designations  
 ADF&G fish ticket numbers issued to catcher vessels.

<b>Shoreside processor WPR, Respondent</b>	
Estimated number of respondents (58 – 45 processors using SPELR)	<b>13</b>
<b>Total annual responses</b> (13 x 36)	<b>468</b>
No. responses per respondent = 36	
<b>Total Burden Hours</b> (468 x .28)	<b>131</b>
Hours per response (17 min = .28)	
<b>Total personnel cost</b> (\$25 x 131)	<b>\$3,275</b>
<b>Total miscellaneous cost</b>	<b>\$1,008</b>
Cost to submit report	
By FAX (\$6 x 3 x 36 = 648)	
By e-mail (\$1 x 10 x 36 = 360)	

<b>Shoreside processor WPR, Federal Government</b>	
<b>Total annual responses</b>	468
<b>Total Burden Hours</b> for FAX responses (3 x 36 x .5)	54
Hours per response (30 min = .5)	
<b>Total personnel cost</b> (\$25 x 54)	\$1,350
<b>Total miscellaneous cost</b>	0

#### **k. Vessel Activity Report (VAR).**

A VAR is required only from a vessel if the vessel is greater than or equal to 60 ft LOA, has a Federal fisheries permit, crosses the seaward boundary of the EEZ or the boundary between Alaska and British Columbia, and has fish or fish product onboard the vessel. When boarding a vessel, the OLE personnel or USCG boarding officers use VAR information to audit and separate product inventory. If a vessel does not file a VAR and has fish or fish product onboard when it enters the EEZ off Alaska, NMFS assumes the fish were harvested in U.S. waters. Without this requirement to submit a form prior to crossing, vessel operators may be more inclined to illegally fish in Federal waters and claim retained product was harvested from foreign or international waters.

#### **Vessel Activity Report (VAR)**

- whether an original or revised report
- vessel name and Federal fisheries permit number or RCR permit number
- vessel type
- representative name, telephone number, FAX number, and COMSAT number (if available)
- If a “return report”
  - Intended Alaska port of landing
  - Date and time (Greenwich mean time) vessel will cross boundary
  - Latitude and longitude where vessel will cross
- If a “depart report”
  - Intended U.S. port of landing or country other than the United States
  - Date and time (Greenwich mean time) vessel will cross boundary
  - Latitude and longitude where vessel will cross
- Russian Zone
  - Whether (YES or NO) vessel is returning from or departing to fish in the Russian zone
- Fish or fish product (including non-groundfish) onboard the vessel when crossing
  - Harvest zone code where groundfish were harvested
  - Species code
  - Product code
  - Total product weight of fish product onboard in pounds or to the nearest 0.001 mt

<b>Vessel Activity Report, Respondent</b>	
Estimated number of respondents	<b>715</b>
<b>Total annual responses</b> (715 x 2)	<b>1430</b>
No. responses per respondent = 2	
<b>Total Burden Hours</b> (1430 x .23)	<b>329</b>
Hours per response (14 min = .23)	
<b>Total personnel cost</b> (\$25 x 329)	<b>\$8225</b>
<b>Total miscellaneous cost</b>	<b>\$8580</b>
Cost to submit report By FAX (\$6 x 1430)	

<b>Vessel Activity Report, Federal Government</b>	
<b>Total annual responses</b>	1430
<b>Total Burden Hours</b> for FAX responses (1430 x .5)	715
Hours per response (30 min = .5)	
<b>Total personnel cost</b> (\$25 x 715)	\$17,875
<b>Total miscellaneous cost</b>	0

## I. Buying station report (BSR)

A BSR is required whenever a shoreside processor, SFP, or mothership utilizes a tender vessel or shoreside buying station to take deliveries of groundfish on its behalf from catcher vessels. The buying station operator or manager receives the catch, records the catch information on a BSR, often issues ADF&G fish tickets, and sends or takes the fish, along with a copy of the BSR, to the associated processor. NMFS does not receive a copy of the BSR; however, a BSR must be available for inspection by authorized personnel.

### Buying station report (BSR)

Original or revised BSR

Name of Buying Station

Operator or Manager Name and Signature

ADF&G No. if buying station is a vessel

License No. and state of registration, if buying station is a vehicle

Whether participating in special management program.

If YES, enter identification number

Date and time groundfish receipt completed

Gear type of harvester

Federal Reporting Area of catch

If caught with trawl gear, indicate whether catch was harvested in the COBLZ or RKCSA.

Associated Processor

If a mothership, enter the name, ADF&G processor code, and Federal fisheries permit number .

If a shoreside processor or SFP, enter the name, AD&FG processor code,

and Federal processor permit number

Catcher Vessel Delivery Information

Name and ADF&G vessel registration number

Whether (YES or NO) received Discard Report

If NO, give code for reason not received

ADF&G fish ticket number

If using scales, optionally:

Species code

Species weight (mt or lb)

Total Groundfish Delivery Weight

Discards and Disposition

Total discard amounts in whole fish weight for each groundfish species or species group and

PSC Pacific herring

Total PSC number of Pacific salmon, steelhead trout, Pacific halibut, king crab, and Tanner crab.

<b>Buying Station Report, Respondent</b>	
Estimated number of respondents	<b>268</b>
<b>Total annual responses</b> (268 x 10)	<b>2680</b>
No. responses per respondent = 10	
Hours per response (23 min = .38)	
<b>Total Burden Hours</b> for all responses (2680 x .38)	<b>1018</b>
<b>Total personnel cost</b> (\$25 x 1018)	<b>\$25,450</b>
<b>Total miscellaneous cost</b>	<b>\$134</b>
Cost to make copies of form (.05 x 2680)	

<b>Buying Station Report, Federal Government</b>	
<b>Total annual responses</b>	0
<b>Total costs</b>	0

**m. DPR.**

NMFS no longer requires submittal of a DPR. This daily report was required when a fishery was expected to have a large number of participants over a short period of time or when a small groundfish quota was available. Daily reports were necessary to keep control of fast-paced fisheries. The DPR has not been used since 1999.

**DPR.**

- whether an original or revised report
- processor name and ADF&G processor code
- Federal processor permit number or Federal fisheries permit number
- whether in a separate management program
  - If YES, enter identification number
- processor type
- gear type of harvester
- representative name, telephone number and FAX number
- COMSAT number (if available)
- date of landing or production
- Federal reporting area where groundfish were harvested
- if a shoreside processor or SFP
  - weight of landings
    - described by species and product codes
- if a mothership or catcher/processor
  - product weight of fish product
    - described by species and product codes and product designations
- weight of discards/dispositions, described by species and product codes

<b>Daily Production Report, Respondent</b>	
<b>Total annual responses</b>	0
<b>Total Burden Hours</b>	0
<b>Total personnel cost</b>	0
<b>Total miscellaneous cost</b>	0

<b>Daily Production Report, Federal Government</b>	
<b>Total annual responses</b>	0
<b>Total Burden Hours</b>	0
<b>Total Personnel cost</b>	0
<b>Total Miscellaneous Cost</b>	0

## **n. Product Transfer Report (PTR).**

The PTR information is used by OLE to verify the accuracy of reported shipments and to monitor movement of product in and out of the processor on a timely basis through physical inspections to verify proper accounting for fish landings

Groundfish. The operator of a mothership or catcher/processor or the manager of a shoreside processor or SFP must complete and submit a separate PTR for each shipment of groundfish and donated prohibited species caught in groundfish fisheries.

IFQ Pacific halibut, IFQ sablefish, and CDQ Pacific halibut. A Registered Buyer must submit a separate PTR for each shipment of halibut or sablefish, other than those conducting dockside sales, for which the Registered Buyer submitted an IFQ landing report or was required to submit an IFQ landing report

CR crab. A Registered Crab Receiver (RCR) must submit a separate PTR for each shipment of crab for which the RCR submitted a CR crab landing report or was required to submit a CR crab landing report.

### Exceptions to submittal requirements

Bait sales (non-IFQ groundfish only). During one calendar day, the operator or manager may aggregate and record on one PTR the individual sales or shipments of non-IFQ groundfish to vessels for bait purposes during the day recording the amount of such bait product shipped from a vessel or facility that day.

#### Retail sales

(a) IFQ halibut, IFQ sablefish, CDQ halibut, and non-IFQ groundfish. During one calendar day, the operator, manager, or Registered Buyer may aggregate and record on one PTR the amount of transferred retail product of IFQ halibut, IFQ sablefish, CDQ halibut, and non-IFQ groundfish if each sale weighs less than 10 lb or 4.5 kg.

(b) CR crab. During one calendar day, the RCR may aggregate and record on one PTR the amount of transferred retail product of CR crab if each sale weighs less than 100 lb or 45 kg.

Wholesale sales (non-IFQ groundfish only). The operator or manager may aggregate and record on one PTR, wholesale sales of non-IFQ groundfish by species when recording the amount of such wholesale species leaving a vessel or facility in one calendar day, if invoices detailing destinations for the entire product are available for inspection by an authorized officer.

### **Product Transfer Report (PTR)**

Whether an original or revised PTR

If revised PTR, confirmation number

Shipper information

If shipping, non-IFQ groundfish, processor's name, Federal fisheries or Federal processor permit number.

If shipping IFQ halibut, CDQ halibut or IFQ sablefish, Registered Buyer name and permit number.

If shipping CR crab, RCR name and permit number

If shipping non-IFQ groundfish, IFQ halibut, CDQ halibut or IFQ sablefish, and CR crab on the same PTR  
Processor name and Federal fisheries permit number or Federal processor permit number  
Registered Buyer name and permit number

- RCR name and permit number
- Representative name, telephone number and fax number
- Transfer information
  - Receiver name and Federal fisheries or Federal processor permit number.
  - Start date, start time and finish date, finish time of product transfer
  - Position of product transfer (mothership or catcher/processor only)
  - Port or location of transfer
  - Mode of transportation and intended route
- Products shipping
  - Species and product code
  - Species weight (only if recording 2 or more species with 2 or more product types contained within the same production unit)
  - Number of units
  - Unit weight
  - Total weight
- Offload information (mothership or catcher/processor only)
  - Whether the transfer is a total or partial offload
  - If a partial offload, for the products remaining on board after the transfer, enter for each product
    - Species code
    - Product code
    - Total product weight to the nearest kilogram or pound (indicate which)

<b>Product Transfer Reports (PTR)</b>	
<b>PTR Respondent</b> (Registered Buyers for IFQ actions)	
Registered Buyers Estimated number of respondents	<b>800</b>
<b>Total annual responses</b> (800 x 12.5)	<b>10000</b>
No. responses per respondent = 12.5	
Hours per response (20 min = .33)	
<b>Total Burden Hours</b> for all responses (10000 x .33)	<b>3300</b>
<b>Total personnel cost</b> (\$25 x 3300)	<b>\$2,500</b>
<b>Total miscellaneous cost</b>	<b>\$60,500</b>
Cost to make copy of form (.05 x 10000 = 500)	
Cost to send by FAX (\$6 x 10000=60000)	
<b>PTR Respondent</b> (Operators or Managers for non-IFQ groundfish)	
Non-Registered Buyers number of respondents (37 motherships + 32 CP trw + 78 CP lngl + 58 ss)	<b>205</b>
<b>Total annual responses</b> (205 x 35)	<b>7175</b>
No. of responses per respondent = 35	
Hours per response (20 min = .33)	
<b>Total Burden Hours</b> for all responses (7175 x .33)	<b>2368</b>
<b>Total personnel cost</b> (\$25 x 2368)	<b>\$59,200</b>
<b>Total miscellaneous cost</b>	<b>\$43,409</b>
Cost to make copy of form (.05 x 7175 = 358.75)	
Cost to send by FAX (\$6 x 7175=43050)	
<b>PTR Respondent</b> (Processors and RCRs for CR crab)	
No. of respondents 6 catcher/processores 21 shoreside processors 16 SFP crab	<b>43</b>
No. of responses per respondent	<b>35</b>
<b>Total annual responses</b> (35 x 43)	<b>1505</b>
Hours per response (20/60 min)	<b>.33 hr</b>
<b>Total Time Burden</b> , all responses (1505 x .33=496.65)	<b>497</b>
<b>Total personnel cost</b> (497 x \$25)	<b>\$12,425</b>
<b>Total miscellaneous cost</b> FAX (\$6 x 1505)	<b>\$9,030</b>

<b>Product Transfer Report, Federal Government</b>	
<b>Total annual responses</b>	18680
<b>Total Burden Hours</b> (.17 x 18680)	3176
Hours per response (10 min = .17)	
<b>Total personnel costs</b> (\$25 x 3176)	\$79,400

**o. Cumulative Mothership ADF&G Fish Tickets**

The operator of a mothership must ensure that any groundfish catch received by a mothership from a catcher vessel is recorded for each weekly reporting period on a minimum of one ADF&G groundfish fish ticket and that the fish ticket is submitted to ADF&G. The cumulative fish tickets are used to establish a fishing history for catcher vessels that deliver offshore.

**Cumulative Mothership ADF&G Fish Tickets**

- Mothership name and ADF&G processor code
- Enter "FLD" for port of landing or vessel transhipped to;
- Signature of the mothership operator;
- Weekending date of the weekly reporting period during which the mothership received the groundfish from the catcher vessel
- Species code for each species from Table 2, except species codes 120, 144, 168, 169, or 171;
- Product code from Table 1 (in most cases, this will be product code 01, whole fish);
- ADF&G 6-digit statistical area in which groundfish were harvested
- Landed weight of each species to the nearest pound

<b>Weekly Cumulative Mothership ADF&amp;G Fish Tickets, Respondent</b>	
Estimated number of motherships	<b>37</b>
Number of fish tickets per year per mothership	<b>36</b>
<b>Total annual responses</b>	<b>1,332</b>
<b>Total Time Burden</b> for all responses 1332 x .58)	<b>772 hr</b>
Time requirement to complete each fish ticket (35 min = .58 hr)	
<b>Total personnel cost</b> (\$25 x 772)	<b>\$19,300</b>
<b>Total miscellaneous cost</b>	<b>\$444</b>
Cost to submit fish tickets by mail each month (\$1 x 12 x 37)	

<b>Weekly Cumulative Mothership ADF&amp;G Fish Tickets, Federal Government</b>	
No costs	

It is anticipated that the information collected will be disseminated to the public or used to support publicly disseminated information. As explained in the preceding paragraphs, the information gathered has utility. NOAA Fisheries will retain control over the information and safeguard it from improper access, modification, and destruction, consistent with NOAA standards for confidentiality, privacy, and electronic information. See response #10 of this Supporting Statement for more information on confidentiality and privacy. The information collection is designed to yield data that meet all applicable information quality guidelines. Prior to dissemination, the information will be subjected to quality control measures and a pre-dissemination review pursuant to Section 515 of Public Law 106-554.

**3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological techniques or other forms of information technology.**

Shoreside processors and SFPs are afforded the option of using the electronic SPELR (see 0648-

0401) in place of the paper DCPL. Seventy-seven percent of these processors currently use the SPELR. In the near future, NMFS intends to make the SPELR mandatory for shoreside processors and SFPs that process above a certain tonnage of groundfish, which would result in an estimated ninety-seven percent usage of SPELR.

By 2008, a new inter-agency electronic reporting system (IERS) (see 0648-0515) will be available on the Internet for use by the shoreside processors and SFPs to enter groundfish, IFQ halibut, IFQ sablefish, CDQ halibut, and crab rationalization (CR) crab. Data will be entered directly into the database by participants through the internet. In addition, when using the SPELR or in the future the IERS, managers are not required to submit a WPR.

Catcher/processors are provided an option to use electronic software to produce and submit an electronic WPR. Currently 34 catcher/processors or 31 percent are using this method.

Catcher vessels using trawl gear are provided an option to use electronic software, available commercially, to produce and submit an electronic daily fishing logbook (DFL). Sixteen catcher vessels using trawl gear, representing five percent of the trawl catcher vessels, are currently using this method.

Some processors generate an electronic version of a check-in/check-out report and submit these reports to NMFS as an attachment to an e-mail. NMFS Sustainable Fisheries personnel enter this data into the database.

All forms and logsheets are available on the NMFS Alaska Region Home Page. The forms are fillable for completion on screen, printing, and submitting to NMFS. The logsheets of the DFLs and DCPLs also may be downloaded and printed along with individual instructions for completion of each.

#### **4. Describe efforts to identify duplication.**

Since its inception in 1990, the NMFS has routinely consolidated and simplified data collection requirements in the R&R collection-of-information to improve real-time data for fisheries management decisions. This collection has produced and will continue in the future to produce an increasingly more efficient and accurate database for purposes of fisheries conservation as well as for the fisheries regulations enforcement. At the same time, NMFS has instituted various methods to eliminate duplication and to reduce burden on the fishing industry.

#### **5. If the collection of information involves small businesses or other small entities, describe the methods used to minimize burden.**

This dynamic collection-of-information has been used in the Alaska Region for domestic fisheries since 1990. This renewal does not impose anything new that would significantly impact small entities.

#### **6. Describe the consequences to the Federal program or policy activities if the collection is not conducted or is conducted less frequently.**

The renewal of the existing data collection is necessary for NMFS to continue efficient monitoring and effective management practices for the fisheries of the EEZ off the coast of Alaska. Without this information collection, Federal management of the Alaskan groundfish fisheries would be severely hampered, resulting in adverse impacts on: (1) the long-term biological stability and economic yield of the groundfish resource; (2) the efficiency and economic viability of the domestic groundfish industry; and (3) the credibility of the fishery management process itself.

The contentiousness of fishery management issues, including resource allocation among competing domestic user groups, compels managers to consider reliable biological and economic information when evaluating potential management measures. The continuing need for this information is explicit in the management goals and objectives established by the Council, as well as in the Magnuson-Stevens Act, E.O. 12866, the Regulatory Flexibility Act, and other relevant Federal regulations. The Federal regulations mandate, for example, that concise biological and economic analyses be completed to assess all relevant effects of proposed changes in management measures, and place specific burdens upon the Council and the Secretary to consider the biological, economic, and social implications of, not only a preferred alternative, but of all reasonable options available to them.

Attainment of this level of assessment is highly dependent upon the quality and timeliness of the biological and economic data available for analysis. The collection-of-information OMB No. 0648 0213 is intended to enhance the effectiveness of the analyses through data for which the industry is the best or only source: fishing effort, retained groundfish catch, discard amounts, production, employment, and product information.

The cost of making decisions based on inadequate information is completely imposed on the domestic groundfish industry. Such costs can adversely affect the viability of the domestic groundfish industry in the very competitive world groundfish markets. The lack of adequate information also results in the fishery management decision-making process being less objective, more political, and potentially less equitable. This can decrease the credibility of the fishery management process and result in an unnecessarily costly and ineffective management system. Finally, the rapid development and over-capitalization of the U.S. groundfish industry has increased fishing effort in most groundfish fisheries to the point where intensive inseason monitoring of groundfish harvest is required to prevent overharvest of quotas and overfishing of certain stocks. Since its inception in 1990, the NMFS has routinely consolidated and simplified data collection requirements in the R&R collection-of-information to improve real-time data for fisheries management decisions.

**7. Explain any special circumstances that require the collection to be conducted in a manner inconsistent with OMB guidelines.**

The NMFS Alaska Region collection-of-information has various forms with different submittal time requirements that require recordkeeping and reporting more frequently than quarterly (see Question 2 for details).

**8. Provide a copy of the PRA Federal Register notice that solicited public comments on the information collection prior to this submission. Summarize the public comments received in response to that notice and describe the actions taken by the agency in response to those**

**comments. Describe the efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.**

The attached notice was published February 17, 2005 (70 FR 8075). No comments were received.

**9. Explain any decisions to provide payments or gifts to respondents, other than remuneration of contractors or grantees.**

No payment or gift to respondents is provided under this program.

**10. Describe any assurance of confidentiality provided to respondents and the basis for assurance in statute, regulation, or agency policy.**

The information collected is confidential under section 402(b) of the Magnuson-Stevens Act (16 U.S.C. 1801, *et seq.*). It is also confidential under NOAA Administrative Order 216-100, which sets forth procedures to protect confidentiality of fishery statistics.

**11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.**

This information collection does not involve information of a sensitive nature.

**12. Provide an estimate in hours of the burden of the collection of information.**

Estimated total responses: 92,342, down from 95,174. Estimated total unique respondents: 1,143, down from 1,431. Estimated total burden: 38,990, down from 41,219. Estimated total personnel costs (Average wage equivalent to a GS-7 employee in Alaska, including COLA, at \$25/hour): \$974,840, up from \$261,780.

**13. Provide an estimate of the total annual cost burden to the respondents or record-keepers resulting from the collection (excluding the value of the burden hours in #12 above).**

Total estimated miscellaneous costs: \$187,458, down from \$199,300.

**14. Provide estimates of annualized cost to the Federal government.**

The estimated total burden: 8,578 hours. The estimated total personnel cost: \$217,025. Total estimated miscellaneous cost: \$29,410.

**15. Explain the reasons for any program changes or adjustments reported in Items 13 or 14 of the OMB 83-I.**

Minor adjustments were made in several areas.

1. Burden hours: The numbers of shoreside processors and stationary floating processors using the Shoreside Processor Electronic Logbook Report has increased, thus reducing daily cumulative production logbook (DCPL) and paper weekly production report (WPR) numbers, resulting in a decrease in burden hours from 41,219 to 38,990.
2. Recordkeeping/reporting costs: there is a net decrease, from \$199,000 to \$187,000: although DFLs and DCPLs mailing and printing costs were changed to reflect 2 logbooks mailed per year instead of one, Mothership/CP WPR changed from all FAX submittal to mostly e-mail submittal; and the number of trawl gear catch vessels using electronic DFLs instead of paper DFLs is accounted for.

**16. For collections whose results will be published, outline the plans for tabulation and publication.**

No plans exist for publishing the results of the information collection that are discussed above.

**17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons why display would be inappropriate.**

In accordance with OMB requirements, the control number and the expiration date of OMB approval are shown on the forms and logbooks.

**18. Explain each exception to the certification statement identified in Item 19 of the OMB 83-I.**

This information collection does not request exceptions to the certification statement.

**B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS**

This collection does not employ statistical methods.



Instructions for  
**GROUND FISH DAILY FISHING LOGBOOK (DFL)**  
**CATCHER VESSEL TRAWL GEAR**

**RESPONSIBILITY**

The owner of a catcher vessel with a Length Overall of greater than 60 feet and issued a Federal fisheries permit is responsible for compliance with the applicable recordkeeping and reporting requirements, including completion of a DFL. The signature of the owner or operator on the DFL is verification of acceptance of that responsibility.

Two logbooks of same gear type.

If more than one logbook of the same gear type is used in a fishing year, the page numbers must follow the consecutive order of the previous logbook.

Two logbooks of different gear types.

If two logbooks of different gear types are used in a fishing year, the pages in each logbook must start with page one.

Use a separate logsheet	For each day of an active period
	For each reporting area where harvest occurred
	Use two separate logsheets, the first to record the information from the reporting area that includes the COBLZ or RKCSA and the second to record the information from the reporting area that does not include the COBLZ or RKCSA.
	For each separate management program (see below)

**TIME LIMITS**

	Within this time limit	
Record haul number, time and date gear set, time and date gear hauled, begin and end position, CDQ group number (if applicable) and estimated total round weight of species for each haul	Within 2 hours after completion of gear retrieval	
Record discard/disposition information	By noon each day to record the previous day's discard/disposition	
Notwithstanding other time limits, record all information required in the DFL	Within 2 hours after the vessel's catch is off-loaded	
Submit the blue discard DFL copy to the Mothership, Shoreside Processor, Stationary Floating Processor or Buying Station receiving the catch	Within 2 hours after catch delivery	
Sign the completed DFL logsheets	By noon of the day following the week-ending date of the weekly reporting period.	
Submit the goldenrod logsheet to the observer	After signature of operator or manager	
Submit the yellow logsheets each quarter to:	Quarter	Submit by
NOAA Fisheries Office for Law Enforcement P.O. Box 21767 Juneau, Alaska 99802-1767	1 (Jan 1 - Mar 31)	May 1
	2 (Apr 1 - Jun 30)	August 1
	3 (Jul 1 - Sep 30)	November 1
	4 (Oct 1 - Dec 31)	February 1 of the following year.

**INFORMATION REQUIRED ON ALL LOGSHEETS**

Account for each day of the fishing year and indicate in the DFL whether the catcher vessel is active or inactive throughout the year.

Active/Inactive

The owner or operator must account for each day of the fishing year and indicate in the DFL whether the catcher vessel is active or inactive throughout the year.

If a catcher vessel is	Then
<b>Active.</b> When gear remains on the grounds in a reporting area (except 300, 400, 550, or 690), regardless of the vessel location	Complete one logsheet per day
<b>Inactive.</b> When no gear remains on the grounds in a reporting area	Use one logsheet. 1. Check “inactive”. 2. Record the first and last day when inactive. 3. Indicate why catcher vessel is inactive

If the time period that a catcher vessel is “inactive” extends across two or more successive quarters, complete two logsheets: the one to indicate the last day of the first “inactive” quarter and the next page to indicate the first day of the second “inactive” quarter.

Page Numbering.

Number the pages in each logbook consecutively, beginning with page 1 and continuing throughout the logbook for the remainder of the fishing year.

Vessel Name.

Enter complete name of catcher vessel as displayed in official documentation.

Operator Name and Signature.

Enter printed name and signature of operator; signature verifies the accuracy and completeness of data on the logsheet.

ADF&G Vessel No.

Enter State of Alaska Department of Fish and Game Vessel Registration Number of the catcher vessel.

Federal Fisheries Permit No.

Enter Federal Fisheries Permit Number of the catcher vessel.

**INFORMATION REQUIRED FOR EACH DAY THE VESSEL IS ACTIVE.**

Gear Type.

Circle the gear type used to harvest the groundfish.

Crew Size.

Enter the number of crew on the last day of the weekly reporting period, excluding certified observer(s).

Federal Reporting Area.

Enter the reporting area code where gear retrieval was completed.

If a haul occurs in more than one reporting area, record the area code where gear retrieval was completed, regardless of where the majority of the haul took place.

COBLZ or RKCSA.

Indicate whether catch was harvested in COBLZ or RKCSA.

Observer Information.

Enter the number of NMFS-certified observers aboard the vessel.  
Enter name and cruise number of each observer aboard the vessel.

Management Program.

Indicate whether harvest was made under a separate management program. If YES, enter identification number, if appropriate.

## CATCH BY HAUL.

Record the following information for each haul.

### Haul No.

Enter the number of the haul in sequence by year.

<b>Gear deployment for trawl gear (or to set gear)</b>	
Position of gear deployment (lat. and long. to the nearest minute) <i>Optional:</i> record to the nearest second or fraction of a minute	The position where the trawl gear reaches the fishing level and begins to fish.
Time of gear deployment (A.l.t.)	The time when the trawl gear reaches the fishing level and begins to fish.
<b>Gear retrieval for trawl gear (or to haul gear)</b>	
Position of gear retrieval (lat. and long. to the nearest minute) <i>Optional:</i> record to the nearest second or fraction of a minute	The position where retrieval of trawl gear cable commences.
Date and time of gear retrieval (A.l.t.)	The date and time when retrieval of trawl gear cable commences.

### Average Sea Depth.

Circle meters (M) or fathoms (FM).

Use the same units to report sea depth throughout the year.

Enter average sea depth for the haul, recorded to the nearest meter or fathom.

### Average Gear Depth.

Circle meters (M) or fathoms (FM).

Use the same units to report gear depth throughout the year.

Enter average gear depth for the haul recorded to the nearest meter or fathom.

### Target Species Code

List the species codes for the main species you expect to harvest this haul or set.

### Haul Weight.

Circle either lb or mt.

Use the same units to report weight throughout the year.

Enter the estimated total haul weight of the groundfish in pounds or to the nearest mt.

## CATCH DELIVERY INFORMATION

### NOTE

**If catch is delivered to more than one processor, use a separate page to record catch delivery information for each processor.**

Check one of the following boxes:

#### Deliveries are unsorted codends.

Check this box if no sorting of codend onboard or bleeding from a codend has occurred prior to delivery to a Mothership, Shoreside Processor, Stationary Floating Processor, or Buying Station.

If delivery is an unsorted codend, the catcher vessel is exempt from recording discards in the DFL and from submittal of the blue discard DFL copy for that delivery. Remove and discard the blue DFL copy.

#### Deliveries are pre-sorted at sea.

Check this box if catch has been sorted onboard or a codend has been bled prior to delivery to a Mothership, Shoreside Processor, Stationary Floating Processor, or Buying Station and complete the discard/disposition section.

## DISCARD/DISPOSITION INFORMATION.

### No discard/disposition.

If there are no discard/disposition for a day, write "NO DISCARDS", "0", or "ZERO" on the "daily total" line.

### Species and product codes.

Enter species and product codes for each discard/disposition.

Use species and product codes presented in Table 1 and Table 2.

Check either lb or mt. Use the same units to report weight throughout the year.

### Daily Total Weight.

Record daily the species code, product code, and the total estimated discard/disposition amounts in whole fish weight for each groundfish species or species group and Pacific herring in pounds or to at least the nearest 0.001 mt.

### Daily Total Numbers of animals.

Record daily the species code, product code, and discard/disposition amounts by number of Pacific salmon, steelhead trout, Pacific halibut, king crab, and Tanner crab.

### Discards bled from an unsorted codend.

If fish are discarded (bled) from an unsorted codend, estimate and record the amount of each species discarded (use Code 98).

### Daily Balance Forward.

Enter the total amount of discard/disposition, by species and product codes, carried forward from the previous day.

## NOTE

**After discard/dispositions have been reported to a Mothership, Shoreside Processor, Stationary Floating Processor, or Buying Station, the total discard/disposition amount is zero; no balance shall be carried forward from previous fishing activity.**

### Cumulative Total Since Last Delivery.

Enter the total discard/disposition amount by species and product codes, calculated by adding the relevant daily total and the total carried forward.

Calculate cumulative discard/disposition totals for each reporting area, gear type, and management program type.

## DELIVERY INFORMATION.

### Delivery Date.

Enter date that harvest was delivered to the Mothership, Shoreside Processor, Stationary Floating Processor, or Buying Station.

### ADF&G Fish Ticket Number.

Enter ADF&G fish ticket number provided by the Mothership, Shoreside Processor, Stationary Floating Processor, or Buying Station at delivery.

### Recipient's Name.

Enter name of Mothership, Shoreside Processor, Stationary Floating Processor, or Buying Station that received catch.

### ADF&G Processor Code.

Enter ADF&G processor code of Mothership, Shoreside Processor, or Stationary Floating Processor that received the groundfish catch (if applicable).

<b>CATCHER VESSEL DFL LONGLINE AND POT GEAR</b>	VESSEL NAME	FEDERAL CRAB VESSEL PERMIT NO.	IPHC USE ONLY	PAGE
	OPERATOR NAME AND SIGNATURE		ADF&G VESSEL NO.	
			FEDERAL FISHERIES PERMIT NO.	

<b>IDENTIFICATION</b>	INACTIVE	START	END	REASON	FEDERAL REPORTING AREA
	<b>IFQ</b>		<b>CDQ</b>		<b>OBSERVER INFORMATION</b>
	Operator IFQ Permit #	IFQ Permit #	CDQ Group #		
	IFQ Permit #	IFQ Permit #	Halibut CDQ Permit #		
	IFQ Permit #	IFQ Permit #	<b>MANAGEMENT PROGRAM</b> (Check if applicable and enter number) CDQ <input type="checkbox"/> Exempted <input type="checkbox"/> AIP <input type="checkbox"/> No. _____		
IFQ Permit #	IFQ Permit #				

CREW SIZE	<b>GEAR TYPE (check one)</b>										
	<input type="checkbox"/> Pot <input type="checkbox"/> Jig <input type="checkbox"/> Troll <input type="checkbox"/> Handline <input type="checkbox"/> Hook & Line <input type="checkbox"/> Other If Hook & Line, complete boxes immediately below.										
<i>If same as previous page check</i>	<b>GEAR TYPE</b>										
	GEAR ID	<input checked="" type="checkbox"/> FIXED HOOK				<input type="checkbox"/> HOOK		LENGTH OF SKATE (feet)		HOOK	
		CONV	TUB	AUTO LINE	SNAP			Size	Spacing (feet)	No. Per Skate	
	A										
	B										
C											
D											

**Complete these boxes once per delivery**

SET #	DATE SET	DATE HAULED	LOCATION OF SET				BEGIN & END DEPTH (Fath.)	IPHC OFFICE USE ONLY
	TIME SET	TIME HAULED	Buoy or Bag #	BEGIN POSITION LATITUDE LONGITUDE	Buoy or Bag #	END POSITION LATITUDE LONGITUDE		

GEAR ID	NUMBER OF SKATES OR POTS		TARGET SPECIES CODE	CDQ/IFQ HALIBUT (Pounds)	IFQ SABLE (Pounds) RD Round wt. WC Western cut EC Eastern cut	CR CRAB	HAUL WEIGHT Est. Total (lbs. or mt.)	BIRD AVOID GEAR
	Set	Lost						

<b>DISCARD/DISPOSITION</b>	For groundfish and Pacific herring, circle lbs. or nearest 0.001 mt. For Pacific halibut, Pacific salmon, king crab, and Tanner crab, record in numbers										
	DATE										
	SPECIES CODE										
	PRODUCT CODE										
	BALANCE FORWARD										
	DAILY TOTAL										
	CUMULATIVE TOTAL SINCE LAST DELIVERY										

<b>DELIVERY</b>	DATE	ADF&G FISH TICKET NO.	RECIPIENT'S NAME or IFQ REGISTERED BUYER	UNLOADING PORT	IPHC USE ONLY	

COMMENTS

Instructions for

**CATCHER VESSEL: LONGLINE & POT GEAR  
DAILY FISHING LOGBOOK (DFL)**

**RESPONSIBILITY**

Groundfish fisheries

The **operator** of a catcher vessel with a length overall (LOA) greater than 60 ft, issued a Federal fisheries permit, **and that retains any groundfish from the Gulf of Alaska (GOA) or Bering Sea and Aleutian Islands management area (BSAI)** must use the catcher vessel longline or pot gear DFL.

IFQ halibut, CDQ halibut, and IFQ sablefish fisheries.

**The operator of a catcher vessel with an LOA greater than 60 ft, issued a Federal fisheries permit, and using longline or pot gear to harvest IFQ**

**sablefish, IFQ halibut, or CDQ halibut from the GOA or BSAI must maintain a longline and pot gear DFL.**

Crab Rationalization (CR) fisheries.

**The operator of a catcher vessel with LOA greater than 60 ft, issued a Federal crab vessel permit, and using pot gear to harvest CR crab from the BSAI, must maintain a longline and pot gear DFL.**

The signature of the owner or operator on the DFL is verification of acceptance of that responsibility.

**TIME LIMITS**

The operator of a catcher vessel must:	Within this time limit	
Record set number, time and date gear set, time and date gear hauled, begin and end position, CDQ group number, halibut CDQ permit number, IFQ permit number, <b>sablefish IFQ permit number, crab IFQ permit number, and/or Federal crab vessel permit number (if applicable)</b> , number of pots set, and estimated total haul for each set.	Within 2 hours after completion of gear retrieval.	
Record all other required information in the DFL	<b>Within 2 hours after the vessel's catch is off-loaded, notwithstanding other time limits</b>	
Discard/Disposition Information	By noon each day to record the previous day's discard/disposition	
Submit the blue DFL copies to the Mothership, Shoreside Processor, Stationary Floating Processor or Buying Station receiving the catch.	Within 2 hours after catch delivery	
Sign the completed DFL logsheets	By noon of the day following the week-ending date of the weekly reporting period.	
Submit the goldenrod logsheet to the observer	After signed by the operator	
Submit the green logsheet	The green logsheets are provided to support a separate data collection by the International Pacific Halibut Commission (IPHC) under the joint NMFS/IPHC logbook program. Contact IPHC for more information at phone number 206-634-1838.	
Submit the yellow logsheets each quarter to:  NOAA Office for Law Enforcement (OLE) P.O. Box 21767 Juneau, Alaska 99802-1767	<b>Quarter</b> 1 (Jan 1 - Mar 31) 2 (Apr 1 - Jun 30) 3 (Jul 1 - Sep 30) 4 (Oct 1 - Dec 31)	<b>Submit by</b> May 1 August 1 November 1 February 1 of the following year.

**INFORMATION REQUIRED ON ALL LOGSHEETS**

Active/Inactive

The owner or operator must account for each day of the fishing year and indicate in the DFL whether the catcher vessel is active or inactive throughout the year.

If a catcher vessel is	Then
<b>Active.</b> A period of time when gear remains on the grounds in a reporting area (except 300, 400, 550, or 690), regardless of the vessel location	Complete up to 7 days on one logsheet
<b>Inactive.</b> A period of time when no gear remains on the grounds in a reporting area	Use one logsheet. 1. Check "inactive". 2. Record the first and last day when inactive. 3. Indicate why catcher vessel is inactive

If the time period that a catcher vessel is inactive extends across two or more successive quarters, complete two logsheets: the one to indicate the last day of the first inactive quarter and the next page to indicate the first day of the second inactive quarter.

Use a separate logsheet	For up to 7 days on one logsheet
	For each reporting area in which harvest occurred..
	For each gear type
	For each separate management program type
If fishing under more than one management program of the same type, use a separate logsheet for each.	

Page Numbering.

Number the pages in each DFL consecutively, beginning with page 1 for January 1 and continuing throughout the logbook for the remainder of the fishing year.

Two logbooks of same gear type.

If more than one logbook of the same gear type is used in a fishing year, the page numbers must follow the consecutive order of the previous logbook.

Two logbooks of different gear types.

If two logbooks of different gear types are used in a fishing year, the page numbers in each logbook must start with page one.

Vessel Name.

Enter complete name as displayed in official documentation.

Operator Name and Signature.

Enter printed name and signature of operator. Signature verifies the accuracy and completeness of data on the logsheet.

ADF&G Vessel No.

Enter State of Alaska Department of Fish and Game (ADF&G) Vessel Registration Number of the catcher vessel.

Permit numbers.

Enter the permit number(s) for the applicable fishery in which vessel participated.

Federal Fisheries permit number

IFQ permit number of the operator and of each IFQ permit holder aboard the vessel.

CDQ group number

Halibut CDQ permit number

[Federal crab vessel permit number](#)

Management Program.

Circle to indicate whether fishing activity is under the CDQ Program, a Research Fishery, Exempted Fishery, **or Aleutian Islands Pollock Fishery (AIP) and add identifying number, if appropriate.**

If harvest is not under one of these management programs, leave blank.

**INFORMATION REQUIRED FOR EACH DAY THE VESSEL IS ACTIVE**

Federal reporting area.

Federal reporting area code where gear retrieval was completed, regardless of where the majority of the set took place.

**NOTE**

**For Federal reporting area codes, see Figures 1 and 3 to part 679**

Gear type.

Circle gear type used to harvest the fish and enter appropriate gear ID in the catch information section.

Observer information.

Record the number of observers aboard, the name of the observer(s), and the observer cruise number(s).

If gear type is:	Then
Other gear	If gear is other than those listed, circle "Other" and describe gear
Pot gear	Circle "pot gear" and enter the number of pots set and the number of pots lost (if applicable)
Hook-and-line gear	Circle "hook and line gear" and Indicate whether gear is fixed hook (conventional or tub), autoline, or snap ( <i>optional</i> , but may be required by IPHC regulations).
	Enter length of skate to the nearest foot ( <i>optional</i> , but may be required by IPHC regulations)
	Enter number of skates set and number of skates lost ( <i>optional</i> , but may be required by IPHC regulations)
	Enter size of hooks, hook spacing in feet, and number of hooks per skate
	Enter the alphabetical letter that coincides with gear description in the "Catch by Set"
	Enter seabird avoidance gear code(s) (see § 679.24(e) and Table 19 to part 679).

**IF GEAR INFORMATION IS THE SAME**

on subsequent pages, mark the box instead of re-entering the gear-type information.

Crew Size.

Enter the number of crew, excluding observer(s) on the last day of the trip.

**CATCH BY SET.**

A set includes a test set, unsuccessful harvest, or when gear is not working and is pulled in, even if no fish are harvested

**A set means**

- a string of longline gear,
- a string of pots, or
- a group of pots with individual pots deployed and retrieved in the water in a similar location with similar soak time.

In the case of **pot gear**, when the pots in a string are hauled more than once in the same position, a new set is created each time the string is retrieved and re-deployed.

If no catch occurred for a day, write "no catch."

The operator must record the following information for each set:

Set number, sequentially by year.

Date Set (month-day)

Time Set (in military format, to the nearest hour, A.l.t.)

Begin and end buoy or bag numbers (optional, but may be required by IPHC regulations).

Location of Set (see following table)

Gear deployment (to set gear)	Hook-and-line gear:	Jig or troll gear	Pot gear
<b>Position</b> (lat and long to the nearest minute) <i>Optional:</i> record to the nearest second or fraction of a minute	The beginning position of a set of hook-and-line gear.	The position where the jig or troll gear enters the water.	The position of the first pot in a string of pots.
<b>Time</b>	The time when the first hook-and-line gear of a set is deployed.	The time when jig or troll gear enters the water.	The time when the first pot in a string of pots is deployed.

Gear retrieval (to haul gear)	<b>Hook-and-line gear:</b>	<b>Jig or troll gear</b>	<b>Pot gear</b>
<b>Position</b> (lat and long to the nearest minute) <i>Optional:</i> record to the nearest second or fraction of a minute	The position where the last hook-and-line gear of a set leaves the water, regardless of where the majority of the set took place.	The position where the jig or troll gear leaves the water.	The position where the last pot of a set is retrieved, regardless of where the majority of the set took place.
Time	The time when the last hook-and-line gear of a set leaves the water.	The time when the jig or troll gear leaves the water.	The time when the last pot of a set is retrieved

**Date Hauled (month-day)**

**Time Hauled (in military format, to the nearest hour, A.I.t.)**

Begin and end gear depths to the nearest fathom (*optional*, but may be required by IPHC regulations);

Target species code.

Species code of the species you intend to catch.

Use the species codes in Table 2.

CDQ/IFQ Halibut.

Estimated total round weight of IFQ halibut or CDQ halibut (indicate which) to the nearest pound.

IFQ Sablefish.

Number and estimated total round weight of IFQ sablefish to the nearest pound.

Circle to indicate whether IFQ sablefish product is:

- western cut (WC),
- eastern cut (EC), or
- round weight (RD).

**CR Crab.**

**Number and scale weight of raw CR crab to the nearest pound.**

**Estimated Haul Weight.**

**Enter the total estimated haul weight of all retained species.** Indicate whether to the nearest pound or to at least the nearest 0.001 mt.

**DISCARD/DISPOSITION INFORMATION.**

Unless delivering unsorted codends, the operator of a catcher vessel must record discard or disposition information that occurred on and prior to delivery to a

buying station, mothership, shoreside processor, or stationary floating processor (SFP).

No discard/disposition.

If there are no discard/disposition for a day, write "NO DISCARDS", "0", or "ZERO" on the "daily total" line

Date

Enter date of discard/disposition.

Species and product codes.

Enter species and product codes for each discard/disposition.

Use product and species codes in Table 1 and Table 2, respectively

Daily Balance Forward.

Enter the total amount of discard/disposition, by species and product codes, carried forward from the previous day.

Daily Total Weight.

Record daily the total estimated discard/disposition amounts in whole fish weight for each groundfish species or species group and Pacific herring in pounds or to at least the nearest 0.001 mt.

Daily Total Numbers of animals.

Record daily the total estimated numbers of Pacific salmon, steelhead trout, Pacific halibut, king crab, and Tanner crab.

**NOTE**

**After discard/dispositions are reported to a Mothership, Shoreside Processor, SFP, or Buying Station, the total discard/disposition amount is zero; no balance shall be carried forward from previous fishing activity.**

Cumulative Total Since Last Delivery.

Enter the total discard/disposition amount or number by species and product codes, calculated by adding the relevant daily total and the total carried forward.

Calculate cumulative discard/disposition totals for each reporting area, gear type, and management program type.

**DELIVERY INFORMATION.**

Enter the following information for harvest delivered to a mothership, shoreside processor, SFP, buying station, Registered Buyer, **or Registered Crab Receiver**.

Date.

Enter date that harvest was delivered.

ADF&G Fish Ticket Number.

Enter ADF&G fish ticket number provided at delivery.

Recipient's Name or IFQ Registered Buyer Name.

Enter name of mothership, shoreside processor, SFP, buying station, Registered Buyer, **or Registered Crab Receiver** that received harvest.

Unloading Port.

Enter name of unloading port

Use port codes provided in Tables 14a, 14b, **and 14c.**

**COMMENTS (optional)**

<b>MOTHERSHIP DCPL</b>		VESSEL NAME					Date (M - D - Y)	PAGE		
		OPERATOR NAME AND SIGNATURE					ADF&G Processor Code			
		Federal Fisheries Permit No.								
<b>IDENTIFICATION</b>	INACTIVE	START	END	REASON	CREW SIZE	<b>OBSERVER INFORMATION</b>		<b>MANAGEMENT PROGRAM</b> <small>(Check if applicable and enter number)</small>		
	GEAR TYPE (circle one)					FEDERAL REPORTING AREA	TRAWL GEAR ONLY (Circle one)		NO. OF OBSERVERS ONBOARD	
	Hook & Line   Pot   Non-pelagic trawl   Pelagic trawl   Jig   Troll   Other					COBLZ	RKCSA		OBSERVER NAME AND CRUISE #	
									OBSERVER NAME AND CRUISE #	
								CDQ <input type="checkbox"/> Exempted <input type="checkbox"/> Research <input type="checkbox"/> AIP <input type="checkbox"/> No. _____		

DELIVERY INFORMATION	CV or BS	RECEIVE DISCARD REPORT	NAME	ADF&G NO.	RECEIPT TIME	RECEIPT POSITION		ROUND CATCH WEIGHT			FISH TICKET NUMBER
						LATITUDE	LONGITUDE	TOTAL HAUL WEIGHT <small>(Circle one LB or MT)</small>	IR/IU SPECIES		
									SPECIES CODE	<small>(Circle one LB or MT)</small>	

For groundfish and Pacific herring, circle: lbs. or nearest 0.001 mt.  
 For Pacific halibut, Pacific salmon, king crab, and Tanner crab, record in numbers

DISCARD/ DISPOSITION	SPECIES CODE												
	PRODUCT CODE												
	BALANCE FORWARD												
	DAILY TOTAL												
	WEEKLY CUMULATIVE TOTAL												

PRODUCT <small>Indicate <input type="checkbox"/>lb. or <input type="checkbox"/>mt.</small>	SPECIES CODE												
	PRODUCT CODE												
	BALANCE FORWARD												
	DAILY TOTAL												
	WEEKLY CUMULATIVE TOTAL												

COMMENTS

Instructions for  
**MOTHERSHIP**  
**DAILY CUMULATIVE PRODUCTION LOGBOOK (DCPL)**

**RESPONSIBILITY**

The owner of a mothership that receives groundfish from vessels issued a Federal fisheries permit under § 679.4 is responsible for compliance with the applicable recordkeeping and reporting requirements of 50 CFR part 679.5, including completion of a DCPL. The signature of the owner or operator on the DCPL is verification of acceptance of that responsibility.

Use a separate logsheet	For each day of an active period
	For each reporting area where harvest occurred
	For each separate management program (see below)

**TIME LIMITS**

The operator of a mothership must	Within This Time Limit															
Record whether delivery is from catcher vessel or buying station, whether received blue DFL, name and ADF&G vessel registration of delivery vessel, receipt time and receipt position where mothership received catch, estimated total <b>haul weight</b> , and fish ticket numbers issued to catcher vessels.	Within 2 hours after completion of receipt of each groundfish delivery															
Record discard/disposition information	By noon each day to record the previous day's discard/disposition that: (1) Occurred on site after receipt of groundfish from a catcher vessel or buying station and during processing of groundfish; (2) Was reported on a blue DFL received from a catcher vessel delivering groundfish; (3) Was reported on a BSR received from a buying station delivering groundfish.															
Record all other information required in the DCPL	By noon of the day following completion of production															
Record product information	By noon each day for the previous day's production															
Sign the completed DCPL logsheets	By noon of the day following the week-ending date of the weekly reporting period															
Submit the goldenrod logsheet to the observer	After signed by the operator															
Submit the yellow logsheets each quarter to:  NOAA Fisheries Office for Law Enforcement P.O. Box 21767 Juneau, Alaska 99802-1767	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 5%;"></th> <th style="width: 40%;">Quarter</th> <th style="width: 55%;">Submit by</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">1</td> <td>Jan 1 - Mar 31</td> <td>May 1</td> </tr> <tr> <td style="text-align: center;">2</td> <td>Apr 1 - Jun 30</td> <td>August 1</td> </tr> <tr> <td style="text-align: center;">3</td> <td>Jul 1 - Sep 30</td> <td>November 1</td> </tr> <tr> <td style="text-align: center;">4</td> <td>Oct 1 - Dec 31</td> <td>February 1 of the following year.</td> </tr> </tbody> </table>		Quarter	Submit by	1	Jan 1 - Mar 31	May 1	2	Apr 1 - Jun 30	August 1	3	Jul 1 - Sep 30	November 1	4	Oct 1 - Dec 31	February 1 of the following year.
	Quarter	Submit by														
1	Jan 1 - Mar 31	May 1														
2	Apr 1 - Jun 30	August 1														
3	Jul 1 - Sep 30	November 1														
4	Oct 1 - Dec 31	February 1 of the following year.														

**INFORMATION REQUIRED ON ALL LOGSHEETS**

Active/Inactive

The owner or operator must account for each day of the fishing year and indicate in the DCPL whether the mothership is active or inactive throughout the year.

If a mothership is	Then
<b>Active</b> A period of time when the mothership is checked-in or processing.	Complete one logsheet per day
<b>Inactive.</b> A period of time when the mothership is not active.	Use one logsheet for up to one quarter. 1) Check “inactive”. 2) Record the first and last day when inactive. 3) Indicate why inactive

If the inactive time period extends across two or more successive quarters, complete two logsheets: the one to indicate the last day of the first inactive quarter and the next page to indicate the first day of the second inactive quarter.

Vessel Name.

Enter complete name as displayed in official documentation.

Operator Name and Signature.

Enter printed name and signature of operator; signature verifies the accuracy and completeness of data on the logsheet.

Page Numbering.

Number the pages in each logbook consecutively, beginning with page 1 for January 1 and continuing throughout the logbook for the remainder of the fishing year.

Logbook Numbering.

If more than one logbook is used in a fishing year, the page numbers should follow the consecutive order of the previous logbook.

ADF&G Processor Code.

Enter State of Alaska Department of Fish and Game (ADF&G) processor code number of the mothership.

Federal Fisheries Permit No.

Enter Federal Fisheries Permit Number of the mothership.

**INFORMATION REQUIRED FOR EACH DAY THE VESSEL IS ACTIVE.**

Gear Type.

Indicate the gear type of harvester. If gear type used to harvest fish is not listed, circle OTHER and describe gear.

Federal Reporting Area.

Enter the reporting area code where groundfish were harvested.

Use the reporting area codes presented in Figure 1 and Figure 3.

COBLZ or RKCSA.

If groundfish were harvested using trawl gear, indicate whether catch was harvested in COBLZ or RKCSA.

Management Program.

Indicate whether harvest was made under a separate management program. If YES, enter identification number, if appropriate.

Crew Size.

Enter the number of crew, excluding certified observer(s), on the last day of the weekly reporting period.

Observer Information.

Enter the number of NMFS-certified observers aboard the vessel. Enter printed name and cruise number of each observer aboard the vessel.

**DELIVERY INFORMATION.**

Record the following information for all deliveries received from a catcher vessel or buying station.

CV or BS.

Enter CV or BS to indicate delivery by a catcher vessel or buying station, respectively.

Receive Discard Report.

Enter YES or NO to indicate whether Catcher Vessel submitted blue discard copy of DFL to mothership (or to buying station delivering to mothership). If NO, enter code to explain.

Code	Reason for Non-submittal
P	Catcher vessel does not have a Federal fisheries permit
	Catcher vessel is under 60 ft LOA and also does not have a Federal fisheries permit
L	Catcher vessel is under 60 ft length overall
U	Catcher vessel delivered an unsorted codend
If blue discard copy of DFL is not submitted by catcher vessel, <b>and no reason was given</b> , enter NO without a code.	

Name.

Enter the name of the Catcher Vessel or Buying Station delivering the groundfish.

ADF&G NO.

Enter the 5-digit ADF&G vessel registration number of the Catcher Vessel or Buying Station delivering the groundfish.

Receipt Time.

Record the time ( A.l.t.) when receipt of groundfish delivery was completed.

Receipt Position.

Enter latitude and longitude of Mothership’s begin position (to at least the nearest minute) when the groundfish delivery is received.

**Option:** record to nearest second or fraction of minute.

Estimated Total Haul Weight.

Enter the estimated total haul weight of groundfish to the nearest pound or metric ton.

Circle either lb or mt.

Use the same units to report weight throughout the year.

IR/IU Species.

If applicable, enter the species code and weight for any IR/IU received.

Indicate whether in lb or mt.

Fish Ticket Number.

Enter the ADF&G fish ticket number issued to the catcher vessel.

No deliveries.

If there are no deliveries for a day, write "NO DELIVERIES", "0", or "ZERO" on the "daily total" line.

**DISCARD/DISPOSITION INFORMATION.**

Record the following information for all discard/disposition reported to you by a catcher vessel or buying station, and all discard/disposition that occurred at the mothership.

Use species and product codes presented in Table 1 and Table 2.

Daily Total Weight.

Record daily the species code, product code, and the total estimated discard/disposition amounts in whole fish weight for each groundfish species or species group and Pacific herring in pounds or to at least the nearest 0.001 mt.

Daily Total Numbers of animals.

Record daily the species code, product code, and discard/disposition amounts by number of Pacific salmon, steelhead trout, Pacific halibut, king crab, and Tanner crab.

No discard/disposition.

If there are no discard/disposition for a day, write "0", "ZERO" or "NO DISCARDS" on the "daily total" line.

Daily Balance Forward.

Enter the total amount of discard/disposition, by species and product codes, carried forward from the previous day.

**NOTE**

**At the beginning of each weekly reporting period, the discard/disposition amount is zero, and nothing shall be carried forward from the previous weekly reporting period.**

Discard/disposition Weekly Cumulative Total.

Enter the total discard/disposition amount by species and product codes, calculated by adding the relevant daily total and the total carried forward.

Calculate cumulative discard/disposition totals for each reporting area, gear type, IFQ, and CDQ program.

**PRODUCT INFORMATION.**

Calculate and record the following information for each product made from fish delivered by a catcher vessel, buying station, or transferred from a groundfish processor.  
Check either pounds (lb) or metric tons (mt).

Ancillary product.

A product, such as meal, heads, internal organs, pectoral girdles, or any other product that may be made from the same fish as the primary product.

Primary product.

A product, such as fillets, made from each fish, with the highest recovery rate.

Reprocessed or rehandled product.

A product, such as meal, that results from processing a previously reported product or from rehandling a previously reported product.

Daily Production Total.

Enter the total amount of product -- by species codes, product codes, and product designation -- that was produced each day.

Use the species codes, product codes, and product designations presented in Table 1 and Table 2.

No production.

If no production occurred for a day, write "NO PRODUCTION" on the "daily total" line.

Daily Balance Forward.

Enter the total amount of product, by species codes, product codes, and product designation, carried forward from the previous day.

**NOTE**

**At the beginning of each weekly reporting period or after the offload or transfer of all fish or fish product onboard if such offload occurs prior to the end of a weekly reporting period, the amount is zero, and nothing shall be carried forward from the previous weekly reporting period.**

Production Weekly Cumulative Total.

At the end of each weekly reporting period, enter the cumulative total product weight, by species codes, product codes, and product designation calculated by adding the relevant daily total and the total carried forward for that week.

Calculate cumulative production totals for each reporting area, gear type, and CDQ number.

**COMMENTS** (optional)

	Description	Species Code	Primary/Ancillary	Product Code
<b>Example 1 – describe a single product:</b>	Pollock made into primary product, minced	270	P	31
<b>Example 2 – describe two products from the same fish</b>	Pollock made into primary product, fillets and ancillary product, roe	270	P	23
		270	A	14
<b>Example 3 – describe multiple products</b>	Starting with 100 mt of pollock -- 90 mt were processed [into 13.5 mt deep skin fillets and 2.7 mt roe]	270	P	24
		270	A	14
	10 mt small and damaged pollock were processed into meal along with 73.8 mt pollock parts 12% (10/83.8) of the meal = 1.68 mt is primary	270	P	32
	88% (73.8/83.8) of the meal = 12.32 mt is ancillary	270	A	32
<b>Example 4 – describe an unlisted, ancillary product</b>	Pollock livers made into ancillary product. Use product code 97, which means miscellaneous products, and write in the name of the product.	270	A	97 livers

<b>CATCHER PROCESSOR DCPL GROUND FISH TRAWL GEAR</b>	VESSEL NAME	Date (M - D - Y)	PAGE
	OPERATOR NAME AND SIGNATURE	ADF&G Processor Code	
		Federal Fisheries Permit No.	

<b>IDENTIFI- CATION</b>	<b>MANAGEMENT PROGRAM</b> <small>(Check if applicable and enter number)</small> CDQ <input type="checkbox"/> Exempted <input type="checkbox"/> Research <input type="checkbox"/> AIP <input type="checkbox"/> No. _____	INACTIVE <input type="checkbox"/>	START _____	END _____	REASON _____	<b>OBSERVER INFORMATION</b>	NO. OF OBSER- VERS ONBOARD
	GEAR TYPE (circle one) Non-pelagic trawl      Pelagic trawl	CREW SIZE _____	FEDERAL REPORTING AREA _____	TRAWL GEAR ONLY (Circle one) COBLZ      RKCSA	OBSERVER NAME AND CRUISE # _____		
					OBSERVER NAME AND CRUISE # _____		

<b>CATCH BY HAUL</b>	HAUL NO.	TIME OF GEAR DEPLOYMENT	BEGIN POSITION OF HAUL		AVE. SEA DEPTH (Circle M or FM)	AVE. GEAR DEPTH (Circle M or FM)	DATE AND TIME OF GEAR RETRIEVAL	END POSITION OF HAUL		TARGET SPECIES CODE	ROUND CATCH WEIGHT		
			LATITUDE	LONGITUDE				LATITUDE	LONGITUDE		TOTAL HAUL WEIGHT (Circle one LB or MT)	SPECIES CODE	IR/IU SPECIES (Circle one LB or MT)

<b>DISCARD/ DISPOSITION</b>	For groundfish and Pacific herring, circle:    lbs. or    nearest 0.001 mt. For Pacific halibut, Pacific salmon, king crab, and Tanner crab, record in numbers												
	SPECIES CODE												
	PRODUCT CODE												
	BALANCE FORWARD												
	DAILY TOTAL												
WEEKLY CUMULATIVE TOTAL													

<b>PRODUCT</b> <small>Indicate <input type="checkbox"/> lb. or <input type="checkbox"/> mt.</small>	SPECIES CODE												
	PRODUCT CODE												
	BALANCE FORWARD												
	DAILY TOTAL												
	WEEKLY CUMULATIVE TOTAL												

COMMENTS

Instructions for

**CATCHER/PROCESSOR TRAWL GEAR  
DAILY CUMULATIVE PRODUCTION LOGBOOK (DCPL)**

**RESPONSIBILITY**

The owner of a catcher/processor issued a Federal fisheries permit under § 679.4 is responsible for compliance with the applicable recordkeeping and reporting requirements of 50 CFR part 679.5, including completion of a DCPL. The signature of the owner or operator on the DCPL is verification of acceptance of that responsibility.

Two logbooks of same gear type.

If more than one logbook of the same gear type is used in a fishing year, the page numbers must follow the consecutive order of the previous logbook.

Two logbooks of different gear types.

If two logbooks of different gear types are used in a fishing year, the page numbers in each logbook must start with page one.

**TIME LIMITS**

The operator must ...	Within this time limit		
Record haul number, time and date gear set, time and date gear hauled, begin and end position, CDQ group number (if applicable), and estimated total haul weight	Within 2 hours after completion of gear retrieval		
Record discard/disposition information	By noon each day to record the previous day's discard/disposition		
Record product information	By noon each day for the previous day's production		
Record all other information required in the DCPL	By noon of the day following completion of production		
Sign the completed DCPL logsheets	By noon of the day following the week-ending date of the weekly reporting period.		
Submit the goldenrod logsheet to the observer	After signed by the operator		
Submit the yellow logsheets each quarter to:  NOAA Office for Law Enforcement P.O. Box 21767 Juneau, Alaska 99802-1767	Quarter	Submit by	
	1	Jan 1 - Mar 31	May 1
	2	Apr 1 - Jun 30	August 1
	3	Jul 1 - Sep 30	November 1
	4	Oct 1 - Dec 31	February 1 of the following year.

**INFORMATION REQUIRED ON ALL LOGSHEETS**

Active/Inactive.

The operator must account for each day of the fishing year and indicate in the DCPL whether the catcher/ processor is active or inactive throughout the year.

If a catcher/processor is	Then
<b>Active.</b> a period of time when the catcher/processor is checked-in or processing	Complete one logsheet per day
<b>Inactive.</b> A period of time when the catcher/processor is not	Use one logsheet for up to one quarter.

active.	<ol style="list-style-type: none"> <li>1. Check “inactive”.</li> <li>2. Record the first and last day when inactive.</li> <li>3. Indicate why catcher/processor is inactive</li> </ol>
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If the time period that a catcher/processor is inactive extends across two or more successive quarters, complete two logsheets: the one to indicate the last day of the first inactive quarter and the next page to indicate the first day of the second inactive quarter.

Date.  
Enter date (month-day-year).

Page Number.  
Logbook must account for each day of the year. Number the pages in each logbook consecutively, beginning with page 1 for January 1 and continuing throughout the logbook for the remainder of the fishing year.

Vessel Name.  
Enter complete catcher/processor name as displayed in official documentation.

Operator Name and Signature.  
Enter printed name and signature of operator. Signature verifies the accuracy and completeness of data on the logsheet.

ADF&G Processor Code.  
Enter State of Alaska Department of Fish and Game (ADF&G) processor code number of the catcher/processor.

Federal Fisheries Permit No.  
Enter Federal Fisheries Permit Number of the catcher/processor.

**INFORMATION REQUIRED FOR EACH DAY THE VESSEL IS ACTIVE.**

Use a separate logsheet	For each day of an active period
	For each reporting area where harvest occurred
	Use two separate logsheets, the first to record the information from the reporting area that includes the COBLZ or RKCSA and the second to record the information from the reporting area that does not include the COBLZ or RKCSA.
	For each separate management program. Use a separate logsheet for each identifying number of the same program type.

Management Program  
Whether harvest under a special management program  
If YES, enter identification number

If a haul occurs in more than one reporting area, record the area code where gear retrieval was completed, regardless of where the majority of the haul took place.

Gear Type.  
Circle the gear type used to harvest the groundfish, either pelagic or non-pelagic trawl.

COBLZ or RKCSA.  
Indicate whether catch was harvested in COBLZ or RKCSA.

Crew Size.  
Enter the number of crew on the last day of the weekly reporting period, excluding certified observer(s).

Observer Information.  
Enter the number of NMFS-certified observers aboard the vessel.

Federal Reporting Area.  
Enter the reporting area code where gear retrieval was completed.

For each observer aboard, enter printed name and cruise number.

Use the reporting area codes presented in Figure 1 and Figure 3.

**CATCH BY HAUL.**

Record the following information for each haul.

Haul No. Enter the number of the haul in sequence by year.

Gear deployment for trawl gear (or to set gear)	
Position of gear deployment (lat. and long. to the nearest minute) <i>Optional:</i> record to the nearest second or fraction of a minute	The position where the trawl gear reaches the fishing level and begins to fish.
Time of gear deployment (A.I.t.)	The time when the trawl gear reaches the fishing level and begins to fish.
Gear retrieval for trawl gear (or to haul gear)	
Position of gear retrieval (lat. and long. to the nearest minute). <i>Optional:</i> record to the nearest second or fraction of a minute	The position where retrieval of trawl gear cable commences.
Date and time of gear retrieval (A.I.t.)	The date and time when retrieval of trawl gear cable commences

Average Sea Depth.

Circle meters (M) or fathoms (FM). Use the same units to report sea depth throughout the year.

Enter average sea depth for the haul, recorded to the nearest meter or fathom.

Average Gear Depth.

Circle meters (M) or fathoms (FM). Use the same units to report gear depth throughout the year.

Enter average gear depth for the haul recorded to the nearest meter or fathom.

Target Species Code

List the species codes for the main species you expect to harvest this haul.

Total Haul Weight

**Enter haul weight of all retained species.**

Indicate whether to the nearest pound or to at least the nearest 0.001 mt.

**DISCARD/DISPOSITION INFORMATION.**

Record all discard/disposition information that occurred on the catcher/processor during harvest and production.

Use species and product codes presented in Table 1 and Table 2.

Check either lb or mt. Use the same units to report weight throughout the year.

Daily Discard/disposition Total Weight.

Record daily the species code, product code, and the total estimated discard/disposition amounts in whole fish weight for each groundfish species or species group and Pacific herring in pounds or to at least the nearest 0.001 mt.

Daily Discard/disposition Total Numbers of animals.

Record daily the species code, product code, and discard/disposition amounts by number of Pacific salmon, steelhead trout, Pacific halibut, king crab, and Tanner crab.

Daily discards bled from an unsorted codend.

If fish are discarded (bled) from an unsorted codend, estimate and record the amount of each species discarded (use Code 98).

No discard/disposition.

If there are no discard/disposition for a day, write "NO DISCARDS", "0", or "ZERO" on the "daily total" line.

Daily Discard/disposition Balance Forward.

Enter the total weight or number as appropriate of discard/disposition, by species and product codes, carried forward from the previous day.

**NOTE**

**At the beginning of each weekly reporting period, the discard/disposition amount is zero, and nothing shall be carried forward from the previous weekly reporting period.**

Weekly Discard/disposition Cumulative Total.

At the end of each weekly reporting period, calculate separately the cumulative total discard/disposition weight or number as appropriate for each reporting area, gear type, and management type number, calculated by adding the relevant daily total and the total carried forward for that week.

Enter the cumulative totals by species codes and product codes.

**PRODUCT INFORMATION.**

Calculate and record the following information for each product made from fish harvested by the catcher/processor.

Check either pounds (lb) or metric tons (mt), and use the same units to report weight throughout the year..

Daily Production Total Weight.

Enter the total weight of product -- by species codes, product codes, and product designation -- that was produced each day.

[see examples below]

Use the species codes, product codes, and product designations presented in Table 1 and Table 2.

No Production.

If no production occurred for a day, write "NO PRODUCTION" on the "daily total" line.

Record whether primary product, ancillary product, or redesignated/rehandled product.

Ancillary product.

A product, such as meal, heads, internal organs, pectoral girdles, or any other product that may be made from the same fish as the primary product.

Primary product.

A product, such as fillets, made from each fish, with the highest recovery rate.

Reprocessed or rehandled product.

A product, such as meal, that results from processing a previously reported product or from rehandling a previously reported product.

	Description	Species Code	Primary/ Ancillary	Product Code
<b>Example 1 – describe a single product:</b>	Pollock made into primary product, minced	270	P	31
<b>Example 2 – describe two products from the same fish</b>	Pollock made into primary product, fillets and ancillary product, roe	270	P	23
		270	A	14
<b>Example 3 – describe multiple products</b>	Starting with 100 mt of pollock -- 90 mt were processed [into 13.5 mt deep skin fillets and 2.7 mt roe]	270	P	24
		270	A	14
	10 mt small and damaged pollock were processed into meal along with 73.8 mt pollock parts 12% (10/83.8) of the meal = 1.68 mt is primary	270	P	32
	88% (73.8/83.8) of the meal = 12.32 mt is ancillary	270	A	32
<b>Example 4 – describe an unlisted, ancillary product</b>	Pollock livers made into ancillary product. Use product code 97, which means miscellaneous products, and write in the name of the product.	270	A	97 livers

Daily Balance Forward.

Enter the total amount of product, by species codes, product codes, and product designation, carried forward from the previous day.

**NOTE**

**At the beginning of each weekly reporting period or after the offload or transfer of all fish or fish product onboard if such offload occurs prior to the end of a weekly reporting period, the amount is zero, and nothing shall be carried forward from the previous weekly reporting period.**

Weekly Production Cumulative Total.

At the end of each weekly reporting period, enter the cumulative total product weight, by species codes, product codes, and product designation calculated by adding the relevant daily total and the total carried forward for that week.

Calculate cumulative production totals separately for each reporting area, whether catch was harvested in COBLZ or RKCSA, gear type, and management type, calculated by adding the relevant daily total and the total carried forward for that week.

**COMMENTS** (*optional*)



Instructions for

**CATCHER/PROCESSOR: LONGLINE & POT GEAR  
DAILY CUMULATIVE PRODUCTION LOGBOOK (DCPL)**

**RESPONSIBILITY**

**Groundfish fisheries**

The operator of a catcher/processor using longline or pot gear to harvest groundfish and that retains any groundfish from the Gulf of Alaska (GOA), or Bering Sea and Aleutian Islands Management Area (BSAI), must maintain a longline and pot gear DCPL.

**IFQ halibut, CDQ halibut, and IFQ sablefish fisheries.**

**The operator of a catcher/processor using longline or pot gear to harvest IFQ sablefish, IFQ halibut, or CDQ halibut from the GOA or BSAI, must maintain a longline and pot gear DCPL.**

**Crab Rationalization (CR) fisheries.**

**The operator of a catcher/processor using longline or pot gear to harvest CR crab from the BSAI, must maintain a longline and pot gear DCPL.**

The signature of the owner or operator on the DCPL is verification of acceptance of that responsibility.

**Two logbooks of same gear type.**

If more than one logbook of the same gear type is used in a fishing year, the page numbers must follow the consecutive order of the previous logbook.

**Two logbooks of different gear types.**

If two logbooks of different gear types are used in a fishing year, the page numbers in each logbook must start with page one.

**TIME LIMITS**

The operator of a catcher/processor must:	Within This Time Limit	
Record set number, time and date gear set, time and date gear hauled, begin and end position, CDQ group number (if applicable), and <b>haul weight</b> for each set	Within 2 hours after completion of gear retrieval	
Record discard/disposition information	By noon each day to record the previous day's discard/disposition	
Record product information	By noon each day for the previous day's production	
Record all other information required in the DCPL	By noon of the day following completion of production	
Sign the completed DCPL logsheets	By noon of the day following the week-ending date of the weekly reporting period.	
Submit the goldenrod logsheet to the observer	After signed by the operator	
Submit the green logsheet	The green logsheets are provided to support a separate data collection by the International Pacific Halibut Commission (IPHC) under the joint NMFS/IPHC logbook program. Contact IPHC for more information at phone number 206-634-1838.	
Submit the yellow logsheets each quarter to:  NOAA Fisheries Office for Enforcement (OLE) P.O. Box 21767 Juneau, Alaska 99802-1767	Quarter	
	1	Submit by
	2	May 1
	3	August 1
	4	November 1
	Oct 1 - Dec 31	February 1 of the following year.

**INFORMATION REQUIRED ON ALL LOGSHEETS**

Active/Inactive

The owner or operator must account for each day of the fishing year and indicate in the DCPL whether the catcher/processor is active or inactive throughout the year.

If a catcher/processor is	Then
<b>Active.</b> A period of time when the catcher/processor is checked-in or processing.	Complete one logsheet per day or up to 7 days on one logsheet
<b>Inactive.</b> A period of time when the catcher/processor is not active.	Use one logsheet for up to one quarter. 1. Check "inactive". 2. Record the first and last day when inactive. 3. Indicate why catcher/processor is inactive

If the time period that a catcher/processor is inactive extends across two or more successive quarters, complete two logsheets: the one to indicate the last day of the first inactive quarter and the next page to indicate the first day of the second inactive quarter.

Page Number

Number the pages in each logbook consecutively, beginning with page 1 for January 1 and continuing throughout the logbook for the remainder of the fishing year.

Vessel Name.

Enter complete vessel name as displayed in official documentation.

Operator Name and Signature.

Enter printed name and signature of operator. Signature verifies the accuracy and completeness of data on the logsheet.

ADF&G Processor Code.

Enter State of Alaska Department of Fish and Game (ADF&G) processor code number of the catcher/processor.

**INFORMATION REQUIRED FOR EACH DAY THE VESSEL IS ACTIVE**

Permit numbers.

Enter the permit number(s) for the applicable fishery in which you participated.

Federal Fisheries permit number

IFQ permit number of the operator and of each IFQ permit holder aboard the vessel.

CDQ group number

Halibut CDQ permit number

Federal crab vessel permit number

Management Program.

Circle to indicate whether fishing activity is under the CDQ Program, a Research Fishery, Exempted Fishery, **or Aleutian Islands Pollock Fishery (AIP) and add identifying number, if appropriate.**

If harvest is not under one of these management programs, leave blank.

Use a separate logsheet	For up to 7 days on one logsheet
	For each reporting area in which harvest occurred..
	For each gear type
	For each separate management program type
If fishing under more than one management program of the same type, use a separate logsheet for each.	

Federal Reporting Area.

Federal reporting area code where gear retrieval was completed, regardless of where the majority of the set took place.

**NOTE**

**For Federal reporting area codes, see Figures 1 and 3 to part 679**

**Gear Type.**

Use a separate logsheet for each gear type. Circle gear type used to harvest the fish.

If gear type is:	Then
Other gear	If gear is other than those listed, circle "Other" and describe gear
Pot gear	Circle "pot gear" and enter the number of pots set and the number of pots lost (if applicable)
Hook-and-line gear	Circle "hook and line gear" and Indicate whether gear is fixed hook (conventional or tub), autoline, or snap ( <i>optional</i> , but may be required by IPHC regulations).
	Enter length of skate to the nearest foot ( <i>optional</i> , but may be required by IPHC regulations)
	Enter number of skates set and number of skates lost ( <i>optional</i> , but may be required by IPHC regulations)
	Enter size of hooks, hook spacing in feet, and number of hooks per skate
	Enter the alphabetical letter that coincides with gear description in the "Catch by Set"
	Enter seabird avoidance gear code(s) (see § 679.24(e) and Table 19 to part 679).

**IF GEAR INFORMATION IS THE SAME**

on subsequent pages, mark the box instead of re-entering the gear-type information.

**Crew Size.**

Enter the number of crew, excluding certified observer(s), on the last day of the weekly reporting period.

**Observer Information.**

Record the number of observers aboard, the name of the observer(s), and the observer cruise number(s).

**CATCH BY SET.**

A set includes a test set, unsuccessful harvest, or when gear is not working and is pulled in, even if no fish are harvested

**A set means**

- a string of longline gear,
- a string of pots, or
- a group of pots with individual pots deployed and retrieved in the water in a similar location with similar soak time.

In the case of **pot gear**, when the pots in a string are hauled more than once in the same position, a new set is created each time the string is retrieved and re-deployed.

If no catch occurred for a day, write "no catch."

The operator must record the following information for each set:

Set number, sequentially by year.

Date Set (month-day)

Time Set (in military format, to the nearest hour, A.l.t.)

Begin and end buoy or bag numbers (optional, but may be required by IPHC regulations).

Location of Set (see following table)

Gear deployment (to set gear)	Hook-and-line gear:	Jig or troll gear	Pot gear
<b>Position</b> (lat and long to the nearest minute) <i>Optional</i> : record to the nearest second or fraction of a minute	The beginning position of a set of hook-and-line gear.	The position where the jig or troll gear enters the water.	The position of the first pot in a string of pots.
<b>Time</b>	The time when the first hook-and-line gear of a set is deployed.	The time when jig or troll gear enters the water.	The time when the first pot in a string of pots is deployed.

Gear retrieval (to haul gear)	<b>Hook-and-line gear:</b>	<b>Jig or troll gear</b>	<b>Pot gear</b>
<b>Position</b> (lat and long to the nearest minute) <i>Optional:</i> record to the nearest second or fraction of a minute	The position where the last hook-and-line gear of a set leaves the water, regardless of where the majority of the set took place.	The position where the jig or troll gear leaves the water.	The position where the last pot of a set is retrieved, regardless of where the majority of the set took place.
<b>Time</b>	The time when the last hook-and-line gear of a set leaves the water.	The time when the jig or troll gear leaves the water.	The time when the last pot of a set is retrieved

**Date Hauled** (month-day) .

**Time Hauled** (in military format, to the nearest hour, A.I.t.) .

Begin and end gear depths to the nearest fathom (*optional*, but may be required by IPHC regulations).

IR/IU Species

Species code. Enter species code of IR/IU species.

Weight. Enter estimated total round weight for each IR/IU species; indicate whether to the nearest pound or the nearest 0.001 mt (2.20 lb).

Target species code.  
Species code of the species you intend to catch.

Use the species codes presented in Table 2.
---

CDQ/IFQ Halibut.

Estimated total round weight of IFQ halibut or CDQ halibut to the nearest pound.

Circle to indicate whether CDQ or IFQ halibut

IFQ Sablefish.

Number and estimated total round weight of IFQ sablefish to the nearest pound.

Circle to indicate whether IFQ sablefish product is:

- western cut (WC),
- eastern cut (EC), or
- round weight (RD).

**CR Crab.**

**Number and scale weight of raw CR crab to the nearest pound.**

**Haul Weight.**

**Enter haul weight of all retained species.**

Indicate whether to the nearest pound or to at least the nearest 0.001 mt.

**PRODUCT INFORMATION.**

No production

If no production occurred for a day, write "NO PRODUCTION" on the "daily total" line.

Calculate and record the following information for each product made from fish harvested by the catcher/ processor.

Check either pounds (lb) or metric tons (mt), and use the same units to report weight throughout the year.

Daily Production Total Weight.

Enter the total weight of product -- by species codes, product codes, and product designation -- that was produced each day.

Record whether primary product, ancillary product, or redesignated/rehandled product.

Use the product codes and product designations and species codes presented in Table 1 and Table 2, respectively.
--

Daily Balance Forward.

Enter the total amount of product, by species codes, product codes, and product designation, carried forward from the previous day.

**NOTE**

**At the beginning of each weekly reporting period or after the offload or transfer of all fish or fish product onboard if such offload occurs prior to the end of a weekly reporting period, the amount is zero, and nothing shall be carried forward from the previous weekly reporting period.**

Weekly Production Cumulative Total.

At the end of each weekly reporting period, enter the cumulative total product weight, by species codes, product codes, and product designation calculated by adding the relevant daily total and the total carried forward for that week.

Calculate cumulative production totals separately for each reporting area, gear type, and management type number, calculated by adding the relevant daily total and the total carried forward for that week.

**DISCARD/DISPOSITION INFORMATION.**

No discard/disposition.

If there are no discard/disposition for a day, write "NO DISCARDS", "0", or "ZERO" on the "daily total" line.

Record all discard/disposition information that occurred on the catcher/processor during harvest and production.

Use either lb or mt and use the same units to report weight throughout the year.

Use product and species codes in Table 1 and Table 2, respectively

Daily Discard/disposition Total Weight.

Record daily the species code, product code, and the total estimated discard/disposition amounts in whole fish weight for each groundfish species or species group and Pacific herring in pounds or to at least the nearest 0.001 mt.

Daily Discard/disposition Total Numbers of animals.

Record daily the species code, product code, and discard/disposition amounts by number of Pacific salmon, steelhead trout, Pacific halibut, king crab, and Tanner crab.

Daily Balance Forward.

Enter the total amount of discard/disposition, by species and product codes, carried forward from the previous day.

**NOTE**

**At the beginning of each weekly reporting period, the discard/disposition amount is zero, and nothing shall be carried forward from the previous weekly reporting period.**

Weekly Discard/disposition Cumulative Total.

At the end of each weekly reporting period, calculate separately the cumulative total discard/disposition weight or number as appropriate for each reporting area, gear type, and management type number, calculated by adding the relevant daily total and the total carried forward for that week.

Enter the cumulative totals by species codes and product codes.

**COMMENTS (optional)**



## Instructions for

### DAILY PRODUCTION REPORT (DPR)

#### RESPONSIBILITY

The DPR provides information on a specific, requested species in a specific reporting area and is submitted only when requested by the Regional Administrator.

The operator or manager must submit a DPR in addition to a WPR:

- o if a catcher/processor or mothership is active and checked in to the specified reporting area or
- o if a shoreside processor or stationary floating processor (SFP) is active and checked in to the specified reporting area.

#### TIME LIMIT AND SUBMITTAL.

The operator, manager, or representative must submit a DPR by FAX to the Regional Administrator at

**FAX No. 907-586-7131**

by 1200 hours, A.l.t., the day following each day of landings, discard, or production.

#### GENERAL.

Use one DPR to record each day or for multiple days.

##### Management Program.

Indicate by circling appropriate term whether harvest was made under a separate management program:

Western Alaska Community Development Quota (CDQ) program. If fishing under more than one CDQ number, use a separate DPR for each. Enter CDQ number.

Research Program. If fishing under more than one research program, use a separate DPR for each. Enter research program number.

Exempt Fishery. If fishing under more than one exempt fishery, use a separate DPR for each. Enter exempt fishery number.

[Aleutian Islands Pollock](#)

Use a separate DPR

- For each processor type
- For each gear type
- For each management program

##### Original/revised Report.

If DPR is the first one sent for a given day, check "ORIGINAL REPORT".

If DPR is a correction or addition to a previously sent DPR, check "REVISED REPORT."

##### Processor Name.

Enter the name of the Mothership, Catcher/Processor, Shoreside Processor, or SFP.

##### Federal Fisheries Permit No.

If a Mothership or Catcher/Processor, enter Federal Fisheries Permit number.

##### Federal Processor Permit No.

If a Shoreside Processor or SFP, enter Federal Processor Permit number.

##### ADF&G Processor Code.

Enter State of Alaska Department of Fish & Game (ADF&G) processor code.

##### Processor Type.

Circle either Mothership, Shoreside Processor, or Catcher/Processor.

##### Gear Type of Harvester.

Circle the type of gear that was used to harvest the groundfish.

##### Representative Information.

Enter the printed name, telephone number, and FAX number of representative.

##### COMSAT NO.

If a vessel, enter satellite communications number (if available).

#### DAILY INFORMATION.

From the DCPL, enter the cumulative amounts of landings, discards, and production at the end of each day.

Date.

If a Shoreside Processor or SFP, enter month-day-year that landings were completed.

If a Mothership or Catcher/Processor, enter month-day-year that production was completed.

Federal Reporting Area.

Enter reporting area where groundfish was harvested or discarded.

Use the reporting area codes presented in Figure 1 and Figure 3

Species Code.

Enter the species code for the requested specie(s).

Use the species codes presented in Table 2

**LANDINGS INFORMATION  
(Shoreside Processor or SFP).**

Product Code. Enter the landings product code.

Weight. Enter the landings weight to at least the nearest 0.001 mt for the requested species.

**PRODUCT INFORMATION  
(Mothership or Catcher/processor).**

Product Designation.

Enter the following codes to indicate product designation:

P primary product  
A ancillary product  
R reprocessed product

Product Code.

Enter the product code for the requested species.

Weight.

Enter product weight of the requested species to at least the nearest 0.001 mt.

**DISCARD/DISPOSITION INFORMATION.**

Product Code.

Enter the discard/disposition product code of the requested species.

Weight.

Enter the discard weight for the requested species to at least the nearest 0.001 mt.

# CHECK-IN/CHECK-OUT REPORT MOTHERSHIP OR CATCHER/PROCESSOR

Original Report

Revised Report

National Marine Fisheries Service  
P.O. Box 21668  
Juneau, AK 99801

FAX: 907-586-7131  
Telephone: 907-586-7376



Vessel Name	ADF&G Processor Code	Federal Fisheries Permit No.
<b>MANAGEMENT PROGRAM</b> <small>(Check if applicable and enter number)</small> CDQ <input type="checkbox"/> Exempted <input type="checkbox"/> Research <input type="checkbox"/> AIP <input type="checkbox"/> No. _____	Representative Name	Telephone No.
	FAX No.	COMSAT No.
Processor Type (circle one) Mothership    Catcher/Processor	Gear Type (circle one) Hook & Line    Pot    Pelagic Trawl    Non-Pelagic Trawl    Jig    Troll	

<b>BEGIN Message</b>	<b>Latitude/Longitude</b>											
Date:	Federal Reporting Area	508	509	512	513	514	516	517	518	519	521	523
Time (ALT)	TRAWL GEAR ONLY	524	530	541	542	543	610	620	630	640	649	Primary and Secondary Target Species Codes
	<input type="checkbox"/> COBLZ <input type="checkbox"/> RKCSA	650	659									
<b>CEASE Message</b>	<b>Latitude/Longitude</b>											
Date:	Federal Reporting Area	508	509	512	513	514	516	517	518	519	521	523
Time (ALT)	TRAWL GEAR ONLY	524	530	541	542	543	610	620	630	640	649	Primary and Secondary Target Species Codes
	<input type="checkbox"/> COBLZ <input type="checkbox"/> RKCSA	650	659									

<b>BEGIN Message</b>	<b>Latitude/Longitude</b>											
Date:	Federal Reporting Area	508	509	512	513	514	516	517	518	519	521	523
Time (ALT)	TRAWL GEAR ONLY	524	530	541	542	543	610	620	630	640	649	Primary and Secondary Target Species Codes
	<input type="checkbox"/> COBLZ <input type="checkbox"/> RKCSA	650	659									
<b>CEASE Message</b>	<b>Latitude/Longitude</b>											
Date:	Federal Reporting Area	508	509	512	513	514	516	517	518	519	521	523
Time (ALT)	TRAWL GEAR ONLY	524	530	541	542	543	610	620	630	640	649	Primary and Secondary Target Species Codes
	<input type="checkbox"/> COBLZ <input type="checkbox"/> RKCSA	650	659									

<b>BEGIN Message</b>	<b>Latitude/Longitude</b>											
Date:	Federal Reporting Area	508	509	512	513	514	516	517	518	519	521	523
Time (ALT)	TRAWL GEAR ONLY	524	530	541	542	543	610	620	630	640	649	Primary and Secondary Target Species Codes
	<input type="checkbox"/> COBLZ <input type="checkbox"/> RKCSA	650	659									
<b>CEASE Message</b>	<b>Latitude/Longitude</b>											
Date:	Federal Reporting Area	508	509	512	513	514	516	517	518	519	521	523
Time (ALT)	TRAWL GEAR ONLY	524	530	541	542	543	610	620	630	640	649	Primary and Secondary Target Species Codes
	<input type="checkbox"/> COBLZ <input type="checkbox"/> RKCSA	650	659									

Instructions for  
**CHECK-IN/CHECK-OUT REPORT,  
MOTHERSHIP**

**TIME LIMIT AND SUBMITTAL.**

The operator of a mothership must submit check-in reports and check-out reports to the Regional Administrator by FAX or transmit a data file by e-mail to [erreports.fakr@noaa.gov](mailto:erreports.fakr@noaa.gov).

**CHECK-IN REPORT.**

Before a mothership commences receipt of groundfish, the operator must submit a check-in report (BEGIN message) within the time limits given in the following table:

Submit a separate BEGIN message for ...	Within this time limit
Each reporting area of groundfish harvest, except 300, 400, 550, or 690	<b>Before receiving groundfish.</b> Must check-in to reporting area(s) where groundfish were harvested. <b>May be checked-in to more than one area simultaneously.</b>
COBLZ or RKCSA	Before receiving groundfish harvested with <b>trawl gear</b> , submit one check-in for the COBLZ or RKCSA and another check-in for the area outside the COBLZ or RKCSA.
Gear Type	If harvested in the same reporting area but using more than one gear type, prior to receiving groundfish submit a separate check-in for each gear type.
CDQ	Prior to receiving groundfish CDQ. If receiving groundfish under more than one CDQ number, use a separate check-in for each number
Exempted or Research Program	If receiving groundfish from an exempted or research fishery, prior to receiving submit a separate check-in for each type.
Processor type	If a mothership and functioning simultaneously as a catcher/processor in the same reporting area, submit a check-in before functioning as either processor type
Change of fishing year	If continually active through the end of one fishing year and at the beginning of a second fishing year, submit a check-in for each reporting area to start the year on January 1.
<b>Aleutian Islands Pollock (AIP)</b>	<b>Before receiving AIP</b>

## CHECK-OUT REPORT.

The operator must submit a check-out report (CEASE message) within the time limits given in the following table:

Submit a separate CEASE message for ...	Within this time limit
Reporting area	Within 24 hours after receipt of fish is complete from each reporting area. If receipt of groundfish from a reporting area is expected to stop for a period of time (month(s)) during the fishing year and then start up again, may submit check-out report for that reporting area.
COBLZ or RKCSA	If receiving groundfish harvested with trawl gear, upon completion of receipt of groundfish, submit a separate check-out for the COBLZ or RKCSA and another check-out for the area outside the COBLZ or RKCSA.
Gear Type	Upon completion of receipt of groundfish, submit a separate check-out for each gear type for which a check-in was submitted.
CDQ	Within 24 hours after receipt of groundfish CDQ has ceased for each CDQ group.
Exempted or Research Program	Upon completion of receipt of groundfish under an exempted or research fishery, submit a separate check-out for each type for which a check-in was submitted
Processor type	Upon completion of simultaneous activity as both mothership and catcher/processor, a separate check-out, one for mothership and one for catcher/processor.
Change of fishing year	If a check-out report was not previously submitted during a fishing year for a reporting area, submit on December 31, a check-out report for each reporting area.
<b>Aleutian Islands Pollock (AIP)</b>	<b>Within 24 hours after receipt of AIP has ceased</b>

### NOTE

**If a Mothership is transiting through a reporting area and is not fishing or receiving fish, a check-in or check-out report is not required from that area.**

### **FOR EACH CHECK-IN AND CHECK-OUT REPORT**

#### Original/revised Report.

If Check-in/Check-out Report is the first one sent for this date and reporting area, check "ORIGINAL REPORT".

If Check-in/Check-out Report is a correction or addition to a previously sent report for this date and reporting area, check "REVISED REPORT."

#### Vessel Name.

Enter the name of Mothership as listed on the Federal Fisheries Permit.

#### ADF&G Processor Code.

Enter State of Alaska Department of Fish & Game (ADF&G) processor code.

#### Federal Fisheries Permit Number.

Enter Federal Fisheries Permit number (AK9).

#### Representative Information.

Enter name, telephone number, and FAX number of representative.

#### COMSAT No.

Enter the satellite communications number of the vessel (if available).

#### Management Program.

Circle to indicate whether fishing activity is under the CDQ Program, a Research Fishery, Exempted Fishery, **or AIP and add identifying number, if appropriate.**

#### Processor Type.

Circle to indicate mothership.

#### Gear Type.

Circle the gear type used to harvest the groundfish.

**CHECK-IN REPORT (BEGIN MESSAGE).**

Date And Time.

Enter date (month-day-year) and time (A.l.t.) **when** receipt of groundfish **will begin**.

Position Coordinates.

Enter latitude and longitude of mothership position in degrees and minutes (*e.g.*, 54 30' N, 167 45'W) where groundfish receipt begins. *Option:* record to the nearest second or fraction of minute.

Federal Reporting Area.

Circle the reporting area code where groundfish harvest occurred.

COBLZ or RKCSA.

If harvest was caught by a vessel using trawl gear, indicate whether catch was harvested in COBLZ or RKCSA.

Primary And Secondary Target Codes.

List the two main species you expect to **receive the following** week. A change in intended target species within the same reporting area does not require a new BEGIN message.

**CHECK-OUT REPORT (CEASE MESSAGE).**

Date And Time.

Enter date (month-day-year) and time (A.l.t.) when the last receipt of groundfish was made.

Position Coordinates.

Enter latitude and longitude of mothership position in degrees and minutes (*e.g.*, 54 30' N, 167 45'W) where the last receipt of groundfish was **completed**. *Option:* record to the nearest second or fraction of minute.

Federal Reporting Area.

Circle the reporting area code where **last** receipt of **groundfish was** completed.



Instructions for

**CHECK-IN/CHECK-OUT REPORT,  
SHORESIDE PROCESSOR**

**TIME LIMIT AND SUBMITTAL.**

The manager of a shoreside processor or stationary floating processor (SFP) must submit check-in reports and check-out reports to the Regional Administrator by FAX (907-586-7131) or transmit a data file by e-mail to [erreports.fakr@noaa.gov](mailto:erreports.fakr@noaa.gov).

**CHECK-IN REPORT.**

The manager must submit a check-in report (BEGIN message) within the time limits given in the following table:

Submit a separate BEGIN message for ...	Within this time limit
Groundfish	Prior to receipt of, processing of, <b>purchase of, or arrange to purchase</b> groundfish
CDQ	Prior to receiving groundfish under the Western Alaska Community Development Quota Program (CDQ). If receiving groundfish under more than one CDQ number, use a separate check-in for each CDQ number
Exempted or Research Program	Prior to receiving groundfish under an exempted fishery or research fishery
Change of fishing year	If continually active through the end of one fishing year and at the beginning of a second fishing year, submit a check-in at the start of the year, January 1
<b>Aleutian Islands Pollock (AIP)</b>	<b>Before receiving AIP</b>

**CHECK-OUT REPORT.**

The manager must submit a check-out report (CEASE message) within the time limits given in the following table:

Submit a separate CEASE message for ...	Within this time limit
CDQ	Within 24 hours after receipt of groundfish CDQ has ceased for each CDQ group
Exempted or Research Program	Upon completion of receipt of groundfish under an exempted or research fishery, submit a separate check-out for each fishery for which a check-in was submitted.
<b>Temporary stop of groundfish participation</b>	If receipt, process, <b>purchase, or arrange to purchase</b> groundfish is expected to stop for a period of time (one or more month) during the fishing year and then start up again, may submit check-out report.
<b>Stop of groundfish participation</b>	Within 48 hours after the end of the applicable weekly reporting period that a shoreside processor or SFP ceases to receive, process, <b>purchase, or arrange to purchase</b> groundfish for the fishing year.
Change of fishing year	If a check-out report was not previously submitted during a fishing year, submit on December 31, a check-out report.

## CHECK-IN AND CHECK-OUT REPORTS

### Original/revised Report.

If report is the first one sent for this date and reporting area, check "ORIGINAL REPORT".

If report is a correction or addition to a previously sent report for this date and reporting area, check "REVISED REPORT."

### Processor Name.

Enter the name of processor, as listed on the Federal Processor Permit.

### ADF&G Processor Code.

Enter State of Alaska Department of Fish & Game (ADF&G) processor code.

### Federal Processor Permit Number.

Enter Federal Processor Permit number.

### Representative Information.

Enter name, telephone number, and FAX number of representative.

### Management Program.

Circle to indicate whether fishing activity is under the CDQ Program, a Research Fishery, Exempted Fishery, **or AIP** and add identifying number, if appropriate.

## INDICATE WHETHER CHECK-IN REPORT OR CHECK-OUT REPORT.

### If check-in report:

Enter date facility will begin to receive, process, **purchase, or arrange to purchase** groundfish.

First Check-in of the Year. Check (a) to indicate that processor is checking in for the first time this fishing year; or

Restart after Temporary Stop. Check (b) to indicate that processor is checking in to restart receipt, processing, purchase, or arrange to purchase groundfish after filing a check-out report.

### If check-out report:

Enter date facility ceased to receive, process, **purchase, or arrange to purchase** groundfish.

## FISH OR FISH PRODUCT HELD AT PLANT.

On each check-in or check-out report, enter all fish or fish products remaining at the facility on the date of the check-in or check-out report

Enter species code, product code, and product weight, in pounds or to at least the nearest 0.001 mt (indicate pounds or nearest 0.001 mt).



Instructions for

**WEEKLY PRODUCTION REPORT (WPR)  
MOTHERSHIP OR CATCHER/PROCESSOR**

**The operator must submit a WPR for any week the mothership or catcher/processor is checked-in.** The WPR summarizes information recorded in the Daily Cumulative Production Logbook (DCPL) on a weekly basis.

**TIME LIMIT AND SUBMITTAL.**

The operator or representative must submit a separate WPR to the Regional Administrator by 1200 hours, A.I.t. on Tuesday following the end of the applicable weekly reporting period **per the following table.**

by FAX (907-586-7131) or

by E-Mail: [erreports.fakr@noaa.gov](mailto:erreports.fakr@noaa.gov)

Use a separate WPR	For each processor type. <b>If a vessel is operating simultaneously during a weekly reporting period as both a catcher/processor and a mothership, the operator must submit two separate WPRs for that week, one for catcher/processor fishing activity and one for mothership fishing activity.</b>
	For each gear type <b>of harvester if groundfish are caught in the same reporting area using more than one gear type</b>
	For each management program <b>For each reporting area, except 300, 400, 550, or 690*</b>
	<b>End of the fishing year.</b> If continually active through the end of one fishing year and at the beginning of a second fishing year, <u>submit a WPR to end the year at midnight, December 31, regardless of where this date falls within the weekly reporting period and submit another WPR to start the year on January 1, regardless of where this date falls within the weekly reporting period.</u>
*Each WPR may list information for two different reporting areas	

**GENERAL INFORMATION.**

Original/revised Report.

If WPR is the first one sent for a given weekly reporting period, check "ORIGINAL REPORT".

If WPR is a correction or addition to a previously sent WPR, check "REVISED REPORT."

Week Ending Date.

Enter the last day of the weekly reporting period (month-day-year), which ends on Saturday at 2400 A.I.t. (except during the last week of each year, when it ends on December 31).

Processor Name.

Enter the name of the Mothership or Catcher/processor, as listed on the Federal Fisheries Permit.

Federal Fisheries Permit No.

Enter Federal Fisheries Permit number.

ADF&G Processor Code.

Enter the State of Alaska Department of Fish & Game (ADF&G) processor code.

Management Program.

Circle to indicate whether fishing activity is under the CDQ Program, a Research Fishery, Exempted Fishery, **or AIP and add identifying number, if appropriate.**

Gear Type of Harvester.

Circle the type of gear that was used to harvest the groundfish.

Processor Type.

Indicate whether Mothership or Catcher/Processor.

Representative Information.

Enter the printed name, **e-mail address**, telephone number, and FAX number of representative.

Date.

Enter the date the WPR is completed.

Crew Size.

Enter number of personnel on last day of week-ending date.

Federal Reporting Area.

Enter the reporting area where gear retrieval was completed.

COBLZ or RKCSA.

If harvester used trawl gear, indicate whether catch was harvested in COBLZ or RKCSA.

## **PRODUCT INFORMATION.**

### Product Weight

From the DCPL, enter the **scale weights** or fish product weights of groundfish product by reporting area at the end of each weekly reporting period by species code, product code, and product designation, to at least the nearest 0.001 mt.

### No Production

If there was no production during a weekly reporting period and the Mothership or Catcher/Processor was checked in, enter "NO PRODUCTION" on the first row of this section.

### **NOTE**

**If DCPL groundfish records are maintained in pounds, convert the amount to metric tons before entering onto the WPR.**

(Divide the amount in pounds by 2204.6 to obtain metric tons.)

## **DISCARD/DISPOSITION INFORMATION.**

### Groundfish or Pacific herring Weight

From the DCPL, enter the cumulative amounts of discard/disposition of groundfish or Pacific herring by reporting area at the end of each weekly reporting period by species code and product code, to at least the nearest 0.001 mt.

### Pacific salmon, steelhead trout, Pacific halibut, king crab, or Tanner crab PSC Number

From the DCPL, enter the cumulative PSC number of discard/disposition of Pacific salmon, steelhead trout, Pacific halibut, king crab, or Tanner crab by reporting area at the end of each weekly reporting period by species code and product code.

### No Discard/disposition

If no discard/disposition occurred during the weekly reporting period, enter "NO DISCARDS" on the first row of this section. Do not leave this section blank.

## **CATCHER VESSEL DELIVERY INFORMATION.**

If a mothership, list the fish ticket numbers issued to Catcher Vessels during the weekly reporting period. Include those fish tickets issued by a buying station on behalf of the mothership.



Instructions for

**WEEKLY PRODUCTION REPORT (WPR)  
SHORESIDE PROCESSOR**

**Except if using the Shoreside Processor Electronic Logbook Report (SPELR) instead of the Daily Cumulative Production Logbook (DCPL), the manager must submit a WPR for any week the shoreside processor or stationary floating processor (SFP) is checked-in.** The WPR summarizes information recorded in the Daily Cumulative Production Logbook (DCPL) on a weekly basis.

If WPR is a correction or addition to a previously sent WPR, check "REVISED REPORT."

Week Ending Date.

Enter the last day of the weekly reporting period (month-day-year), which ends on a Saturday at 2400 A.I.t. (except during the last week of each year, when it ends on December 31).

**TIME LIMIT AND SUBMITTAL.**

Processor Name.

Enter the name of the Shoreside Processor of SFP, as listed on the Federal Processor Permit.

The manager or representative must submit a WPR to the Regional Administrator by 1200 hours, A.I.t. on Tuesday following the end of the applicable weekly reporting period **per the following table:**

Federal Processor Permit No.

Enter Federal Processor Permit number.

by FAX: (907-586-7131) or

ADF&G Processor Code.

Enter the State of Alaska Department of Fish & Game (ADF&G) processor code.

by E-Mail: [erreports.fakr@noaa.gov](mailto:erreports.fakr@noaa.gov)

Management Program.

Circle to indicate whether fishing activity is under the CDQ Program, a Research Fishery, Exempted Fishery, **or AIP and add identifying number, if appropriate.**

Use a separate WPR	For each gear type <b>of harvester if groundfish are caught in the same reporting area using more than one gear type</b>
	For each management program
	<b>For each reporting area, except 300, 400, 550, or 690*</b>
	<b>End of the fishing year.</b> If continually active through the end of one fishing year and at the beginning of a second fishing year, <u>submit a WPR to end the year at midnight, December 31, regardless of where this date falls within the weekly reporting period and submit another WPR to start the year on January 1, regardless of where this date falls within the weekly reporting period.</u>
*Each WPR may list information for two different reporting areas	

Representative Information.

Enter the printed name, **e-mail address**, telephone number, and FAX number of representative.

Date. Enter the date the WPR is completed.

Federal Reporting Area.

Enter the reporting area where groundfish were harvested.

COBLZ or RKCSA.

If harvested with trawl gear, indicate whether catch was harvested in COBLZ or RKCSA.

**GENERAL INFORMATION.**

**PART I INFORMATION**

Original/revised Report.

If WPR is the first one sent for a given weekly reporting period, check "ORIGINAL REPORT".

From Part I of the DCPL, enter the cumulative amounts of landings and discard/disposition by reporting area at the end of each weekly reporting period.

Gear Type of Harvester.

Circle the type of gear that was used to harvest the groundfish. If gear type not listed, circle OTHER and write a brief description of gear.

Landings Weight Information.

Enter landings weight by Federal reporting area, for each species code and product code, in metric tons to at least the nearest 0.001 mt.

No Landings

If no landings occurred during a weekly reporting period and the Shoreside Processor or SFP is checked in, enter "NO LANDINGS" on the first row of this section. Do not leave this section blank.

**NOTE**

**If DCPL groundfish records are maintained in pounds, convert the amount to metric tons before entering onto the WPR.  
(Divide the amount in pounds by 2204.6 to obtain metric tons.)**

Discard/disposition Weight Information.

Enter discard/disposition weight by Federal reporting area for each species code and product code of groundfish or Pacific herring to at least the nearest 0.001 mt.

Discard/disposition PSC Number Information.

Enter by Federal reporting area, the number of discard/disposition for each species code and product code of Pacific salmon, steelhead trout, Pacific halibut, king crab, or Tanner crab.

No Discards/disposition.

If there are no discard/disposition, enter "NO DISCARDS" on the first row of this section. Do not leave this section blank.

**PART II INFORMATION.**

Product Weight.

From Part II of the DCPL, enter the cumulative amounts of product by management area (BSAI or GOA) at the end of each weekly reporting period by species code, product code, and product designation, to at least the nearest 0.001 mt.

No Production

If there was no production during a weekly reporting period and the Shoreside Processor or SFP was

checked in, enter "NO PRODUCTION" on the first row of this section. Do not leave this section blank.

**CATCHER VESSEL DELIVERY INFORMATION.**

List the fish ticket numbers issued to catcher vessels for the weekly reporting period. Include those fish tickets issued by a buying station on behalf of the Shoreside Processor or SFP.



## Instructions for

### U.S. VESSEL ACTIVITY REPORT (VAR)

#### RESPONSIBILITY

Fish or Fish Product **Other than Crab** Onboard

Except as noted below, the operator of a

- a catcher vessel greater than 60 ft (18.3 m) LOA,
- a catcher/processor required to hold a Federal fisheries permit issued under 50 CFR part 679, or
- a mothership required to hold a Federal fisheries permit issued under 50 CFR part 679 and carrying fish or fish product onboard must complete and submit a VAR to **OLE, Juneau, AK** by FAX

**FAX: (907-586-7313)**

or electronic file

**E-Mail: [enf.dataclerk@noaa.gov](mailto:enf.dataclerk@noaa.gov)**

before the vessel crosses the seaward boundary of the EEZ off Alaska or crosses the U.S.-Canadian international boundary between Alaska and British Columbia.

Combination of non-IFQ groundfish with IFQ halibut, CDQ halibut, IFQ sablefish **or CR crab**.

If a vessel is carrying non-IFQ groundfish and IFQ halibut, CDQ halibut, IFQ sablefish **or CR crab**, the operator must submit a VAR **in addition to** an IFQ Departure Report required by § 679.5(1)(4).

Exception: IFQ Departure Report.

A VAR is not required if a vessel is carrying only IFQ halibut, CDQ halibut, IFQ sablefish, **or CR crab** onboard and the operator has submitted an IFQ Departure Report required by § 679.5(1)(4).

Revised VAR.

**If fish or fish products are landed at a port other than the one specified on the VAR, the operator must submit a revised VAR showing the actual port of landing before any fish are offloaded.**

#### INFORMATION REQUIRED

Whether original or revised VAR. If VAR is the first one sent for a given day, check ORIGINAL REPORT. If VAR is a revision to a previously sent VAR, check REVISED REPORT.

Vessel Name.

Enter vessel name as it appears on the Federal fisheries permit.

Permit Number

Enter Federal fisheries permit number **or RCR permit number**.

Type of vessel (whether catcher vessel, catcher/processor, or mothership).

Representative name, daytime telephone number (including area code), and facsimile number and COMSAT number (if available) .

Return report. "Return" means returning to Alaska.

If the vessel is crossing the seaward boundary of the EEZ off Alaska or crossing the U.S.-Canadian international boundary between Alaska and British Columbia into U.S. waters, indicate a "return" report and enter:

Intended Alaska port of landing (see Table 14 to 50 CFR part 679);

Estimated date and time (hour and minute, Greenwich mean time) the vessel will cross the boundary; and

The estimated position coordinates in latitude and longitude where the vessel will cross.

Depart report. "Depart" means leaving Alaska.

If the vessel is crossing the seaward boundary of the EEZ off Alaska and moving out of the EEZ or crossing the U.S.-Canadian international boundary between Alaska and British Columbia and moving into Canadian waters, indicate a "depart" report and enter:

The intended U.S. port of landing or country other than the United States;

Estimated date and time (hour and minute, Greenwich mean time) the vessel will cross the boundary; and

The estimated position coordinates in latitude and longitude where the vessel will cross.

The Russian Zone. Indicate (YES or NO) whether the vessel is returning from fishing in the Russian Zone or is departing to fish in the Russian Zone.

Fish or fish products. For all fish or fish products (including non-groundfish) on board the vessel, enter:

Harvest Zone. Enter the harvest zone where Fish were harvested.

- |    |  |    |         |
|----|--|----|---------|
| A1 | BSAI EEZ   | A2 | GOA EEZ |
| B  | State waters of Alaska                                   |    |         |
| C  | State waters other than Alaska                           |    |         |
| D  | Donut Hole   |    |         |
| F  | Foreign waters other than Russia                         |    |         |
| I  | International waters other than Donut Hole and Seamounts |    |         |
| R  | Russian waters   |    |         |
| S  | Seamounts in international waters                        |    |         |
| U  | U.S. EEZ other than Alaska                               |    |         |

Species Code. Enter the species code for each product. If no species code is listed for the landed fish, write in the "common" name for that fish species (e.g., swordfish, albacore).

Product Code. Enter the product code for each product.

Use the species and product codes presented in Table 1 and Table 2 to part 679
--

Product Weight. Circle pounds or 0.001 mt. Enter the fish product weight of products in pounds or to the nearest 0.001 mt (2.20 lb).



Instructions for

**BUYING STATION REPORT (BSR)**

**RESPONSIBILITY**

The manager or operator of a buying station must submit a BSR, and any acquired blue DFL logsheets, with each delivery of catch to an associated processor (mothership, shoreside processor, or stationary floating processor). Retain a copy of each BSR.

The BSR must accompany the delivery of fish:  
 To each associated processor,  
 With each truck, if groundfish are offloaded to a truck bound for an associated processor.  
 With each airline shipment, if groundfish are offloaded to an airplane bound for an associated processor.

Write a separate BSR	For each associated processor
	For each truck, if groundfish offloaded to a truck. BSR must accompany the shipment
	For each airline shipment, if groundfish offloaded to an airplane. BSR must accompany the shipment.
	For each reporting area, if receiving harvest from more than one reporting area
	If receiving harvest from a vessel using trawl gear, use two separate BSRs, the first to record the information from the reporting area that includes the COBLZ or RKCSA and the second to record the information from the reporting area that does not include the COBLZ or RKCSA
	For each gear type, if receiving harvest from more than one gear type
	For each special management program -- Western Alaska Community Development Quota (CDQ) Program, Research Fishery, Exempted Fishery, <b>or AIP and add identifying number, if appropriate.</b>
	If receiving halibut under a donated prohibited species program

**TIME LIMITS**

Record all information required on a BSR and sign the BSR within 2 hours of completion of delivery from catcher vessel.

Delivery Date and Time

Date received. Record the date (month - day - year) when receipt of groundfish catch was completed.

**INFORMATION REQUIRED**

Original or revised BSR.

Indicate whether this BSR is the original report or a revised report.

Time received. Record the time (A.I.t.) when receipt of groundfish catch was completed.

ADF&G No.

If buying station is a vessel, enter State of Alaska Department of Fish and Game (ADF&G) Vessel Registration Number of buying station.

Name of Buying Station.

Enter complete name of buying station.

License No.

If buying station is a vehicle, enter license number and state of registration of buying station.

Operator or Manager Name and Signature.

Enter the printed name of the operator or manager. The operator or manager must sign the BSR to verify accuracy and completeness of data on the report.

Gear type of harvester.

Circle the gear type used to harvest the groundfish. If gear type is not printed, circle OTHER and write description of gear.

Management Program.

Circle to indicate whether receiving fish caught under the CDQ Program, a Research Fishery, Exempted Fishery, **or AIP and add identifying number, if appropriate.**

Federal Reporting Area.

Enter the reporting area code where groundfish were harvested. If caught with trawl gear, indicate whether catch was harvested in the COBLZ or RKCSA.

Use the reporting area codes presented in Figures 1 and 3.

Associated Processor

If associated processor is a mothership, enter the name, ADF&G processor code, and Federal fisheries permit number of the mothership.

If associated processor is a shoreside processor or stationary floating processor, enter the name, AD&FG processor code, and Federal processor permit number of the processor.

**CATCHER VESSEL DELIVERY INFORMATION**

Record the following information for each delivery.

Catcher Vessel Name.

Enter the name of the catcher vessel delivering the groundfish.

ADF&G Number.

Enter the 5-digit ADF&G vessel registration number of the catcher vessel delivering the groundfish.

Receive Discard Report.

Enter YES or NO to indicate whether operator of the catcher vessel submitted blue discard copy of DFL to buying station.

If "NO", enter the reason given for non-submittal as follows (example: NO-L):

Code	Reason for Non-submittal
P	Catcher vessel does not have a Federal fisheries permit
L	Catcher vessel is under 60 ft length overall
P	Catcher vessel is under 60 ft LOA and also does not have a Federal fisheries permit
U	Catcher vessel delivered an unsorted codend
If blue DFL is not submitted by catcher vessel, and no reason was given, enter NO without a code	

Fish Ticket Number.

Enter the ADF&G fish ticket number issued to each Catcher Vessel delivering groundfish.

Groundfish Delivery Weight.

Enter the estimated total groundfish delivery weight for each catcher vessel. Indicate whether recorded to the nearest 0.001 mt or nearest pound by circling either MT or LB.

Scale Weight.

**Optional:** in addition to recording the total estimated delivery weight or actual scale weight of a catcher vessel delivery, enter weight of individual species and record species codes and weights (in lb or mt).

**DISCARD/DISPOSITION INFORMATION**

For each buying station delivery to an associated processor, record the total estimated discard and disposition amounts in whole fish weight for each groundfish species or species group and Pacific herring in pounds or to at least the nearest 0.001 mt.

For each buying station delivery to an associated processor, record the total estimated numbers of discard/disposition of Pacific salmon, steelhead trout, Pacific halibut, king crab, and Tanner crab.

Enter discard/disposition information for discards or disposition that:

Are reported on a blue DFL by a catcher vessel delivering to a buying station.

Occur after receipt of harvest from a catcher vessel.

Occur prior to delivery of harvest to an associated processor.

If there is no discard/disposition, write "NO DISCARDS", "0", or "ZERO.."

Species and Product Codes.

Record the species code and product code for each discard/disposition.

Use the product codes and species codes presented in Tables 1 and 2, respectively

Revised: 10/01/200

Confirmation # \_\_\_\_\_

<h1>PRODUCT TRANSFER REPORT</h1>		<input type="checkbox"/> Original Report	<input type="checkbox"/> Revised Report Identifier No.	NOAA Fisheries Office for Law Enforcement P.O. Box 21767 Juneau, AK 99802  <b>Submit by FAX to Data Clerks at:</b> <b>FAX: 907-586-7313</b> Telephone: 800-304-4846 (option 1) E-Mail: enf.dataclerk@noaa.gov	
Shipper	Federal Fisheries or Processor permit No.  IFQ Registered Buyer Permit No.  RCR Permit No.	Representative Name  Telephone No.  Fax No.	Date and Time of Product Transfer  Start  Finish		
Receiver	Federal Fisheries or Processor Permit No. (if any)	Position of Product Transfer (Lat/Long) <i>(Mothership or Catcher/processor Only)</i>	Port or Location of Transfer		
Mode of Transportation and Intended Route					

PRODUCTS SHIPPING						Is this a <input type="checkbox"/> TOTAL OFFLOAD or a <input type="checkbox"/> PARTIAL OFFLOAD <i>Mothership or Catcher/Processor ONLY</i> If partial offload, record amount and type of product remaining onboard after this transfer <b>AMOUNT AND TYPE OF PRODUCT REMAINING ONBOARD</b>					
Species Code	Product Code	Species Weight*	No. of Units	Unit Wt. (lb or kg)	Total Weight (lb or kg)	Species Code	Product Code	Amount (lb or kg)	Species Code	Product Code	Amount (lb or kg)

\*This column to be used only for scale weight of multiple species within one unit only

## Instructions for

### PRODUCT TRANSFER REPORT (PTR)

#### RESPONSIBILITY

Except as listed below:

##### Groundfish.

The operator of a mothership or catcher/processor or the manager of a shoreside processor or stationary floating processor (SFP) must complete and submit a separate PTR for each **shipment** of groundfish and donated prohibited species caught in groundfish fisheries. **A PTR is not required to accompany a shipment.**

##### IFQ halibut, IFQ sablefish, and CDQ halibut.

A Registered Buyer must submit a separate PTR for each shipment of halibut or sablefish for which the Registered Buyer submitted an IFQ landing report or was required to submit an IFQ landing report. **A PTR is not required to accompany a shipment.**

##### CR crab.

**A Registered Crab Receiver (RCR) must submit a separate PTR for each shipment of crab for which the RCR submitted a CR crab landing report or was required to submit a CR crab landing report. A PTR is not required to accompany a shipment.**

#### Exceptions

##### Bait sales (non-IFQ groundfish only).

**During one calendar day**, the operator or manager may aggregate **and record** on one PTR the individual sales or shipments of non-IFQ groundfish to vessels for bait purposes during a day recording the amount of such bait product **shipped** from a vessel or facility that day.

##### Retail sales

**IFQ halibut, IFQ sablefish, CDQ halibut, and non-IFQ groundfish.** **During one calendar day**, the operator, manager, or Registered Buyer may aggregate and **record on one PTR the amount of transferred retail product of IFQ halibut, IFQ sablefish, CDQ halibut, and non-IFQ groundfish if each sale weighs less than 10 lb or 4.5 kg.**

**CR crab.** **During one calendar day, the RCR may aggregate and record on one PTR the amount**

**of transferred retail product of CR crab if each sale weighs less than 100 lb or 45 kg.**

Wholesale sales (non-IFQ groundfish only). The operator or manager may aggregate and record on one PTR, wholesale sales of non-IFQ groundfish by species when recording the amount of such wholesale species leaving a vessel or facility in one calendar day, if invoices detailing destinations for all of the product are available for inspection by an authorized officer.

##### Dockside sales

A person holding a valid IFQ permit, IFQ card, and Registered Buyer permit may conduct a dockside sale of IFQ halibut or IFQ sablefish with a person who has not been issued a Registered Buyer permit after all IFQ **halibut and IFQ sablefish** have been landed and reported in accordance with § 679.5(1).

A person holding a valid halibut CDQ permit, halibut CDQ card, and Registered Buyer permit may conduct a dockside sale of CDQ halibut with a person who has not been issued a Registered Buyer permit after all CDQ halibut have been landed and reported in accordance with § 679.5(1).

A Registered Buyer conducting dockside sales must issue a receipt to each individual receiving IFQ halibut, CDQ halibut, or IFQ sablefish in lieu of a PTR. This receipt must include:

- Date of sale;
- Registered Buyer permit number;
- Weight by product of the IFQ halibut, CDQ halibut or IFQ sablefish transferred.

A Registered Buyer must maintain a copy of each dockside sales receipt as described in § 679.5(1).

#### **TRANSFER DIRECTLY FROM THE LANDING SITE TO A PROCESSING FACILITY (CDQ HALIBUT, IFQ HALIBUT, IFQ SABLEFISH, OR CR CRAB ONLY).**

A PTR is not required for transportation of unprocessed IFQ halibut, IFQ sablefish, CDQ halibut, **or CR crab** directly from the landing site to a facility for processing, provided the following conditions are met:

A copy of the IFQ landing report **receipt (Internet receipt)** documenting the IFQ landing accompanies the

offloaded IFQ halibut, IFQ sablefish, or CDQ halibut while in transit, or

**A copy of the CR crab landing report receipt (Internet receipt) documenting the IFQ landing accompanies the offloaded CR crab while in transit, and**

**A copy of the IFQ landing report or CR crab landing report receipt is available for inspection by an authorized officer.**

The Registered Buyer submitting the IFQ landing report **or RCR submitting the CR crab landing report** completes a PTR for each shipment from the processing facility.

**TIME LIMITS AND SUBMITTAL.**

The operator of a mothership or catcher/processor, the manager of a shoreside processor or SFP, the Registered Buyer, **or RCR** must:

- Record all product transfer information on a PTR within 2 hours of the completion of the **shipment.**
- **Submit a PTR by facsimile or electronic file** to

**OLE, Juneau, AK (907-586-7313)**

by 1200 hours, A.l.t., on the Tuesday following the end of the applicable weekly reporting period in which the **shipment** occurred.

- If any information on the original PTR changes prior to the first destination of the shipment, **submit a revised PTR by facsimile or electronic file** to

**OLE, Juneau, AK (907-586-7313)**

by 1200 hours, A.l.t., on the Tuesday following the end of the applicable weekly reporting period in which the

change occurred and **indicate the confirmation number of the original PTR.**

**REQUIRED INFORMATION**

The operator of a mothership or catcher/processor, the manager of a shoreside processor or SFP, the Registered Buyer, **or RCR must include the following information on a PTR:**

Original or revised PTR.

Whether a submittal is an original or revised PTR. **If revised, record the confirmation number of the original PTR.**

Shipper information.

Name, telephone number, and facsimile number of the representative, **according to the following table:**

If you are shipping ...	Enter under "Shipper"...
Non-IFQ groundfish	Your processor's name, Federal fisheries or Federal processor permit number.
IFQ halibut, CDQ halibut or IFQ sablefish	Your Registered Buyer name and permit number.
<b>CR crab</b>	<b>Your RCR name and permit number.</b>
Non-IFQ groundfish, IFQ halibut, CDQ halibut or IFQ sablefish, <b>and CR crab</b> on the same PTR	(1) Your processor's name and Federal fisheries permit number or Federal processor permit number. (2) Your Registered Buyer's name and permit number, and. (3) <b>Your RCR name and permit number</b>

Receiver Information.

Using descriptions from the following table, enter receiver information, date and time of product transfer, location of product transfer (e.g., port, position coordinates, or city), mode of transportation, and intended route.

If you are the shipper and ...	Then enter ...			
	Receiver	Date & time of product transfer	Location of product transfer	Mode of transportation and intended route
Receiver is on land and transfer involves one van, truck, or vehicle.	Receiver name and Federal fisheries or Federal processor permit number (if any).	Date and time when shipment leaves the plant.	Port or city of product transfer	Name of the shipping company; destination city and state or foreign country.
Receiver is on land and transfer involves multiple vans, trucks, or vehicles.	Receiver name and Federal fisheries or Federal processor permit number (if any).	Date and time when loading of vans or trucks is completed each day.	Port or city of product transfer	Name of the shipping company; destination city and state or foreign country.
Receiver is on land and transfer involves one airline flight.	Receiver name and Federal fisheries or Federal processor permit number (if any).	Date and time when shipment leaves the plant.	Port or city of product transfer	Name of the airline company; destination airport city and state.
Receiver is on land and transfer involves multiple airline flights.	Receiver name and Federal fisheries or Federal processor permit number (if any).	Date and time of shipment when the last airline flight of the day leaves.	Port or city of product transfer	Name of the airline company(s); destination airport(s) city and state.
Receiver is a vessel and transfer takes occurs at sea.	Vessel name and call sign	Start and finish dates and times of transfer.	Transfer position coordinates in latitude and longitude, in degrees and minutes.	The first destination of the vessel.
Receiver is a vessel and transfer takes place in port.	Vessel name and call sign	Start and finish dates and times of transfer.	Port or position of product transfer	The first destination of the vessel.
Receiver is an agent (buyer, distributor, or shipping agent) and transfer is in a containerized van(s).	Agent name and location (city, state).	Transfer start and finish dates and times.	Port, city, or position of product transfer.	Name (if available) of the vessel transporting the van; destination port.
You are aggregating individual retail sales for human consumption. (see § 679.5(g)(2))	“RETAIL SALES”	Date of transfer.	Port or city of product transfer	n/a
You are aggregating individual bait sales during a day onto one PTR (non-IFQ groundfish only).	“BAIT SALES”	Date of transfer.	Port or city of product transfer	n/a
Non-IFQ Groundfish only. You are aggregating wholesale non-IFQ groundfish product sales by species during a single day onto one PTR and maintaining invoices detailing destinations for all of the product for inspection by an authorized officer.	“WHOLESALE SALES”	Time of the first sale of the day; time of the last sale of the day.	Port or city of product transfer	n/a

**PRODUCTS SHIPPED.**

The operator, manager, Registered Buyer, **or RCR** must record the following information for each product **shipped:**

Species code and product code.

For non-IFQ groundfish, IFQ halibut, IFQ sablefish, and CDQ halibut, the species code and product code (Tables 1 and 2 to part 679).

**For CR crab, the species code and product code (Tables 1 and 2 to 50 CFR part 680).**

**Do not record on PTR**  
Products identified by the  
Product codes 41, 42, 98, or 99.

Species weight.

USE THIS COLUMN if you are shipping two or more species with two or more product types contained within the same production unit. This column is to be used only for recording the actual scale weight of each product of each species to the nearest kilogram or pound (indicate which).

If not applicable, enter "n/a" in the species weight column.

If using more than one line to record species in one carton, use a brace "}" to tie the carton information together.

DO NOT USE THIS COLUMN if you are aggregating daily wholesale shipments onto one PTR

DO NOT USE THIS COLUMN if you are shipping the same kind of product made from the same kind of species to one customer.

Number of units.

Total number of production units (blocks, trays, pans, individual fish, boxes, or cartons; if iced, enter number of totes or containers).

Unit weight.

Unit weight (average weight of single production unit as listed in "No. of Units," less packing materials) for each species and product code in kilograms or pounds (indicate which).

Total weight.

Total weight for each species and product code of shipment less packing materials in kilograms or pounds (indicate which).

Total or partial offload.

*Use only if a mothership or catcher/processor.* The operator must indicate **whether fish or fish products are left onboard the vessel (partial offload) after the shipment is complete.**

If a partial offload, for the products remaining on board after the transfer, the operator must enter: species code, product code, and total product weight to the nearest kilogram or pound (indicate which) for each product.

To calculate metric tons from pounds:  
No. cartons x average carton weight (lb)  
2204.6

To calculate metric tons from kilograms:  
No. cartons x average carton weight (kg)  
1,000

## Fishery Conservation and Management

## § 648.7

### § 648.6 Dealer/processor permits.

(a) *General.* (1) All dealers of NE multispecies, monkfish, Atlantic herring, Atlantic sea scallop, spiny dogfish, summer flounder, Atlantic surf clam, ocean quahog, Atlantic mackerel, squid, butterfish, scup, bluefish, tilefish, and black sea bass; Atlantic surf clam and ocean quahog processors; and Atlantic herring processors or dealers, as described in § 648.2; must have been issued under this section, and have in their possession, a valid permit or permits for these species. A person who meets the requirements of both the dealer and processor definitions of any of the aforementioned species' fishery regulations may need to obtain both a dealer and a processor permit, consistent with the requirements of that particular species' fishery regulations. Persons aboard vessels receiving small-mesh multispecies and/or Atlantic herring at sea for their own use exclusively as bait are deemed not to be dealers, and are not required to possess a valid dealer permit under this section, for purposes of receiving such small-mesh multispecies and/or Atlantic herring, provided the vessel complies with the provisions of § 648.13.

\* \* \* \* \*

### § 648.7 Recordkeeping and reporting requirements.

(a) *Dealers—(1) Detailed weekly report.* Federally permitted dealers must submit to the Regional Administrator or to the official designee a detailed weekly report, within the time periods specified in paragraph (f) of this section, on forms supplied by or approved by the Regional Administrator and a report of all fish purchases, except surf clam and ocean quahog dealers or processors who are required to report only surf clam and ocean quahog purchases. If authorized in writing by the Regional Administrator, dealers may submit reports electronically or through other media. The following information, and any other information required by the Regional Administrator, must be provided in the report:

(i) All dealers issued a dealer permit under this part, with the exception of those utilizing the surf clam or ocean quahog dealer permit, must provide: Dealer name and mailing address; dealer permit number; name and permit number or name and hull number (USCG documentation number or state registration number, whichever is applicable) of vessels from which fish are landed or received; trip identifier for a

trip from which fish are landed or received; dates of purchases; pounds by species (by market category, if applicable); price per pound by species (by market category, if applicable) or total value by species (by market category, if applicable); port landed; signature of person supplying the information; and any other information deemed necessary by the Regional Administrator. The dealer or other authorized individual must sign all report forms. If no fish are purchased during a reporting week, no written report is required to be submitted. If no fish are purchased during an entire reporting month, a report so stating on the required form must be submitted.

(ii) Surf clam and ocean quahog processors and dealers must provide: Date of purchase or receipt; name, permit number and mailing address; number of bushels by species; cage tag numbers; allocation permit number; vessel name and permit number; price per bushel by species. Dealers must also report disposition of surf clams or ocean quahogs, including name and permit number of recipients. Processors must also report size distribution and meat yield per bushel by species.

(2) *Weekly IVR system reports.* (i) Federally permitted dealers, other than Atlantic herring dealers, purchasing quota-managed species not deferred from coverage by the Regional Administrator pursuant to paragraph (a)(2)(ii) of this section must submit, within the time period specified in paragraph (f) of this section, the following information, and any other information required by the Regional Administrator, to the Regional Administrator or to an official designee, via the IVR system established by the Regional Administrator: Dealer permit number; dealer code; pounds purchased, by species, other than Atlantic herring; reporting week in which species were purchased; and state of landing for each species purchased. If no purchases of quota-managed species not deferred from coverage by the Regional Administrator pursuant to paragraph (a)(2)(ii) of this section were made during the week, a report so stating must be submitted through the IVR system in accordance with paragraph (f) of this section.

(ii) The Regional Administrator may defer any quota-managed species from the IVR system reporting requirements if landings are not expected to reach levels that would cause the applicable target exploitation rate corresponding to a given domestic annual harvest limit, target or actual TAC, or annual or seasonal quota specified for that species to be exceeded. The Regional Administrator shall base any such determination on the purchases reported, by species, in the comprehensive written reports submitted by dealers and other available information. If the Regional Administrator determines that any quota-managed species should be deferred from the weekly IVR system reporting requirements, the Regional Administrator shall publish notification so stating in the FEDERAL REGISTER. If data indicate that landing levels have increased to an extent that this determination ceases to be valid, the Regional Administrator shall terminate the deferral by publishing notification in the FEDERAL REGISTER.

(3) *Annual report.* All persons required to submit reports under paragraph (a)(1) of this section are required to submit the following information on an annual basis, on forms supplied by the Regional Administrator:

(i) All dealers issued a dealer permit under this part, with the exception of those processing only surfclams or ocean quahogs, must complete all sections of the Annual Processed Products Report for all species of fish or shellfish that were processed during the previous year. Reports must be submitted to the address supplied by the Regional Administrator.

(ii) Surf clam and ocean quahog processors and dealers must provide the average number of processing plant employees during each month of the year just ended; average number of employees engaged in production of processed surf clam and ocean quahog products, by species, during each month of the year just ended; plant capacity to process surf clam and ocean quahog shellstock, or to process surf clam and ocean quahog meats into finished products, by species; an estimate, for the next year, of such processing capacities; and total payroll for surf clam and ocean quahog processing, by

month. If the plant processing capacities required to be reported in this paragraph (a)(3)(ii) change more than 10 percent during any year, the processor shall notify the Regional Administrator in writing within 10 days after the change.

(iii) Atlantic herring processors, including processing vessels, must complete and submit all sections of the Annual Processed Products Report.

(b) *Vessel owners or operators—(1) Fishing Vessel Trip Reports—(i)* The owner or operator of any vessel issued a valid permit under this part must maintain on board the vessel, and submit, an accurate fishing log report for each fishing trip, regardless of species fished for or taken, on forms supplied by or approved by the Regional Administrator. If authorized in writing by the Regional Administrator, a vessel owner or operator may submit reports electronically, for example by using a VMS or other media. With the exception of those vessel owners or operators fishing under a surfclam or ocean quahog permit, at least the following information and any other information required by the Regional Administrator, must be provided: vessel name; USCG documentation number (or state registration number, if undocumented); permit number; date/time sailed; date/time landed; trip type; number of crew; number of anglers (if a charter or party boat); gear fished; quantity and size of gear; mesh/ring size; chart area fished; average depth; latitude/longitude (or loran station and bearings); total hauls per area fished; average tow time duration; hail weight, in pounds (or count of individual fish, if a party or charter vessel), by species, of all species, or parts of species, such as monkfish livers, landed or discarded; dealer permit number; dealer name; date sold, port and state landed; and vessel operator's name, signature, and operator's permit number (if applicable).

(ii) *Surf clam and ocean quahog vessel owners and operators.* The owner or operator of any vessel conducting any surf clam and ocean quahog fishing operations, except those conducted exclusively in waters of a state that requires cage tags or when he/she has surrendered the surf clam and ocean quahog fishing vessel permit, shall maintain,

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on board the vessel, an accurate daily fishing log for each fishing trip, on forms supplied by the Regional Administrator, showing at least: Name and permit number of the vessel, total amount in bushels of each species taken, date(s) caught, time at sea, duration of fishing time, locality fished, crew size, crew share by percentage, landing port, date sold, price per bushel, buyer, tag numbers from cages used, quantity of surf clams and ocean quahogs discarded, and allocation permit number.

(iii) The owner or operator of a vessel described here must report catches (retained and discarded) of herring each week to an IVR system. The report shall include at least the following information, and any other information required by the Regional Administrator: Vessel identification, reporting week in which species are caught, pounds retained, pounds discarded, management area fished, and pounds of herring caught in each management area for the previous week. Weekly Atlantic herring catch reports must be submitted via the IVR system by midnight, Eastern time, each Tuesday for the previous week. Reports are required even if herring caught during the week has not yet been landed. This report does not exempt the owner or operator from other applicable reporting requirements of § 648.7.

(A) The owner or operator of any vessel issued a permit for Atlantic herring subject to the requirements specified by § 648.4(c)(2)(vi)(C) that is required by § 648.205 to have a VMS unit on board must submit an Atlantic herring catch report via the IVR system each week (including weeks when no herring is caught), unless exempted from this requirement by the Regional Administrator.

(B) An owner or operator of any vessel issued a permit for Atlantic herring that is not required by § 648.205 to have a VMS unit on board, or any vessel that catches herring in or from the EEZ, but catches  $\geq 2,000$  lb (907.2 kg) of Atlantic herring on any trip in a week, must submit an Atlantic herring catch report via the IVR system for that week as required by the Regional Administrator.

(C) Atlantic herring IVR reports are not required from Atlantic herring carrier vessels.

(c) *When to fill out a log report.* Log reports required by paragraph (b)(1)(i) of this section must be filled out with all required information, except for information not yet ascertainable, prior to entering port with fish. Information that may be considered unascertainable prior to entering port with fish includes dealer name, dealer permit number, and date sold. Log reports must be completed as soon as the information becomes available. Log reports required by paragraph (b)(1)(ii) of this section must be filled out before landing any surfclams or ocean quahogs.

(d) *Inspection.* All persons required to submit reports under this section, upon the request of an authorized officer, or by an employee of NMFS designated by the Regional Administrator to make such inspections, must make immediately available for inspection copies of the required reports that have been submitted, or should have been submitted, and the records upon which the reports were based. At any time during or after a trip, owners and operators must make immediately available for inspection the fishing log reports currently in use, or to be submitted.

(e) *Record retention.* Copies of dealer reports, and records upon which the reports were based, must be retained and be available for review for a total of 3 years after the date of the last entry on the report. Dealers must retain required reports and records at their principal place of business. Copies of fishing log reports must be kept on board the vessel for at least 1 year and available for review and retained for a total of 3 years after the date of the last entry on the log.

(f) *Submitting reports—(1) Dealer or processor reports.* (i) Detailed weekly trip reports, required by paragraph (a)(1)(i) of this section, must be postmarked or received within 16 days after the end of each reporting week. If no fish are purchased during a reporting month, the report so stating required under paragraph (a)(1)(i) of this section must be postmarked or received within 16 days after the end of the reporting month.

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(ii) Surfclam and ocean quahog reports, required by paragraph (a)(1)(ii) of this section, must be postmarked or received within 3 days after the end of each reporting week.

(iii) Weekly IVR system reports required in paragraph (a)(2) of this section must be submitted via the IVR system by midnight, Eastern time, each Tuesday for the previous reporting week.

(iv) Annual reports for a calendar year must be postmarked or received by February 10 of the following year. Contact the Regional Administrator (see Table 1 to §600.502) for the address of NMFS Statistics.

(2) Fishing vessel log reports. (i) Fishing vessel log reports, required by paragraph (b)(1)(i) of this section, must be postmarked or received within 15 days after the end of the reporting month. Each owner will be sent forms and instructions, including the address to which reports are to be submitted, shortly after receipt of a Federal fisheries permit. If no fishing trip is made during a month, a report stating so must be submitted.

(ii) Surfclam and ocean quahog log reports, required by paragraph (b)(1)(ii) of this section, must be postmarked or received within 3 days after the end of each reporting week.

(3) At-sea purchasers, receivers, or processors. All persons, except persons on Atlantic herring carrier vessels, purchasing, receiving, or processing any Atlantic herring, summer flounder, Atlantic mackerel, squid, butterfish, scup, or black sea bass at sea for landing at any port of the United States must submit information identical to that required by paragraphs (a)(1) or (a)(2) of this section, as applicable, and provide those reports to the Regional Administrator or designee on the same frequency basis.

(g) Additional data and sampling. Federally permitted dealers must allow access to their premises and make available to an official designee of the Regional Administrator any fish purchased from vessels for the collection of biological data. Such data include, but are not limited to, length measure-

ments of fish and the collection of age structures such as otoliths or scales.

[61 FR 34968, July 3, 1996, as amended at 61 FR 43425, Aug. 23, 1996; 61 FR 58465, Nov. 15, 1996; 62 FR 14646, Mar. 27, 1997; 63 FR 52640, Oct. 1, 1998; 63 FR 58329, Oct. 30, 1998; 64 FR 57593, Oct. 26, 1999; 65 FR 1569, Jan. 11, 2000; 65 FR 45851, July 26, 2000; 65 FR 60895, Oct. 13, 2000; 65 FR 77465, Dec. 11, 2000]

EFFECTIVE DATE NOTE: At 66 FR 49144, Sept. 26, 2001, §648.7 was amended by revising the first sentence of paragraph (a)(2)(i) and adding paragraph (b)(1)(iv), effective Nov. 1, 2001. For the convenience of the user the revised text follows:

§ 648.7 Recordkeeping and reporting requirements.

- (a) \* \* \*
(2) \* \* \*

(i) Federally permitted dealers, other than Atlantic herring and tilefish dealers, purchasing quota-managed species not deferred from coverage by the Regional Administrator pursuant to paragraph (a)(2)(ii) of this section must submit, within the time period specified in paragraph (f) of this section, the following information, and any other information required by the Regional Administrator, to the Regional Administrator or to an official designee, via the IVR system established by the Regional Administrator: Dealer permit number; dealer code; pounds purchased, by species, other than Atlantic herring and tilefish; reporting week in which species were purchased; and state of landing for each species purchased. \* \* \*

\* \* \* \* \*

- (b) \* \* \*
(1) \* \* \*

(iv) The owner or operator of any vessel issued a limited access permit for tilefish must submit a tilefish catch report via the IVR system within 24 hours after returning to port and offloading as required by the Regional Administrator. The report shall include at least the following information, and any other information required by the Regional Administrator: Vessel identification, trip during which species are caught, and pounds landed. IVR reporting does not exempt the owner or operator from other applicable reporting requirements of §648.7.

\* \* \* \* \*

§ 648.8 Vessel identification.

(a) Vessel name and official number. Each fishing vessel subject to this part and over 25 ft (7.6 m) in registered length must:

**SEC. 303. CONTENTS OF FISHERY MANAGEMENT PLANS 16 U.S.C. 1853**

**95-354, 99-659, 101-627, 104-297**

**(a) REQUIRED PROVISIONS.**--Any fishery management plan which is prepared by any Council, or by the Secretary, with respect to any fishery, shall--

(1) contain the conservation and management measures, applicable to foreign fishing and fishing by vessels of the United States, which are--

(A) necessary and appropriate for the conservation and management of the fishery to prevent overfishing and rebuild overfished stocks, and to protect, restore, and promote the long-term health and stability of the fishery;

(B) described in this subsection or subsection (b), or both; and

(C) consistent with the national standards, the other provisions of this Act, regulations implementing recommendations by international organizations in which the United States participates (including but not limited to closed areas, quotas, and size limits), and any other applicable law;

(2) contain a description of the fishery, including, but not limited to, the number of vessels involved, the type and quantity of fishing gear used, the species of fish involved and their location, the cost likely to be incurred in management, actual and potential revenues from the fishery, any recreational interest in the fishery, and the nature and extent of foreign fishing and Indian treaty fishing rights, if any;

(3) assess and specify the present and probable future condition of, and the maximum sustainable yield and optimum yield from, the fishery, and include a summary of the information utilized in making such specification;

(4) assess and specify--

(A) the capacity and the extent to which fishing vessels of the United States, on an annual basis, will harvest the optimum yield specified under paragraph (3),

(B) the portion of such optimum yield which, on an annual basis, will not be harvested by fishing vessels of the United States and can be made available for foreign fishing, and

(C) the capacity and extent to which United States fish processors, on an annual basis, will process that portion of such optimum yield that will be harvested by fishing vessels of the United States;

(5) specify the pertinent data which shall be submitted to the Secretary with respect to commercial, recreational, and charter fishing in the fishery, including, but not limited to,

information regarding the type and quantity of fishing gear used, catch by species in numbers of fish or weight thereof, areas in which fishing was engaged in, time of fishing, number of hauls, and the estimated processing capacity of, and the actual processing capacity utilized by, United States fish processors;

(6) consider and provide for temporary adjustments, after consultation with the Coast Guard and persons utilizing the fishery, regarding access to the fishery for vessels otherwise prevented from harvesting because of weather or other ocean conditions affecting the safe conduct of the fishery; except that the adjustment shall not adversely affect conservation efforts in other fisheries or discriminate among participants in the affected fishery;

(7) describe and identify essential fish habitat for the fishery based on the guidelines established by the Secretary under section 305(b)(1)(A), minimize to the extent practicable adverse effects on such habitat caused by fishing, and identify other actions to encourage the conservation and enhancement of such habitat;

(8) in the case of a fishery management plan that, after January 1, 1991, is submitted to the Secretary for review under section 304(a) (including any plan for which an amendment is submitted to the Secretary for such review) or is prepared by the Secretary, assess and specify the nature and extent of scientific data which is needed for effective implementation of the plan;

(9) include a fishery impact statement for the plan or amendment (in the case of a plan or amendment thereto submitted to or prepared by the Secretary after October 1, 1990) which shall assess, specify, and describe the likely effects, if any, of the conservation and management measures on--

(A) participants in the fisheries and fishing communities affected by the plan or amendment; and

(B) participants in the fisheries conducted in adjacent areas under the authority of another Council, after consultation with such Council and representatives of those participants;

(10) specify objective and measurable criteria for identifying when the fishery to which the plan applies is overfished (with an analysis of how the criteria were determined and the relationship of the criteria to the reproductive potential of stocks of fish in that fishery) and, in the case of a fishery which the Council or the Secretary has determined is approaching an overfished condition or is overfished, contain conservation and management measures to prevent overfishing or end overfishing and rebuild the fishery;

(11) establish a standardized reporting methodology to assess the amount and type of bycatch occurring in the fishery, and include conservation and management measures that, to the extent practicable and in the following priority--

(A) minimize bycatch; and

(B) minimize the mortality of bycatch which cannot be avoided;

(12) assess the type and amount of fish caught and released alive during recreational fishing under catch and release fishery management programs and the mortality of such fish, and include conservation and management measures that, to the extent practicable, minimize mortality and ensure the extended survival of such fish;

(13) include a description of the commercial, recreational, and charter fishing sectors which participate in the fishery and, to the extent practicable, quantify trends in landings of the managed fishery resource by the commercial, recreational, and charter fishing sectors; and

(14) to the extent that rebuilding plans or other conservation and management measures which reduce the overall harvest in a fishery are necessary, allocate any harvest restrictions or recovery benefits fairly and equitably among the commercial, recreational, and charter fishing sectors in the fishery.

97-453, 99-659, 101-627, 102-251, 104-297

**(b) DISCRETIONARY PROVISIONS.**--Any fishery management plan which is prepared by any Council, or by the Secretary, with respect to any fishery, may--

(1) require a permit to be obtained from, and fees to be paid to, the Secretary, with respect to--

(A) any fishing vessel of the United States fishing, or wishing to fish, in the exclusive economic zone [or special areas,]\* or for anadromous species or Continental Shelf fishery resources beyond such zone [or areas]\*;

(B) the operator of any such vessel; or

(C) any United States fish processor who first receives fish that are subject to the plan;

(2) designate zones where, and periods when, fishing shall be limited, or shall not be permitted, or shall be permitted only by specified types of fishing vessels or with specified types and quantities of fishing gear;

(3) establish specified limitations which are necessary and appropriate for the conservation and management of the fishery on the--

(A) catch of fish (based on area, species, size, number, weight, sex, bycatch, total biomass, or other factors);

(B) sale of fish caught during commercial, recreational, or charter fishing, consistent with any applicable Federal and State safety and quality requirements; and

(C) transshipment or transportation of fish or fish products under permits issued pursuant to section 204;

(4) prohibit, limit, condition, or require the use of specified types and quantities of fishing gear, fishing vessels, or equipment for such vessels, including devices which may be required to facilitate enforcement of the provisions of this Act;

(5) incorporate (consistent with the national standards, the other provisions of this Act, and any other applicable law) the relevant fishery conservation and management measures of the coastal States nearest to the fishery;

(6) establish a limited access system for the fishery in order to achieve optimum yield if, in developing such system, the Council and the Secretary take into account--

(A) present participation in the fishery,

(B) historical fishing practices in, and dependence on, the fishery,

(C) the economics of the fishery,

(D) the capability of fishing vessels used in the fishery to engage in other fisheries,

(E) the cultural and social framework relevant to the fishery and any affected fishing communities, and

(F) any other relevant considerations;

(7) require fish processors who first receive fish that are subject to the plan to submit data (other than economic data) which are necessary for the conservation and management of the fishery;

(8) require that one or more observers be carried on board a vessel of the United States engaged in fishing for species that are subject to the plan, for the purpose of collecting data necessary for the conservation and management of the fishery; except that such a vessel shall not be required to carry an observer on board if the facilities of the vessel for the quartering of an observer, or for carrying out observer functions, are so inadequate or unsafe that the health or safety of the observer or the safe operation of the vessel would be jeopardized;

(9) assess and specify the effect which the conservation and management measures of the plan will have on the stocks of naturally spawning anadromous fish in the region;

(10) include, consistent with the other provisions of this Act, conservation and management measures that provide harvest incentives for participants within each gear group to employ fishing practices that result in lower levels of bycatch or in lower levels of the mortality of bycatch;

16 U.S.C. 1853

(11) reserve a portion of the allowable biological catch of the fishery for use in scientific research; and

(12) prescribe such other measures, requirements, or conditions and restrictions as are determined to be necessary and appropriate for the conservation and management of the fishery.

97-453, 104-297



# Federal Register

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**Wednesday,  
March 2, 2005**

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## **Part II**

# **Department of Commerce**

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**National Oceanic and Atmospheric  
Administration**

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**15 CFR Part 902**

**50 CFR 679 and 6805**

**Fisheries of the Exclusive Economic Zone  
Off Alaska; Allocating Bering Sea and  
Aleutian Islands King and Tanner Crab  
Fishery Resources; Final Rule**

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****15 CFR Part 902****50 CFR Parts 679 and 6805**

[Docket No. 040831251-5032-02; I.D. 082504A]

RIN 0648-AS47

**Fisheries of the Exclusive Economic Zone Off Alaska; Allocating Bering Sea and Aleutian Islands King and Tanner Crab Fishery Resources**

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

**ACTION:** Final rule.

**SUMMARY:** NMFS issues a final rule implementing Amendments 18 and 19 to the Fishery Management Plan for Bering Sea/Aleutian Islands (BSAI) King and Tanner Crabs (FMP). Amendments 18 and 19 amend the FMP to include the Voluntary Three-Pie Cooperative Program (hereinafter referred to as the Crab Rationalization Program or Program). Congress amended the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) to require the Secretary of Commerce to approve and implement the Program. The action is necessary to increase resource conservation, improve economic efficiency, and improve safety. This action is intended to promote the goals and objectives of the Magnuson-Stevens Act, the FMP, and other applicable law.

**DATES:** Effective on April 1, 2005.

**ADDRESSES:** Copies of Amendments 18 and 19, the Final Regulatory Flexibility Analysis (FRFA), and the Environmental Impact Statement (EIS) for this action may be obtained from the NMFS Alaska Region, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Durall, and on the Alaska Region, NMFS, Web site at <http://www.fakr.noaa.gov/sustainablefisheries/crab/eis/default.htm>. The EIS contains as appendices the Regulatory Impact Review (RIR), Initial Regulatory Flexibility Analysis (IRFA), and Social Impact Assessment (SIA) prepared for this action.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule may be submitted to NMFS, Alaska Region, and by e-mail to

[David\\_Rostker@omb.eop.gov](mailto:David_Rostker@omb.eop.gov), or fax to 202-395-7285.

**FOR FURTHER INFORMATION CONTACT:** Susan Salvesson, 907-586-7228 or [sue.salvesson@noaa.gov](mailto:sue.salvesson@noaa.gov).

**SUPPLEMENTARY INFORMATION:** In January 2004, the U.S. Congress amended section 313(j) of the Magnuson-Stevens Act through the Consolidated Appropriations Act of 2004 (Pub. L. 108-199, section 801). As amended, section 313(j)(1) requires the Secretary to approve and implement by regulation the Program, as it was approved by the North Pacific Fishery Management Council (Council) between June 2002 and April 2003, and all trailing amendments, including those reported to Congress on May 6, 2003. In June 2004, the Council consolidated its actions on the Program into the Council motion, which is contained in its entirety in Amendment 18. Additionally, in June 2004, the Council developed Amendment 19, which represents minor changes necessary to implement the Program. The Notice of Availability for these amendments was published in the **Federal Register** on September 1, 2004 (69 FR 53397). NMFS approved Amendments 18 and 19 on November 19, 2004.

NMFS published a proposed rule to implement Amendments 18 and 19 in the **Federal Register** on October 29, 2004 (69 FR 63200). NMFS solicited public comments on the proposed rule through December 13, 2004. NMFS received 49 letters of public comment. NMFS summarized these letters into 234 separate comments, and responded to them under Response to Comments, below.

The Program allocates BSAI crab resources among harvesters, processors, and coastal communities. The Council developed the Program over a 6-year period to accommodate the specific dynamics and needs of the BSAI crab fisheries. The Program builds on the Council's experiences with the halibut/sablefish Individual Fishing Quota (IFQ) program and the American Fisheries Act (AFA) cooperative program for Bering Sea pollock. The Program is a limited access system that balances the interests of several groups who depend on these fisheries. The Program addresses conservation and management issues associated with the current derby fishery, reduces bycatch and associated discard mortality, and increases the safety of crab fishermen by ending the race for fish. Share allocations to harvesters and processors, together with incentives to participate in crab harvesting cooperatives, will increase efficiencies, provide economic stability,

and facilitate compensated reduction of excess capacities in the harvesting and processing sectors. Community interests are protected by Community Development Quota (CDQ) allocations and regional landing and processing requirements, as well as by several community protection measures.

This preamble first provides a Crab Rationalization Program overview that presents a general description of all of the Program components. Subsequent sections address the response to public comments and changes in the rule from proposed to final. Please refer to the proposed rule for additional information on the Program.

**Crab Rationalization Program Overview**

The Program applies to the following BSAI crab fisheries: Bristol Bay red king crab (*Paralithodes camtschaticus*), Western Aleutian Islands (Adak) golden king crab (*Lithodes aequispinus*)—west of 174° W. long., Eastern Aleutian Islands (Dutch Harbor) golden king crab—east of 174° W. long., Western Aleutian Islands (Adak) red king crab—west of 179° W. long., Pribilof Islands blue king crab (*P. platypus*) and red king crab, St. Matthew Island blue king crab, Bering Sea snow crab (*Chionoecetes opilio*), and Bering Sea Tanner crab (*C. bairdi*). Golden king crab is also known as brown king crab. In this document, the phrases “crab fishery” and “crab fisheries” refer to these fisheries, unless otherwise specified. A License Limitation Program (LLP) license will no longer be required to participate in these crab fisheries.

Several crab fisheries under the FMP are excluded from the Program, including the Norton Sound red king crab fishery, which is operated under a “superexclusive” permit program intended to protect the interests of local, small-vessel participants. Also excluded from this Program are the Aleutian Islands Tanner crab fishery, Aleutian Islands red king crab fishery east of 179° W. long., and the Bering Sea golden king crab, scarlet king crab (*L. couesi*), triangle Tanner crab (*C. angulatus*), and grooved Tanner crab (*C. tanneri*) fisheries. An LLP license will be required to participate in the FMP crab fisheries excluded from the Program.

**Harvest Sector**

Qualified harvesters are allocated quota share (QS) in each crab fishery. To receive a QS allocation, a harvester must hold a permanent, fully transferable LLP license endorsed for that crab fishery. Using LLP licenses for defining eligibility in the Program maintains current fishery participation. Quota

share represents an exclusive but revocable privilege that provides the QS holder with an annual allocation to harvest a specific percentage of the total allowable catch (TAC) from a fishery. IFQs are the annual allocations of pounds of crab for harvest that represent a QS holder's percentage of the TAC. A harvester's allocation of QS for a fishery is based on the landings made by his or her vessel in that fishery. Specifically, each allocation is the harvester's average annual portion of the total qualified catch during a specific qualifying period. Qualifying periods were selected to balance historical and recent participation. Different periods were selected for different fisheries to accommodate closures and other circumstances in the fisheries in recent years.

Quota share is designated as either catcher vessel (CV) shares or catcher/processor (CP) shares, depending on the nature of the LLP license and whether the vessel processed the qualifying harvests on board. Catcher vessel IFQ will be issued in two classes, Class A IFQ and Class B IFQ. Crabs harvested with Class A IFQ will require delivery to a processor holding unused processing quota. Class A IFQ landings also will be subject to a regional delivery requirement. Under this regional requirement, landings will be delivered either in a North or in a South region (in most fisheries). Crabs harvested with Class B IFQ can be delivered to any processor and will not be regionally designated. Landings in excess of IFQ will be forfeited in all cases. Class B IFQ are intended to provide ex-vessel price negotiating leverage to harvesters. For each region of each fishery, the allocation of Class B IFQ will be 10 percent of the total allocation of IFQ to the CV sector.

Transfer of QS and IFQ, either by sale or lease, will be allowed, subject to limits including caps on the amount of shares a person may hold or use. To be eligible to receive transferred QS or IFQ, a person must meet specific eligibility criteria. Initial recipients of QS, CDQ groups, and eligible crab community entities are exempt from the transfer eligibility criteria.

Separate caps will be imposed to limit the amount of QS and IFQ a person can hold and to limit the use of IFQ on board a vessel. These caps are intended to prevent negative impacts from what can be described as excessive consolidation of shares. Excessive share holdings are prohibited by the Magnuson-Stevens Act. Different caps were chosen for the different fisheries because fleet characteristics and dependence differ across fisheries.

Separate caps on QS holdings are established for CDQ groups, which represent rural western Alaska communities. Processor holdings of QS will also be limited by caps on vertical integration. Quota share holders can retain and use initial allocations of QS above the caps.

#### *Crew Sector*

To protect their interests in the fisheries, qualifying crew will be allocated 3 percent of the initial QS pool. These shares are intended to provide long term benefits to captains and crew. The Council originally intended this provision to apply only to vessel captains. However, NMFS has determined that documentation necessary to allocate Crew QS, called C shares by the Council, requires that these shares be initially issued to individuals who hold a State of Alaska Interim Use Permit. In most cases, this individual will be the captain; however, the State does not require that the holder of the Interim Use Permit be the vessel captain. The allocation to crew will be based on the same qualifying years and computational method used for QS allocations to LLP license holders. Crew (C) QS will be issued as CVC QS and CPC QS, depending on the activity in the qualifying years. To ensure that Crew QS and IFQ benefit at-sea participants in the fisheries, Crew IFQ can be used only when the IFQ holder is on board the vessel.

To be eligible to receive an allocation, an individual is required to have historic and recent participation. Historic participation is demonstrated by at least one landing in each of three of the qualifying years. Recent participation is demonstrated by at least one landing in two of the three most recent seasons, with some specific exceptions.

CV Crew IFQ (called CVC IFQ) will be required to be delivered to shore-based processors for processing. CVC IFQ is not subject to specific delivery requirements until July 1, 2008. After July 1, 2008, CVC IFQ will be subject to the Class A IFQ/Class B IFQ distinction with commensurate regional delivery requirements unless the Council determines, after review, not to apply those designations. Before July 1, 2007, the Council intends to review CVC IFQ landing patterns to determine whether the distribution of landings among processors and communities of CVC IFQ differs from the distribution of IFQ landings.

CP crew will be allocated CPC QS and IFQ that include a harvesting and on-board processing privilege. Crab

harvested with CPC IFQ also can be delivered to shore-based processors.

Crew QS and IFQ can be transferred to eligible individuals. Leasing of Crew IFQ is permitted before July 1, 2008. After July 1, 2008, leasing will be permitted only in the case of a documented hardship (such as a medical hardship or loss of vessel) for the term of the hardship, subject to a maximum of 2 years over a 10-year period. Use caps apply to individual Crew QS holdings.

#### *Processing Sector*

A processing privilege, analogous to the harvesting privilege allocated to harvesters, will be allocated to processors. Qualified processors will be allocated processor quota share (PQS) in each crab fishery. PQS represents an exclusive but revocable privilege to receive deliveries of a specific portion of the annual TAC from a fishery. The annual allocation of pounds of crab based on the PQS is IPQ. IPQ will be issued for 90 percent of the IFQ allocated harvesters, equaling the amount of IFQ allocated as Class A IFQ. Processor privileges will not apply to the remaining TAC allocated as Class B IFQ, or for Crew IFQ until July 1, 2008. IPQs will be regionally designated for processing (corresponding to the regional designation of the Class A IFQ).

PQS allocations are based on processing history during a specified qualifying period for each fishery. A processor's initial allocation of PQS in a fishery will equal its share of all qualified pounds of crab processed in the qualifying period. Processor shares are transferable, including the leasing of IPQs and the sale of PQS, subject to caps and to community protection measures. IPQs can be used without transfer at any facility or plant operated by a processor. New processors can enter the fishery by purchasing PQS or IPQ or by purchasing crab harvested with Class B IFQ or crab harvested by CDQ groups or the Adak community entity.

A PQS holder is limited to holding 30 percent of the PQS issued for a fishery, except that initial allocations of shares above this limit can be retained and used. In addition, in the snow crab fishery, no processor is permitted to use or hold in excess of 60 percent of the IPQs issued for the Northern region.

#### *Catcher/Processor Sector*

Catcher/processors (CPs) have a unique position in the Program because they participate in both the harvesting and processing sectors. To be eligible for CP QS, a person is required to hold a permanent, fully transferable LLP license designated for CP use. In

addition, a person must have processed crab on board the CP, whose history gave rise to the LLP license, in either 1998 or 1999. Persons meeting these qualification requirements will be allocated CP QS in accordance with the allocation rules for QS for all qualified catch that was processed on board. These shares represent a harvest privilege and an on-board processing privilege. Catcher/Processor QS does not have regional designations.

#### *Regionalization*

The regional delivery requirements for QS are intended to preserve the historic geographic distribution of landings in the fisheries. Communities in the Pribilof Islands are the prime beneficiaries of this regionalization provision. Two regional designations will be created in most fisheries. The North region is all areas in the Bering Sea north of 56°20' N latitude. The South region is all other areas. Catcher vessel QS, Class A IFQ, PQS, and IPQ will be regionally designated. Crab harvested with regionally designated IFQ will be required to be delivered to a processor in the designated region. Likewise, a processor with regionally designated IPQ is required to accept delivery of and process crab in the designated region. Legal landings in a region in the qualifying years will result in QS and PQS designated for that region.

The Program has two exceptions to the North/South regional designations. In the Western Aleutian Islands golden king crab fishery, 50 percent of the Class A IFQ and IPQ will be designated as west shares to be delivered west of 174° W. longitude. The remaining 50 percent of the Class A IFQ and IPQ will have no regional designation and will not be subject to a regional delivery requirement. The west designation will be applied to all Class A IFQ and IPQ regardless of the historic location of landings in the fishery. A second exception is the Bering Sea Tanner crab fishery, which will have no regional designation. This fishery is anticipated to be conducted primarily as a concurrent fishery with the regionalized Bristol Bay red king crab and Bering Sea snow crab fisheries, making the regional designation of Tanner crab landings unnecessary.

#### *Crab Harvesting Cooperatives*

Harvesters may form voluntary crab harvesting cooperatives in order to collectively harvest their IFQ holdings. A minimum membership of four unique QS holders is required for crab harvesting cooperative formation. A crab harvesting cooperative is required

to apply for a crab harvesting cooperative IFQ permit. The crab harvesting cooperative IFQ permit will display the aggregate amount of IFQ in each crab fishery that will be yielded by the collective QS holdings of the members. IFQ could be transferred between crab harvesting cooperatives, subject to NMFS' approval. For inter-cooperative transfers, the crab harvesting cooperative will need to designate the crab harvesting cooperative member engaged in the transaction for purposes of applying the use cap of that member to the IFQ that is being transferred to the crab harvesting cooperative. Crab harvesting cooperative members will be allowed to leave a crab harvesting cooperative or change crab harvesting cooperatives on an annual basis prior to the August 1 deadline for the annual crab harvesting cooperative IFQ permit application. Vessels that are used exclusively to harvest crab harvesting cooperative IFQ will not be subject to use caps. Crab harvesting cooperatives are free to associate with one or more processors to the extent allowed by antitrust law.

#### *Community Protection Measures*

The Program includes several provisions intended to protect communities from adverse impacts that could result from the Program. Communities eligible for the community protection measures are those with 3 percent or more of the qualified landings in any crab fishery included in the Program. Based on these criteria, NMFS has determined that the following crab communities meet this criteria: Adak, Akutan, Unalaska, Kodiak, King Cove, False Pass, St. George, St. Paul, and Port Moller. All of these communities are identified as eligible crab communities (ECCs) for purposes of community protection measures.

*“Cooling off” provision.* Until July 1, 2007, PQS and IPQ based on processing history from the ECCs can not be transferred from those communities. The use of IPQ outside the community during this period is limited to 20 percent of the IPQ and for specific hardships. PQS and IPQ from three crab fisheries are exempt from the cooling off provision: Tanner crab, Western Aleutian Islands red king crab, and Western Aleutian Islands golden king crab.

*IPQ issuance limits.* IPQ issuance limits are established to limit the annual issuance of IPQ in seasons when the Bristol Bay red king crab or snow crab TAC exceeds a threshold amount. Under these circumstances, Class A IFQ issued in excess of these thresholds will not be

required to be delivered to a processor with IPQ but will be subject to the regional delivery requirements.

*Sea time waiver.* Sea time eligibility requirements for the purchase of QS are waived for CDQ groups and community entities in ECCs, allowing those communities to build and maintain local interests in harvesting. CDQ groups and ECCs are eligible to purchase PQS but are not permitted to purchase Crew QS.

*Right of first refusal (ROFR).* ECCs, except for Adak, will have a ROFR on the transfer of PQS and IPQ originating from processing history in the community if the transfer will result in relocation or use of the shares outside the community. Adak is not eligible for the ROFR provision because Adak will receive a direct allocation of Western Aleutian Islands golden king crab. In addition, the City of Kodiak and the Kodiak Island Borough in the Gulf of Alaska (GOA) have a ROFR on the transfer of PQS and IPQ from communities in the GOA north of 56°20' N. latitude.

#### *Community Development Quota Program and Community Allocations*

*Community Development Quota Program.* The CDQ Program is expanded to include the Eastern Aleutian Islands golden king crab fishery and the Western Aleutian Islands red king crab fishery. In addition, the CDQ allocations in all crab fisheries covered by the Program are increased from 7.5 to 10 percent of the TAC. The increase will not apply to the CDQ allocation of Norton Sound red king crab because this fishery is excluded from the Program. The crab CDQ fisheries will be managed as separate commercial fisheries by the State under authority deferred to it under the FMP. The State will establish observer coverage requirements, State permitting requirements, and transfer provisions among the CDQ groups. It also will monitor catch to determine when IFQ have been reached, enforce any penalties associated with IFQ overages, and monitor compliance with the requirement that CDQ groups must deliver at least 25 percent of their allocation to shore-based processors.

Crab harvested under the CDQ allocations (except Norton Sound red king crab) are subject to some of the Federal requirements that apply to all crab fisheries under the Program including permitting, recordkeeping and reporting, a vessel monitoring system, and the cost recovery fees.

CDQ groups can participate in the crab fisheries as holders of both QS and PQS. Some CDQ groups will be initial

recipients of QS because they hold LLP licenses and the appropriate catch history. In addition, CDQ groups are exempt from the transfer eligibility requirement related to sea time so they are eligible to obtain QS by transfer, subject to QS use caps for CDQ groups. CDQ groups also will be able to obtain PQS by transfer because there are no transfer restrictions on who can hold PQS. While harvesting crab with IFQ, CDQ groups are subject to the same regulations as apply to other IFQ holders. The purchase and holding of QS and PQS by the CDQ groups is subject to the administrative regulations for the CDQ Program at 50 CFR part 679. These regulations include information on reporting, prior approval, and use requirements for all CDQ investments, which include QS and PQS.

*Adak allocation.* An allocation of 10 percent of the TAC of Western Aleutian Islands golden king crab will be made to the community of Adak. The allocation to Adak will be made to a nonprofit entity representing the community, with a board of directors elected by the community. As an alternative and in the interim, the allocation and funds derived from it could be held in trust by the Aleut Enterprise Corporation for a period not to exceed 2 years, if the Adak community non-profit entity is not formed prior to implementation of the Program. Oversight of the use of the allocation for "fisheries related purposes" is deferred to the State under the FMP. NMFS will have no direct role in oversight of the use of this allocation. The State will provide an implementation review to the Council to ensure that the benefits derived from the allocation accrue to the community and achieve the goals of the fisheries development plan. The Adak allocation will be managed as a separate commercial fishery by the State in a manner similar to management of the crab CDQ fisheries. As with the CDQ allocations, crab harvested under the Adak allocation will be subject to several requirements that apply to all crab fisheries under the Program including permitting, recordkeeping and reporting, a vessel monitoring system, and the cost recovery fees.

*Community purchase.* Any non-CDQ community in which 3 percent or more of any crab fishery was processed could form a non-profit entity to receive QS, IFQ, PQ and IPQ transfers on behalf of the community. The non-profit entity will be called an eligible crab community organization (ECCO).

#### *Protections for Participants in Other Fisheries*

The Program will greatly increase the flexibility for crab fishermen to choose when and where to fish for their IFQ, and this increased flexibility will provide crab fishermen with increased opportunity to participate in other fisheries. Restrictions on participation in other fisheries, also called sideboards, will restrict a vessel's harvests to its historical landings in all GOA groundfish fisheries (except the fixed-gear sablefish fishery). Restrictions will be applied to vessels but will also restrict landings made using a groundfish LLP license derived from the history of a vessel so restricted, even if that LLP license is used on another vessel. Groundfish sideboards in the GOA will be managed by NMFS through fleet-wide sideboard directed fishing closures in Federal waters and for the parallel fishery in state waters.

#### *Arbitration System*

BSAI crab fisheries have a history of contentious price negotiations. Harvesters have often acted collectively to negotiate an ex-vessel price with processors, which at times delayed fishing. The Arbitration System was developed to resolve failed price negotiations arising from the creation of QS/IFQ and PQS/IPQ. The complications include price negotiations that could continue indefinitely and result in costly delays and the "last person standing" problem where the last Class A IFQ holder deliveries will have a single IPQ holder to contract with, effectively limiting any ability to use other processor markets for negotiating leverage. To ensure fair price negotiations, the Arbitration System includes a provision for open negotiations among IPQ and IFQ holders as well as various negotiation approaches, including: (a) A share matching approach where IPQ holders make known to unaffiliated IFQ holders that have uncommitted IFQ available the amount of uncommitted IPQ they have available so the IFQ holder can match up its uncommitted IFQ by indicating an intent to deliver its catch to that IPQ holder; (b) a lengthy season approach that allows parties to postpone binding arbitration until sometime during the season; and (c) a binding arbitration procedure to resolve price disputes between an IPQ holder and eligible IFQ holders.

The arbitration process will begin preseason with a market report for each fishery prepared by an independent market analyst selected by the PQS and QS holders and the establishment of a

non-binding fleet wide benchmark price formula by an arbitrator who has consulted with fleet representatives and processors. Information provided by the sectors for these reports will be historical in nature and at least 3 months old. This non-binding price will guide the above described negotiations. Information sharing among IPQ and IFQ holders, collective negotiations, and release of arbitration results will be limited to minimize the antitrust risks of participants in the Program. The participants in the Arbitration System will also select Contract Arbitrators who will assist in Binding Arbitration.

The binding arbitration procedure is a last best (or final) offer format. The IPQ holder, each IFQ holder, and each crab harvesting cooperative could submit an offer. For each IFQ holder or cooperative, the arbitrator will select between the IFQ holder's offer and the IPQ holder's offer. After an arbitration decision is rendered, an eligible IFQ holder with uncommitted IFQ could opt-in to the completed contract by accepting all terms of the arbitration decision as long as the IPQ holder held sufficient uncommitted IPQ.

#### *Monitoring and Enforcement*

NMFS and the State of Alaska will coordinate monitoring and enforcement of the crab fisheries. Harvesting and processing activity will need to be monitored for compliance with the implementing regulations. Methods for catch accounting and catch monitoring plans will generate data to provide accurate and reliable round weight accounting of the total catch and landings to manage QS and PQS accounts, prevent overages of IFQ and IPQ, and determine regionalization requirements and fee liabilities. Monitoring measures will include landed catch weight and species composition, bycatch, and deadloss to estimate total fishery removals.

#### *Economic Data Collection*

The Program includes a comprehensive economic data collection program to aid the Council and NMFS in assessing the success of the Program and developing amendments necessary to mitigate any unintended consequences. An Economic Data Report (EDR), containing cost, revenue, ownership, and employment data, will be collected on a periodic basis from the harvesting and processing sectors. The data will be used to study the economic impacts of the Program on harvesters, processors, and communities. Pursuant to section 313(j) of the Magnuson-Stevens Act, the data and identifiers will also be used for

Program enforcement and determination of qualification for QS. Consequently, identifiers and data will be disclosed to NOAA Enforcement, NOAA GC, the Antitrust Division of the Department of Justice, the Federal Trade Commission, and RAM. With limited exceptions, participation in the data collection program is mandatory for all participants in the crab fisheries.

#### *Cost Recovery and Fee Collection*

NMFS will establish a cost recovery fee system, required by section 304(d)(2) of the Magnuson-Stevens Act, to recover actual costs directly related to the management and enforcement of the Program. The crab cost recovery fee will be paid in equal shares by the harvesting and processing sectors and will be based on the ex-vessel value of all crab harvested under the Program, including CDQ crab and Adak crab. NMFS also will enter into a cooperative agreement with the State of Alaska to use IFQ cost recovery funds in State management and observer programs for BSAI crab fisheries. The crab cost recovery fee is prohibited from exceeding 3 percent of the annual ex-vessel value. Within this limit, the collection of up to 133 percent of the actual costs of management and enforcement under the Program is authorized, which provides for fuller reimbursement of management costs after allocation of 25 percent of the cost recovery fees to the crew loan program.

#### *Crew Loan Program*

To aid captains and crew in purchasing QS, a low interest loan program (similar to the loan program under the halibut and sablefish IFQ program) will be created. This program will be funded by 25 percent of the cost recovery fees as required by the Magnuson-Stevens Act. Loan money will be accessible only to active participants and could be used to purchase either QS or Crew QS. Quota share purchased with loan money will be subject to all use and leasing restrictions applicable to Crew QS for the term of the loan. This final rule does not contain regulations to implement the crew loan program. The loan program will be developed by NMFS Financial Services.

#### *Annual Reports and Program Review*

NMFS, in conjunction with the State of Alaska, will produce annual reports on the Program. Before July 1, 2007, the Council will review the PQS, binding arbitration, and C share components of the Program. After July 1, 2008, the Council will conduct a preliminary review of the Program. A full review of

the entire Program will be undertaken in 2010. Additional reviews will be conducted every 5 years. These reviews are intended to objectively measure the success of the Program in achieving the goals and objectives specified in the Council's problem statement and the Magnuson-Stevens Act. These reviews will examine the impacts of the Program on vessel owners, captains, crew, processors, and communities, and include an assessment of options to mitigate negative impacts.

#### **Summary of Regulation Changes in Response to Public Comments**

This section provides a summary of the major changes made to the final rule in response to public comments. All of the specific changes, and the reasons for making these changes, are contained under Response to Comments.

#### *Harvester, Crew, and Processor Sectors*

The following significant changes from the proposed to final rule in response to public comments are necessary to meet the requirements of Amendment 18 and 19. In the final rule NMFS:

(1) Revised the way in which Class A IFQ and Class B IFQ are allocated to individual IFQ holders who hold PQS or IPQ, or who are affiliated with PQS or IPQ holders, so that Class A IFQ is issued in proportion to the amount of IPQ that is held by the IPQ holder or affiliates.

(2) Revised the definition of "affiliation" to clarify the term "otherwise controls".

(3) Clarified that CVC QS and IFQ are not subject to regional designation and the Class A and Class B IFQ assignment for the first three years of the program—until July 1, 2008.

(4) Revised the QS use caps that apply to non-individual PQS and IPQ holders so that the application of those caps considers the QS holding of that PQS and IPQ holder and the total QS holdings of all persons affiliated with that PQS or IPQ holder.

(5) Revised the PQS and IPQ use caps that apply to PQS and IPQ holders so that the PQS or IPQ holdings of that PQS or IPQ holder and the total PQS or IPQ holdings of all persons affiliated with that PQS or IPQ holder are used in the calculation of the PQS or IPQ holder's caps.

(6) Clarified that an "individual and collective" rule applies for computing QS use caps for individual PQS holders, CDQ groups, and all other QS holders. This methodology sums all QS holdings by a person and the percentage of ownership by that person in any QS

holding entity. This method is more consistent with Amendment 18.

(7) Added provisions on applying limits on the amount of "custom processing" that may be undertaken at any one processing facility, or at any facility, or group of facilities that is owned by an IPQ holder.

(8) Clarified the limited exemption that applies to using legal landings based on the activities of a vessel which received an LLP by transfer in order to remain in a fishery.

#### *Crab Harvesting Cooperatives*

In response to Council and public comments, NMFS removed the requirement in § 680.21 that crab harvesting cooperatives be formed under the Fishermen's Collective Marketing Act (FCMA, 15 U.S.C. 512). With this change, QS holders that hold PQS and IPQ, as well as QS holders affiliated with PQS and IPQ holders, can participate in crab harvesting cooperatives. To address antitrust concerns, NMFS: (1) Clarified that issuance 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 laws; and (2) added that members of crab harvesting cooperatives, that are not FCMA cooperatives, should consult counsel before commencing any activity under the crab harvesting cooperative if members are uncertain about the legality under the antitrust laws of the crab harvesting cooperative's proposed conduct. Additionally, NMFS added definitions of crab harvesting cooperatives and FCMA cooperatives at § 680.2.

Additionally, NMFS changed the regulations at § 680.42(c)(5) so that a CVC or CPC QS holder is subject to the owner on board restriction regardless of whether he or she joins a crab harvesting cooperative. NMFS revised the final rule at § 680.21(a)(1)(iii)(B) to allow CVC QS holders who join a crab harvesting cooperative to withhold their Class B IFQ from submission to the crab harvesting cooperative. This will take effect after the third year of the Program when CVC QS becomes subject to the Class A/Class B IFQ split. NMFS revised the final rule at § 680.21(a)(1)(iii)(A)–(B) to permit QS holders to hold memberships in one crab harvesting cooperative per fishery. If a QS holder joins a crab harvesting cooperative for fishery, all of that QS holder's IFQ for that fishery will be submitted to the crab harvesting cooperative.

NMFS revised intercooperative transfers at § 680.21(e) to require the designation of the members of the crab

harvesting cooperatives that are engaged in the transfer for purposes of applying the use caps of the members to the cooperative IFQ that is being transferred between the crab harvesting cooperatives.

#### ROFR

The final rule revises proposed provisions for an ECC's ROFR of purchase of PQS or IPQ that is being proposed by a PQS/IPQ holder for use outside the community. These revisions are in response to public comment and are intended to more closely reflect the original intent of the Council. First, the final rule clarifies that an ECC has discretion on whether or not to designate an ECC entity to represent it in ROFR and enter into civil contract arrangements for this purpose. If an ECC entity is not designated within a reasonable period of time, then the ECC permanently waives its opportunity to exercise ROFR. Second, statute terms for civil contracts establishing ROFR between eligible ECCs and holders of PQS/IPQ have been removed from the regulations. Instead, the regulations now refer to the provisions in section 313(j) of the Magnuson-Stevens Act. This approach ensures consistency with the Magnuson-Stevens Act and is appropriate because NMFS does not enforce these contract terms.

#### Arbitration System

NMFS made the following significant changes from the proposed to final rule in response to public comments. These changes are necessary to meet the requirements of Amendment 18 and 19. In the final rule NMFS:

(1) Clarified that only IFQ holders can initiate the Binding Arbitration procedure.

(2) Revised the timeline for the 2005 season for QS holders and PQS holders to join an Arbitration Organization which is responsible for selecting a group of experts that can assist in price negotiations: the market analyst, formula arbitrator, and contract arbitrator.

(3) Revised the mechanism for exchanging information between uncommitted IPQ holders and uncommitted Arbitration IFQ holders to allow for a third-party to provide data in an arms-length relationship.

(4) Established a minimum of 25 percent of the total IFQ held by an FCMA cooperative that must be committed to an IPQ holder in order to engage in share matching.

(5) Clarified the timing under which a Binding Arbitration procedure must occur and the process whereby it can occur.

(6) Clarified the ability of persons to participate in FCMA cooperatives and collectively negotiate, and the limits to which FCMA cooperatives may exchange information among cooperatives.

(7) Removed the requirement that the transferors require persons receiving QS/IFQ or PQS/IPQ by transfer to join an Arbitration Organization, and requiring the transferees to do that themselves.

(8) Required that CVO IFQ, CVC IFQ after July 1, 2008, and IPQ would not be issued for a crab QS fishery until the Market Analyst, Formula Arbitrator, or Contract Arbitrators have been selected for that fishery.

(9) Clarified the type of Arbitration Organization which a person must join depending on their holdings of QS/IFQ and PQS/IPQ.

#### Monitoring and Enforcement

NMFS made two major changes to requirements for CPs as a result of public comment. Both changes reduce the burden on participants in the crab fishery. First, NMFS reduced the required reporting interval for crab catch by CPs from once every twenty four hours to weekly. Second, NMFS removed requirements for CPs to provide an observer work area on board their vessels. NMFS also clarified regulations governing the use of the Interagency Electronic Reporting System (IERS) to ensure that vessels that are unable to use the Internet may report catch using an alternative, NMFS approved, method such as an email attachment to report catch.

#### Economic Data Collection

In response to public comment requesting additional time to prepare and submit the historic EDRs, the submission interval for the EDR is increased from 60 days to 90 days at §§ 680.6(a)(2), 680.6(c)(2), 680.6(e)(2) and 680.6(g)(2), to provide both the time to gather records and complete an accurate EDR. Also in response to public comment, the time interval allowed for verification of data by all submitters is extended in the final rule at § 680.6(i)(2) to 20 days from the 15 days interval identified in the proposed rule.

#### Cost Recovery and Fee Collection

The cost recovery fee system remains relatively unchanged from the proposed rule. NMFS received only one comment for the cost recovery fee system. NMFS responded affirmatively to this comment by adjusting the methodology by which CPs must calculate and submit fees to reduce any disparity between

fees paid by CPs and shoreside processors. An explanation of the revised methodology for CP fee calculation is contained in the response to comments.

#### Response to Comments

##### Harvest Sector

*Comment 1:* QS should belong to the American public, not fishing industry. It is not fair to the American public to have the interests of only those who enrich themselves have a say over the resource.

*Response:* Allocating QS and PQS to fishery participants is a provision of Amendment 18. Section 313(j) of the Magnuson-Stevens Act requires NMFS to implement the Program provisions as specified in Amendment 18.

*Comment 2:* If a vessel sinks, it should lose all rights to fish forever.

*Response:* The sunken vessel provision that allocates QS to LLP license holders who have had a vessel sink are part of Amendment 18. Under section 313(j) of the Magnuson-Stevens Act, NMFS does not possess the discretion to alter the sunken vessel provision as it exists in Amendment 18. Any change to this provision requires an amendment to the Program and should be addressed with the Council.

*Comment 3:* The term "IFQ TAC" used in § 680.40(h)(5)(ii) in the calculation of the Class A IFQ allocation and the IPQ allocation is not defined. Care should be taken in defining the term to show that prior to July 1, 2008, CVC QS yield IFQ that are not subject to the Class A IFQ landing requirements and that IPQ should be issued for 90 percent of the CVO IFQ allocation. After July 1, 2008, CVC QS holders will receive Class A IFQ and IPQ will be issued for 90 percent of the CVO and CVC IFQ allocation. Clarify definition and calculation of IPQ and Class A IFQ allocations.

*Response:* NMFS agrees and has modified the final rule at § 680.40(h)(5)(ii) to more clearly reflect the nature of the Class A IFQ, the allocations that may occur, and the definition of CVC and CVO QS and IFQ.

*Comment 4:* Section 680.41(c)(2)(ii)(D)(2)(i) and (ii) does not adequately parallel the Council motion. For corporations and other entities, one "owner" (not "member") must meet the sea time requirement. In addition, that same owner must hold at least a 20 percent ownership interest in the entity. The section does not exactly parallel these requirements. Use language from the Council motion.

*Response:* NMFS agrees and has modified the final rule at

§ 680.41(c)(2)(ii)(D)(2)(i) and (ii) to more clearly show that one individual must meet both requirements in order to receive QS or IFQ by transfer. However, the final rule maintains the term “member” because not all persons who may hold QS or PQS will have “owners.” As an example, non-profit corporations don’t have “owners.”

*Comment 5:* The provisions § 680.41(l)(2) and (4) concerning the transfer of CVO QS and CVC QS, respectively, should be deleted in their entirety. They specifically provide, “Notwithstanding QS use limitations under § 680.42, CVO (CVC) QS may be transferred to any person eligible to receive CVO or CPO (CVC or CPC) QS as defined under paragraph (c) of this section.” These provisions appear to override any use caps contained at § 680.42 (the only section of the regulation defining use caps).

*Response:* NMFS agrees and has revised § 680.41(i)(5) in the final rule to clarify that the approval criteria for transfer do not preclude the use caps at § 680.42.

*Comment 6:* The rule limiting the acquisition of LLP licenses (and history) in excess of the cap after June 10, 2002, should apply to § 680.42(b)(3) and (4) (CDQ caps and vertical integration caps), as well as the general caps. Add in control date to this section.

*Response:* NMFS agrees and has revised § 680.42(a)(1) to accommodate this comment. This revised regulatory text also notes that 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,” except under limited conditions addressed under the response to comment 40. This provision would apply to both CDQ groups and the vertical integration caps.

*Comment 7:* For CDQ groups, the individual and collective rule should be used to determine holdings for applying the caps at § 680.42(b)(3).

*Response:* NMFS agrees and has modified the final rule at § 680.42(b)(3) to clarify that the QS and IFQ use caps apply individually and collectively to CDQ groups to meet the intent of Amendment 18.

*Comment 8:* Table 7 mixes the concepts of eligibility and qualification. Eligibility defines the persons eligible to receive an allocation. For CVO and CPO, holders of permanent LLP licenses are eligible for an initial allocation. For CVC and CPC, persons meeting the historical participation requirement (*i.e.*, landings in 3 of the qualifying years for vessels) and recency requirements (*i.e.*, landings in 2 of the 3 most recent years) are

considered eligible. Once persons are found eligible, their allocations are based on the qualifying years shown in Column B. The same subset of years would apply to all participants (CVO, CPO, CVC, and CPC). Column E is incorrect. In addition, Columns C and D define CVC and CPC eligibility, not qualification. Revise table to reflect difference between eligibility and qualification.

*Response:* NMFS agrees and has revised Table 7 in the final rule to reflect the difference between eligibility and qualification.

*Comment 9:* Table 7 leaves out the season beginning in 1991 for Bering Sea Tanner crab. The seasons shown in (2) and (3) are one season, not two. Revise dates in the table to include the 1991 BS Tanner season.

*Response:* NMFS agrees and has revised the dates in Table 7 to include the 1991 BS Tanner crab season in the final rule.

*Comment 10:* Table 7 defines seasons with an opening and closing date. Often the last landing of the season is made after the closing date. The regulation should be clear that legal landings made after the closing date will be counted for allocations. Clarify that these landings will count for determining allocations.

*Response:* NMFS will consider legal landings made after the closing date of the fishery in the calculation of PQS and QS to be issued provided that the harvests were made during the periods established in Table 7.

*Comment 11:* Allocating QS only for fisheries for which the holder’s LLP license is endorsed is unfair, inequitable, and dramatically limits the amount of QS an LLP license holder will receive. Specifically, if a vessel has substantial history in a crab fishery, but did not qualify for an LLP license endorsement for that fishery, then the LLP license holder should receive QS based on that history.

*Response:* Allocating QS only for catch history in fisheries for which the holder’s LLP license is endorsed is a provision of the Council’s motion, which is Amendment 18. Section 313(j) of the Magnuson-Stevens Act requires NMFS to implement the Program provisions as specified in Amendment 18. The Council developed the method for distributing QS based on a linkage to permanent fully transferrable LLP license (with limited exemptions) after considerable debate and analysis in the EIS/RIR/IRFA prepared to support Amendment 18 and this final rule.

*Comment 12:* NMFS should explain how QS distribution will accommodate resolution of appeals on LLP licenses

and on QS allocation after initial QS allocation.

*Response:* NMFS anticipates that all LLP license appeals that affect the interim status of crab LLP licenses will be resolved by the time that this action is effective and the application period commences. However, other potential sources of Program application claims, for example, regarding landings and processing histories, will likely not be complete until during or after the application period. Some features of the Program such as one-time permanent regional QS and PQS assignments require that NMFS base its primary initial issuance computations and distribution on as complete a QS/PQS pool as possible. Therefore it is essential that all persons who believe they may be eligible for QS/PQS apply during the open application period, whether or not their LLP license status or other situation makes them ineligible for QS/PQS at that time. NMFS would not issue QS unless and until a person’s crab LLP license gained appropriate status or other claim was resolved in their favor by Final Agency Action of RAM, the Office of Administrative Appeals, or the Regional Administrator. At that time, NMFS would issue QS or PQS as appropriate to their application.

However, no distribution of annual IFQ or IPQ would be made for the newly issued QS/PQS until the next time at which NMFS makes a distribution of annual TAC to QS/PQS holders for that crab fishery so as not to disrupt the balance of existing QS and PQS amounts, arbitration agreements, use cap credits, etc. Regional assignments of QS/PQS issued initially but on a delayed basis would be based on original regional ratios computed from data developed for the primary initial QS issuance event.

*Comment 13:* Council intent, as stated in Amendment 18, was to calculate each holder’s QS as a weighted average. The proposed rule, at § 680.40(c)(2), uses a simple average determined by calculating the holder’s percentage in each of the history years, adding up the percentages, and dividing by the number of years. This section should be changed to comply with Council intent. The Council followed AFA, where the boats rejected the simple average approach in favor of adding up all the QS holder’s pounds in the aggregate, and then dividing by the aggregate total pounds in all of the history years (weighted average). Guideline harvest level (GHL) volatility in snow crab, for example, illustrates why. The aggregate annual landings vary significantly over the history years, meaning that a QS holder with very high landings in a low

GHL year would get more QS than a consistent participant. Someone who sat out a low GHL year (good idea for the health of the industry and fishery) would be severely penalized.

*Response:* The methodology used at § 680.40(c)(2) does use a weighted average when calculating the amount of QS that will be issued. The method requires determining the percentage of the total qualified landings a person and summing up the percentage of the total qualified landings of all persons that are qualified to receive QS. A person's percentage of the total qualified landings is divided by the percentage of the percentage of all the qualified landings in that fishery. This methodology is explained in detail in the preamble to the proposed rule (see 69 FR 63208) and in the final rule at § 680.40(c)(2)(iv).

*Comment 14:* The QS pool is so large that overfishing results. Quotas should be cut by 50 percent this year and 10 percent each year thereafter.

*Response:* NMFS disagrees. The QS pool represents the portion of available TAC for a fishery that will be allocated to QS holders annually. The QS pool yields IFQ every year which is the pounds of crab the QS holder may harvest, based on the amount of crab available for harvest. Each year, the TAC is determined through a scientific process that is designed to maintain healthy stocks and reduce the risk of overfishing.

*Comment 15:* The surviving spouse provision in the proposed rule at § 680.41(n) provides that if a QS holder dies, his spouse has 3 years to lease out his QS. There are no additional regulations in the proposed rule to explain what happens after that time. If this provision is similar to the halibut/sablefish QS surviving spouse provision, then the surviving spouse will have to either sell the QS or qualify to have the QS transferred to their name. They qualify by having 150 days of sea time-fishing only, no tendering or research vessel time. If they do qualify, then they have to be on board during the harvesting and delivery of the product.

This would be a hardship for a surviving spouse of a crab QS holder. Crab fishing is much different than halibut fishing, and provides a large portion of a family's annual income. A surviving spouse probably would not be able to leave the children and job and go out to the Bering Sea to crab fish for weeks at a time, a few times a year, even if she could qualify. I don't think it is the wish or intention of QS holders to leave their spouses and families in such a bind. In these cases, the spouse, along with the QS holder, have made

significant personal and financial investment in this fishery.

*Response:* Amendment 18 does not make a specific exemption to allow a beneficiary to receive an additional opportunity to lease IFQ or IPQ, other than the provisions established under the rule. In fact, the three year lease period allowed for beneficiaries of QS and PQS to use the IFQ or IPQ is designed to mirror existing leasing by beneficiaries under the halibut and sablefish IFQ program. Extending this limited leasing ability beyond three years would frustrate the overall intent of the Program, which is to limit leasing after several years have transpired.

A beneficiary of QS or PQS may sell the QS or PQS, or fish the IFQ or IPQ themselves after the three year period. Additionally, for CVO and CPO QS, if the beneficiary owns at least 10 percent of a vessel, they can hire someone else to fish the IFQs after the three year period. This provision is unlike the halibut/sablefish IFQ program where second generation QS holders cannot hire skippers to fish for them.

*Comment 16:* It is important that any active fisherman who holds Class B IFQ have the ability to transfer those shares to any other active fisherman. For example, an active fisherman who holds Class B IFQ for red king crab and golden king crab should be able to transfer his shares for either or both species to another active fisherman. This accommodates the fact that an active fisherman may have earned IFQ for a species that he is not fishing in a particular season, but should be able to transfer to another active fisherman who is fishing that species in that same season.

*Response:* Under the rule, Class B IFQ may be transferred to any eligible recipient mid-season, including an active participant in the fisheries.

*Comment 17:* The final rule should clearly instruct RAM to initially allocate our BSAI crab IFQs directly and individually to the owners of IFQ qualified vessels (corporations, LLCs, and partnerships) in proportion to their stock ownership or interest in the vessels that earned each respective BSAI crab fishing history. This will help NMFS avoid numerous, time-consuming transfers and sale procedures, and substantially reduce federal paperwork.

*Response:* QS will be issued to the holder of the LLP license at the time of application, and not to the owners of a corporation, or other organization, that holds the LLP license. The exact allocation of QS among the owners of a corporation would be an additional administrative burden on NMFS and the exact allocation may be subject to

contractual agreements among the owners that NMFS would be required to interpret and would be subject to appeal. In some cases, owners may wish to have the LLP license holding corporation also hold the QS. NMFS will allocate QS to the entity that holds the LLP license. If the owners of a corporation wish to receive a portion of the QS, that can be accomplished by a subsequent transfer from the QS holding corporation to the corporation's owners. The rule has not been modified.

*Comment 18:* The final rule should include a provision that provides for post delivery transfers of IFQ. Too often small errors in estimating the average weight of crab has adversely affect the crew's ability to judge the poundage of crab on board. Allowing transfers of IFQ after delivery would provide vessel operators with the flexibility needed to make the right decisions, and be consistent with national standard 1 of the Magnuson-Stevens Act.

*Response:* Transfers of IFQ after deliveries are particularly problematic for NMFS to track and monitor. In particular, NMFS does not have the ability to keep "real time" accounts accurate enough to allow this type of transfer. Amendment 18 does not provide any provisions for IFQ overages or the ability to undertake post-delivery transfers. While there may be some overages in some of the fisheries, NMFS does not anticipate that these overages will be severe in most cases and after the Program has been in place for a period of time, the likelihood of these overages will decrease.

*Comment 19:* The final rule should include language that allows flow thru of grandfathered ownership to an individual past the current one percent cap. For example, in the proposed rule an individual is allowed their historic ownership of QS past the one percent cap if earned in the qualification years and vessel history is acquired prior to January 1, 2002. Because QS will be awarded to LLP license ownership groups initially, the regulations should make sure the QS can flow thru to individual owners based on their ownership make up with no penalty assessed if their grandfathered QS exceeds one percent.

*Response:* Amendment 18 is clear that the exemption to the QS and IFQ use caps for corporations or other entities that are initially issued QS or IFQ in excess of the use caps do not extend to the individual members that comprise that corporation or other entity. The use cap exemption is limited to the entity that initially received the QS or IFQ, not to its constituent members who can only receive QS or IFQ from the entity

through transfers. Therefore, each member of that entity is subject to the QS and IFQ use caps without exemption. The exemption to the QS and IFQ use caps does not extend to persons who receive QS or IFQ by transfer.

*Comment 20:* The proposed rule at § 680.41(l)(2) and (4) incorrectly waives all use caps with respect to harvest shares. The motion establishes use caps.

*Response:* NMFS agrees and has modified the wording in the final rule at § 680.42(i)(5). See also response to comment 5.

*Comment 21:* The proposed rule at § 680.42(b)(4) exempts all PQS holders from the individual IFQ caps and applies a higher use cap to those persons. The motion intended a very limited exemption that would not apply to individuals.

*Response:* NMFS agrees and has modified the provision in the final rule at § 680.42(b)(4) to better reflect the intent of Amendment 18 by establishing that individual PQS holders do not receive an exemption to the overall QS and IFQ use cap that applies to non-individual PQS holders who also hold QS or IFQ.

*Comment 22:* If all vessels with catch history in the Eastern Aleutian Islands golden king crab fishery in the qualifying years were granted QS then there would not be such a concentration of QS holders in that fishery. Allocating QS only to holders of an LLP license endorsed for that fishery would result in a violation of the excessive shares provision of the Magnuson-Stevens Act.

*Response:* NMFS agrees that allocating QS to all vessels with catch history in the fishery would result in more QS holders in that fishery, however, Amendment 18 is clear that QS will only be issued for catch history for which the holder's LLP license is endorsed, with one limited exemption. Section 313(j) of the Magnuson-Stevens Act requires NMFS to implement the Program as specified in Amendment 18.

*Comment 23:* In the early stages of the Crab Rationalization Program, it was discussed whether or not golden king crab should be included; as it was a fishery that still had never fully been utilized. Instead of excluding golden king crab, the opposite took place, in that the golden king crab fishery qualification period of 1996–2000, all years, is the most stringent of all crab fisheries. The golden king crab qualifications are further compounded because golden king crab is the only crab fishery that is not allowed to drop one year in its calculations. Not allowing the dropping of a year is a blatant discriminatory measure. The

golden king crab IFQ qualification years are years in which the golden king crab fishery GHs were not fully harvested and the fishery lasted 12 months. The golden king crab fishery GH has only become fully utilized for the first time in the year 2000. The proposed window of years for golden king crab was when the smallest number of approximately 15–17 vessels, had ever participated in the history of the golden king crab fishery.

The result is a select group of vessels will receive excessive golden king crab QS. Approximately 6 to 8 vessels would receive approximately 70 percent to 80 percent of the QS. Therefore, the golden king crab window of years has disenfranchised many of the other golden king crab LLP license holders; to benefit a select group of excessive share recipients. Golden king crab is the only fishery that “must” use the recent years of history up until implementation, as the GHs were finally fully harvested.

There was a lot of testimony to the Council requesting the qualification period include the current years in which the GHs were finally fully harvested. NOAA General Counsel also stated on the record that fishing history up until time of final action should be considered. Additionally the court ruling over the Halibut IFQ lawsuit, stated that fishing history up until final action should be considered. Yet the Council did not consider the years of history beyond 2000.

In conclusion, the qualification period for the golden king crab fishery does not conform to the National Standards under the Magnuson-Stevens Act. National Standards state that no such measure shall have economic allocation as its sole purpose. It is easy to point out that the specific years selected for golden king crab are for the sole purpose of economic allocation to a select few vessels. National standards state that “allocations should be fair and equitable to all fisherman”, not just a select few vessels as in golden king crab fishery. National Standards state that allocations shall be carried out in such a manner that no particular entity acquires an excessive share, not the excessive shares that are proposed in golden king crab fishery. National Standards must be adhered to.

*Response:* Amendment 18 establishes the qualifying years for the golden king crab fishery. Section 313(j) of the Magnuson-Stevens Act requires NMFS to implement the Program as specified in Amendment 18. Therefore, this provision does not violate the Magnuson-Stevens Act and the rule has not been modified. The Council considered recent participation in the

golden king crab fishery in developing this Program. The allocation of QS or PQS in the golden king crab fishery is based on an extensive decision making process and the EIS/RIR/IRFA prepared for this action considered a variety of years for the initial allocation of QS.

*Comment 24:* The proposed rule at § 680.40(c)(2)(vii) requires an interim LLP license as a condition of eligibility for an LLP license/catch history exemption contemplated by the Council; and also disallows severability of catch history from an LLP license for initial allocation of QS. Additionally, § 680.40(b)(4)(ii)(B)(E) disallows severability of landings and history from LLP licenses. By requiring an interim LLP license to qualify for the exemption, the proposed rule excludes a vessel for which there was no interim LLP license, but which otherwise would qualify for the exemption. The proposed Council motion did not require an interim LLP license as a qualification for the history exemption, and it was not the intent of the Council to exclude the vessels in question. The final regulations should allow the history exemption for a very limited number of vessels in question (must have conducted a transfer by January 1, 2002) by removing the requirement of an interim LLP license for eligibility under this provision and providing an exception from the proposed rule which disallows severability of landings and catch history from the LLP license.

*Response:* NMFS agrees and has modified the final rule at § 680.40(b)(4)(vii) to remove the requirement of an interim LLP license for eligibility under this provision, based on this comment and comments 42 and 43. This provision is intended to address a specific situation in which LLPs were transferred between vessels so that a vessel could legally remain in the fishery. Amendment 18 did not specify that an interim LLP was a requirement to qualify for this provision.

*Comment 25:* The proposed rule at § 680.40(h)(4) provides that persons with 10 percent common ownership with a PQS holder would receive all Class A IFQ (and no Class B IFQ). The motion intended that the exclusively Class A IFQ allocation be limited to the amount of IFQ “controlled” by the IPQ holder, with the remainder allocated as Class A and Class B IFQ. Eligibility to receive an allocation of Class B IFQ in the Council motion relies on whether the processor “controls” delivery of the IFQ. Use of a “control” standard for determining whether Class B IFQ will be allocated has two effects: First, if the processor holds a limited amount of

IPQ, the Class A IFQ only allocation should be limited to an amount of IFQ that offset the IPQ holding, with the remainder of the allocation subject to the Class A/Class B IFQ split. Using this approach, a person receives a Class A only IFQ allocation for only those IFQ that are controlled by the processor, with the remainder of the allocation (which is beyond the control of the processor) as a Class A/Class B allocation. Second, if the processor does not control deliveries (regardless of the number of IPQ held), the Class B IFQ allocation will be necessary for negotiating strength of the person controlling deliveries in their negotiations with processors generally. If a "control" affidavit is used for determining who will receive Class B IFQ, the term "control" must be well-defined, so that the signatory to the affidavit knows what the attestation means.

Allocation of "only Class A IFQ" should be limited to the amount of controlled IFQ. The remainder of the allocation should be subject to the Class A/Class B division of fully independent harvesters. Additionally, the definition of control should be revised to reflect the nature of control at issue (*i.e.*, does the IPQ holder control the delivery of the IFQ). This definition may rely to some extent on "affiliation," but control of deliveries should be paramount.

*Response:* Amendment 18 provides that:

(1) Crab harvester QS held by IPQ processors and persons affiliated with IPQ processors will only generate Class A annual IFQ, so long as such QS is held by the IPQ processor or processor affiliate.

(2) IPQ processors and affiliates will receive Class A IFQ at the full poundage appropriate to their harvesters QS percentage.

(3) Independent (non-affiliated) harvesters will receive Class B IFQ pro rata, such that the full Class B QS percentage is allocated to them in the aggregate.

(4) "Affiliation" will be determined based on an annual affidavit submitted by each QS holder. A person will be considered to be affiliated, if an IFQ processor controls delivery of a QS holder's IFQ.

The commenter raises two separate points in this comment: (1) What is control for purposes of determining the amount of Class A IFQ that is to be issued to a person holding QS that is an IPQ processor or affiliate; and (2) how much Class A IFQ should be allocated to an IPQ processor or affiliate? Both of these questions must be answered to address the commenter's question.

#### (1) What Is Control?

The proposed rule measured control by requiring that each year in the Annual Application for Crab IFQ/IPQ the applicant provide documentation of affiliation declaring any and all affiliations using affiliation as defined in § 680.2 (See § 680.4(f)). Affiliation for purposes of determining a linkage with a PQS or IPQ holder is defined as: (1) Common ownership, either directly or indirectly by the PQS or IPQ holder of more than 10 percent of the QS or IFQ holding entity; (2) control of a 10 percent or greater interest by a PQS or IPQ holding entity in a QS or IFQ holding entity by controlling ownership or voting stock; and (3) a PQS or IPQ holder otherwise controlling a QS or IFQ holding entity through any other means whatsoever. This definition of affiliation is intended to broadly include activities that would allow a PQS or IPQ holding entity to exercise control over the activities of a QS or IFQ holder—specifically, the control of where the IFQ crab would be delivered. The definition of "otherwise controls" in the affiliation definition is intended to be broad and would encompass a range of arrangements either contractual or otherwise that could be used to express control. The current definition of affiliation does not define specific indices of control such as are provided in the AFA (See § 679.2 for the definition of affiliation under the AFA) or under regulations that govern the control of a fishing vessel by a non-U.S. citizen as defined under Maritime Administration (MARAD) regulations (See 46 CFR 356.11), although those indices of "control" would be subsumed under the broad definition of "otherwise controls" in the affiliation definition contained in the proposed rule.

Amendment 18 does not expressly define the method for establishing how control is to be measured, what indices should be used, and whether additional factors such as ownership of the IFQ holding entity could be used to define control. NMFS has decided that because control is not specifically defined in Amendment 18 and because control can be expressed in a variety of ways, that the affidavit that is submitted each year should include a definition of control of delivery that includes the ability of the IPQ holder to direct the delivery of the IFQ using measures of ownership and otherwise controlling the operations of the IFQ holder. These two aspects of "control" are necessary to ensure that IFQ that is held by an IPQ holder or an affiliate is apportioned the appropriate amount of Class A IFQ. Ownership is frequently used as one index of control

in measuring the ability of a person to exercise control over a corporation. Owning a corporation effectively determines the course of the activities of that corporation. The amount of ownership that results in an ability for the IPQ holder to direct the business operations (*i.e.*, where the IFQ crab are delivered) is subject to some debate and business arrangements.

The EIS prepared for the final rule does not provide a specific example of how a PQS or IPQ holder may control the deliveries of an IFQ holder. Section 2.2 of the EIS notes that: only QS holders that are unaffiliated with holders of processing shares would receive Class B IFQs. Holders of processing shares and their affiliates that hold QS would be allocated Class A IFQs for all of their IPQ holdings, with the remainder of their IFQ allocated as Class A IFQ and Class B IFQ at the same ratio as those allocated to independent harvesters. The annual poundage allocation of IFQ arising from the QS would be unaffected by the Class A/Class B IFQ distinctions. For each region of each fishery, the allocation of Class B IFQ would be 10 percent of the total allocation of IFQ. The absence of an affiliation with a holder of processing shares would be established by a harvester filing an annual affidavit stating that the use of any IFQ held by that harvester is not subject to any control of any holder of processing shares.

While this description provides some detail about the actual allocation of the Class A and Class B IFQ, and that affiliation with a processor would be established by an annual affidavit, the indices for control are not defined.

The proposed rule used a 10 percent ownership control standard as a means of measuring the control over an entity based on several factors: (1) The use of a 10 percent standard in several other aspects of Amendments 18; and (2) the standard used under the AFA which is a rationalization program that uses an affiliation definition for purposes of applying use caps and processing sideboard limitations.

*Use of the 10 Percent Standard in Amendment 18.* There are several sections throughout Amendment 18 where a 10 percent common ownership standard is used for purposes of determining whether or not a linkage occurs. While these standards do not *per se* state that a 10 percent common ownership standard is applicable to establish control, the consistent use of a 10 percent common ownership standard in various aspects of this program suggests that a 10 percent standard was perceived to be a threshold level at

which some form of control is being exercised by one entity over another entity. The principal use of the 10 percent standard is found in the following sections of Amendment 18:

(1) 1.6.2 Leasing of QS (leasing is equivalent to the sale of IFQs without the accompanying QS.). Leasing is defined as the use of IFQ on vessel which a QS owner holds less than 10 percent ownership of vessel or on a vessel on which the owner of the underlying QS is not present

(2) 1.6.4 Controls on vertical integration (ownership of harvester QS by processors): Option 3: Vertical integration ownership caps on processors shall be implemented using both the individual and collective rule using 10 percent minimum ownership standards for inclusion in calculating the cap. PQS ownership caps are at the company level.

(3) 2.7.1 Ownership caps. PQS ownership caps should be applied using the individual and collective rule using 10 percent minimum ownership standards for inclusion in calculating the cap. PQS ownership caps are at the company level.

(4) *Cooperative Section Rules governing cooperatives.* The Council clarified the following rules for governing cooperatives: Four entities are required for a cooperative. The requirement for four owners to create a cooperative would require four unique entities to form a cooperative. Independent entities must be less than 10 percent common ownership without common control (similar to the AFA common ownership standard used to implement ownership caps).

The RIR/IRFA prepared for this action also used a 10 percent ownership standard for purposes of measuring whether a common linkage exists between a processor and a harvester and whether a vessel was considered to be affiliated with a processor. (See 3.7.9.4 Shares of processor affiliates, and page 293 of Appendix 1). As is noted in the RIR/IRFA “[t]his level of ownership and the ownership of affiliates is intended to capture all relationships and influences and was used for determining ownership under the AFA (See page 191 of Appendix 1).” The RIR/IRFA analyzed the potential economic impacts of affiliation using this standard and the potential impacts on affiliated IFQ holders was detailed for each of the crab QS fisheries.

While alternative ownership standards could be chosen, NMFS is relying on the frequent and consistent use of a 10 percent standard throughout Amendments 18 and 19 and the EIS/RIR/IRFA prepared to support this

action as the basis for establishing affiliation, and therefore control, as being triggered when one entity holds a 10 percent or great common ownership interest in another entity.

*Other Indices of Control.* Amendment 18 indicated that control would be expressed “if an IPQ processor controls delivery of a QS holder’s IFQ.” Amendment 18 does not provide additional guidance on how that control may be expressed. The preamble to the proposed rule provides examples of control based on the definition of affiliation. “Examples of the types of control that may be encompassed by this definition include the authority to direct the delivery of crab harvested under an IFQ permit held by the second entity to a specific RCR, or when one entity absorbs the majority of costs and normal business risks associated with the operation of a second entity, including the costs associated with obtaining and using any amount of the QS, PQS, IFQ, or IPQ held by the second entity.” The definition used in the proposed rule is broad, but may not provide an adequate definition for purposes of the affidavit that is required on an annual basis.

NMFS agrees that the definition of “otherwise controls” could be clarified by using specific indices in the final rule. NMFS is expanding the definition of “otherwise controls” using the indices that are used for determining impermissible control by a non-citizen of a United States fishing vessel under MARAD regulations at (46 CFR 356.11) as a guide for these specific indices. Those indices are detailed in the final rule and include those situation in which a PQS or IPQ holder has:

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

(2) 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;

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

(4) 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;

(5) 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;

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

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

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

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

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

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

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

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

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

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

(6) 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;

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

(8) 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.

(2) How Much Class A IFQ Should Be Allocated to an IPQ Processor or Affiliate?

The second main issue raised by the commenter is how much Class A IFQ is issued to QS or IFQ holders who are affiliated with PQS or IPQ holders. Amendment 18 appears to be somewhat internally inconsistent. It states that “Crab harvester QS held by IPQ processors and persons affiliated with IPQ processors will only generate Class A annual IFQ, so long as such QS is held by the IPQ processor or processor affiliate.” However, the next sentence apparently modifies this statement by noting that “IPQ processors and affiliates will receive Class A IFQ at the full poundage appropriate to their

harvesters QS percentage." Section 2.2 of the EIS further supports an approach in which the amount of Class A IFQ that is issued to an IFQ holder or affiliate is based on the proportion of QS held to the amount of PQS held by the PQS holder to which the QS holder is affiliated.

NMFS is interpreting Amendment 18 in the following manner:

(1) If a person holds IPQ and IFQ, than 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 would 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.

As an example, if a person held 100,000 pounds of IPQ in a fishery and 120,000 pounds of IFQ, that person would receive 100,000 pounds of Class A IFQ and 20,000 pounds of IFQ issued in the appropriate Class A and Class B ratio for that person;

(2) If a person 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 that person relative to that amount of IPQ held by the IPQ holder to which they are affiliated. Any remaining IFQ would 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.

For example, assume that an IPQ holder holds 200,000 pounds of IPQ and 100,000 pounds of IFQ in a fishery. Also assume that the IPQ holder is affiliated, either through a 10 percent common ownership standard, or through control, with 3 IFQ holders (IFQ holder A, IFQ holder B, and IFQ holder C). IFQ holder A has 100,000 pounds of IFQ, IFQ holder B has 25,000 pounds of IFQ, and IFQ holder C has 175,000 pounds of IFQ. Collectively, the three affiliated IFQ holders have 300,000 pounds of IFQ.

The IPQ holder would be issued all 100,000 pounds of his IFQ holdings as Class A IFQ because the amount of IPQ held (200,000 pounds) exceeds the total amount of IFQ that he holds. The remaining 100,000 pounds of Class A only IFQ would be allocated on a pro rata basis as follows.

(1) The total remaining IPQ (100,000 pounds) is divided by the total IFQ held by all affiliates of the IPQ holder (300,000 pounds). This yields a Class A only ratio of .333.

(2) The IFQ held by each affiliate is multiplied by the Class A only ratio. In our example:

IFQ holder A = 100,000 pounds  $\times$  (0.333) = 33,333 pounds of Class A only IFQ  
 IFQ holder B = 25,000 pounds  $\times$  (0.333) = 8,333 pounds of Class A only IFQ  
 IFQ holder C = 175,000 pounds  $\times$  (0.333) = 58,333 pounds of Class A only IFQ.

Any remaining IFQ held by these IFQ holders would be allocated using the Class A and Class B ratio. This example is limited to IFQ holders being affiliated with only one IPQ holder. In cases where an IFQ holder is affiliated with multiple IPQ holders with IPQ in excess of their IFQ holding, this same methodology would apply. This method meets the intent of Amendment 18, and is consistent with the statements in the EIS concerning the allocation of Class A and Class B IFQ among persons affiliated with IPQ holders.

*Comment 26:* The proposed rule at § 680.40(h)(4) contradicts Amendment 18 and Congressional mandate in applying the affiliation definition of 10 percent or more processor ownership for the allocation of Class B IFQ. This provision would cause severe economic harm to vessels that have affiliation by processors, stifle investment by QS holders in processing activity, and cause a number of serious problems for the development of a successful crab rationalization program. The final rule should define who can receive Class B IFQ as follows: Class B IFQ will be assigned to all eligible recipients except that Class B IFQ will not be assigned to any person whose delivery of crab is controlled by a holder of PQS or IPQ. Control will be determined based on an annual affidavit by each QS holder submitted as part of the annual application for crab IFQ/IPQ permit. A PQS or IPQ holder does not control QS or IFQ if the skipper responsible for delivery of crab harvested under the QS is contractually able to deliver its harvest wherever they choose without direction by the PQS or IPQ holder.

*Response:* The response to this comment is addressed in the response to comment 25.

*Comment 27:* The proposed rule at § 680.40(h)(4)(ii) would prohibit issuance of Class B IFQ to holders of PQS or IPQ or to entities affiliated with such holders. An affidavit requirement is set forth in the proposed rule as a criterion for the issuance of Class B IFQ, as specified in the Council motion and is an important element of accountability and enforceability of the system devised by the Council, and

should be preserved. The final regulations should provide for an affidavit process for accountability and enforceability of a system devised by the Council for the issuance of B IFQ. Additionally, processor controlled IFQ holders should not be issued Class B IFQ.

*Response:* The response to this comment is addressed in the response to comment 25. The affidavit is maintained as the standard by which NMFS will determine affiliation with a processor. The Annual Application for IFQ or IPQ will note what standards meet affiliation thresholds. The accountability for accurately supplying this information to NMFS will rest with the applicant.

*Comment 28:* The test for determining which harvesters are ineligible to receive Class B IFQ should be whether a PQS holder, by any means whatsoever, controls where the harvester's IFQ are delivered. With respect to this test, control should be evaluated on the basis of criteria similar to those employed by the Maritime Administration when evaluating compliance with the AFA citizenship requirements. By focusing on IPQ holder ownership or control of an IFQ holder to the exclusion of other factors, the use of the affiliation standard at § 680.2 leaves open the possibility that Class B IFQ could be controlled by PQS holders in a manner that contravenes the intent expressed in the Council motion.

In order to fully protect the independence of Class B IFQ, each affiliation evaluation should include consideration of indicia of IPQ holder control of an IFQ holder and over IFQ delivery. Accordingly, the definition of affiliation used at § 680.40(h)(4) should be expanded to include indicia of direct or indirect control similar to those used for evaluating affiliation in the AFA context and control of U.S. flag fishing vessels (46 CFR 356.11). In each case, these regulations compel a thorough evaluation of both the ownership of an entity and other control factors that may permit a non-owner to none-the-less exercise control over that entity or its actions. An annual evaluation of this control should occur in conjunction with the IFQ application process, and subsequent to this application, applicants should be prohibited, without prior approval by NMFS, from entering into any relationship with a PQS holder or affiliate that modifies the indicia of control already evaluated.

*Response:* The response to this comment is addressed in the response to comment 25. The rule does not specify that IFQ recipients notify NMFS after the issuance of IFQ and IPQ that they have entered into a relationship with a

PQS or IPQ holder that would result in them becoming affiliated or otherwise resulting in increasing control by the PQS or IPQ holder. NMFS did not make this a requirement for several reasons:

(1) NMFS would not be able to reissue Class A or Class B IFQ once the season has begun. Because the amount of IPQ issued in a fishery is equal to the amount of Class A IFQ, modifying the amount of Class A IFQ issued to a person due to a mid-season change in affiliation would require reissuing IPQ as well and would significantly disturb the operation of the fishery;

(2) In some cases an IFQ holder would not be aware of changes in corporate ownership that could increase the degree of control being exerted by an IPQ or PQS holder. As an example, IFQ could be held by a corporation that is in turn owned by several other corporations. If one of those corporations purchased IPQ, the IFQ holding corporation may not be aware of this change in affiliation unless private contracts stipulated that the IFQ holder be notified that such a purchase had occurred. In any case, the IFQ holder would not be able to exercise control over the actions of this party purchasing the IFQ.

The Annual Application for IFQ or IPQ requires each applicant to annually submit their affidavit and provides a reasonable assurance that if affiliation were to change in mid-season, those changes would be reflected in the affidavit for the following year. NMFS established a time period shortly after the annual application is due until IFQ and IPQ is issued where no transfers of IFQ or IPQ would be approved. This will provide NMFS with time to determine affiliations, the amount of Class A IFQ and Class B IFQ to be issued to each IFQ holder, and issue that IFQ and IPQ. Once issued, transfers could occur that could result in Class B IFQ being transferred to IPQ holders or their affiliates. Because we are modifying the way in which Class A IFQ and Class B IFQ is allocated to PQS or IPQ holders and their affiliates, this would be permitted.

*Comment 29:* An extremely unreasonable burden would be put on harvesters if processors affiliated harvesters were interpreted to include harvesters who have a gear loan from a processor, a tender contract, or some other unforeseen link with a processor that would happen with normal business dealings. This could prohibit the harvester from receiving Class B IFQ, participating in arbitration, or joining a cooperative. The solution of signing a control affidavit stating that a processor has no control of landings

seems unclear. The final rule should carefully define control and affiliation so as to avoid creating a disadvantage to harvesters or creating a risk of having to sign an affidavit that could later be interpreted as fraudulent.

*Response:* The response to this comment is addressed in the response to comment 25.

*Comment 30:* I am a fisherman with a partnership to two different crab vessels that will be participating in the upcoming crab rationalization. On one of these vessels I have been a partner for seventeen years with a group that also owns a small part of a processor. We have a co-ownership agreement that gives me complete control of when and where the vessel delivers. In the last seventeen years I have delivered many times to processors not owned by my partners, the choice has always been mine, as stated in our co-ownership agreement. To deny me Class B IFQ shares under § 680.40(h)(4) gives an unfair advantage to the other unaffiliated vessels who may be able to receive a premium for this crab from outside (non-PQS) buyers. I believe if a vessel could make an annual declaration of control, that any concerns of anti-trust violations could be alleviated, especially with a co-ownership agreement showing the “affiliated” partner not in control of decision making for the vessel or its QS/IFQ.

*Response:* The response to this comment is addressed in the response to comment 25.

*Comment 31:* The allocation of only Class A IFQ to those vessels that are considered affiliated at § 680.40(h)(4) will disadvantage those minority co-owners that have complete operational control over the deliveries of the vessel and IFQ. The definition of control should be revised to reflect the nature of control at issue, taking into account past operating practices. For instance, a vessel may have partial or full ownership by an entity that also has partial ownership in a processing operation. While these vessels might be considered “affiliated” with a processor, they have historically acted independent of the processor and will continue to do so. The operator and in some cases the co-owners of the vessel and have full freedom to deliver wherever they wish, even to the point that a large portion of their QS will be in the Northern Region that their affiliated processor has never had operations. An annual declaration of control is a reasonable method for determining who will receive Class B IFQ.

*Response:* The response to this comment is addressed in the response to comment 25.

*Comment 32:* I have had a business relationship with a processing company for 16 years. I have been a partner in the vessel for 12 years. They have never told me where to deliver my catch. I do not fish for their processing company and have not for 14 yrs. I have delivered to a different processor mainly for the last 14 years. My partner's attitude has always been its my choice where to deliver my product. I think I have earned my Class B IFQ and deserve them. I think a simple letter stating that I control where I will deliver my product will be sufficient.

*Response:* The response to this comment is addressed in the response to comment 25. The factors that this commenter raises would be supplied in the affidavit that he submits each year. If there are sufficient indicia to indicate that control exists, then that person would need to indicate that they are affiliated with an IPQ holder. If not, or if it is unclear, NMFS may request additional information.

*Comment 33:* Comment strongly supports the dual definition of control (by any means) and the 10 percent affiliation standard identified by NMFS in the proposed rule. The Program was developed with PQS included, which is a new concept in fisheries management. Due to the uncertainties in how this will work, the Council stipulated that only those non-affiliated QS holders would receive the IFQ in an Class A/B IFQ split. This is to benefit the independent QS holders and help to maintain a competitive market place. The concept of a simple affidavit stating that control over deliveries is insufficient. Anyone can say that they are not under the control of a processor. The added 10 percent ownership requirement, which is consistent with other definitions of affiliation by the Council and NMFS throughout the motion and the EIS, is appropriate and needed.

*Response:* The response to this comment is addressed in the response to comment 25.

*Comment 34:* Nowhere in the Council motion are recipients of Class B IFQ restricted in nearly so severe a manner as in the proposed rule at § 680.40(h)(4)(ii). The Council motion clearly states that if the QS holder is appropriately able to execute an affidavit stating that no IPQ holder controls where the IFQ is delivered, that QS holder is entitled to receive Class B IFQ. If a QS holder executed such a document, and was discovered to have misrepresented the facts, then that QS holder would be liable for fraud under

federal law. By drawing the proposed rule so narrowly, NMFS has created new restrictions to prevent abuse, restrictions which were neither seen to be necessary by the Council nor which acknowledge the very real penalties which already exist under federal laws for fraud. NMFS should redraft the regulations to accurately reflect the Council motion, bearing in mind that industry participants are already appropriately held to the standard of making accurate representations to NMFS.

*Response:* The response to this comment is addressed in the response to comment 25.

*Comment 35:* In order to fully protect the independence of Class B IFQ harvesters, each affiliation evaluation should include consideration of a broad range of indicia of "affiliation/control", as well as "affiliation/ownership". "Affiliation/control" and "affiliation/ownership" are two separate tests, both of which must be satisfied in order to be eligible for Class B IFQ. These separate tests are spelled out in the April 2003 Council motion on "Processor Holdings of Harvest Shares" It is crystal clear from the motion that the truly "independent (non-affiliated) harvesters" are to be the recipients of the full allocation of aggregate Class B IFQ. These are all or nothing tests, without any "proportionality" component relative to how much PQ is held, nor the degree of affiliation as a function of degree of processor ownership of the harvester QS holder.

Though the words of the April motion do not indicate a specific 10 percent ownership standard for defining "affiliation," 10 percent was the standard that was used in the RIR analysis that was before the Council when it made the motion.

Some have argued that discussion in section 1.6.4, of the EIS pg. 2-41 suggests proportionality in distributing Class B IFQ to non-fully independent harvesters. However, the EIS was not available to Congress when it acted to require implementation of the program as "approved by the North Pacific Fishery Management Council between June 2002 and April 2003, and all trailing amendments including those reported to Congress on May 6, 2003." Thus the 'legislative' history on how to allocate Class B IFQ to independent harvests should rest not on section 1.6.4 of the EIS which was not available, but on the RIR which was available in June 2002 and when the Council motion was made in April 2003, and which consistently used a 10 percent affiliation standard to define "independence" as

well as incorporating a separate test for "control."

*Response:* The response to this comment is addressed in the response to comment 25.

*Comment 36:* The Council motion included a trigger mechanism for red king crab and snow crab that would end the Class A/B IFQ designations for harvesting QS. If the red king crab GHL exceeds 20 million pounds and/or the snow crab GHL exceeds 175 million pounds, all harvesting shares above those trigger amounts are to be unrestricted or Class B IFQ. If the proposed rule's definition of affiliation remains in place, what shares will affiliated vessels receive when the trigger numbers are reached? Under the proposed rule they cannot receive Class B or unrestricted IFQ. This outcome, while not yet realized in terms of demonstrated GHL, highlights the inconsistency between the proposed regulation and the intent of the Council. Again, the prohibition to receive Class B IFQ to anyone with a 10 percent ownership standard has far reaching consequences. If the regulation remains unchanged, no holder of QS will dare to invest in processing because he will forfeit his ability to receive Class B IFQ. CDQ groups wishing to increase their participation in crab processing and harvesting will not be able to do so. The vessels whose delivery are uncontrolled but have a greater than 10 percent ownership share held by a PQS holder are also penalized. The regulations should be amended to follow the Council intent to utilize the affidavit process to determine control over delivery as the basis for allocating Class A and B IFQ.

*Response:* Portions of this comment are addressed in the response to comment 25. For the allocation of IFQ when the TAC for Bristol Bay red king crab or snow crab exceeds the specified amount, the final rule specifies at § 680.4(j)(3) that the allocations are made as a modified form of Class A IFQ that would not be subject to delivery to an IPQ holder, but which still have regional designation requirements as provided in Amendment 18. This differs from Class B IFQ, which are not subject to regional delivery requirements.

*Comment 37:* Class B IFQ should not be held by processor-affiliated entities. The important point here, as in the case of cooperatives, is to achieve, through a definition of "affiliation," a result that is consistent with objectives of the both rationalization program and the antitrust laws. Class B IFQ provide leverage for harvesters, who must bargain in a system which provides 90 percent of IFQ shares are Class A IFQ

that must be matched to IPQ. This intended leverage on the part of harvesters is compromised, if processor-controlled entities hold Class B IFQ. However, where a harvester is not controlled by a processor, then the rationale for holding Class B IFQ properly applies. The commenter believes that skippers and crew members of vessels in which there is some, but not controlling, processor interest, should enjoy the intended benefit of Class B IFQ.

*Response:* The response to this comment is addressed in the response to comment 25.

*Comment 38:* The test for determining which harvesters are ineligible to receive Class B IFQ should be whether a PQS holder, by any means whatsoever, controls where the harvester's IFQ are delivered. With respect to this test, control should be evaluated on the basis of criteria similar to those employed by the MARAD when evaluating compliance with the AFA citizenship requirements. By focusing on IPQ holder ownership or control of an IFQ holder to the exclusion of other factors, the use of the affiliation standard at § 680.2 leaves open the possibility that Class B IFQ could be controlled by PQS holders in a manner that contravenes the intent expressed in the Council motion.

In order to fully protect the independence of Class B IFQ, each affiliation evaluation should include consideration of indicia of IPQ holder control of an IFQ holder and over IFQ delivery. Accordingly, the definition of affiliation used at § 680.40(h)(4) should be expanded to include indicia of direct or indirect control similar to those used for evaluating affiliation in the AFA context and control of U.S. flag fishing vessels (46 CFR 356.11). In each case, these regulations compel a thorough evaluation of both the ownership of an entity and other control factors that may permit a non-owner to none-the-less exercise control over that entity or its actions. An annual evaluation of this control should occur in conjunction with the IFQ application process, and subsequent to this application, applicants should be prohibited, without prior approval by NMFS, from entering into any relationship with a PQS holder or affiliate that modifies the indicia of control already evaluated.

*Response:* The response to this comment is addressed in the response to comment 25.

*Comment 39:* While the affidavit process does go a long way towards defining processor affiliates, an ownership standard is also necessary, such as the MARAD's definition of the

25 percent rule for foreign ownership of U.S. flagged vessels. This standard should be adopted in both the issuance of Class B IFQ and binding arbitration standards.

*Response:* The response to this comment is addressed in the response to comment 25. The 10 percent standard for ownership was chosen based on the preponderance of its use in Amendment 18 as a means of establishing linkages among various entities for a variety of applications. This same 10 percent standard was used for analysis in the EIS/RIR/IRFA supporting this action.

*Comment 40:* The proposed rule at § 680.42(b)(1)(i) could limit the benefits from the LLP license buyback to persons that purchased LLP licenses after June 10, 2002, that were put over the use caps by the buyback. Include a provision that would grandfather any initial allocation in excess of the use caps received from LLP licenses acquired after June 10, 2002, and prior to the referendum on the buyback, to the extent that the allocation would not have been in excess of the cap, but for the buyback.

*Response:* The comment applies to the final rule at § 680.42(a)(1)(i), which addressed PQS issuance. Neither the proposed rule nor Amendment 18 provided specific guidance on the potential implications of the BSAI Crab Fisheries Capacity Reduction Program, or the "Buyback" on persons who received catch history by transfer of an LLP license after June 10, 2002, that may result in an increased chance of that person receiving an allocation of QS in excess of the use caps established at § 680.42(a). Amendment 18 notes that "a cutoff date of June 10, 2002, was established for the QS ownership cap grandfather provision." Amendment 18 did not provide a specific exemption to this cut off date in the case of the Buyback being approved, although the Buyback was under development at the time that the Council took final action. Additionally, Congressional action on portions of the Buyback were approved prior to Congressional action on the Crab Rationalization Program.

However, the legislation that enacted the Buyback required that a referendum of eligible voters approve the program before it could be enacted. The final results from the referendum were provided on November 24, 2004. Prior to this time, it is reasonable to assume that an individual would not have known if the Buyback would have been approved, or if it would have an impact on the amount of QS a person would be issued based on LLP licenses transferred after June 10, 2002. This November 24, 2004, deadline is after the publication of

the proposed rule implementing the Crab Rationalization Program and NMFS was unable to incorporate the potential effects of the Buyback in the proposed rule because it had not yet been approved by the fleet.

Due to the lack of clear guidance on this issue in Amendment 18, but the potentially adverse and unanticipated effect of the Buyback, NMFS may make specific exemptions to the cutoff date in Amendment 18 to accommodate transfers that occurred after June 10, 2002 but prior to the approval of the Buyback by referendum on November 24, 2004. NMFS has modified the final rule at § 680.42(a)(1)(ii)(B) so that any person who applies to receive QS based on an LLP license transferred after June 10, 2002, but prior to November 24, 2004, will receive the amount of QS associated with that transferred LLP license in excess of the use cap for that crab QS fishery if that transfer would not have resulted in that person exceeding the QS use cap for that fishery if the total fishery catch history had not been reduced by the Buyback Program.

*Comment 41:* The proposed rule does not provide for a modification of the QS ownership caps as a result of recently approved crab vessel buyback. The purpose of the QS cap was to eliminate speculative purchases of QS above a certain level after the Council's motion passed in June of 2002. The buyback will have the impact of increasing QS holders' percentage ownership by about 10 percent. It was generally understood that the buyback would function so that the ownership cap would increase by the same percentage as the increase resulting from the implementation of the buyback and the final rule should reflect this understanding. If not, those who owned QS at the capped level would not be able to receive the benefits of the buyback program.

The buyback was a legal action that took place after the Council's June 2002 motion. The agency does have authority to implement regulations consistent with the Council's intent. In this case, no individual speculated on the purchase of QS that would put them over the cap. Instead, an industry approved buyback program resulted in every participant that remained in the fishery receiving a greater harvest share. It is in full compliance with the Council's intent that the QS cap be raised accordingly.

*Response.* This response is addressed in the response to comment 40.

*Comment 42:* The provisions § 680.40(b)(4)(ii)(B) and (E) of the proposed rule prevent the separation of an LLP license from its history. The

provision should allow separation in the case of a person acquiring an LLP license to remain in a fishery (§ 680.40(c)(1)(vii)). Insert a provision that permits the separation of an LLP license from its history to the extent necessary to achieve the purpose of § 680.40(c)(1)(vii) of the proposed rule.

*Response:* The commenter is referring to § 680.40(c)(2)(vii) in the final rule. This provision was intended to address the limited circumstance where a person transferred an LLP license for use on a vessel which otherwise would have been qualified to participate in the fishery. NMFS composed the proposed rule to limit this provision rather narrowly. Amendment 18 notes that "the underlying principle of this program is one history per vessel." The specific provision at § 680.40(c)(2)(vii) is intended as a general exemption to this rule. NMFS modified § 680.40(b)(4)(ii)(B) and (E) in the final rule to note that this general principle is not applied for purposes of complying with § 680.40(c)(2)(vii).

*Comment 43:* The provision at § 680.40(c)(1)(vii) permits a person that purchased an LLP license to remain in a fishery to use the history of the vessel on which the LLP license was used or on which the LLP license was based. The requirement that the vessel using the LLP license have an interim LLP license could limit the application of this provision to situations where multiple license transfers were required to comply with vessel length limits on LLP licenses. Remove the limitation that the LLP license be an "interim" license. The rule should be clear that no history may be credited toward two different allocations and that only one history may be credited to an LLP license.

*Response:* Amendment 18 does not explicitly limit the application of this exemption to persons with an interim LLP license. NMFS had established this limitation in the proposed rule to tightly constrain the applicability of this provision to the general rule that there should be only one catch history eligible to receive an allocation per vessel. NMFS has removed the exemption's limitation that the LLP license be an interim LLP license. Additionally, the provision at § 680.40(c)(2)(vii) clearly states that only one catch history may be credited to a person who applies to receive QS with a permanent, fully transferable LLP license. The catch history used by that QS applicant may be either that derived from that LLP license or the catch history from the vessel which that LLP was transferred and used, but not both.

*Comment 44:* The January 1, 2002, cut-off date on the provision, in the

proposed rule at § 680.40(c)(2)(vii), that would allow a person who applies to receive QS with an LLP license endorsed for a fishery to choose to receive the QS based either on the landings made by the vessel that was used to qualify for that LLP license or on the landings made by another vessel, is arbitrary. The cut-off date is unlawful and penalizes LLP license holders who purchased licenses after that date to remain in the fishery by not allowing them to receive QS based on the more extensive catch history of another vessel. Section 680.40(c)(2)(vii) should be revised either to strike the January 1, 2002, date or to accommodate the circumstance of a prospective applicant whose interim LLP license was not invalidated, and who did not purchase a permanent LLP license, until after that date.

*Response:* The January 1, 2002, cut-off date is a provision of Amendment 18. Amendment 18 was approved by the Council and codified by section 313(j) of the Magnuson-Stevens Act. NMFS does not possess the discretion to alter this provision as it exists in statute. Any change to this provision requires an amendment to the Program and should be addressed with the Council. Therefore, NMFS will not make this change in the final rule. The Council did establish a clear control date prior to final decision on this Program to prevent speculative behavior by interim LLP license holders or those without an LLP license to avoid redistributing QS allocations to those who did not have a permanent LLP license.

*Comment 45:* Clarification of Council intent is necessary to determine whether the Council meant to apply the January 1, 2002, cut-off date to the provision that would allow a person who applies to receive QS with an LLP license endorsed for a fishery to choose to receive the QS based either on the landings made by the vessel that was used to qualify for that LLP license or on the landings made by another vessel. Thus, there appears to be considerable uncertainty concerning how these exceptions to the general rule are intended to operate.

*Response:* NMFS disagrees that clarification of Council intent is necessary. Amendment 18 explicitly applies the January 1, 2002, date to this provision. Therefore, no uncertainty exists concerning implementation of these exceptions to the basis for QS distribution.

*Comment 46:* The proposed rule is arbitrary and capricious, does not constitute reasoned decision-making, and is not consistent with standards for agency action set forth in the APA and

judicial decisions applying those standards. There is simply no rational connection between the cut-off date and the invalidation/purchase criterion underlying the exemption, and no explanation was given for denying an allocation of QS to persons whose interim LLP licenses were invalidated by NMFS, and who thus did not purchase a permanent LLP license until after January 1, 2002. The Council selected the January 1, 2002, cut-off date in substantial part to accommodate the circumstances of a particular individual, and did not consider the situation of other interim LLP license holders. The Council entirely failed to consider that claims for LLP licenses were still pending before NMFS as of January 1, 2002, and that interim LLP licenses of some participants would not be invalidated until after that date. Further, the cut-off date was selected retroactively, and did not give interim LLP license holders any notice that their ability to continue participating in the fishery would hinge on purchasing a permanent LLP license by a date certain.

*Response:* This comment has been addressed in a previous response to comment 44.

*Comment 47:* The January 1, 2002, cut-off date is inconsistent with the National Standards for implementing the Magnuson-Stevens Act, in particular, National Standard 4. The cut-off date unfairly and inequitably denies an allocation of CVO QS to applicants for whom the invalidation/purchase trigger of the exemption did not occur until after January 1, 2002. It penalizes an LLP license holder who exercised its rights under the LLP to appeal an initial administrative determination (IAD) by NMFS, but whose appeal was not resolved by NMFS until after January 1, 2002. A person who did not appeal an adverse IAD, or whose appeal was resolved by NMFS prior to January 1, 2002, may receive an allocation of CVO QS under the exemption, but a person whose appeal was not resolved until after that date may not. There is no rational basis for this distinction.

*Response:* This comment has been addressed in response to comment 44. Additionally, the January 1, 2002 cut-off date is part of Amendment 18. Section 313(j) of the Magnuson-Stevens Act requires NMFS to implement the Program as specified in Amendment 18.

*Comment 48:* Principles of equal protection and due process, as contained in the Fifth Amendment to the U.S. Constitution, are offended by a regulatory system that makes a distinction between similarly situated persons on the basis of an arbitrary cut-off date. Persons whose interim LLP

licenses were invalidated after January 1, 2002, and who then purchased permanent licenses to insure that their vessels would remain authorized to participate in the fishery, are in the same position as persons for whom the invalidation/purchase trigger of the exemption occurred prior to that date. The timing of invalidation of an LLP license was governed by regulations implementing the LLP and largely under the control of NMFS. It simply is not fair to deny an allocation of CVO QS to a person based in the fortuitous timing of NMFS' decision to invalidate an LLP license. A participant in the fishery should not be penalized or denied an allocation of QS because it exercised its rights under the LLP regulations to pursue a claim for an endorsement but NMFS did not resolve that claim until after January 1, 2002.

*Response:* This comment has been addressed in response to comment 44.

*Comment 49:* The proposed rule at § 680.40 contemplates an interim LLP license as a condition for a license history exemption contemplated by the Council. By requiring such a license and prohibiting the severability of catch history from an LLP license for initial allocation of QS, the proposed rule excludes a vessel for which there was no such license, but which otherwise would qualify for the exemption. The owners of two of the vessels in question were advised to obtain a complete LLP package or they would be denied a permanent LLP license. They did so, without first being so denied, and thus, were not issued an interim LLP License. The Council did not require an interim LLP License as a qualification for the history exemption, and it was not the intent of the Council to exclude the vessels in question. The final regulations should allow the history exemption for the very limited number of vessels in question. The commenter estimates no more than four LLP licenses will utilize this exemption.

*Response:* This comment has been addressed in response to comments 42 and 43.

*Comment 50:* The exception at § 680.40(b)(4)(vii) of the proposed rule permitting issuance of QS to persons who made landings under an interim LLP license by acquired a fully transferable LLP license to preserve their fishing eligibility prior to January 1, 2002, should be narrowly construed to permit the intended beneficiaries of that exception to take advantage of it, but not allow unintended beneficiaries to likewise benefit from the exemption. The commenter is opposed to any broader interpretation of this exemption than is necessary to give effect to the

Council's intent and therefore encourages NMFS to strictly construe the proposed exemption in accordance with the Council's motion.

*Response:* NMFS has revised § 680.40(b)(4)(vii) in the final rule to limit the applicability of the provision while meeting the intent of Amendment 18. This includes not expanding the dates by which the transfer needed to occur, nor the limitation that only one catch history may be used for purposes of receiving QS.

#### Crew Sector

*Comment 51:* The provision at § 680.40(b)(2)(i)(B)(2) suggests that regional designations apply to CVC QS "prior to July 1, 2008." The provision should read, "on and after July 1, 2008."

*Response:* NMFS agrees and changed the language at § 680.40(b)(2)(i)(B)(2) to read, "on and after July 1, 2008."

*Comment 52:* The provisions in the proposed rule at § 680.40(h)(1) through (7) appear to make no IFQ allocations for CVC QS holders prior to July 1, 2008. The CVC IFQ should not be subject to region or processor landing restrictions during this time period. The provision should make clear that CVC QS holders receive an allocation prior to July 1, 2008.

*Response:* NMFS agrees and has modified the provisions at § 680.40(h)(1) through (7) in the final rule to clarify how CVC IFQ allocations occur.

*Comment 53:* The table at § 680.41(c)(1)(i) in the proposed rule is incorrect concerning CVC or CPC in lines (E) and (F). In line (E), the initial recipient of QS is not relevant (no provision authorizing recipients of an initial allocation to receive shares is included for the acquisition of CVC and CPC shares). The only standard for eligibility to receive CVC or CPC shares is that the person acquiring the shares must be an individual that is a U.S. citizen and an "active participant". Similarly, in line (F), a cooperative cannot receive shares since it doesn't meet those criteria. The line concerning cooperative acquisition could be deleted. Alternatively, a cooperative could be permitted to receive shares through an individual that meets the requirements, if the agency would like to assume the added administrative burden of tracking those transactions and performance of owner on board requirements. Limit eligibility to receive CVC and CPC shares to individuals who are U.S. citizens and "active participants."

*Response:* NMFS agrees and has restructured the table at § 680.41(c)(1)(v) so that it is clear that a person who wishes to receive CVC or CPC QS or IFQ

by transfer must be a U.S. citizen, have met sea time requirements, and be a recent participant in a crab fishery in the 365 days prior to applying for the transfer. The regulations at § 680.41(c)(1)(vi) have been modified so that CVC and CPC IFQ cannot be transferred to a cooperative because the regulations at § 680.42 have been modified so that owner onboard provisions would apply even if the CVC of CPC IFQ is being used in a crab harvesting cooperative. It should be noted that CVC and CPC IFQ may be used in a cooperative by a person who receives CVC or CPC IFQ by transfer and then converts that IFQ for use in the cooperative, provided that the owner on board provisions for use in a crab harvesting cooperative are met.

*Comment 54:* The table at § 680.42(b)(2)(i) specifies the use caps for CVC and CPC shares. Under the Council motion, these caps are to be equivalent to the CVO and CPO vessel use caps. As written, they are equivalent to the individual CVO and CPO use caps (in most cases one-half of the correct cap). Revise individual use caps for CVC and CPC shares to equal the vessel use caps.

*Response:* NMFS agrees, Section 1.8.1.9 of Amendment 18 notes that "C share ownership caps for each species are the same as the vessel use cap for each species." The table at § 680.42(b)(2)(i) in the final rule has been modified to correctly reflect Amendment 18.

*Comment 55:* An eligible captain, who intended to continue fishing but happened to die between seasons of causes unrelated to fishing, should qualify to receive CVC QS. The proposed rule is unclear whether this is the case. Is it the intent of Amendment 18 and the regulations to determine what kind of death will qualify?

*Response:* This comment is applicable to regulations at § 680.40(b)(3)(C)(2) in the final rule. Amendment 18 notes that "[f]or captains who died from fishing related incidents, recency requirements shall be waived and the allocation shall be made to the estate of that captain." Amendment 18 clearly establishes that the limits under which the recency requirements to receive CVC or CPC QS can be waived. NMFS has interpreted a "fishing related incident" as one in which the person died while serving as a member of a harvesting crew in any U.S. commercial fishery. Section 313(j) of the Magnuson-Stevens Act requires NMFS to implement the Program provisions as specified in Amendment 18. Any change to this provision requires an amendment to the Program and should be addressed with the

Council. The rule has not been modified.

*Comment 56:* The proposed rule contains many references to CVC (Catcher Vessel Crew) QS and CVS (Catcher Vessel Skipper) QS. Table 2, Eligibility to Receive Catcher Vessel Crew (CVC) Quota Share (QS) and Qualifying Year Periods, in the preamble to the proposed rule, lists 3 eligibility criteria, the second of which limits QS only to skippers. Since only 1 person on each vessel obtained an interim use permit in a given fishery, that person must be defined as the skipper. If the Council's intent was to award CVC QS to crew members, then it should add a phrase in eligibility requirement (2) that says, "\* \* \* being the individual named on a State of Alaska Interim Use Permit [OR BEING AN INDIVIDUAL WHO DECLARED TAXABLE INCOME FOR FISHING VESSEL PROCEEDS BASED ON IRS FORM 1099 FOR CRAB AND] and who made at least one delivery. If the Council's intent was not to award any CVC QS to crew members, then it should clarify its intent by requesting the removal of all references to CVC QS from § 680, leaving only CVS (Catcher Vessel Skipper) QS.

*Response:* The terms "C shares," "Captain's shares," and "Skipper shares" are used interchangeably in Amendment 18 to refer to QS and IFQ that would be allocated to non-LLP license holders—these terms are called CVC and CPC QS and IFQ by NMFS in the final rule. The preamble to the proposed rule (69 FR 63201) notes that "NMFS has determined that documentation necessary to allocate Crew QS, called C shares by the Council, would require that these shares be issued to individuals who hold a State of Alaska Interim Use Permit. Most likely, this individual would be the captain; however, the State does not require that the holder of the Interim Use Permit be the vessel captain." The phrase "crew" does not imply that persons other than those who made legal landings with an Interim Use Permit would qualify to receive CVC or CPC QS, and this is the skipper, or captain of the vessel in most cases. The rule has not been modified.

*Comment 57:* Highline vessel owners expressed concern that awarding enough CVC QS to crew members to be consistent with crew share history could become too much overhead to vessel operators in the future. This is one likely reason that the Council specified that 3 percent of the QS be issued to skippers, rather than their historic share of about 15 percent. In order to accommodate CVC QS for crew as well

as skippers, without a large negative impact on skippers, it would be fairer to allocate an additional maximum 3 percent for crew member quotas (CVC QS) qualified by evidence from IRS form 1099. This is because the average crew share is about  $\frac{1}{3}$  of the average captain share, but there about 3 times as many crew as captains. The ratio of CVS QS to actual Skipper share for harvest years could be multiplied by the actual crew share to determine CVC QS.

*Response:* Amendment 18 expressly limits the amount of QS that can be issued as CVC and CPC QS to 3 percent of the initial QS pool in a crab QS fishery. Issuing more than this amount would directly contradict Amendment 18. Section 313(j) of the Magnuson-Stevens Act requires NMFS to implement the Program provisions as specified in Amendment 18. Therefore, NMFS does not possess the discretion to alter the amount of QS that can be issued as CVC and CPC QS as it exists in statute. Any change to this provision requires an amendment to the Program and should be addressed with the Council. The rule has not been modified.

*Comment 58:* Awarding crew QS only to interim use permit card holders is not fair to crew and captains who may have fished as many or more years but had only forms 1099 for evidence. It is also contrary to the stated intention that these shares are intended to provide long term benefits to captains and crew. Forms 1099 are verifiable evidence. To be consistent with the above intention, IRS Forms 1099 should be admitted as an alternative eligibility qualifier at § 680.40(b)(3)(iii). The following wording should be added: alternatively, crew may establish eligibility by submitting copies of IRS forms 1099 and/or crew settlement sheets for any 5 qualifying seasons. This is simple, fair, and consistent with the intention quoted above. It provides protection for crewmembers who may rely more heavily on crab in the recent years than in the earlier years. One good reason for the above intention is dependence on crab for livelihood of current crew.

*Response:* This comment has been addressed in response to comment 56. The 1099 IRS form does not indicate that a person made legal landings in a crab QS fishery, only that a person earned income in a fishery. Such a form is not sufficient for determining whether legal landings have been made in the fishery.

*Comment 59:* Collateral damage of the crab rationalization will hurt most for crewmembers who do not receive CVC QS, who also do not find a new job soon. It would be irresponsible for our

industry to shift all of the cost of retraining, placement, and needs-based care onto the Department of Labor and the Department of Health and Social Services at the expense of the general taxpayer. Perhaps a portion of the Cost Recovery tax can be allocated towards reimbursing these agencies for costs of helping unemployed crewmembers.

Crewmembers have neither unemployment insurance nor a severance package. The federal government structured this crab plan in a manner that terminates about 1,000 crabbers or 80 percent of the industry's work force. They probably earned a modal value of \$20,000–\$30,000 per year crabbing. Most are desirable employees and will find work, but some may remain unemployed or underemployed for a long time. The taxpayers should not be saddled with having to bear the costs of maintaining the thousand crabbers about to be thrown out of work with neither severance pay nor unemployment. This burden on the taxpayers has not been evaluated, nor has the burden on the crew itself. It is as if a giant tax, amounting to a modal value of around \$20–30,000 per year is taken out of the crewman's pocket and dropped into the pocket of the vessel owner. There should be a Federal acknowledgment of responsibility for those hurt most by the plan at the end of the section on Cost Recovery and Fee Collection.

*Response:* The EIS/RIR/IRFA prepared to analyze the effect of Amendment 18 did examine the potential effects of this program on crew. This rule may result in fewer crew being employed as QS holders consolidate their fishing operations for improved economic efficiency—one of the primary goals of the Crab Rationalization Program. The Cost Recovery and Fee Collection portion of this Program is intended to offset the administrative costs and provide funds for loans to entry-level fishermen, including crewmembers who may not have received CVC or CPC QS.

*Comment 60:* If the crab resource is to be fairly divided among the qualifying participants in the fishery, crew must be included. For the Council to neglect crew is irresponsible. For as long as crews have been crab fishing, a share of the crab resource has been allocated to each crewman. Crew's and owners' catch history are inextricably intertwined. Each vessel's crew and owners have signed a crew share agreement at the start of each fishery that defines the crew's share of the resource. The crew invested sweat equity in the operation by providing at least 10 days to 2 weeks of skilled

services maintaining and improving vessels and gear before and after each fishery. As self-employed individuals, the crew paid their own taxes, expecting no fringe benefits normally associated with labor, such as owner contributions to health care plans, pensions, or workman's compensation. The crew suffered the physical brutality of the fishery and put their lives and health at risk whether or not the owner was on board. Without good crews and skippers, it was not possible to achieve a good catch history. Many vessel owners did not spend any time on the Bering Sea during the qualifying years. The crew was there, exposed to the elements. Vessel owners choosing to retire would benefit from a lower tax bill in the future, and the satisfaction of knowing that their net crew allocation provides a fair distribution.

*Response:* The effects of this Program on crew members were considered during its development by the Council. Please see response to comment 59. The distribution of QS among the various participants in the crab fisheries was discussed and debated extensively during the Program's development. The rule has not been modified.

*Comment 61:* While recognizing broad safety, conservation, and economic benefits of the rationalization program that is to be implemented by the present rulemaking, the commenter is concerned that many skippers and crew members in the BSAI crab fisheries will be confronted with severe financial dislocation. Adverse consequences will arise from fleet consolidation and coordination through IFQ transfers and fishing cooperatives, from overwhelming vessel owner control of IFQs, and from IPQs. Inevitably, there will be lost employment among skippers and crew members, as vessels are retired or otherwise idled by cooperative agreements. Furthermore, while those skippers and crew who remain in the fisheries will see increased harvests, they will also see the resulting benefits flow overwhelmingly to vessel owners and processors, not to mention those communities that will enjoy development quotas and other, similar advantages.

*Response:* This response was addressed in the response to comment 59.

*Comment 62:* There are measures that may be taken by rulemaking, consistent with the Program, the Magnuson-Stevens Act, other applicable law, that would provide some degree of protection and mitigation for skippers and crew members, so that they do not ultimately suffer the worst case. IPQs have a demonstrable potential for

adversely affecting skippers and crews (not to mention, independent vessel owners), and that this challenge should be addressed, as effectively as the law allows, in the present rulemaking. In short, the rulemaking should prevent processors from using the market power deriving from IPQs to achieve excessive leverage in price negotiations that affect not only vessel owners, but also skippers and crew members. Processors must not be provided an opportunity, by virtue of IPQs, to engage in the kinds of market-distorting practices proscribed by the antitrust laws. There are several, specific areas of concern in the proposed rule, with respect to the participation of processors: (1) Participation of processor-“affiliated” entities in cooperatives, (2) holding of Class B IFQ by processor-affiliated entities, and (3) participation of processors or their affiliated entities in binding arbitration.

*Response:* The ability of IPQ holders and their affiliates to participate in crab harvesting cooperatives, hold Class B IFQ, and use the Arbitration System, has been addressed in previous response to comments under those subjects, particularly the response to comments 25 and 164. The final rule, Amendment 18, and the Magnuson-Stevens Act all prevent IPQ holders from using the market power deriving from IPQs to achieve excessive leverage in price negotiations and to engage in the kinds of market-distorting practices proscribed by the antitrust laws. Additionally, the economic data collection program was developed to allow such analysis in the future.

*Comment 63:* Because of the adverse consequences to skippers and crew members, and because the rationalization program offers little of positive economic value to skippers and crew members, relative to vessel owners, processors, and communities, the proposed rule should, as a matter of principle, ensure that such value be maximized to the extent permitted by the Magnuson-Stevens Act and the Council-approved Program.

*Response:* This Program was intended to provide additional economic benefits and efficiencies to a variety of participants. Achieving economic efficiency is one of several goals that this Program is mandated to meet under the Magnuson-Stevens Act.

*Comment 64:* The Program has ignored the 1,500 to 2,000 crew members directly involved in the crab fisheries and has failed to include them in the decision-making. Many crew have been involved in crab fishing industry for their entire adult life. The crewmembers are directly responsible

for the catch records on every one of the vessels. The Program will create a devastating effect on the livelihood of 50–60 percent of the fleet’s crew. Under the Program, every boat will drop a crewmember. Owners with multiple boats will put the IFQ on select boats while their other boats pursue other options. Boats will be bought and sold for no other reason than to obtain their IFQ. What happens to the crewmembers of those vessels? Is it not the responsibility of government in a democratic society to make available programs so that the people they are putting out of work have the opportunity to seek gainful employment in other occupations? Economic stability/benefit is a good thing for everyone, however NMFS simply has not considered everyone involved. NMFS’ analysis regarding the effects of the Program on crew members is extremely poor.

NMFS has taken away our life, our livelihood, everything we depend on to live. We may not deserve much but we do deserve to be treated fairly by the Federal Government. Owners and processors get a percentage of IFQ for nothing, give us a percentage for nothing. Maybe buy us out so we can be retrained and enter another occupation.

*Response:* In developing Amendment 18, the Council analyzed the potential effects of this Program on crew members and provided some allocation of QS to crew who have participated in the fishery. The distribution of the benefits from the program include a variety of industry participants. This Program was developed over a six year period by the Council which included input from crew and other industry participants. The effects of this Program on crew are discussed extensively in the EIS/RIR/IRFA supporting this action.

*Comment 65:* It is important that the CVC and CPC QS ownership caps in the regulations be listed at the correct levels from Amendment 18, which are equal to the use caps for the vessels in all fisheries. For example, in the case of snow crab and Bristol Bay red king crab, vessel use caps are 2 percent and CVC and CPC QS ownership caps are also 2 percent.

*Response:* NMFS agrees. This comment has been addressed in response to comment 54.

*Comment 66:* The provision in the proposed rule at § 680.42(b)(1)(iii) creates ambiguity concerning non-individuals holding CVC IFQ and QS. CVC IFQ and QS may be held only by individuals. Limit CVC and CPC share holdings to individuals.

*Response:* NMFS agrees, the language in the final rule at § 680.42(b)(1)(iii) has

been clarified to note that CVC and CPC IFQ and QS may be held only by individuals who are qualified to do so. This change better reflects the provisions established in Amendment 18.

#### *Processing Sector*

*Comment 67:* The proposed rule does not correctly implement the Council’s intent for this fishery concerning the community of Adak. The clear intent of the Council was that 50 percent of the WAI golden king crab QS was to be processed in the WAI region. The problem has to do with some confusion in the Council’s motion because harvesting history for WAI golden king crab does not match the processing history and does not match the recent golden king crab processing activities in Adak. The proposed rule does not meet the Council intent to process 50 percent of the IPQ in the WAI region. The fact that Adak is excluded from the ROFR provision suggests the Council felt ROFR was unnecessary because they were guaranteed 50 percent of the WAI golden king crab could be processed without IPQ. Another inconsistency is that Adak would be precluded from acquiring 50 percent of the IPQ by the 30 percent ownership cap. If inadequate IPQ is available for lease or purchase, the requirement to process 50 percent of the WAI golden king crab in the western region can only be achieved by allowing the crab to be processed without IPQ.

*Response:* Persons who apply for PQS and receive PQS in excess of the use caps will be grandfathered in at that amount as long as that amount is not based on transfers of processing history after June 10, 2002. The rule has not been modified. Neither Amendment 18 nor the rule require that only one PQS or IPQ holder hold 50 percent of the PQS or IPQ in the Western Aleutian golden king crab fishery. The rule establishes that 50 percent of the total PQS and IPQ issued in this fishery must be processed West of a line at 174° W. longitude, as established in Amendment 18. The remaining PQS or IPQ does not have a regional designation and may be used West of 174° W. longitude as well. Nothing in this rule restricts the use of undesignated PQS or IPQ in Adak. In addition, at § 680.40, the final rule requires that 50 percent of the CVO and CVC QS in the Western Aleutian golden king crab fishery be designated for delivery West of a line at 174° W. longitude. This provision would not be implemented for CVC QS until July 1, 2008, as established under Amendment 18.

*Comment 68:* The provision in the proposed rule at § 680.40(e)(1)(i) and

(e)(1)(ii)(D) refers to the Total Processing Denominator (TPD) for each year. When taken together with the reference to the “average percentage of the TPD for a person” at (e)(1)(ii)(D), the provisions suggest that the “average annual percentage” approach to determining allocations will be used for processors, which is not correct. Clarify method of allocation of processor individual allocations is total individual qualified history divided by all qualified history.

*Response:* NMFS agrees and has clarified the provisions at § 680.40(e)(1)(i) and (e)(1)(ii)(D) in the final rule to note that a person’s initial allocation of PQS is equivalent to that person’s total qualifying legal processing history divided by all qualified history in that crab QS fishery.

*Comment 69:* The provision at § 680.42(c)(4) prevents the issuance of IPQ in excess of the “IPQ cap” in the Bristol Bay red king crab fishery and the Bering Sea snow crab fishery. It is very confusing to have this provision in the section on “use limitations” since it is not a use limit, but an allocation limit. The provision should likely be moved to § 680.40(h) and/or (i), which concern the allocation of Class A IFQ and IPQ.

*Response:* NMFS agrees and has moved the provision from § 680.42(c)(4) to § 680.40(h)(10) and § 680.40(j)(3), IPQ issuance limits, to avoid confusion with the use caps at § 680.42.

*Comment 70:* The legislation authorizing the program provided at section 313(j) of the Magnuson-Stevens Act provides that IPQ should not create a right, title, or interest in any crab, until that crab is purchased from a fisherman. No similar language appears in the regulation. Include the language from the legislation in the regulation at § 680.40(l).

*Response:* NMFS agrees. Section 680.40(l) notes that the QS and PQS permits issued under this Program do not constitute absolute rights to the resource. These limitations extend to the IFQ and IPQ resulting from the QS or PQS. NMFS modified the final rule at § 680.40(1) to more accurately reflect the legislative language at § 313(j)(7) of the Magnuson-Stevens Act.

*Comment 71:* Section 313(j)(2) of the Magnuson-Stevens Act states that if the Secretary determines a processor has leveraged its IPQ to acquire Class B IFQ, the processor’s IPQ shall be forfeited. If a specific regulatory re-statement of the ability of the Secretary to forfeit IPQ held by a processor that have acquired Class B IFQ is not included in the proposed rule, it should be included in the final rule.

*Response:* The regulatory text in the final rule at § 680.7(f) states that it is a

prohibition to use IPQ to acquire an interest in Class B IFQ. The specific requirement to forfeit those shares would be determined after investigation by NOAA Enforcement. Nothing in these regulations restricts the ability of NOAA Enforcement to require divestiture of PQS or IPQ if a person leveraged IPQ to acquire ownership interest in Class B IFQ.

*Comment 72:* Section 680.42(b)(2) creates an ambiguity concerning individuals holding PQS and IPQ being exempt from the cap. Only corporations and other non-individuals that directly hold PQS and IPQ are exempt from this cap. In addition, the exemption should be limited under the cap described at (b)(4), not generally. Section 680.42(b)(2) should read, “Except for corporations and other non-individuals as provided at (b)(4) and CDQ groups as provided for at (b)(3).”

*Response:* NMFS agrees. These comments now refer to the final rule at § 680.42(a)(2). Amendment 18 notes that “[a]ll individuals and subsidiaries will be subject to the general caps on QS holdings.” NMFS modified the final rule at § 680.42(a)(2) so that it is clear that except for corporations and other non-individuals and CDQ groups, the general cap that applies to QS and IFQ use would apply. This means that individuals that are holders of IPQ, or an affiliate, but not a direct corporate entity holding PQS would be subject to the QS and IFQ use caps at § 680.42(a)(2)(i).

*Comment 73:* (C48–80) For PQS holders, the AFA-style 10 percent limited threshold rule is used for determining compliance with the vertical integration cap on IFQ holdings. Under this approach all QS and IFQ holdings of the holder of the PQS and all of its affiliates are counted toward the cap. The application of this rule is not clear from the proposed rule at § 680.42(b)(4). A second issue arises in this provision of the regulation because this is an additional cap to the cap at § 680.42(b)(2)(i). This cap supersedes the cap at § 680.42(b)(2)(i) only for a corporation or other non-individual directly holding the PQS. In other words, all individuals will still be subject to the individual caps at § 680.42 (b)(2)(i). Clarify the method of calculating holdings and the application of the cap and the limited exemption.

*Response:* NMFS agrees and has modified the final rule at § 680.42(a)(4) accordingly. Amendment 18 notes that “[v]ertical integration ownership caps on processors shall be implemented using both the individual and collective 10 percent minimum ownership standards for inclusion in calculating

the general cap” which is “similar to the AFA common ownership standard used to implement ownership caps.” The intent behind these phrases are clarified in the EIS/RIR/IRFA. This approach would function so that a non-individual person that holds PQS would be limited to a QS and IFQ cap that would be calculated based on the sum of all QS or IFQ held by that PQS holder and all QS or IFQ held by any entity that is affiliated with that PQS holder. This method would comply with the Council’s intent in this provision that a corporate entity would have an exemption but that entities linked to that PQS holder through common ownership would be considered as holding QS or IFQ for purposes of applying this higher cap. The commenter is correct in that the use caps at § 680.42(a)(1)(i) would apply to all individuals, or other entities that do not hold PQS. Section 680.42(a)(4) has been modified.

It should be noted that this “AFA 10 percent threshold” method of computation is used only for purposes of computing the amount of QS and IFQ holdings that apply to QS and IFQ use caps for non-individuals that hold PQS. In the case of individuals who hold PQS, other persons that hold QS or IFQ but not PQS, or CDQ groups, QS and IFQ use caps are computed using an “individual and collective” rule. Under this standard, the amount of QS or IFQ that is computed as applying to a person is equal to the sum of the QS or IFQ held by the person and an amount equal to the percentage of holdings by that person in any entity in which that person has an interest. As an example, if an individual held QS and a 20 percent interest in another entity that held QS, the “individual and collective” rule would sum the holdings by that individual and 20 percent of the QS holdings by the other entity for purposes of computing how much QS that individual could hold. The same method would be used for IFQ holdings and IFQ use cap calculation. This “individual and collective” standard is similar to the one applied in the halibut and sablefish IFQ program for computing QS use caps under that program. The “individual and collective” rule does not require that a minimum of 10 percent ownership be triggered to count any collective holdings by a person.

*Comment 74:* Caps on PQS and IPQ should use the AFA-style 10 percent limited threshold rule, not the individual and collective rule. Under this approach all PQS and IPQ holdings of the holder of the PQS and all of its affiliates are counted toward the cap.

The application of this rule is not clear from the proposed rule at § 680.42(c)(1). Clarify the method of calculating holdings.

*Response:* NMFS agrees. The comment now refers to the final rule at § 680.42(b)(3). Amendment 18 notes that "PQS ownership caps should be applied using the individual and collective rule using 10 percent minimum ownership standards for inclusion in calculating the cap." The application of this standard is similar to that which is being used in the application of the rule for calculating the amount of QS or IFQ that can be used by a non-individual that holds PQS. This approach would function so that a non-individual person that holds PQS would be limited to a PQS and IPQ cap that would be calculated based on the sum of all PQS or IPQ held by that PQS holder and all PQS or IPQ held by any entity that is affiliated with that PQS holder. This method would comply with the Council's intent that PQS or IPQ holder through common ownership would be considered as holding PQS or IPQ for purposes of applying the PQS use cap to that person at § 680.42(b)(3).

*Comment 75:* Processing quota share, at § 680.40(e) of the proposed rule, is also calculated as a simple average, when Council intent was a weighted average. Total Processing Denominator (denominator is defined as "pounds \* \* \* in each qualifying year") appears to be an annual number. Both the pounds for each person and pounds for the TPD should be summed over the history years, and then divided to obtain the percentage.

*Response:* The response to this comment has been addressed in response to comment 68.

*Comment 76:* Cooling-off period waiver in the proposed rule, at § 680.42(c)(5), should be brought into compliance with Amendment 18. The ECC may not waive the cooling-off period, even for a temporary move. The ECC may waive the ROFR after the two-year period expires, as specified in the Council motion on civil contract terms for ROFR. Amendment 18 allows a community group or CDQ group to waive any right of first refusal.

*Response:* The cooling off period established in Amendment 18 is reflected in the final rule at § 680.42(b)(4). The "cooling off" period that is established is based on the language used in Amendment 18. A community as defined for the "cooling off" period cannot waive the cooling off period, and nothing in these regulations would permit them to do so. An IPQ holder may use IPQ outside of a community during the "cooling off"

period only under the limited exemptions provided by Amendment 18 and in § 680.42(b)(4) for a small amount of IPQ and to address unforeseen circumstances.

*Comment 77:* Council intent was that any PQS earned based on processing history in the West region would be designated as west region PQS. However, the regulations at § 680.40(e)(2) state that a person will receive only west PQS if, at the time of the application, that person owns a crab processing facility that is located in the West region.

*Response:* Amendment 18 notes that the allocation of West regionally designated PQS in the WAG crab QS fishery would be made to "to participants with processing facilities in the West." This statement is distinct from the criteria used in designating the allocation of PQS in the other fisheries. The allocation criteria here are explicit in that the allocation of West region QS is based on the ownership of a processing facility in the West region, and NMFS has determined this to mean ownership of a processing facility in the West region at the time of application. The rule has not been modified.

*Comment 78:* Public Law 108-199 Section 801(j)(6) states that the Secretary may revoke any IPQ held by any person found to have violated a provision of the antitrust laws of the United States. If a specific regulatory re-statement of the ability of the Secretary to revoke IPQ held by a person found to have violated antitrust law is not included in the proposed rule, it should be included in the final rule.

*Response:* NMFS does have the ability to revoke any IPQ held by a person that has violated an antitrust law of the United States as granted by this provision. This statutory authority was not part of the proposed rule but is an authority that exists under section 313(j) of the Magnuson-Stevens Act. An explicit regulatory statement was not placed in the proposed rule because it was not deemed necessary to reiterate the authority that NMFS has to revoke IPQ under these conditions. The rule has not been modified, but NMFS has the statutory authority to revoke IPQ for antitrust violations if necessary after review under the Magnuson-Stevens Act.

*Comment 79:* The Council motion recommends that NOAA Fisheries award PQS to processors that purchased crab during the relevant processing history years based on the entity that signed the fish ticket and did not base the award of PQS on the location where the crab was physically processed. The Council recognized and acknowledged

the use of custom processing and the regulation correctly reflects that Council intent in its definition of the initial award of PQS. The regulations do not specify how custom processing affects processor use caps; IPQ transfers; and community protection provisions. We believe that in order to achieve the efficiencies envisioned, custom processing will be used extensively in the future. Therefore we believe the final rule should treat custom processing as follows: Custom Processing and IPQ leasing should each be counted against the use cap of the processor doing the physical processing. For example, PQS holder X holds IPQ and purchases crab, which is processed by PQS holder Y. PQS holder X is subject to the use cap because it holds the IPQ. Processor Y's use cap calculation should include both its own IPQ and the amount that it is physically processing for PQS holder X.

*Response:* Amendment 18 notes that "limits on ownership and use would count any crab custom processed by a plant toward the cap of the plant owner. The application of the cap to custom processing is intended to prevent consolidation which could occur if custom processing is not considered." The proposed rule does not require that the processing which is occurring at a facility be counted against the owner of the facility if the owner also holds IPQ. Under Amendment 18, any IPQ that is "custom processed" at a facility would be counted against both the IPQ holder (the custom processor) and the IPQ holder that owns the facility. This accounting is potentially problematic in that there may be cases in which a processing facility is owned by multiple IPQ holders, or is not owned by an IPQ holder at all. In cases of multiple IPQ holders owning a processing facility, it is not clear whether the amount of IPQ crab custom processed at a facility would be counted against all IPQ holders on a pro rata basis, or in proportion to their ownership in the processing facility. It would also create a situation where IPQ use would be "double counted", resulting in less IPQ being available to Class A IFQ holders that is needed.

To implement this provision of Amendment 18, NMFS modified the final rule at § 680.7(a)(7) to note that no IPQ holder may use more IPQ crab than the maximum amount of IPQ that may be held by that person including all crab that are received by any RCR at any shoreside crab processor or stationary crab processor in which that IPQ holder has a 10 percent or greater direct or indirect ownership interest. Therefore, a person that holds IPQ is limited to an

IPQ use cap based on: The sum of all IPQ held by that IPQ holder and all IPQ held by any entity in which that PQS holder has a 10 percent or greater direct or indirect ownership interest; and any IPQ crab that is received at a shoreside crab processor or stationary floating crab processor owned by that IPQ holder.

Ownership of a processing facility is defined as having a 10 percent or greater direct or indirect interest in the processing facility. This modification better comports with the intent of Amendment 18. NMFS will not directly collect ownership information on processing facilities, however, any IPQ holder that owns a processing facility is responsible for maintaining records adequate to ensure that the IPQ use caps are not exceeded through custom processing arrangements established by IPQ holders that also own processing facilities. NMFS will be able to account for processing facility ownership using the EDR required under this Program, should a specific facility or IPQ holder need to be investigated.

In addition, NMFS has added a prohibition to the final rule at § 680.7(a)(8) so that in those cases where a processing facility is not owned by an IPQ holder, no RCR or group of RCRs may receive more than 30 percent of the IPQ in any crab QS fishery at any shoreside crab processor or stationary crab processor. This limitation meets the requirements of Amendment 18 to limit the amount of processing that could be done at any one facility and limits the ability for IPQ holders to simply divest themselves of ownership in a processing facility as a means of avoiding the limitations on IPQ use through custom processing arrangements.

*Comment 80:* Lease of IPQ or physical processing outside the community should each count for purposes of community protections and should require agency transfer approval.

*Response:* Use of IPQ outside of an ECC would be considered as subjecting those IPQ shares and the underlying PQS to the cooling off and ROFR provisions as revised in this final rule. Any transfer of IPQ for use outside of that ECC subject to the cooling off provision or ROFR would need to be approved by NMFS under the current regulations. The rule has not been modified.

*Comment 81:* Processor interests should be made entirely transparent to authorized fisheries managers and enforcement officials, as well as to the antitrust authorities, and all available tools for preventing and punishing anti-competitive processor behavior should be employed aggressively. The

important safeguards contemplated by the Magnuson-Stevens Act and the antitrust laws, and reflected in the proposed rule, should be preserved.

*Response:* This Program requires extensive reporting of data by both harvesters and processors in order to ensure that existing antitrust laws are not violated and that the goals of this Program are met. These data can be used to investigate activities of concern.

*Comment 82:* The allocations of PQS are not equitable because processors with history processing crab in Alaska that do not meet the eligibility qualifications at § 680.40(d)(3) would not receive PQS. Specifically, if a processor lost its facility due to fire, and did not make \$1,000,000 worth of improvements to that facility, it would not qualify for the hardship exemption for eligibility at § 680.40(d)(3)(ii)(B). These regulations eliminate competition and prevent boats from delivering to a native-Alaskan owned processor with a long history of processing crab in the BSAI area.

*Response:* NMFS encourages all processors to complete an application for QS or PQS. The eligibility requirements in the regulations are provisions of Amendment 18. Section 313(j) of the Magnuson-Stevens Act requires NMFS to implement the Program provisions as specified in Amendment 18.

*Comment 83:* The unique concentration of PQS holders in the golden king crab fishery presents a problem in terms of economic efficiencies the Program envisioned for processing in small fisheries. Two processors will receive greater than three-quarters of the initial PQS pool in the EAI golden king crab fishery, creating a problem with the 30 percent use cap. This is similar to the snow crab fishery where a few processors will hold north region PQS. In that case, the Council allowed an IPQ use cap up to 60 percent of the IPQ issued with a north region designation. The commenter requests an amendment that allows for an IPQ use cap of 60 percent of the IPQ issued in the EAI golden king crab fishery. This would allow processors to achieve efficiencies envisioned by the Program.

*Response:* Persons who apply for PQS and receive PQS in excess of the use caps will be grandfathered in at that amount as long as that amount is not based on transfers of PQS catch history after June 10, 2002. The rule has not been modified.

#### *Crab Harvesting Cooperatives*

*Comment 84:* The requirement at § 680.21 of the proposed rule, that

prohibits participation in crab fishery cooperatives by a QS holder who also holds PQS or IPQ, is affiliated with holders of PQS or IPQ, processes Class B IFQ, or is affiliated with a person that processes Class B IFQ, is overly restrictive and does not meet the intent of the overall Crab Rationalization program. Section 680.21 assumes that "harvest cooperatives" under the Council motion are intended to be FCMA cooperatives. This interpretation appears to have led NMFS to conclude that any processor affiliated QS holder could not join a cooperative. The Council motion intended cooperatives for the limited purpose of coordinating harvest activity to allow all holders of harvest shares to achieve efficiencies and should not require FCMA qualification. We also note that the December 3, 2004, memorandum of NOAA General Counsel on Harvesting Cooperatives under the Crab Rationalization Program clarifies that the cooperative system intended by the Council can be implemented consistent with antitrust law, providing NMFS with the latitude to address this critical flaw.

It is by no means clear that the Council, or the Congress, intended that cooperatives for BSAI crab harvesting should be only those as provided for in the FCMA for joint marketing purposes, as prescribed in the proposed rule at § 680.21. The language of the Council motion distinguishes and requires FCMA cooperatives in the arbitration program, the only portion of the motion in which a cooperative would engage in negotiation. In the arbitration section of the motion, FCMA cooperatives are distinguished as the only cooperatives that may negotiate on behalf of their members. In addition, the motion specifically identifies the role of its harvest cooperatives. The Council motion establishes a "harvesting cooperative" that is intended to coordinate harvests of its members' IFQ to achieve efficiencies in the fisheries. The terms that govern these harvesting cooperatives are delineated in the Council motion. The motion and clarification describe a system of coordination of harvests that would be used to pursue fleet consolidation. Similarly, the clarification describes systems of leasing and use of allocations. No mention of marketing or negotiation activities is made in either the motion or clarifications.

The Council envisioned all crab harvesting vessels having the opportunity to form harvesting cooperatives to achieve the benefits of fleet consolidation through the operation of leasing and transferring

crab harvesting quota share among the cooperative members. In fact, the Council motion encourages the formation of harvesting cooperatives by including incentives such as exemption from individual use caps for cooperative members and by allowing only cooperative members the ability to lease quotas five years following implementation of the crab rationalization regulations. The only distinction is that affiliated vessels cannot participate in price formation. It is critical to note that non-FCMA operational cooperatives, comprised of non-processor affiliated vessels, processor-affiliated vessels and processors, were envisioned by the Council to maximize operational efficiencies and net national benefits, and to broadly distribute those rationalization benefits across harvesters, processors and fishery-dependent Alaska coastal communities.

Participants in both federal and state crab rationalization working groups have always proceeded with an underlying assumption that all harvesters—both affiliated and non-affiliated—would be allowed to join harvesting cooperatives to achieve efficiencies and lessen the enforcement burden. Also, as the Council reiterated at its December 2004 meeting, it intended for all crab harvesting vessels to have the option to join crab harvesting cooperatives.

Given the limited scope of harvest cooperative actions and the distinction of FCMA cooperatives in the arbitration provisions of the motion, harvest cooperatives should not be required to be FCMA cooperatives and NMFS should remove requirement that harvest cooperatives be FCMA cooperatives.

The proposed rule has taken a conservative, zero-risk approach to antitrust that is inconsistent with Council intent. In so doing, the proposed rule, at § 680.21, defines the entire universe of cooperatives as only program-compliant FCMA (bargaining) cooperatives that need limited antitrust exemption. The preamble explains the proposed rule's cooperative membership restriction is due to Congress' inclusion in its codification of the Council plan amendments, that nothing in their approval shall be construed to create an implied or explicit exemption from the antitrust laws and regulations. The proposed rule interpreted that statutory language to mean that the only cooperatives available to the crab harvesting vessels are those allowed under the FCMA.

The justification in the proposed rule, at § 680.21, for FCMA status is flawed. The proposed rule claims crab

harvesting cooperatives are FCMA cooperatives because they combine and collectively manage their crab IFQ. This claim is untrue. All crab harvesters receive QS prior to forming a cooperative. The QS for each participant in a harvesting cooperative has been decided and NOAA will issue the QS. The cooperative members will not do the segmentation of the crab resource. They need no FCMA limited antitrust exemption to collectively catch because such activity is not engaged in market segmentation. They only need FCMA protection when engaged in collective bargaining or binding arbitration. Additionally, NMFS' position in the proposed rule ignores the fact that antitrust law already applies to all industry participants, that this fact was reiterated in Senator Stevens' statutory language, and that the simplest way to avoid any additional concerns would simply be to create a rule prohibiting any affiliated vessel from participating in price negotiations. The current regulation disregards the critical distinction in the Council's motion between FCMA cooperatives and non-FCMA harvesting cooperatives, treating all cooperatives as FCMA cooperatives and thereby limiting the ability of processors and their affiliates to realize the benefits of coordination of harvest activity that could be achieved through the harvest cooperative structure the Council has developed. The final regulations should be amended to allow the fullest participation possible by processor affiliated vessels in crab harvesting cooperatives so that each crab QS holder is able to meet the goals of crab rationalization.

The penalties imposed on the processor-affiliated vessels prohibited from cooperative participation under the proposed regulation are severe. Requiring crab harvesting cooperatives to be FCMA cooperatives causes the following problems: (1) Fishermen that cannot join a cooperative because of their affiliated partners are severely disadvantaged from their fellow fishers; (2) without the ability to form cooperatives, many of the benefits of the entire rationalization program will be lost to many vessels which find themselves, in one way or another affiliated with a processor; and (3) vessels that are affiliated with processors would be unfairly penalized by not being allowed to "stack" their quota on vessels, be restricted to vessel use caps, and face more restrictive transfer provisions. Such vessels will not be able to achieve the operational efficiencies intended by cooperatives such as lower operational costs

(dramatic savings on fuel, harvesting equipment, insurance), higher product recovery rates, higher quality and more diverse finished products, reduced bycatch of non-target species, and reduced environmental impact. Additionally, processors and processor-affiliated vessels would not be allowed to receive Class B IFQ. Other lost rationalization benefits include: improved management capability for harvests resulting in overage/underage; improved management capability for dealing with sideboard limitations; reduced administrative and enforcement costs; and improved safety (fewer and safer vessels fishing). The Council did not intend these benefit deprivations that derive from the errant definition of "cooperatives" used in the proposed rule.

We believe requiring all cooperatives to be FCMA cooperatives is neither warranted nor encouraged by antitrust law. We believe harvesting cooperatives can include vessels affiliated with holders of PQS. The antitrust laws are intended to prohibit anti-competitive behavior among competitors. Such conduct typically includes agreements among competitors to (a) increase prices or (b) reduce output in order to increase prices. At the same time, the antitrust laws encourage business to achieve efficiencies by lowering costs. Crab harvesting cooperatives and the harvesting allocation agreement among vessels, (including vessels affiliated with PQS holders) are not anti-competitive. They do not reduce output and are incentivized to maximize their production. A harvesting cooperative will simply divide the harvest of its government allocated QS in a manner to maximize efficiency. The efficiencies are reflected in lower operational costs (dramatic savings on fuel, harvesting equipment, insurance), higher product recovery rates, higher quality and more diverse finished products, improved safety, reduced bycatch of non-target species, and reduced environmental impact.

Given that the antitrust laws do not summarily condemn, and, indeed, encourage, cooperatives, associations, and other joint ventures that, as here, do not involve price fixing or other plainly anti-competitive practices, adopting a proposed rule that imposes a per se ban on such cooperatives in the BSAI is without justification. That is especially so in this instance because the underlying rationale for such a ban is the mistaken notion that such cooperatives in fact violate—or at least pose a significant risk of violating—the antitrust laws. For this reason alone, the proposed rule should not prohibit crab

processor-affiliated participation in crab harvesting cooperatives, as defined by the rule.

Participation of processor-affiliated entities in cooperatives should be permitted only where there is no price negotiation, that is, only in cooperatives that are established solely for operational fishing purposes. Processor affiliated vessels that form "non-FCMA" cooperatives should be prohibited from participating or voting in the price formation process under the Binding Arbitration system. In other words, participation in cooperatives authorized by the FCMA must be restricted to entities that are not affiliated with processors. By this means, the safety, conservation, and economic efficiency objectives of the rationalization program can be realized through operational cooperatives, without compromising competition that is the purpose of the antitrust laws to protect, or reducing the market leverage accorded harvesters not controlled by processors through FCMA cooperatives.

Section 680.21(b)(3) of the proposed rule that requires crab harvesting cooperatives to be established under the FCMA was based on antitrust concerns. However, a cooperative formed for the purposes of making harvesting more efficient would be analyzed under the "rule of reason" antitrust doctrine. Under this doctrine, a cooperative would be legal unless the pro-competitive benefits of the venture and its practices are outweighed by the anti-competitive effects that the arrangement cause.

Harvesting cooperatives that include vessels affiliated with processors greatly increase the efficiency of harvesting crab and pose no threat to competition. Simply put, excluding processor affiliated vessels from the ability to join cooperatives would deny a substantial percentage of the fleet many of the benefits contemplated by rationalization. As long as processor affiliated vessels are not involved in the negotiation of prices with the processor to whom they are affiliated, there is no anti-competitive impact from these cooperatives.

Non-FCMA operational cooperatives need no limited antitrust exemption because they involve neither market segmentation nor price formation and they pose no significant anti-competitiveness risks. Segmentation in the form of crab IFQ and IPQ occurred by statute, unlike the Pacific whiting cooperatives or AFA cooperatives, in which segmentation (issuance of IFQ) was conditional on cooperative formation and collective catching behavior. Therefore, we urge that the

regulations be modified to allow processor affiliated vessels to be members of crab harvesting cooperatives.

In light of the explicit Congressional intent that crab harvesting cooperatives not be given a special antitrust exemption, non-FCMA cooperatives must be strictly scrutinized to ensure compliance with applicable antitrust laws. As is the case for AFA catcher-vessel cooperatives, crab harvesting cooperatives whose membership includes one or more affiliated harvesters should be required to seek and obtain a favorable business review by the Department of Justice, Antitrust Division. However, because (unlike under the AFA) there is no argument that crab harvesting cooperatives have special status under antitrust laws, non-FCMA harvesting cooperatives should also be subject to initial and on-going scrutiny that is more stringent than that applied to AFA cooperatives.

The regulations should allow other forms of cooperatives, subject to review by the Department of Justice. In the first year of the crab harvesting cooperatives' existence, NMFS should condition the allocation of IFQ to a non-FCMA cooperative on that cooperatives' submission of a business review request to the Justice Department, and should require a copy of the business review request be submitted to NMFS with the cooperative's IFQ application. In subsequent years, the cooperative should be required to provide evidence of a favorable business review and should also provide both the Department of Justice and NMFS with prompt notice of any changes in its membership, governance, or activity. Finally, since non-FCMA cooperatives are not entitled to any antitrust exemption, the final rule should contain an explicit acknowledgment that NMFS's allocation of IFQ to a cooperative whose membership includes one or more affiliated harvesters in no way constitutes a determination that the cooperative was formed or is operating in compliance with applicable antitrust law. NMFS's allocation activity would not therefore provide a cooperative with an affirmative defense against antitrust liability, and the cooperative and its members would bear full responsibility for any violation of antitrust law.

The two types of cooperatives intended by the Council should be defined in the regulations at § 680.2: (1) For program-compliant FCMA cooperatives, a definition of voluntary cooperatives consisting only of harvesters with no affiliation to processors that are organized for the

purpose of bargaining and negotiating price, per the Council intent, and (2) for program-compliant non-FCMA cooperatives, a definition of voluntary cooperatives consisting of harvesters that are not affiliated with processors, processor-affiliated harvesters and one or more processors. The purpose of the second type of cooperative is to capture operational efficiencies in harvesting and processing, and to broaden the rationalization benefits to both sectors, per the Council intent. Inclusion of program-compliant non-FCMA cooperatives will require modifying some text throughout the regulations, especially at § 680.21, in order to correctly explain the intended program operation and benefits.

*Response:* NMFS has removed the requirement that crab harvesting cooperatives under § 680.21 be FCMA cooperatives and has modified the structure of the crab harvesting cooperative regulations to allow the formation of crab harvesting cooperatives by affiliated entities for the sole purpose of harvesting their crab IFQ. NMFS also has added regulatory definitions of crab harvesting cooperatives and FCMA cooperatives to § 680.2 of the final rule. The final rule, at § 680.21, continues to require FCMA cooperatives for the price arbitration system.

The rationale for the proposed requirement that crab harvesting cooperatives under § 680.21 be FCMA cooperatives is provided in the preamble to the proposed rule (69 FR 63226-63227). Subsequent to publication of the proposed rule, NMFS determined that affiliated harvesters could form an association to pool their crab QS and harvest the QS from one vessel with the likelihood that such activity would not violate the antitrust laws. Under the "Antitrust Guidelines for Collaboration Among Competitors," issued by the Department of Justice (DOJ) and the Federal Trade Commission (FTC), affiliated and non-affiliated harvesters could pool their crab QS and harvest it from one vessel with the likelihood that such activity would not be an antitrust violation as long as the activity of the cooperative promotes efficiency, does not have an anti-competitive effect, and is otherwise found to comply with the guidelines.

NMFS has decided that allowing holders of QS/IFQ that also holds PQS/IPQ or are affiliated with holders of PQS/IPQ to join crab harvesting cooperatives complies with Amendment 18 and Council intent in designing the Program. With this change, more participants will be able to participate in crab harvesting cooperatives for the

purpose of harvesting their IFQ and benefit from efficiencies gained through cooperatives.

NMFS agrees with the commenters that crab harvesting cooperatives that are not formed in accordance with the FCMA will not benefit from the antitrust immunity FCMA cooperative formation provides. Some activities by members of non-FCMA crab harvesting cooperatives could, under some circumstances, violate the antitrust laws. NMFS recognizes that withdrawing the requirement that crab harvesting cooperatives be formed under the FCMA will increase the risk of possible antitrust violations for the participants in the crab rationalization program who are not members of an FCMA cooperative. Therefore, NMFS strongly encourages members of non-FCMA crab harvesting cooperatives to 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. NMFS has included a sentence in the final rule that includes this recommendation at § 680.21, as well as a statement that issuance by NMFS of a crab harvesting cooperative IFQ permit to a crab harvesting cooperative is not a determination that the crab harvesting cooperative is formed or is operating in compliance with antitrust law at § 680.21(b)(3).

Although NMFS has included this precautionary advice in the preamble and the final rule, NMFS declines to include regulatory requirements conditioning the allocation of IFQ to a non-FCMA cooperative on the submission of a business review letter request to DOJ in the final rule as the commenters suggest. NMFS has determined that such regulations would impose unnecessary administrative burdens on the public, NMFS, and the DOJ.

*Comment 85:* The provision at § 680.21(b)(3) prohibits PQS and IPQ holders and their affiliates to join crab harvesting cooperatives. This limits the ability of vertically integrated harvesters to achieve harvest coordination efficiencies.

*Response:* NMFS agrees, and for the reasons described in the response to comment 84, has removed this prohibition in the final rule.

*Comment 86:* The prohibition at § 680.21(f)(4) on crab harvesting cooperative members holding or transferring PQS and IPQ is likely to limit the achievement of efficiencies in the fisheries for a substantial number of vertically integrated share holders. This provision is unnecessary, if crab harvesting cooperatives are not required

to be FCMA cooperatives. Remove the prohibition on crab harvesting cooperative members holding or acquiring IPQ and PQS.

*Response:* NMFS agrees, and for the reasons described in the response to comment 84, has removed this prohibition from the final rule.

*Comment 87:* In the proposed rule, at § 680.21(f)(4), all non-affiliated cooperatives must be FCMA cooperatives and members may not hold or acquire IPQ. The reason for this is that the harvester Arbitration Organization and a collective bargaining cooperative is an FCMA cooperative and may be exposed to antitrust violation if this provision is removed.

*Response:* NMFS agrees that members of FCMA cooperatives may not hold or acquire PQS or IPQ and that only FCMA cooperatives can participate in collective negotiation. However, NMFS has removed the requirement that crab harvesting cooperatives under § 680.21 must be formed in accordance with the FCMA. See response to comment 84.

*Comment 88:* FCMA cooperatives are allowed under cooperative law to vertically integrate by collectively owning a processor(s). Yet, the proposed rule in § 680.21(g)(1) disallows this activity. Furthermore, the Council clearly intended for harvesters to individually or collectively direct-market Class B IFQ, if they so desired. Doing so under the proposed rule, however, would render the harvesters processor-affiliated and deny them all program benefits, including collective price bargaining. This oversight needs to be corrected.

*Response:* Under the final rule, crab harvesting cooperatives can direct-market crab caught with Class B IFQ. NMFS removed the limitation on processing Class B IFQ at § 680.21(b)(3) in the final rule with the removal of the requirement that all crab harvesting cooperatives be formed under the FCMA. See response to comment 84.

PQS and IPQ are not required for the processing of crab caught with Class B IFQ. However, the final rule still contains the restriction on crab harvesting cooperatives owning PQS, IPQ, and QS. This prohibition is necessary to maintain the regulatory distinctions between IFQ held by entities that are not crab harvesting cooperative and IFQ held by crab harvesting cooperatives, and to simplify the administration of the Program. If the regulations allowed crab harvesting cooperatives to hold QS, PQS or IPQ, then the crab harvesting cooperatives would function like all other business entities under the Program. Therefore, crab harvesting cooperatives would no

longer function as a crab harvesting cooperative, and not be exempt from the vessel use caps, which is contrary to the intent of the Council motion.

Additionally, the Council did not establish QS, PQS, or IPQ ownership caps for crab harvesting cooperatives.

NMFS declines to respond to the comment concerning the legality of vertical integration by FCMA cooperatives as that subject is outside of NMFS' area of expertise.

*Comment 89:* The agency discussion in the preamble to the proposed rule (on page 63226 and 63227) sets the appropriate precautionary standard relative to antitrust constraints on cooperative membership relative to binding arbitration and limiting participation in FCMA cooperatives.

However, allowing the formation of a separate type of non-FCMA cooperative for the sole purpose of coordinating harvest arrangements and taking advantage of the exemption from leasing restrictions should be provided to processor-affiliated QS holders. This revision should require anyone forming or participating in such a cooperative to submit a request to the DOJ Anti-trust division for a Business Review Letter. Any change in membership of such a cooperative should require submitting a request for a new Business Review Letter.

If the agency allows for these non-FCMA cooperative for affiliate QS holders, the definition section should be updated to create clear definitions of FCMA cooperatives and non-FCMA cooperatives. The section on Binding Arbitration should be updated so that all the current generic references to "cooperative" are replaced with the term "FCMA cooperatives." The revisions of the proposed regulations should make it absolutely clear that non-FCMA cooperatives would not be provided any of the shelter from antitrust constraints embodied in the FCMA.

Additionally, non-FCMA cooperatives should not receive any Class B IFQ allocations.

*Response:* For the reasons discussed in response to comment 84, NMFS agrees that QS holders affiliated with processors should be permitted to join non-FCMA cooperatives and has changed the regulations accordingly. Additionally, NMFS has added definitions at § 680.2 for crab harvesting cooperatives and FCMA cooperatives. NMFS also agrees that the Arbitration System regulations at § 680.20 need to make it clear that, for the Arbitration System, cooperatives that wish to negotiate collectively must be formed

under the FCMA, and NMFS has changed the regulations to reflect this.

NMFS has included a sentence in the final rule at § 680.21 that 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. NMFS also included a statement, in the final rule at § 680.21(b)(3), that issuance by NMFS of a crab harvesting cooperative IFQ permit to a crab harvesting cooperative is not a determination that the crab harvesting cooperative is formed or is operating in compliance with antitrust law. Although NMFS has included these statements in the final rule, NMFS declines to include regulations requiring members of crab harvesting cooperatives to request a business review letter from DOJ. NMFS has determined that such regulations would impose unnecessary administrative burdens on the public, NMFS, and DOJ.

Crab harvesting cooperatives with affiliated members will receive Class A and Class B IFQ that is converted for use in the crab harvesting cooperative according to the provisions set forth at § 680.40(h)(3). These provisions would apply to the IFQ that would be issued to the members of the crab harvesting cooperative if they were receiving the IFQ directly. As an example, if a crab harvesting cooperative had 5 members, all of whom were affiliated, or held IPQ, and 50 percent of their IFQ would be issued as Class A IFQ only, the amount of Class A IFQ that would be issued for use by the crab harvesting cooperative would be in the same proportion—50 percent of the IFQ issued to the cooperative would be issued as Class A IFQ only. The remaining IFQ issued to the cooperative would be issued as both Class A and Class B IFQ.

*Comment 90:* The proposed rule at § 680.21(g) allows a crab harvesting cooperative to freely engage in intercooperative transfers without regard to individual use caps. The motion intended intercooperative transfers to be conducted through members to allow the application of use caps. Once IFQ are inside a crab harvesting cooperative, any individual or vessel caps do not apply to the movement of those IFQ within the cooperative. In the absence of a requirement that intercooperative transfers be accounted for by individuals in a cooperative for purposes of applying use caps, the program is without any effective use caps. The final rule should require cooperatives to conduct

intercooperative transfers through members, as described in the Council motion. The provisions at § 680.41(h) should require designation of the member(s) of the cooperatives that are engaged in the transaction for purposes of applying use caps to the shares a person may bring to a cooperative. In the absence of this limitation, persons could join a cooperative and acquire shares in excess of the cap, making individual use caps ineffective.

*Response:* NMFS agrees that individual use caps should apply to intercooperative transfers, as required by Amendment 18. In the final rule, intercooperative transfers were moved from § 680.41(h) to § 680.21(f). The final rule at § 680.21(f) requires, on the application for intercooperative transfer, designation of the members of the crab harvesting cooperatives that are engaged in the transaction for purposes of applying the use caps of the members to the cooperative IFQ that is being transferred between the crab harvesting cooperatives.

*Comment 91:* The application of a ownership cap to intercooperative transfers at § 680.21(f) actually has the potential to disadvantage cooperative members and minimizes the potential efficiencies, in comparison to individual IFQ harvesters. The Council motion does not appear to effectively limit the IFQ that cooperative members could lease, in addition to the individual membership ownership caps. A lease is the use of an annual allocation that is generated in association with QS. In this circumstance it is not clear that it necessarily involves the possession of the QS which would trigger its application. Five unique QS holders, each fishing their own vessel, have the opportunity to collectively harvest twice the ownership/use cap as a cooperative association of the same number of individuals. This issue is important and deserves to be addressed in light of the objective to promote cooperative membership, minimize management complexity, and promote efficiencies in the long term.

*Response:* Amendment 18 does limit the amount of IFQ that crab harvesting cooperative members can lease through the application of the use caps to intercooperative transfers of IFQ. Use caps apply to both the QS and the IFQ a person holds. Amendment 18 clearly states that transfers (*i.e.* leases) of IFQ between crab harvesting cooperatives will be undertaken by the members individually, subject to use caps. Requiring an intercooperative transfer to occur through members is necessary for the application of the use caps. Section 313(j) of the Magnuson-Stevens Act

requires NMFS to implement the Program provisions as specified in Amendment 18. Note that although Amendment 18 uses the term 'ownership caps', in the final rule NMFS uses the term 'use caps' because persons do not own QS or IFQ.

*Comment 92:* The term "crab harvesting cooperative," which is used frequently throughout the rule, is not defined at either § 679.2 or § 680.2. The final rule should include definitions for "FCMA crab harvesting cooperatives" (made up of those who are eligible to receive "Arbitration IFQ") and "non-FCMA crab harvesting cooperatives" which would be limited in scope. Section 680.21(c)(2) should also be revised in a manner that is consistent with this approach.

*Response:* At § 680.2, NMFS has added a definition for crab harvesting cooperative, for the purposes of 50 CFR part 680, to mean 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. NMFS has also added a definition for FCMA cooperative, for the purposes of 50 CFR 680, to mean a cooperative formed in accordance with the Fishermen's Collective Marketing Act of 1934 (15 U.S.C. 521). Additionally, at § 680.20, NMFS has clarified that only FCMA cooperatives can participate in the Arbitration System. See NMFS' response to comment 84 as to why NMFS removed the proposed requirement that crab harvesting cooperatives be FCMA cooperatives.

*Comment 93:* Because of the potential for antitrust violations, two types of crab cooperatives should be allowed to be formed: (1) Unaffiliated cooperatives (FCMA type) that can hold, fish and trade Class A and Class B IFQ and CVC and CPC IFQ and enter into binding arbitration based on their best financial interest and efficiency; and (2) A non-FCMA "operational cooperative" for purposes of economic efficiency of processor affiliates, that allows processor affiliates to form cooperatives for purposes of Class A IFQ fishing but prohibits participation in arbitration and the fishing of Class B IFQ and CVC and CPC IFQ due to antitrust violation potential.

*Response:* The final rule distinguishes between FCMA cooperatives for the Arbitration System at § 680.20 and crab harvesting cooperatives at § 680.21. However, NMFS disagrees that crab harvesting cooperatives with affiliated members should be prohibited from

fishing Class B IFQ and CVC and CPC IFQ. Under the final rule, NMFS will issue Class B IFQ based on the amount of Class B IFQ that would be issued to each member individually, as discussed under comment 89.

*Comment 94:* The proposed rule at § 680.21 prohibits CDQ groups that share ownership of crab vessels with processors from being able to achieve the efficiencies of participating in crab harvesting cooperatives. Also, the proposed rule at § 680.40 prohibits CDQ groups that are affiliated with processors from receiving Class B IFQ. These prohibitions will severely affect CDQ groups who have made investments in crab harvesting vessels jointly with holders of PQS. These regulations will hamper the ability of CDQ groups to further integrate into the processing of king and Tanner crab and to consider processing crab for markets not yet utilized. CDQ groups could not be expected to purchase QS under these regulations that deny them the ability to join a crab harvesting cooperative and the ability to receive unrestricted Class B IFQ.

*Response:* NMFS agrees and has changed the regulations at § 680.21 to allow CDQ groups that are affiliated with processors to join crab harvesting cooperatives. See response to comment 84. Additionally, NMFS has changed the regulations in the final rule at § 680.40(h) to allocate Class B IFQ to persons that hold PQS/IPQ or are affiliated with PQS/IPQ holders. See response to comment 25.

*Comment 95:* Non-FCMA cooperatives are disallowed under § 680.21. If the final rule were to allow processor-affiliated vessels to join a non-FCMA cooperative that could participate in Program benefits, the four unique entity rule would be problematic. A single processor that owns multiple vessels could not form a cooperative because it could not pass the four-independent entity rule stipulated by the Council and by the proposed rule. Note however, the proposed rule applies to FCMA and are silent on Non-FCMA. If the four-entity rule applied to Non-FCMA cooperatives and if Non-FCMA cooperatives were allowed, then processors could cooperate and aggregate processor-vessels across multiple processors. Operational efficiencies intended by the Council require coordinated decision making among harvesters and processors with mutual interest. These efficiencies may be achieved only if Non-FCMA cooperatives are allowed.

*Response:* See Response to comment 84. NMFS has revised the regulations regarding FCMA cooperative formation

and provided additional advice for reducing potential antitrust risk. Non-FCMA crab harvesting cooperatives are permitted under this final rule.

NMFS proposed that any QS holder could be considered a "unique entity" for the purposes of crab harvesting cooperative formation. However, whether the QS holder is a "unique entity" for purposes of meeting the minimum requirement of four unique entities for crab harvesting cooperative membership depends on whether the QS holder is "affiliated" with another entity seeking membership in the same crab harvesting cooperative. NMFS has revised the definition of "affiliation" at § 680.2 to better accommodate the needs of the affected public. However, Amendment 18 does not distinguish between FCMA and non-FCMA cooperatives regarding affiliation and the four unique entity rule. Therefore, the definition of affiliation and the four unique entity rule apply equally to FCMA and non-FCMA cooperatives under this final rule.

*Comment 96:* The proposed regulations at § 680.21(d)(4) provide that IFQ resulting from CVC and CPC QS would be converted to standard IFQ, if the holder joins a crab harvesting cooperative, effectively removing any owner on board requirements for CVC or CPC QS. The motion intended the C share pool to benefit persons actively on board vessels in the fisheries. The final rule should not convert CVC and CPC IFQ to CVO and CPO IFQ when held by a crab harvesting cooperative and should require that the owner of the CVC or CPC IFQ be on board when the crab harvesting cooperative is fishing its CVC or CPC IFQ. Additionally, the regulations should clarify that CVC IFQ issued to a crab harvesting cooperative are not subject to the Class A/Class B IFQ split during the first three years of the program.

*Response:* Amendment 18 states that holders of CVC or CPC QS or qualified lease recipients are required to be on board the vessel used to harvest CVC or CPC IFQ and that CVC and CPC QS holders are eligible to join crab harvesting cooperatives. Amendment 18 does not provide any exemption to the owner on board requirements for CVC or CPC QS holders if the QS holder joins a crab harvesting cooperative. In developing the proposed rule, NMFS, for reasons provided in the preamble of the proposed rule (69 FR 63200, 63228, October 29, 2004), emphasized the Council's intent for crab harvesting cooperatives to maximize efficiencies and benefits through consolidation and collective management of the members' QS holdings by proposing to convert

CVC and CPC QS to CVO and CPO IFQ when held by a crab harvesting cooperative. However, comments received from the Council as well as comments received from the general public indicate that NMFS inappropriately allowed the rationale for maximizing crab harvesting cooperative efficiencies to override the legislated owner on board requirements for holders of CVC and CPC QS or qualified lease recipients. NMFS recognizes that the owner on board requirement is fundamental to supporting active participation in the crab fisheries and was intended to extend to CVC and CPC QS holders if the QS holder joins a cooperative. Therefore, NMFS has removed the requirement that all CVC and CPC QS held by the members of a crab harvesting cooperative be converted to CVO and CPO IFQ. Additionally, the final rule at § 680.42(c)(5) clearly provides that all CVC or CPC QS holders must be on board the vessel at all times when harvesting his or her CVC or CPC IFQ.

NMFS agrees that CVC QS is not subject to the Class A/Class B IFQ split during the first three years of the program. The final regulations clearly indicate at § 680.40(b)(1)(ii) and (h)(6)(ii) that CVC QS and the resulting IFQ will not be subject to the Class A/Class B IFQ split until July 1, 2008. Therefore, any CVC QS committed to a cooperative will not be subject to the Class A/Class B IFQ split until July 1, 2008.

*Comment 97:* The Program pushes all individual harvesters to join cooperatives by providing advantages to cooperative members over individual harvesters, such as in arbitration, price formation, overages, and QS transfer. Harvesters will be forced to join a cooperative in 5 years. While cooperatives will be easier for NMFS to manage, this is not sufficient reason to dictate the structure of how an individual harvester does business. Financial advantages will encourage most harvesters to join crab harvesting cooperatives. It should be a harvester's decision, based on what is best for the harvester.

*Response:* Amendment 18 specifically states that, for IFQ holders that are not crab harvesting cooperative members, leasing would be allowed for the first 5 years of the Program. NMFS does not possess any discretion to vary the implementation of the 5-year leasing provision at this time. Any change to the 5-year leasing provision requires an amendment to the Program and should be addressed through the Council process.

NMFS agrees that management of a few, well-organized cooperatives will be easier than management of multiple individual harvesters. Although the Council and NMFS designed the Program to encourage crab harvesting cooperative membership, membership in a crab harvesting cooperative is entirely voluntary and remains the decision of the individual harvester. Each harvester has the choice whether to join a crab harvesting cooperative based solely on their individual financial and operational needs.

*Comment 98:* It is important that a skipper or crew member's Class B IFQ do not automatically become crab harvesting cooperative shares by virtue of his or her vessel's participation in that crab harvesting cooperative. The decision whether to transfer his or her Class B IFQ to an eligible fisherman on a vessel in a different crab harvesting cooperative or on a vessel not participating in a crab harvesting cooperative must remain open to the skipper or crew member.

*Response:* NMFS agrees. However, during the first three years of the Program, CVC QS will not be subject to the Class A/Class B IFQ split (see response to comment 96). During the first three years of the Program, CVC QS holders will not be able to withhold their Class B IFQ from conversion to Cooperative IFQ when they join a cooperative because no Class B IFQ will exist for CVC QS holders. Therefore, if a CVC QS holder wishes to join a cooperative in any crab fishery during the first three years of the Program, he or she must commit all of his or her IFQ for that crab fishery to that cooperative.

Nonetheless, NMFS believes that allowing CVC QS holders to withhold their Class B IFQ from submission to a crab harvesting cooperative will allow for greater flexibility in fishing those shares and provides the greatest advantage to skippers and crew. Under this rule, the regulations have been clarified at § 680.21(a)(1)(iii)(B) to permit CVC QS holders to withhold their Class B IFQ from submission to a crab harvesting cooperative for use as individual IFQ when joining a crab harvesting cooperative after the third year of the Program.

*Comment 99:* The application of a 10 percent criterion to crab harvesting cooperative membership is unreasonably restrictive, and as a result, the proposed rule runs counter to the key policy objectives of the rationalization program: improved conservation and safety, and increased economic efficiency. The Council could not have intended this result, and there is a strong argument to be made that the

antitrust laws do not require such restrictive criteria, and in fact, that the 10 percent criterion, as applied in the manner provided in the proposed rule, would inhibit, not protect, competition.

This overly restrictive criterion for affiliation unduly limits the formation of crab harvesting cooperatives in the following ways: The effect of the 10 percent criterion will be to prohibit harvesters from participation in crab harvesting cooperatives, if they enter into agreements to invest in PQS; Holders of Class B IFQ who engage in custom processing of that IFQ with their own company, or are affiliated with an entity doing custom processing, including live crab sales, would be prohibited from participation in crab harvesting cooperatives; Holders of harvester QS who invest in any amount of PQS will be restricted to the issuance of only Class A IFQ, and forego market leverage opportunities of Class B IFQ; Under the 10 percent criterion, processors will realistically only be able to transfer or sell PQS to other processors. This will encourage consolidation of PQS among the existing processors and eliminate opportunities for harvester investment in PQS.

The Proposed Rule should allow for affiliated QS holders to participate in non-FCMA "operational cooperatives" for purposes of economic efficiency, but affiliated QS holders should be prohibited from participation in price formation negotiations.

*Response:* Amendment 18, clearly establishes that four unique entities may join to form a crab harvesting cooperative with the requirement that "entities must be less than 10 percent common ownership without common control." The decision to measure affiliation as a linkage between two or more entities with a 10 percent or greater common ownership interest is discussed in NMFS's response to comment 25. As discussed in the response to comment 84, NMFS has modified the final regulations to allow persons affiliated with PQS and IPQ holders to join crab harvesting cooperatives, provided that they are "unique entities" according to the standard set forth in Amendment 18 and under this rule.

The unique entity rule applies to the formation of crab harvesting cooperatives. For purposes of collective negotiation under the Arbitration System, only cooperatives formed under the FCMA may collectively negotiate. The Arbitration System does not permit "affiliated" IFQ holders to participate collectively in an FCMA cooperative for purposes of collective negotiation. Therefore, a crab harvesting cooperative

of IFQ holders without "affiliations" to PQS/IPQ holders that forms under the requirements of the FCMA could collectively negotiate, but a crab harvesting cooperative with affiliated IFQ holders could not collectively negotiate for purposes of the Binding Arbitration procedure under the Arbitration System.

*Comment 100:* Waiving the owner on board provision for C shares within a crab harvesting cooperative as outlined in the proposed rule at § 680.21(d)(4) greatly facilitates the use of those shares in a crab harvesting cooperative as long as the definition of "active participant" is attached to all CVC and CPC QS initially issued and subsequently transferred. "Active participant" means recent participation in a rationalized crab fishery in the 365 days prior to the use of the CVC or CPC IFQ. Class C shares should be kept "on the vessel" so that they not get locked up "on shore," which would happen if the owner on board requirement were dropped in a crab harvesting cooperative without requiring the C share holder to be an active participant in the fisheries. Dropping the owner on board requirement for C shares when in a crab harvesting cooperative greatly improves flexibility for the C share holder, especially in the case of small distant fisheries like St. Matthew blue king crab where, in the case of a small TAC, only a few boats may participate and it may be impossible to accommodate all the C share IFQ holders. Dropping the owner on board requirement in a crab harvesting cooperative will also reduce the burden put on the agency for tracking and managing CVC and CPC IFQ as a separate and distinct type of IFQ in the crab harvesting cooperative. If the active participant requirement were made the sole requirement for holders of CVC or CPC QS in a crab harvesting cooperative, then the CVC or CPC QS holder would only have to provide proof at the time of application for that season's IFQ that they had made a landing in a rationalized crab fishery in the past 365 days, reducing the workload on NMFS management and enforcement during the fishery itself.

*Response:* See response to comment 96. Amendment 18 does not include any exemptions from the owner on board requirement. NMFS agrees with the Council that CVC and CPC QS used in a crab harvesting cooperative is subject to owner on board requirements to be consistent with Amendment 18. NMFS also recognizes that the Council considered CVC and CPC QS owner on board requirements fundamental to supporting active participation in the crab fisheries. The final rule clearly

provides, at § 680.42(c)(5), that all CVC or CPC QS holders must be on board the vessel at all times when harvesting his or her CVC or CPC IFQ.

Nonetheless, NMFS does not agree that the proposed "active participant" designation alone would sufficiently prevent CVC and CPC QS from being fished in a crab harvesting cooperative by absentee owners. Active participation in the BSAI crab fisheries is demonstrated by a landing in a crab fishery in the last 365 days. Documentation of "active participation" includes an ADF&G fish ticket, an affidavit from the vessel owner, or other verifiable documentation. This would allow for an individual to be on board the vessel for a single landing in any given year and remain an absentee owner for the remainder of the year.

*Comment 101:* Because permitting affiliated crab harvesting cooperatives to hold Class B IFQ issued on the basis of membership in the cooperative by non-affiliated harvesters could result in IPQ holder control over Class B IFQ, non-FCMA crab harvesting cooperatives with affiliated members should not be permitted to hold Class B IFQ. Even if a non-FCMA crab harvesting cooperative limits its activity to harvesting allocation, that harvesting allocation function could permit a non-affiliated harvester to assign his or her Class B IFQ to an affiliated harvester, in direct contravention of the Council motion and the fundamental purpose of the Class A/Class B IFQ distinction.

*Response:* Amendment 18 does not preclude the ability of persons affiliated with PQS or IPQ holders from holding Class B IFQ. Prohibiting the issuance of Class B IFQ to a crab harvesting cooperative if it has members who are affiliated with an IPQ or PQS holder is not appropriate given the lack of restriction on affiliated entities that do not join crab harvesting cooperatives. Class B IFQ is not issued to individual members in a cooperative, but rather is issued to the crab harvesting cooperative as a single entity, and the specific use of Class B IFQ by members of a crab harvesting cooperative is determined by internal contractual agreements among members. If a crab harvesting cooperative operates in a manner that results in a violation of antitrust laws, DOJ has the ability to investigate any claims.

The goal of the Class B IFQ allocation is to provide additional negotiating leverage for harvesters when it comes to price negotiation with IPQ holders for their Class A IFQ. Joining a crab harvesting cooperative is a voluntary arrangement and parties to that arrangement should be aware of the

affiliations of the other members of the cooperative. If a person does not want to join a crab harvesting cooperative with affiliated IFQ holders out of concerns about potential use of Class B IFQ by the crab harvesting cooperative, that person does not have to join the crab harvesting cooperative, or could establish private contractual arrangements with other crab harvesting cooperative members concerning the use of the person's Class B IFQ. Allowing affiliated IFQ holders to join crab harvesting cooperatives is not in direct contravention to Amendment 18.

*Comment 102:* Why are CPs exempt from the processor restrictions on cooperative formation and able to fully benefit from rationalization? The answer seems to be that the proposed rule only considered antitrust risk at the point of ex-vessel pricing. Catcher processors are processors and in the AI golden king crab market, they have sufficiently large market share in which collusive marketing behavior could adversely affect the consumer. However, CPs also buy crab from catcher vessels. So, the fact that CPs can join FCMA cooperatives is a double standard. Shoreside processors must pass the standard of zero risk of potential collusion in the ex-vessel market or the first-wholesale market, while at-sea, vertically integrated CPs must pass a lesser standard of no likely price collusion at first-wholesale. Catcher processors need two limited antitrust exemptions: (1) Downstream wholesale pricing, especially in WAI golden crab, where CPs process a majority of the harvest and could adversely impact consumers, and (2) ex-vessel price formation with "over-the-side" purchases. The regulations should be consistent in their treatment of all processors, unless Amendment 18 explicitly differentiates between on-shore processors and CPs.

*Response:* The decision to exclude PQS and IPQ holders from crab harvesting cooperatives but permit CPs to join crab harvesting cooperatives stemmed from the proposed requirement that crab harvesting cooperatives be FCMA cooperatives. As stated in the preamble to the proposed rule, NMFS proposed to prohibit PQS and IPQ holders (or those affiliated with persons that hold PSQ or IPQ) from membership in crab harvesting cooperatives because, at the time of the issuance of the proposed rule, NMFS determined that, while there was some legal uncertainty, there was a significant risk that a crab harvesting cooperative with such members would fail to meet the requirements for FCMA cooperatives and thereby lose the antitrust immunity

provided by the FCMA. The proposed rule did not prohibit CPs from membership in FCMA crab harvesting cooperatives because the risk of inconsistency with the FCMA was less certain. NMFS has revised the regulations regarding crab harvesting cooperative formation by removing the FCMA requirement for crab harvesting cooperatives and permitting affiliated harvesters to join crab harvesting cooperatives, and has provided additional advice for reducing potential antitrust risk (*see* response to comment 84). These changes should eliminate any perceived disparity between the requirements imposed on CPs in relation to those imposed on shoreside processors regarding antitrust risk and participation in crab harvesting cooperatives.

NMFS does not have the statutory authority to impose the limited antitrust exemptions contained in the comment. Furthermore, section 313(j)(6) of the Magnuson-Stevens Act states that nothing in the Magnuson-Stevens Act constitutes either an express or implied waiver of the antitrust laws of the United States.

*Comment 103:* The proposed rule at § 680.21(b)(4) and (5) provides for "all or nothing" membership by a harvester in a single cooperative, thus prohibiting membership in multiple cooperatives in different fisheries. Restricting membership to only one cooperative will limit the ability of participants to achieve efficiencies. Additionally, benefits from leasing across cooperatives are not likely to be as large as membership in multiple cooperatives. This provision should be replaced with a provision that allows one cooperative per fishery or one cooperative per fishery and region to allow harvesters to more efficiently and safely harvest their IFQ.

*Response:* After extensive public comment and further consideration, NMFS has determined that QS holders may participate in more than one crab harvesting cooperative. NMFS initially determined that because the Program would allow unrestricted leasing between crab harvesting cooperatives, each cooperative would be free to focus on harvesting IFQ for the fisheries of its choice and through leasing would achieve the same benefits as allowing QS holders to join multiple cooperatives. NMFS now understands that QS holders would not be able to achieve the same level of efficiency by leasing as they would through joining multiple crab harvesting cooperatives. Additionally, NMFS initially determined that allowing QS holders to join multiple cooperatives would result

in an administratively unmanageable system. NMFS has since developed a method for simplifying the administration of multiple crab harvesting cooperatives.

NMFS also was concerned that if membership were allowed in more than one crab harvesting cooperative it would be easy for QS holders to allocate a nominal amount of IFQ to a crab harvesting cooperative and effectively result in single member crab harvesting cooperatives that undermine the Council's intent for a minimum membership of four entities. In the final rule, NMFS is requiring a QS holder to commit all of his or her QS holdings for a particular fishery for conversion to cooperative IFQ upon joining a cooperative in that fishery. NMFS has concluded that this requirement will deter the nominal donation of IFQ and subsequent formation of single member crab harvesting cooperatives.

Furthermore, NMFS was concerned that bycatch may increase if single-species crab harvesting cooperatives were formed because the crab harvesting cooperative would have to discard all legal crab species for which the cooperative did not possess IFQ. NMFS remains concerned about potential bycatch, but has concluded that diverse QS ownership by members in crab harvesting cooperatives and the ability to lease between crab harvesting cooperatives will help reduce potential bycatch concerns. Finally, NMFS was concerned that crab harvesting cooperative management would be diluted by members who have joined multiple cooperatives resulting in reduced effectiveness managing the harvesting of the cooperative's IFQ. By limiting crab harvesting cooperative membership by fishery, NMFS has concluded that it has sufficiently reduced the potential for membership dilution and has been convinced by public comment that multiple cooperatives can be effectively managed by their members.

Therefore, NMFS has been persuaded by public comment that the reasons articulated in the proposed rule preamble as to why QS holders may only join one crab harvesting cooperative are no longer valid. NMFS has revised the final rule at § 680.21(a)(1)(iii) to permit crab harvesting cooperative membership by a QS holder to one crab harvesting cooperative per fishery. A minimum standard of one crab harvesting cooperative per fishery is necessary to balance NMFS' desire to reduce administrative burden while continuing to allow participants to realize the efficiency benefits of cooperatives.

However, NMFS continues to require that all of a QS holder's IFQ for any fishery must be committed to the crab harvesting cooperative they wish to join. For instance, if a QS holder holds 10 units of IFQ in the Bristol Bay Red (BBR) king crab fishery and 20 units of IFQ in the Western Aleutian golden (WAG) king crab fishery and wishes to join a crab harvesting cooperative in the WAG fishery, he or she must commit all 20 units of WAG IFQ to the WAG crab harvesting cooperative he or she chooses to join. The QS holder may choose to fish his or her BBR IFQ independently or may commit all 10 units of BBR IFQ to a cooperative in the BBR fishery. Therefore, NMFS revised the final rule at § 680.21(a)(1)(iii)(B) to permit QS holders to join one crab harvesting cooperative per fishery, but it requires QS holders to commit all their IFQ to the crab harvesting cooperative in the fishery that they wish to join.

NMFS rejected further restrictions on crab harvesting cooperative membership by region because complicated crab harvesting cooperative relationships based on regional differences may unnecessarily hinder the efficiencies that NMFS is attempting to achieve with multiple crab harvesting cooperatives. Individual crab harvesting cooperatives must ensure compliance with the appropriate regional delivery requirements of crab harvesting cooperative IFQ.

*Comment 104:* The regulations should allow QS holders to be members, simultaneously, of different cooperatives in different fisheries or in the same fisheries in order to maximize economic efficiency and achieve other benefits.

*Response:* See response to comment 103. NMFS has determined that one cooperative per fishery will achieve a balance between minimizing administrative burden while continuing to allow participants to realize the efficiency benefits of crab harvesting cooperatives. NMFS also has determined that one crab harvesting cooperative per fishery is consistent with statutory and Council intent. However, NMFS has determined that membership in multiple crab harvesting cooperatives within a single fishery would result in an administrative burden that outweighs any additional corresponding efficiency benefits to the industry. NMFS has revised the regulations in the final rule to limit QS holders to membership in one crab harvesting cooperative per fishery.

*Comment 105:* The proposed rule at § 680.21(e)(3) provides that all members of a cooperative are liable for violations of any individual member. What kinds

of violations are swept up in this? The Council's intent was to hold all members of the cooperative accountable for violations like exceeding caps, bycatch, etc., not, for example, a personal violation, like a crewmember retaining undersized crab for personal consumption. Nor did the Council intend that one individual's failure to comply with the economic and social data requirements be applied to all members. This accountability needs to be clarified and brought into compliance with Council intent.

*Response:* NMFS has determined that the provision for crab harvesting cooperative joint and several liability as presented in the proposed rule is consistent with the Magnuson-Stevens Act and Council intent. NMFS was directed by statute that monitoring and enforcement of harvest allocations will be at the crab harvesting cooperative level and that crab harvesting cooperative members will be jointly and severally liable for the actions of the crab harvesting cooperative. This means that any violation by any member of a crab harvesting cooperative will be subject to joint and several liability. Joint and several liability means each liable party is individually responsible for the entire obligation, although the parties may decide among themselves how to apportion a particular penalty.

For instance, if NMFS finds an individual cooperative harvester retaining undersized crab, depending on the facts of the case, the harvester and the crab harvesting cooperative may both be the subjects of an enforcement action.

However, payment of fees and submission of an EDR are application requirements that must be completed before a PQS or QS holder may receive IPQ or IFQ. Any QS holder must first receive his or her IFQ before he or she can dedicate that IFQ to a crab harvesting cooperative. A complete application includes the submission of an EDR and payment of any fees. Applications for IFQ must also be timely to be considered by NMFS. If an individual does not receive his or her IFQ because they failed to submit a complete and timely application, no IFQ will exist for that person to convert into crab harvesting cooperative IFQ. Submission of a complete and timely application is not a matter of joint and several liability, but is a matter of individual responsibility and permit administration.

*Comment 106:* The proposed rule, at § 680.21(b)(2), does not apply a standard for a crab harvesting cooperative to reject any QS holder. Because a QS holder loses the benefits of QS

consolidation, leasing after five years, and elimination of the vessel cap, a change needs to be made to the regulations so that private persons may not deny a government benefit to a QS holder. One possibility would be a default cooperative, that any QS holder could join.

*Response:* Amendment 18 clearly directs that membership in crab harvesting cooperatives is voluntary. The term "voluntary" is generally defined as unconstrained by interference or not impelled by outside influence. Consistent with this definition, NMFS did not impose any regulations for membership requirements regarding crab harvesting cooperatives. NMFS took a minimalist approach and determined that no QS holder is required to join a crab harvesting cooperative to receive or harvest IFQ and no crab harvesting cooperative is required to accept a member as a QS holder that the crab harvesting cooperative does not wish to admit. Therefore, the regulations do not address any requirements for acceptance or denial regarding crab harvesting cooperative membership.

If a crab harvesting cooperative denies membership to a person, it is not a denial of a government benefit, but is simply a denial of membership to that person by that crab harvesting cooperative. The government benefit of participation in a crab harvesting cooperative continues to be available to any person regardless of whether the person joins or is rejected from a crab harvesting cooperative. NMFS anticipates that many crab harvesting cooperatives will exist for each fishery. A person rejected by one crab harvesting cooperative could continue to solicit other crab harvesting cooperatives for admission. Given the voluntary nature of crab harvesting cooperatives and the large number of crab harvesting cooperatives that NMFS anticipates will exist for each fishery under the Program, NMFS has determined that the creation of a NMFS sanctioned "default crab harvesting cooperative" is unnecessary.

*Comment 107:* The regulations require a minimum of four unique QS-holding entities for the formation of a crab harvesting cooperative, but do not clearly state that C share holders are considered "unique entities" for the purposes of crab harvesting cooperative formation. Each QS holding individual should be considered a unique entity, whether or not that individual holds some interest in a commonly held corporation. The final rule should clarify that C share holders are considered "unique entities" for the

purposes of crab harvesting cooperative formation.

*Response:* NMFS proposed that any QS holder, including CVC and CPC QS holders, could be considered "unique entities" for the purposes of crab harvesting cooperative formation and has continued this provision in the final rule. However, whether a CVC or CPC QS holder is a "unique entity" for purposes of meeting the minimum requirement of four unique entities for crab harvesting cooperative membership depends on whether the CVC or CPC QS holder is "affiliated" with another entity seeking membership in the same crab harvesting cooperative. If a CVC or CPC QS holder is "affiliated" with another entity seeking membership in the same crab harvesting cooperative, then NMFS will consider the CVC or CPC QS holder and the affiliated entity as representing only one unique entity. Conversely, if a CVC or CPC QS holder is not "affiliated" with any other entity seeking membership in the same crab harvesting cooperative, then NMFS will consider the CVC or CPC QS holder as one unique entity. NMFS has revised the definition of "affiliation" in section 680.2 to clarify that any individual QS holder, including CVC and CPC QS holders, qualify as unique entities for the purposes of crab harvesting cooperative formation provided they are not considered "affiliated."

#### *Community Protection Measures*

*Comment 108:* NMFS is giving away the fisheries resources forever to corporate interests outside of the Aleutians, including Japanese corporate interests with lobbying ties to Washington, DC. This amounts to economic genocide and strips local residents of economic opportunity that would provide them with the ability to continue to live in the region.

*Response:* Allocating QS to fishery participants is a provision of Amendment 18. Section 313(j) of the Magnuson-Stevens Act requires NMFS to implement the Program provisions as specified in Amendment 18. Additionally, the Program contains provisions to allocate the crab resources to Alaskan communities, including communities in the Aleutian Islands. The CDQ allocation increased from 7.5 percent to 10 percent of the TAC, and the CDQ crab species are increased to include Eastern Aleutian Islands golden king crab and Western Aleutian Islands red king crab. Adak will be allocated 10 percent of the Western Aleutian Islands golden king crab fishery, and 50 percent of this fishery must be processed in Adak. These provisions provide local residents with economic opportunities

in the BSAI crab fishing industry to support their ability to live in the region.

*Comment 109:* The Council motion outlines the terms that should govern the management of the Adak allocation of WAI brown king crab. No provision is made in the regulations for management of that allocation.

*Response:* NMFS regulations define the Adak community entity at § 680.2 and provide for the allocation of 10 percent of the TAC of Western Aleutian Islands golden king crab to the Adak community entity at § 680.40(a).

With respect to management or oversight of the use of this allocation by the Adak community entity, Amendment 18 states, in part, a "set of use procedures, investment policies and procedures, auditing procedures, and a *city or state oversight mechanism* [emphasis added] will be developed. Funds collected under the allocation will be placed in a separate trust until the above procedures and a plan for utilizing the funds for fisheries related purposes are fully developed. Funds will be held in trust for a maximum of 2 years, after which the Council will reassess the allocation for further action \* \* \*. Use CDQ type management and oversight to provide assurance that the Council's goals are met. Continued receipt of the allocation will be contingent upon an implementation review conducted by the *State of Alaska* [emphasis added] to ensure that the benefits derived from the allocation accrue to the community and achieve the goals of the fisheries development plan."

NMFS interpretation of Amendment 18 is that the State of Alaska is primarily responsible for oversight of the use of the allocation for fisheries related purposes. Therefore, oversight of the use of the allocation by the Adak community entity for "fisheries related purposes" is deferred to the State of Alaska under the FMP. The FMP contains the Council's motion about oversight of the Adak allocation to provide specific direction to the State. NMFS will have no direct role in management or oversight of the use of the allocation and NMFS will not direct the State through Federal regulations about how to conduct its oversight responsibilities. The State will implement State regulations that are consistent with the FMP. Any persons believing that the State is acting inconsistently with the FMP may follow the appeal procedures in the FMP or raise the issue with the Council and request regulatory action to further clarify or define the State's oversight role.

In addition, the FMP directs the State to conduct an implementation review for the Council to ensure that the benefits derived from the allocation accrue to the community and achieve the goals of the fisheries development plan. The Council's motion did not specify when this implementation review should be conducted. Therefore, it will be up to the Council and the State to determine an appropriate time for this review to be presented to the Council.

*Comment 110:* The proposed rule § 680.40(m) and § 680.41(c) and (d) incorrectly revised the rules of the right of first refusal. The motion clearly identifies the terms of the right of first refusal.

*Response:* NMFS agrees and the final rule has been revised from the proposed rule to remove § 680.40(m) and to reference the civil contract terms for the establishment of ROFR as set forth at section 313(j) of the Magnuson-Stevens Act. A list of contract terms is available from the NMFS Alaska Region Web site at <http://www.fakr.noaa.gov>. This approach ensures consistency with Amendment 18 and is appropriate because NMFS would not monitor or enforce these contract terms.

Regulations at § 689.41(c) and (d) have been revised to more closely reflect Council intent regarding the discretion of an ECC to designate an ECC entity and enter into civil contracts for ROFR.

*Comment 111:* The rationale for having both ECCOs and ECC entities is not clear. The ECCO seems to be the entity that holds shares for a community, while the ECC entity has the right of first refusal. The Council motion contemplates a single entity to serve both of these purposes. In addition, it is unclear that one entity would have the ability to exercise a ROFR, but not be able to take possession of shares on the exercise of that right. In addition, given the administrative burden of the program, it is unclear why the agency would like to oversee additional entities/organizations. The final rule should establish a single entity to hold the right of first refusal and any community shares.

*Response:* NMFS disagrees that Amendment 18 states that a single entity would serve both the ECCO function for purchase and holding of QS and the ECC entity function of representing a non-CDQ ECC in the exercise of ROFR. Amendment 18 states: "Ownership and management of harvest and processing shares by community entities in non-CDQ communities [ECCOs] will be subject to rules established by the halibut and sablefish community purchase program." This

"program" refers to the regulations established under Amendment 66 to the FMP for Groundfish of the GOA for the restrictions associated with the designation of an ECCO, including the requirement that these organizations be non-profit. No such restrictions were set forth in Amendment 18 for an ECC entity. While an ECCO could also serve as an ECC entity, an entity designated by an ECC to represent it in the exercise of ROFR may not meet the conditions and criteria for an ECCO. Thus, an ECC that wishes to purchase QS and designate an ECCO for that purpose could also designate the ECCO as its ECC entity for purposes of ROFR, but is not required to do so.

*Comment 112:* The requirement of a ROFR contract at the time of application at § 680.40(f)(3) and (7) is inconsistent with the Council motion. PQS applicants need to enter the contract only if the ECC entity is designated by a time certain. Instead, applicants for PQS should provide notice to an eligible community that they intend to apply for PQS that could be subject to a ROFR. If the community notifies the agency and the PQS applicant that it has formed an entity (and provides contact information for the entity) the PQS allocation would be made only on completion of the contract establishing the terms of ROFR. If the contract is not executed, the parties could seek remedies in civil court to the extent necessary.

*Response:* NMFS agrees and has changed the final rule to reflect that the designation of an ECC entity is a choice and not a requirement. Only if such a designation is made within 30 days prior to the ending date of the initial application period for crab PQS (§ 680.41(l)) would an ECC have opportunity to exercise ROFR in the future.

*Comment 113:* The contract terms for ROFR at § 680.40(m) are not those in the Council motion. A cleaner approach would be to just copy the Council motion, rather than reinterpret it.

*Response:* NMFS agrees and has removed § 680.40(m) from the final rule and cross referenced section 313(j) of the Magnuson-Stevens Act concerning civil contract terms for ROFR as statute provisions under § 680.40(f)(3). See also response to comment 110.

*Comment 114:* For purposes of implementing the ROFR at § 680.40(m), "movement of shares from a first or second class city, if one exists, and borough, if a first or second class city does not exist," constitutes "movement of shares from the community". Note that this differs from the cooling off period. Clarify provisions that apply to

movement of PQS/IPQ from the community.

*Response:* See response to comment 110. The final rule also has been revised to clarify that the definition of "community" for purposes of movement of PQS/IPQ during the cooling off period has been added to the final rule at § 680.42(b)(4) to differentiate these restrictions from the movement of PQS/IPQ for purposes of ROFR after the cooling off period (see response to comment 136 for additional information on the application of community for the cooling off period.)

*Comment 115:* The provision at § 680.40(m)(2) states that "any sale must be provided on the same terms" to the EEC entity. This wording is not a complete description of the right of first refusal, since the ability to exercise the right applies for a limited period and is exercised by performing the terms, not receiving an offer. Use the language from the motion.

*Response:* NMFS agrees. See response to comment 110.

*Comment 116:* Since ROFR applies to IPQ, the provision at § 680.40(m)(6) should be broadened to include waivers with respect to IPQ. Since ROFR applies to IPQ, the provision at § 680.40(m)(7) should be broadened to include ROFR with respect to IPQ, under the terms of the motion.

*Response:* NMFS agrees. See response to comment 110.

*Comment 117:* It is unclear at § 680.41(c)(3)(i) and (ii) whether the ECCO can hold and transfer PQS. The ECCO should be able to hold and transfer both QS and PQS. Clarify that ECCOs can hold PQS.

*Response:* NMFS agrees that an ECCO can hold and transfer both QS and PQS. Any person, including an ECCO, may apply to receive and hold PQS or IPQ by transfer. The final rule at § 680.41(c)(1)(i) makes this clear. Restrictions exist, however, on who can purchase QS and special provisions for transfer to and holding of QS by an ECCO must therefore be set forth in regulations.

*Comment 118:* The provision at § 680.41(c)(3)(i) and (ii) states that each ECC *must* designate an ECCO. The rationale for this absolute requirement is unclear. Communities have the option of designating an ECC entity, but would waive the ROFR and not be permitted to use the community purchase privilege, if they chose not to. "Must" should be changed to "may".

*Response:* The commenter is confusing ECCO provisions for the purchase of QS with ECC entity provisions for purposes of exercising ROFR. NMFS agrees that a non CDQ

ECC is not required to designate either an ECCO for purposes of purchasing and holding PSQ, IPQ or QS or an ECC entity to exercise ROFR. The final rule at § 680.41(l)(2)(ii) provides a 30-day time limit within which an ECC must designate an ECC entity if it wishes to do so. If an ECC entity is not designated, then opportunity for ROFR by the ECC is permanently waived.

*Comment 119:* The provision at § 680.41(d)(2)(i)(C) requires a statement from an authorized representative of a community that the ROFR has been offered on sale of shares outside a community. Several aspects should be clarified here. First, a signature from an authorized representative is too strict of a requirement. A provision that requires a PQS/IPQ holder that is subject to ROFR to provide notice to ECC entity (and the agency) of the sale is all that should be included here. Otherwise, reluctance to sign the authorization could lead to a delay in the transaction despite proper notice of the sale.

Second, the notice is only required if the sale meets the requirements for the ROFR (*i.e.*, some transfers do not trigger the ROFR). Intra-company transfers, transfers for use in the community, and some transfers of IPQ are not subject to the ROFR. This is not clear from the way the provision is drafted.

Third, somewhere in the regulation the process of completing a sale on which the ROFR is exercised should be stated. Under the Council motion, the ECC entity should notify the PQS/IPQ holder (and agency) of its intent to exercise ROFR (and evidence of its earnest money payment). Then regulations should require confirmation of performance for the agency to finish the transaction. The rule should be changed to only require notice of the transaction to the holder of the ROFR if the proposed transfer is subject to the ROFR. Regulations should be revised to better define the process for exercising ROFR.

*Response:* NMFS agrees and has changed the final rule at § 680.41(h)(2)(i)(C) to clarify that a holder of PQS/IPQ who wishes to transfer any PQS or IPQ subject to ROFR for use outside an ECC that has designated an entity to represent it in exercise of ROFR, must include an affidavit in the application for transfer stating that notice of the desired transfer has been provided to the ECC entity under civil contract terms enacted under section 313(j) of the Magnuson Stevens Act. The final rule at § 680.41(i)(8) and (9) also has been revised to clarify the process for approval of a transfer application subject to ROFR. In summary, 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 general criteria for transfer of PQS or IPQ under § 680.41(i), unless a court order is issued to NMFS to prohibit transfer based on a breach of civil contract terms referenced under § 680.41(f)(3). A 10-day stand down period by NMFS before approval of a transfer should allow sufficient time for an aggrieved signatory to a civil contract for ROFR to obtain a court order to stop a transfer of PQS/IPQ subject to ROFR so that contract terms may be fulfilled through civil court proceedings.

In the case of an application for transfer of PQS within an ECC that has designated an entity to represent it in exercise of ROFR, the Regional Administrator will not approve the application unless either the ECC entity provides 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.

*Comment 120:* The community of Adak does not receive the ROFR. It should be expressly excluded from ROFR at § 680.41(j)(1)(ii).

*Response:* NMFS agrees that the community of Adak is not eligible for exercise of ROFR and noted that elsewhere in the regulations. The suggested regulatory clarification has been made to the final rule.

*Comment 121:* The community does not need to designate an ECC entity. If they do not the ROFR is waived. Change "must" to "may" at § 680.41(j)(2)(ii).

*Response:* NMFS agrees that under Amendment 18, an ECC is not required to designate an entity to represent it in the exercise of ROFR and has changed the final rule at § 680.41(l)(2) to clarify that such a designation is discretionary. Any such designation must be made at least 30 days prior to the ending date for the initial application period for crab PQS. If an eligible ECC does not designate an entity within that time period, opportunity to exercise ROFR for transfer of PQS or IPQ will be permanently waived. NMFS notes that an ECC that is also a CDQ community is not required to designate an ECC entity because Amendment 18 specifically states that the CDQ group to which that ECC is a member also will be the ECC entity in the exercise of any ROFR. See also response to comment 111.

*Comment 122:* Requiring the ECC entity to be a signatory to the transfer at § 680.41(j)(3) is inappropriate and should be removed. A ROFR only requires notice and the opportunity to exercise the right. It may be useful to have PQS holders submit an annual report identifying the amount of IPQ that it used in a community during the year and if used outside a community, who used the IPQ (which would be used to determine whether the ROFR would apply to a future transaction). Require that the transferor provide evidence of notice to the ECC entity.

*Response:* NMFS agrees that an ECC entity does not need to be a signatory to the transfer of PSQ or IPQ and has changed the final rule accordingly; see response to comment 119. To the extent that information on the use of IPQ within and outside an ECC can be publically released under federal and state data confidentiality standards, NMFS will plan to do so on an annual basis. This commitment does not require a regulatory provision.

*Comment 123:* The proposed provision at § 680.41(j)(4) seems to confuse the process of passing on the ROFR to a successor. If the transfer is within the ECC, the recipient of the PQS would need to sign a contract granting the ROFR to the ECC organization (not "exercising the right") and agree to terms concerning the use of the shares in the community in future years. In addition, the ECC entity need not have signed the contract on application. The submission of the contract signed by the recipient of the shares will allow the agency to deliver the contract to the ECC entity for signature. If the ECC entity does not sign the contract the ROFR would be waived. Revise process for intra-community transfers consistent with the Council motion.

*Response:* The final rule at § 680.41(i) clarifies the process for transfer of PSQ within an ECC. See response to comment 119. The final rule at § 680.40(f)(3) also was revised to clarify the role of a civil contract for ROFR in the PQS application process. NMFS will not be involved in the completion of these civil contracts. Instead, an application for crab QS or 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 60 days prior to the end of the application period. If the ECC designates an entity to represent it in the exercise of ROFR in the designated time period, 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(l)(2). Also see responses to comments 121 and 112.

*Comment 124:* The provisions at § 680.41(j)(5) defining the ROFR in the North Gulf need to limit the ROFR to the same terms generally as the general ROFR. This means that the ROFR applies only to the first transfer from the community of origin. These terms are not clear in the current regulation. Revise regulation consistent with the Council motion.

*Response:* The final rule at § 680.40(f)(3)(ii) has been revised to clarify that the civil contracts between the ECC (only the ECC comprised of the City of Kodiak and Kodiak Island Borough is eligible) and applicants for PQS based on legal processing that occurred in the GOA north of a line at 56°20' N. lat. must adhere to the same terms for civil contracts established under section 313(j) of the Magnuson Stevens Act as the general ROFR contract agreements. Also see response to comment 110.

*Comment 125:* The cooling off provision allows IPQ to be used inside the borough, if one exists, and inside the first or second class city, if a borough does not exist. The provision at § 680.42(c)(5) appears to limit use of shares outside of the first or second class city in all cases. Revise provision to define boundaries based on Council criteria.

*Response:* NMFS agrees and has clarified the different definition of "community" to which the "cooling off" period applies at § 680.42(b)(4) that applies specifically to PQS/IPQ transfers during the cooling off period. See also response to comment 114.

*Comment 126:* An initial recipient of PQS (*i.e.*, a shore-based processor) must submit a signed community ROFR with his/her application. The proposed rule at § 680.40(f)(3) and (m), does not address what happens if a community fails to establish an entity to negotiate the community ROFR, or otherwise fails to consummate a ROFR deal with the processor during the application period. There is no remedy for the PQS holder, which runs the risk of losing IPQ for the crab year. The Council anticipated this situation and incorporated language in Amendment 18 that states an ECC (both CDQ and non-CDQ) must establish the entity to negotiate the ROFR prior to the application period; otherwise that community loses its ROFR rights. If an ECC does not establish an appropriate entity within 60 days of the initial

application period, that community loses its ROFR rights.

*Response:* NMFS agrees and has changed the final rule accordingly. See response to comments 121 and 111.

*Comment 127:* The proposed rule's "affiliation" standard adversely impacts CDQ groups and eliminates Council-intended community protection. Most, if not all CDQ groups invested in crab harvesting assets, either as partners or sole owners, following passage of the June 10, 2002, Council motion. They did so cognizant of the fact that the motion assigns CDQ groups the community ROFR rights for PQS earned in their communities, as a form of community protection. But the proposed rule's narrow definition of "affiliation" undermines the community protection from ROFR rights. ROFR rights are rendered meaningless if a CDQ group exercises its ROFR rights and purchases processing assets to keep them in the community. The CDQ crab harvesting investments become "processor-affiliated." Those CDQ vessels and all that may be indirectly affiliated with them lose their Class B IFQ. They may not join cooperatives under § 680.21. They lose all rationalization benefits, like the vessel cap exemption, leasing rights after 2010, and the right to lease IFQ from a cooperative. The Council never intended this benefit deprivation.

The Council anticipated these sorts of problems and established a context-specific definition of "affiliation." With regard to Class B IFQ, the definition focused on control of landings, not the 10 percent rule that is uniformly applied in the proposed rule. The proposed rule should be modified to reflect Council intent. An affidavit approach re-establishes a functional ROFR process; in the absence of it, ROFR is a meaningless right that offers no community protection.

*Response:* In response to other comments, NMFS has revised the final rule to allow processor affiliated vessels to join crab harvesting cooperatives and therefore to gain the benefits from participating in crab harvesting cooperatives. See response to comment 84. Further, the definition of "affiliation" under § 680.2 has been modified to allow crab harvesting cooperatives or other processor affiliated entities to receive Class A/ Class B IFQ in amounts proportional to the amount of IPQ held by the person with whom the QS holder is affiliated. See response to comment 25 for a more specific discussion of this change.

*Comment 128:* The Council recognized CDQ organizations as the ECCO for CDQ communities, because CDQ organizations are already

established to buy, sell and lease QS and other assets in a manner consistent with the NPFMC's intent for this program. Therefore, the rationale for requiring at § 680.41 that a CDQ group apply on behalf of the ECC and also establish a separate ECCO is inefficient and perhaps even inconsistent with Council intent. CDQ groups are already authorized to hold shares for their community(s) and the NPFMC has also given the CDQ groups the right of first refusal. This suggests that the Council motion contemplates a single entity to serve both of these purposes.

*Response:* NMFS agrees that Amendment 18 contemplates that the CDQ group to which an ECC is a member would serve both as the ECCO for purposes of purchasing and holding PQS or QS and as the ECCO for purposes of ROFR. Given the nondiscretionary nature of this designation, CDQ communities do not need to identify either the ECCO or ECC entity because that ECCO or entity already is specified under the Council's motion and in regulations.

*Comment 129:* The requirement that a PQS applicant must submit a signed ROFR prior to PQS issuance at § 680.40 (f)(3) and (f)(7) is not practical in cases where the ECC has not established an ECC entity within the appropriate time frame; or where the ECC entity has overstepped the Council's ROFR terms. The Council specified ROFR contract terms that should be incorporated into the proposed rule. These terms are specific, yet at the same time they do not pose any enforcement liability on the NMFS.

*Response:* The final rule at § 680.41(l) establishes time limitations for the designation of an ECC entity to represent a non CDQ ECC in the exercise of ROFR. Signed ROFR contracts will not be required to be submitted, only an affidavit that such a contract has been completed consistent with the terms set forth under the Council's motion. These terms have been removed from regulations at § 680.40(m) because they are already set forth specifically in statute and to avoid any inconsistency between regulations and statutory language. Additionally, these contract terms will not be monitored or enforced by NMFS. NMFS is requiring PQS holders to submit an affidavit attesting that the contract has been completed. Also see response to comment 112.

*Comment 130:* As an ECC, ROFR rights are very important to our community. But the proposed rule at § 680.41(d)(2)(i)(C) does not implement these rights in a manner that is both clear and consistent with the Council motion. We offer these suggestions:

The ROFR provision in the proposed rule requires a statement from an authorized representative of a community that the ROFR has been offered on sale of shares outside a community. This could be a problem. A provision that requires a PQS/IPQ holder that is subject to ROFR to provide notice to ECC entity (and the agency) of the sale is important and necessary; but the signature-requirement is not. An ECCO's reluctance to sign the authorization could lead to a delay in the transaction despite proper notice of the sale.

Also, the notice is only required if the sale meets the requirements for the ROFR (*i.e.*, some transfers do not trigger the ROFR). Intra-company transfers, transfers for use in the community, and some transfers of IPQ are not subject to the ROFR. The proposed rule needs to be more specific in this regard.

*Response:* NMFS agrees that the ROFR provisions of the proposed rule should be changed to more accurately reflect the intent of the Council and statute provisions of section 313(j) of the Magnuson Stevens Act. The final rule at § 680.41(h)(2)(i)(C) and (i)(8) reflects the recommended changes.

*Comment 131:* The ROFR requirement was approved by the Council to protect a crab community from losing its processing industry. The proposed regulation establishes a timetable that requires a ROFR contract be submitted prior to the award of PQS. This does not meet the intent of the Council and does not aid in the protection of the community. There may be occasions when the proper community entity simply cannot act in a timely fashion and the processor awaiting PQS is penalized by not receiving PQS due to circumstances completely beyond his control. We believe the regulation should be revised to require that the ROFR be fully executed prior to a holder of PQS completing a permanent sale of his PQS.

The proposed regulation also conflicts with Council intent in that it would require the community group or CDQ group to affirmatively reject the option to purchase. The Council motion required the exact opposite—the Council plan required a community group or CDQ group to affirmatively accept the option. The Council interpretation is critical because it requires the community to take action and will protect from community inaction for any reason. The ROFR requirement in the proposed regulation with regard to leasing is inconsistent with Council intent. The proposed regulation states that the ROFR is required if PQS is leased in excess of

one year. The Council test stated that the ROFR arises if the 80 percent of the PQS is leased in any three of five years. The regulation should be revised to reflect that original intent of the Council.

*Response:* The terms of a civil contract for ROFR have been removed from regulations at § 680.40(m), including the terms associated with leasing of PQS referred to in the comment, because these terms are enacted by statute. This approach also avoids any regulatory conflict with Amendment 18 concerning these terms and conditions. See also response to comment 113.

NMFS has changed the final rule at § 680.40(f)(3) and (f)(7) to require only that an affidavit be signed by the PQS applicant that a civil contract for ROFR has been completed. NMFS will not issue an IAD on unverified claims or issue PQS until such an affidavit is received. The final rule also has been changed so that an ECC entity would not be required to affirmatively reject an option to exercise ROFR. See response to comment 119.

*Comment 132:* Add the following definition for a non-profit to § 680.2 to clarify the phrase non-profit organization used in the regulations: Non-profit organization means: (1) An Alaskan municipal corporation in a non-CDQ ECC; or (2) a corporation organized under the Alaska Nonprofit Corporation Act. A municipal corporation is not a profit entity. This definition is consistent with the intent of requiring a non-profit organization to serve as the representative of an ECC and provide a community with the option of designating a municipal corporation as the non-profit organization EEC entity for the ECC.

In smaller communities, establishing a limited purpose non-profit entity for the ECC entity will be inefficient. For example, an additional volunteer board would need to be recruited, separate insurance, legal and accounting services would be required, and the rules for participation in the ECC entity and election and meeting procedures would need to be determined. Allowing a municipal corporation would avoid these inefficiencies because all of the organizational infrastructure is already in place within a municipal corporation. Moreover, publically elected officials, who operate in what they feel is in the best interest of the public, would be the final decision makers.

*Response:* Amendment 18 for community purchase and management of PQS and QS states: “\* \* \* Ownership and management of harvest and processing shares by community

entities in non-CDQ communities will be subject to rules established by the halibut and sablefish community purchase program.” This program was implemented under the final rule implementing Amendment 66 to the FMP for Groundfish of the GOA (69 FR 23861, April 30, 2004). The proposed and final rules implementing Amendment 18 for community purchase and management of crab QS and PQS are consistent with Amendment 66 provisions. Thus, NMFS believes that the commenter's suggestion is inconsistent with Amendment 18 and would require a subsequent FMP amendment to the Program in the future.

*Comment 133:* Section 680.40(f) makes it seem that the ROFR can be used on QS purchase and it should be clarified that ROFR can only be used on PQS and IPQ.

*Response:* NMFS agrees and has changed the final rule accordingly.

*Comment 134:* Clarify at § 680.41(j)(4) that ROFR does not apply for transfers of IPQ inside an ECC.

*Response:* The proposed and final regulatory text only refers to applicability of ROFR to transfer of PQS within a community to maintain the opportunity for ROFR contract provisions between an ECC entity and all PQS holders in the community. NMFS agrees that ROFR does not apply to the transfer of IPQ within a community because this activity only is an annual transfer that maintains processing history within the community. NMFS does not believe that regulatory changes are necessary to clarify this point.

*Comment 135:* The proposed rule at § 680.40(a)(1) stipulates that “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.” CDQ groups strongly support this above provision as a community protection measure under the Crab Rationalization program. The increase in CDQ allocations of Crab species from 7.5 percent to 10 percent is consistent with National Standard 8 of the Magnuson-Stevens Act. National Standard 8 includes the requirement that conservation and management measures, consistent with the conservation requirements of the Magnuson-Stevens Act, take into consideration the importance of fishery resources to fishing communities. This standard establishes the goals of providing for the sustained participation of those communities and of minimizing

adverse economic impacts to the extent practicable.

*Response:* The increase in the allocation of crab TACs to the CDQ Program and the addition of two new CDQ allocations for Eastern Aleutian Islands golden king crab and Adak red king crab are required by section 313(j) of the Magnuson-Stevens Act.

*Comment 136:* ROFR has distinct characteristics that differ between the "Cooling Off" period and after the cooling off period. This is not clear in the proposed rule. If the IPQ holder and the physical processor are in the same community, agency transfer approval should not be required and the activity should not count for purposes of community protections. We believe that the Council intended that use caps and community protections should not be circumvented by the use of custom processing arrangements. We also believe that the Council did not intend to require a formal agency transfer approval for custom processing arrangements in a single community.

*Response:* NMFS agrees. Amendment 18 clarifies that the "cooling off provision" would limit the transfer of PQS or IPQ outside of a community for the first two years of the Program. However, Amendment 18 defines a community for purposes of the "cooling off" provision as "the boundaries of the Borough, or if no Borough exists, the first class or second class city as defined by applicable state statute." NMFS incorrectly applied the same geographic boundaries to both the ROFR provisions and the "cooling off" provisions at § 680.42(b)(4). The commenter's concern is addressed by modifying § 680.42(b)(4)(iv) to clarify the geographic boundaries to which the "cooling off" provisions apply.

#### Arbitration System

*Comment 137:* The provisions in the proposed rule at § 680.20(h)(2)(ii)(B), (h)(3)(iii)(C), (h)(3)(iv)(D), and (h)(3)(v) permit IPQ holders to initiate arbitration. Only IFQ holders are permitted to initiate arbitration under the Council's arbitration program. The final rule should limit arbitration initiation to IFQ holders.

*Response:* NMFS agrees, Amendment 18 and 19 state that the Binding Arbitration procedures can be initiated by the Arbitration IFQ holder only. The reference to the IPQ holder initiating binding arbitration has been removed from § 680.20(h)(2)(ii)(B), (h)(3)(iii)(C), (h)(3)(iv)(D), and (h)(3)(v).

*Comment 138:* CVC QS holders should not be required to be in Arbitration Organizations in the first three years of the program, as required

in the proposed rule at § 680.20(a)(1). In Amendment 18, arbitration is optional for these share holders until July 1, 2008. They could elect to join the arbitration process by joining an Arbitration Organization, but should not be required to join. The final rule should make membership in Arbitration Organizations optional for CVC QS holders prior to July 1, 2008.

Additionally, the reference to paragraph (b)(1) at § 680.20(d)(1) of the proposed rule should be clear that CVC QS holders may (not must) join Arbitration Organizations prior to July 1, 2008.

*Response:* NMFS agrees. CVC QS and IFQ holders may participate in the Arbitration System, but are not required to do so prior to July 1, 2008. This interpretation is consistent with Amendments 18 and 19. NMFS has corrected the final rule at § 680.20(a)(1) and § 680.20(d)(1) to note that participation in the Arbitration System by CVC QS holders is not required prior to July 1, 2008.

*Comment 139:* The proposed rule at § 680.20(a)(2) should not limit negotiations to the preseason period. Although the process for arbitration states that negotiations should be conducted in the preseason, the purpose of that language is to define the matching of shares for purposes of the arbitration procedure. The regulation suggests that IFQ and IPQ cannot be used if parties do not reach a preseason negotiation. Nothing is lost in the arbitration process from allowing voluntary negotiations between holders of uncommitted shares to occur after the season is begun.

*Response:* Amendments 18 and 19 state that "at any time prior to the season opening date, any IFQ holders may negotiate with any IPQ holder on price and delivery terms for that season (price/price formula; time of delivery; place of delivery; etc.)." Although this statement could suggest that the open negotiation process was anticipated to be limited to the preseason period, the use of the word "may" as opposed to "must" would allow the process to extend beyond the preseason period. This statement is made under the general heading of "Last Best Offer Binding Arbitration." It is presumed that the limitation on the use of open negotiations would apply to persons who are using the negotiation methods that are established under the Arbitration System (*i.e.*, share matching and binding arbitration), but not necessarily to those IFQ and IPQ holders who are ineligible to use the Arbitration System or to those Arbitration IFQ holders that have not yet committed shares to a specific IPQ

holder. Under this revision, an Arbitration IFQ holder that has committed shares to a specific IFQ holder would not be permitted to reenter open negotiations as is expressed under Amendments 18 and 19. However, if an Arbitration IFQ holder has not yet committed shares, open negotiation would be available to that person after the season has begun.

NMFS is revising this portion of the regulations at § 680.20(a)(3) to clarify that if Arbitration IFQ holders choose to use the Arbitration System, they may enter into open negotiation prior to, and during the crab fishing season. Once the season begins, those persons who have committed shares to an IPQ holder would be subject to the limitations established under Amendments 18 and 19. Persons who are affiliated with PQS or IPQ holders would continue to be eligible to use open negotiation after the fishing season has begun.

*Comment 140:* The word "uncommitted" has been omitted in front of IPQ in a few places in the proposed rule at § 680.20(a)(3). Only uncommitted shareholders can negotiate deliveries with holders of uncommitted IFQ.

*Response:* NMFS agrees that Amendments 18 and 19 are intended to limit the ability to negotiate to uncommitted IPQ holders. NMFS has changed the final rule at § 680.20(a)(2) to clarify this point.

*Comment 141:* The provision at § 680.20(d)(1)(iv) of the proposed rule permits a person to be a member of only one Arbitration Organization. If a person is only permitted to be a member of a single organization, holders of both IFQ and IPQ cannot meet the requirements of the regulation to be members of separate organizations for IFQ and IPQ. The final rule should be revised to allow membership in one IFQ Arbitration Organization and one IPQ Arbitration Organization.

*Response:* NMFS agrees that the regulations in the proposed rule do not accommodate the situation of a person who holds both PQS/IPQ and QS/IFQ. The regulations at § 680.20(d)(1)(iv) have been modified to allow a person who holds PQS/IPQ to join only one PQS/IPQ Arbitration Organization, a person who holds Affiliated QS/IFQ to join only one Affiliated QS/IFQ Arbitration Organization, and a person who holds Arbitration QS/IFQ to join only one Arbitration QS/IFQ Organization. This section has been renumbered based on responses to comments, and the text to which the commenter refers is now found at § 680.20(d)(1)(iii) not at § 680.20(d)(1)(iv).

*Comment 142:* The provision at § 680.20(e)(2)(ii) of the proposed rule requires the use of the "Share Matching Approach," the "Lengthy Season Approach," and "Binding Arbitration." None of these should be required of all participants since arbitration is intended to be voluntary. The regulation requires Arbitration Organization membership and contracts that define the terms that govern arbitration participation. This provision is over broad. The final rule should be revised to state that participants shall engage in arbitration subject to the rules and to the extent specified in the contracts.

*Response:* The regulations are intended to require that if a member of an Arbitration Organization intends to use the Arbitration System, that member would be required to use the negotiation approaches of open negotiation, Lengthy Season, and Share Matching outlined at § 680.20(h). NMFS agrees that the wording in this regulation may not reflect the intent that members of an Arbitration Organization that choose to use the Arbitration System, may use any of the negotiation approaches that are described at § 680.20(h). Regulations governing the use of the negotiation approaches are already defined at § 680.20(h) and additional contractual requirements on the members of Arbitration Organizations are not required. The regulation at § 680.20(e)(2)(ii) has been removed to reduce confusion and more accurately reflect the Statute.

*Comment 143:* The provision at § 680.20(e)(2)(v) of the proposed rule is over broad and should be deleted. All information generated pursuant to § 620.20 would require each Arbitration Organization to obtain documents that it and its members have no access to.

*Response:* The provisions governing the use of information in the Arbitration System is intended to facilitate the ability of uncommitted IPQ holders to communicate to uncommitted IFQ holders the amount of IPQ that may be available. The role of the Arbitration Organizations in this process is to help ensure that information is communicated to their members in a manner that minimizes the potential risks of violating antitrust statutes. The goal of the information exchange is not to place undue burdens on the participants. NMFS agrees and has modified the regulations so that the delivery of information from uncommitted IPQ holders to the uncommitted Arbitration IFQ holders could be accomplished by requiring Arbitration Organizations to hire administrative personnel or contract with a third party data collection

agency, that does not have a linkage with either the IPQ holders or IFQ holders, for the delivery of that information to Arbitration QS/IFQ Arbitration Organizations. Arbitration Organizations therefore will not be required to obtain documents that their members cannot see in a manner that requires their members to see them. The regulations in this section have been modified to improve the ability of uncommitted IPQ holders to communicate the amount of shares available through the Arbitration Organizations or through a third-party data collection agent. NMFS has renumbered the regulations based on changes from other comments, and has modified and redesignated the text to which the commenter refers to at § 680.20(e)(2)(iv).

*Comment 144:* The provisions at § 680.20(e)(2)(v)(B)(1) and (2) of the proposed rule require the Arbitration Organizations to deliver notices to uncommitted Arbitration IFQ holders. IPQ Arbitration Organizations, however, have no way of knowing who holds uncommitted IFQ. The provisions should be revised so that persons required to deliver notices (1) have access to the names of those required to receive the notice; (2) have access to the information required to be delivered; and (3) are required to maintain confidentiality.

*Response:* This concern has been addressed by modifying the information distribution system as per the previous comment response in comment 143. However, IPQ holders will not be allowed access to information about who holds uncommitted IFQ. All information exchanges will be subject to existing antitrust laws.

*Comment 145:* As drafted, the arbitration requires the Arbitration Organizations to deliver several different notices and pieces of information to members that meet certain criteria. The regulation also places strict limitation on the persons who may receive this information (*i.e.*, only holders of uncommitted IFQ are permitted to receive the terms of the arbitration finding or the identities of the holders of uncommitted IPQ that are parties to an arbitration proceeding). The provisions create a paradox under which the persons (or organizations) required to deliver the notices are unlikely to be able to deliver the notices, because no person would be in a position to receive the information that needs to be disseminated or know the identities of the persons that need to receive the information. The regulations could overcome this problem by providing Arbitration Organizations

with the ability to hire a third party for the delivery of notices. That third party should be required to be independent of any associations with any IFQ holders or IPQ holders (except for the management of Arbitration Organization notices) and be bound to hold all information received confidential.

*Response:* This concern has been addressed by modifying the information distribution system. See response to comment 143.

*Comment 146:* The timeline at § 680.20(f)(4) may not be appropriate for the first year delivery of the arbitration formula. The final rule should allow the same time as permitted at § 680.20(e)(6) for the Market Report.

*Response:* NMFS agrees. The timeline that has been developed may not adequately address the timing of the fishery in the first year of the program. The best available estimate is that QS/PQS and IFQ/IPQ will not be issued until August 1. In order to make the arbitration system available to the participants in the first year of the program, the timeline for joining an Arbitration Organization, selecting the market analyst, formula arbitrator, and formula arbitrator has been modified so that it will occur after the expected date of QS issuance. NMFS has modified the timelines for the Arbitration System in 2005 at § 680.20(c)(3), (d)(3)(i), (e)(6) and (f)(4) and (g)(4)(viii) as follows:

(1) The deadline for QS and PQS holders to join an Arbitration Organization is August 15, 2005;

(2) The deadline for Arbitration Organizations with members who are QS or PQS holders to submit a complete Annual Arbitration Organization Report is August 20, 2005;

(3) The deadline for the selection of the Market Analyst, Formula Arbitrator, and Contract Arbitrators is September 1, 2005; and

(4) The deadline for the completion of the Market Report and Non-Binding Price Formula is September 30, 2005 or 25 days prior to the date of the start of the crab season for that crab QS fishery.

NMFS understands that this new timeline may be problematic for participants in the golden king crab fisheries which typically begin in mid-August. Given these deadlines, the Arbitration System may not be available to participants in this fishery prior to the start of the season given current season opening schedules.

Consistent with Council intent, IFQ/IPQ will not be issued for this or any other crab QS fishery under § 680.20(e)(7) until the market analyst, formula arbitrator and contract arbitrator have been selected. The extent to which these activities can be

completed by mid August will be dependent upon voluntary cooperation among fishery participants prior to issuance of IFQ/IPQ. The time lines in the final rule are deadlines, but the required activities could occur earlier, thus perhaps allowing for issuance of IFQ/IPQ for the golden king crab fishery by mid August. However, if fishery participants cannot conclude these activities by mid August, their IFQ/IPQ will not be issued prior to the August 15 start date, but CPO IFQ will be available for harvest.

Any concern about different start dates for the CV and CP fisheries may be attenuated by a delayed start date in the golden king crab fishery for the first year of the program. A change in the start date of the fishery is deferred to the authority of the State of Alaska Board of Fisheries, and is not addressed in these regulations.

*Comment 147:* Section 680.20(h)(3) describes the arbitration procedure. The regulation should also provide that a single binding arbitration proceeding (excluding quality disputes, performance disputes, and the lengthy season approach) is permitted for each IPQ holder per fishery per year. The final rule should include a provision that limits each IPQ holder to a single binding arbitration proceeding per fishery per year.

*Response:* Amendments 18 and 19 do not provide a specific provision to this effect. However, given the fact that binding arbitration proceedings are limited to arbitration during a five day period that occurs from 15 days prior to the season until 10 days prior to the start of the crab fishing season, the practical effect may be that there is a single arbitration per IPQ holder per crab QS fishery during this five day period. However, this would not preclude additional arbitration proceedings that could arise from a lengthy season approach, quality dispute, or performance dispute. Section 680.20(h)(3) has been modified to note that there can only be one arbitration proceeding for an IPQ holder during this 5-day period.

*Comment 148:* Section 680.20(h)(3)(ii) generally sets out the process by which arbitration is initiated. Although the commitment of shares is defined in the definitions section of the proposed rule (§ 680.2, Committed IFQ and Committed IPQ), the regulation could be clarified, if the process for negotiated commitments were included here. The final rule should include description of commitment definition at § 680.20(h)(3)(ii).

*Response:* As the commenter notes, this process is clarified in the

definitions section. The regulatory text provides that open negotiation is possible until an Arbitration IFQ holder has committed IFQ to an IPQ holder. Once that commitment has occurred, the IFQ holder is subject to the provisions established under the Lengthy Season approach, Share Matching and Binding Arbitration. The regulations at § 680.20(h)(3)(ii) have been modified to more clearly state that once IFQ are committed, open negotiation is no longer possible.

*Comment 149:* The provisions at § 680.20(h)(3)(iii) concerning the “Lengthy Season Approach” should specify that the adoption of this negotiation/arbitration approach is available only to persons that have committed shares. The final rule should require share commitments for participants to use the lengthy season approach.

*Response:* NMFS agrees and has modified § 680.20(h)(3)(iii)(A) to note that the Lengthy Season approach requires a commitment of shares by the IFQ and IPQ holder.

*Comment 150:* The inclusion of the provisions at § 680.20(h)(3)(iii) concerning the “Lengthy Season approach” at this point in the regulations adds confusion to the arbitration process. This paragraph primarily concerns the commitment of shares and the process that share holders undertake preceding, and possibly leading up to, Binding Arbitration. The lengthy season approach is an alternative to that standard procedure. The provisions concerning the lengthy season approach should be included in the contract for the Contract Arbitrators, but as a separate provision outside the process description here.

*Response:* The Lengthy season approach is described as an alternative mechanism to allow for committed Arbitration IFQ holders and committed IPQ holders to negotiate specific contract terms later in the season, or enter into binding arbitration if those processes are unsuccessful. The regulations at § 680.20(h)(3)(iii) have been modified to more clearly state that the Lengthy Season approach is an alternative approach to the standard binding arbitration procedure.

*Comment 151:* The process for arbitration of the lengthy season approach is not well defined in the Council motion. The regulation at § 680.20(h)(3)(iii) should not attempt to specifically define that process. The regulation should state that industry should define the procedure for arbitration of the lengthy season approach, including the timing of the

proceeding and the ability of any IFQ holders to join the proceeding or opt-in to the outcome of the proceeding.

*Response:* The requirements of when binding arbitration may occur under a Lengthy Season approach provide considerable flexibility to the participants. The regulation has not been modified.

*Comment 152:* The provision at § 680.20(h)(3)(iv)(B) of the proposed rule requires an arbitration IFQ holder to commit at least 50 percent of the IFQ held to an IPQ holder to make a unilateral commitment. The provision should provide for the commitment of the lesser of 50 percent of the IFQ held and an amount of IFQ that results in the commitment of all the processor’s IPQ. In the absence of this provision, a harvester may be unable to commit any IFQ to a processor under the provision because the processor does not hold sufficient IPQ to take most of the harvester’s IFQ. In addition, the regulation should consider a lower level than 50 percent for a cooperative to make a unilateral commitment, since a cooperative represents several share holders. A more appropriate threshold might be 50 percent of the average share holding in the cooperative. Revise the provision concerning the minimum commitment. For a cooperative unilateral commitment, a more appropriate threshold might be 50 percent of the average CVO share holding in the cooperative.

*Response:* Amendments 18 and 19 state that the IFQ offered must be a “substantial amount” of the IFQ holders uncontracted (uncommitted IFQ). The 50 percent commitment of shares was based on the assumption that it would represent a substantial amount of shares that a single IFQ holder could commit. NMFS has revised the final rule at § 680.20(h)(3)(iv)(B) to allow for an offer of uncommitted Arbitration IFQ equal to the total amount of uncommitted IPQ available, if that amount is less than 50 percent of the Arbitration IFQ holders uncommitted Arbitration IFQ. Because a cooperative is an association of multiple persons, it is reasonable to reduce the amount of IFQ that a cooperative must commit. Rather than linking this to a percentage of the average IFQ converted by members in the cooperative, a more administratively simple approach would be to require that cooperatives commit at least 25 percent of the IFQ held by the cooperative to an IPQ holder. Because cooperatives are likely to hold larger amounts of IFQ than a single IFQ holder, a 25 percent standard would be a substantial amount of the total holdings of the cooperative, and likely, would be at least equivalent to an

amount equal to 50 percent of any single IFQ holder. This 25 percent threshold for FCMA cooperatives has been added to the final rule at § 680.20(h)(3)(iv)(B).

*Comment 153:* The time period to initiate arbitration at § 680.20(h)(3)(iv) must be limited on both sides, since only one arbitration proceeding is allowed for each processor. The share matching limit of 25 days before the start of the season is intended to also operate as a limit on the ability to initiate arbitration. In the absence of a limit, a harvester could initiate an arbitration proceeding several months prior to the season, which is unreasonable for all parties including other harvesters that may wish to deliver to that processor. The final rule should limit IFQ holders from initiating binding arbitration more than 25 days prior to the season opening.

*Response:* Amendment 18 states a Binding Arbitration proceeding must begin "no later than" 15 days before the season opening date. The regulations at § 680.20(h)(3) are consistent with Amendment 18 and provide that a Binding Arbitration proceeding may begin at any point prior to 15 days before the start of the crab fishing season, except in the case of Share Matching. NMFS agrees it is reasonable to also include a date before which a harvester could not initiate a Binding Arbitration proceeding to limit a harvester's initiating a Binding Arbitration several months prior to the season. NMFS has modified the final rule at § 680.20(h)(3)(v) to include a requirement that the Arbitration IFQ holder must initiate the Binding Arbitration procedure between 25 days and 15 days prior to the date of the first crab fishing season and a requirement that decisions would need to be issued not later than 10 days prior to the start of the crab fishing season. These requirements would effectively provide a 5-day period during which all arbitration proceedings must be decided.

*Comment 154:* The provision at § 680.20(h)(3)(v) needs to limit arbitration to holders of shares that are committed to one another. Revise provision so that an IFQ holder may initiate arbitration with an IPQ holder to which the IFQ holder has committed shares.

*Response:* NMFS agrees and has modified the final rule at § 680.20(h)(3)(v) to more clearly state that arbitration is limited to IFQ and IPQ holders to whom shares have been committed.

*Comment 155:* The provisions § 680.20(h)(3)(v)(A), (B), (C), and (D), which reference the use of Open

Negotiations, the Lengthy Season Approach, Share Matching, and Performance Disputes, do not work here because of the timing of these actions and the timing for initiating arbitration. For example, performance disputes will not arise until during the season, while the arbitration referred to here is limited to preseason. These references should be removed, as the preceding language defining the terms of arbitration are clear. The procedures for the lengthy season approach and performance disputes should be defined in the contract, but not specifically defined in the regulation. Remove the references at § 680.20(h)(3)(v)(A), (B), (C), and (D) to the open negotiations, lengthy season approach, share matching, and performance disputes.

*Response:* NMFS agrees and has changed the final rule at § 680.20(h)(3)(v) to clarify the issue raised in this comment. Section 680.20(h)(3) applies to the timeframe for initiating Binding Arbitration prior to the season, if an open negotiation process is unsuccessful. It does not apply to the lengthy season approach, performance disputes, or quality disputes.

*Comment 156:* There needs to be a limit at § 680.20(h)(3)(vi) of the proposed rule on the time during which a person can join an arbitration proceeding in order to prevent parties joining during the proceeding to disrupt the proceeding. Require the contract with the Contract Arbitrator to specify the terms and timing of joining the proceedings.

*Response:* Amendments 18 and 19 do not specify a time frame by which arbitration proceedings must be initiated. The proposed rule did not specify a particular time during which binding arbitration must be joined, but did note that binding arbitration could be concluded in a fashion so that post-arbitration opt-in could occur. This effectively created the need for an end of arbitration at some point before the end of the season. The contracts that establish the binding arbitration system could include terms that specify a time period during which binding arbitration may be joined. The final rule at § 680.20(h)(3)(vi) has been modified to clarify that the contract with the Contract Arbitrator may specify the terms and timing of joining the proceedings.

*Comment 157:* The ability to join in a binding arbitration under § 680.20(h)(3)(vi) of the proposed rule should be contingent on the IPQ holder having uncommitted shares and the harvester making a commitment of IFQ.

Limit joining by requiring a commitment under § 680.20(h)(3)(iv).

*Response:* The proposed regulations do not explicitly state that this is the case. The final regulations at § 680.20(h)(3)(vi) have been modified to provide that joining an arbitration requires that uncommitted IPQ be available.

*Comment 158:* The rationale for requiring separation of the schedule meeting and the meeting defining terms of last best offers, at § 680.20(h)(3)(vii) and (viii) of the proposed rule, is not clear. It may be that antitrust concerns dictate that IFQ holders that are not part of an FCMA cooperative should not participate in a joint meeting. If that is the case, a provision should be added to that effect.

*Response:* The commenter is correct in that the intent of this provision is to ensure that IFQ holders who are not members of an FCMA should not participate in a joint meeting regarding Last Best Offers. Such joint meetings could increase participant's risk of antitrust violations. The regulations have not been modified, but this response provides the rationale for the structure of the regulations.

*Comment 159:* The provisions at § 680.20(h)(3)(viii), (ix), and (x) should make it clear that the arbitration will apply to all committed IFQ of the IFQ holder and the corresponding committed IPQ of the IPQ holder. The arbitration outcome should decide the delivery terms of all shares that the parties have committed to one another. Revise to make arbitration apply to and fully binding on all deliveries of committed shares of the parties.

*Response:* The regulations have been modified to more explicitly state that the arbitration decision will apply to all committed IFQ of the IFQ holder and the corresponding committed IPQ of the IPQ holder. This modification is made in the final rule at § 680.20(h)(3)(x).

*Comment 160:* Under the provision at § 680.20(h)(5), information flow in binding arbitration is limited to the information submitted by parties and market report and formula. The broad availability of data to IFQ holders under notice requirements and FCMA cooperatives could be argued to create an imbalance in the proceedings.

*Response:* The flow of information in this program is intended to provide both parties to an arbitration adequate access to information. Information being provided to the Arbitration IFQ holders is intended to facilitate their ability to make a last best offer to that IPQ holder within the time frame required and under the limitations that all IFQ holders would be required to make their

last best offer to the IPQ holder at the same time. The exchange of information does not imbalance the information available to either party to make an adequate last best offer. The regulation has not been modified.

*Comment 161:* The provision at § 680.20(h)(8) makes reference to (h)(6)(v), which does not exist.

*Response:* The citation at § 680.20(h)(8) is incorrect and should be a reference to (h)(6). This is corrected in the final rule.

*Comment 162:* At § 680.20(h)(11)(ii) in the proposed rule, using the same procedure for performance disputes as for other arbitration is not possible because of the timing of arbitration and the timing of performance disputes. The specific process should be defined by industry in the contract with the contract arbitrator. The contract with the Contract Arbitrator should define the process for resolution of performance disputes through arbitration.

*Response:* The regulation at § 680.20(h)(10)(ii) has been clarified that applicable procedures in the binding arbitration process would apply to a performance dispute arbitration. The regulation clarifies that the contract with the contract arbitrator would specify the time frame for the process. Due to renumbering of this section, the pertinent regulation is now found at § 680.20(h)(10)(ii).

*Comment 163:* At § 680.20(h)(11)(iii) in the proposed rule, it is unclear how arbitration can be “unsuccessful”. The reference to “unsuccessful” arbitration should be removed or explained.

*Response:* NMFS agrees and has removed the reference to unsuccessful arbitration at § 680.20(h)(10)(iii). It does not affect the ability of parties to pursue contract remedies if the contract is not met.

*Comment 164:* Fleetwide arbitration was considered and rejected by the Council in favor of a last-best-offer system built on distinct, independent arbitrations. Yet, the proposed rule § 680.20(h)(3)(i)(D) allows a binding arbitration system that mirrors fleetwide arbitration by violating Council intent concerning the sharing of confidential data. The proposed rule permits a framework in which confidential cost data may be gathered by one harvester Arbitration Organization and shared across all harvester Arbitration Organizations and thus, all harvesters. A single, omnibus FCMA cooperative is allowed to form multiple Arbitration Organizations (AOs), each under the leadership of member(s)—or representative(s)—in-common with the FCMA cooperative. Data pertinent to a

bilateral price dispute could be shared back to the FCMA cooperative. The entire membership of the FCMA cooperative would be allowed to see the cost data from all processors. Furthermore, the Contract Arbitrator “*must receive and consider all data submitted by the parties*” (see § 680.20(h)(4)(iii)), including data that are not germane to the bilateral dispute. Each AO may invoke Binding Arbitration to collect processor cost data rather than resolve price disputes.

There are compelling economic incentives for harvesters to structure such a fleetwide system of mandatory Binding Arbitration in order to capture cost of production data from all processors. This possibility poses a serious antitrust/anti-competitiveness risk. It also clearly violates Council intent that Binding Arbitration is the last resort to resolve failed price disputes.

Sharing of Binding Arbitration data in violation of Council intent is manifest in the proposed rule. For example the Contract Arbitrator is also allowed to share information with parties other than those engaged in the Binding Arbitration, violating the Council’s confidentiality requirements. The proposed rule, at § 680.20(h)(6)(iii) requires the contract arbitrator to provide NMFS with confidential information. Yet, Amendment 18 unambiguously stipulates the contrary.

In sum, the proposed rule allows and promotes: (a) Fleetwide Binding Arbitration that was rejected by the Council, (b) sharing of proprietary and confidential data that poses serious antitrust and anti-competitiveness risks, and (c) dispute resolution between two parties based on information regarding disputes between other parties. To resolve this problem, no member common to an FCMA cooperative may be involved in more than two arbitrations (two because of the 50 percent matching rule). This requirement would mean the language at § 680.20(h)(3)(i)(D) must be eliminated or revised to prevent sharing and collecting cost data from multiple processors. More generally, information sharing should be restricted only to the specific parties of the Binding Arbitration, per the Council intent.

*Response:* The Arbitration System is designed to permit members of an FCMA cooperative to participate cooperatively. Amendments 18 and 19 provide “[a]ny parties eligible for collective bargaining under the FCMA will be eligible to participate collectively as a member of that FCMA cooperative in binding arbitration.” Amendments 18 and 19 also provide

that “[a]ll participants to an arbitration shall sign a confidentiality agreement stating that they will not disclose any information received from the arbitrator.” The rule establishes that members of an FCMA cooperative that are engaged in an arbitration may arbitrate collectively as part of the FCMA cooperative (see § 680.20(h)(3)(i)). The Program does not amend the FCMA or existing antitrust laws of the United States. Under the FCMA, cooperative negotiation is permissible. The regulations also require that the contract among the Arbitration Organizations and the Contract Arbitrator require that members of different FCMA cooperatives shall not participate collectively (see § 680.20(h)(3)(i)(B)). Of course, if otherwise consistent with the FCMA, two cooperatives could combine to form one cooperative and thereby act collectively. The Arbitration Organizations are not directly parties to a negotiation and therefore would not receive information on particular arbitration proceedings during their negotiation. They would be permitted access to arbitration decisions and on the amount of uncommitted IPQ available to facilitate the ability of uncommitted IFQ holders to access data.

Cooperatives may negotiate with several IPQ holders, as may individual IFQ holders and a person may enter multiple arbitrations subject to the limitations of the Arbitration System. This type of negotiation is not prohibited under Amendment 18. NMFS disagrees that the rule permits a framework in which confidential cost data may be gathered by one harvester Arbitration Organization and shared across all harvester Arbitration Organizations and thus, all harvesters. Section 680.20(h)(5) establishes limits on the release of data obtained in an arbitration and limits the release of data. Specifically, § 680.20(h)(5)(iv) limits the release of data by persons in an arbitration proceeding to persons who were not party to that proceeding. The proposed rule has not been modified under this particular comment.

*Comment 165:* The entire Arbitration System in the proposed rule is set up as though it is mandatory, rather than the path of last resort to resolve “failed price negotiations”, as specified in Amendment 18. As such, it is set up as an analog to harvester-only pricing because everyone is forced in. It is unclear what oversight NMFS will have in this process or why it will or should have any oversight of private arbitrations.

*Response:* The Arbitration System is established as a mechanism that is

available to IFQ and IPQ holders if open negotiation fails. The Arbitration System requires contractual arrangements among the various parties that may choose to use the Arbitration System. The requirement that QS holders to join an Arbitration Organization is intended to facilitate cost sharing for the program and provide all fishery participants with a market report and non-binding price formula prior to the start of the season. Once a binding arbitration proceeding is entered, the participants are bound to the contractual requirements for the system. These requirements would be enforced through civil contracts. NMFS would be able to receive information on specific arbitration proceedings for purposes of oversight should concerns arise about the potential antitrust implications of particular proceedings or the Arbitration System as a whole. The rule has not been modified.

*Comment 166:* The binding arbitration procedure described in the proposed rule allows for and provides an incentive for harvesters to join one omnibus FCMA that uses multiple Arbitration Organizations, that could invoke Binding Arbitration for the purpose of securing confidential cost information across all processors, and exert monopoly power, rather than to resolve failed price negotiations. Harvesters would extract maximum rents because they would be able to see all arbitration information across all processors, whereas processors would not be accorded the same privilege. This asymmetry is inconsistent with the zero-risk antitrust concerns expressed throughout the document. Most importantly, such behavior by harvesters would be an antitrust violation.

*Response:* The Arbitration System limits the release of information received during a particular arbitration proceeding to the parties to that arbitration proceeding (see § 680.20(h)(5)). The limit on the release of data ensures that only the parties to an arbitration, that is the Arbitration IFQ holders and IPQ holders that are in an arbitration proceeding, have access to data submitted to the Contract Arbitrator as part of that proceeding. Section 680.20(h)(5) has been modified to explicitly state that persons who are not parties to an arbitration shall not have access to information from that arbitration proceeding, other than the result of an arbitration decision which will be released. This provision is required so that uncommitted IFQ holders would be able to participate in post-arbitration opt-in. Under this revision, an "omnibus" FCMA

cooperative would not have access to an arbitration proceeding unless the omnibus cooperative was directly party to an arbitration proceeding.

If a single FCMA cooperative formed and all members of the cooperative participated in all arbitration proceedings with all IPQ holders, it could be possible for the members of that FCMA cooperative to have access to information from all IPQ holders. If this circumstance did arise, DOJ would have the ability to review the potential antitrust implications of this situation and pursue enforcement actions if necessary. Nothing in Amendment 18 prohibits a cooperative from forming and initiating multiple arbitration proceedings with different IPQ holders. As noted in comment 164, the Program is not intended to amend the FCMA, or other antitrust laws of the United States that permit cooperative negotiations. This is clearly stated in the authorizing language in section 313(j) of the Magnuson-Stevens Act. The rule is not being modified at this time to limit the ability of an FCMA cooperative to participate in multiple binding arbitration proceedings.

*Comment 167:* Mandatory membership in an Arbitration Organization seems OK if the purpose is solely to initiate timely collection of relevant data that would be needed in the event of an arbitration. It should not be the springboard to easy arbitration. Nothing beyond choosing a Contract Arbitrator should be mandatory, unless a party initiates binding arbitration.

*Response:* In order for the Arbitration System to function the Market Report and Non-Binding Price Formula must be generated prior to the start of the season. These documents are intended for use both during the open negotiation stage and during any binding arbitration proceedings. The rule has not been modified.

*Comment 168:* Amendments 18 and 19 give no authority to NMFS to collect confidential, proprietary information. And contrary to the justification given in the preamble, DOJ has no authority to oversee private negotiations. Their authority only arises in the event that one of the parties claims an antitrust violation. Amendments 18 and 19 clearly state that binding arbitration is between private parties and enforced through civil damages. Furthermore Amendment 18 states "Oversight and administration of the binding arbitration should be conducted in a manner similar to the AFA cooperative administration and oversight." There is no similar DOJ oversight under AFA.

*Response:* The provision of information to NMFS, under

§ 680.20(h)(6), is not inconsistent with Amendments 18 and 19 and is consistent with the legislation that enacted the Program. Section 313(j)(6) of the Magnuson-Stevens Act provides that NMFS, in consultation with the DOJ and FTC shall develop a data collection program necessary "to determine whether any illegal acts of anti-competition, anti-trust, or price collusion have occurred among persons receiving individual processing quota under the program." This provision has been interpreted to allow the agency to gather information that may be required to assist DOJ and the FTC in their review process. The final rule has not been modified.

*Comment 169:* The "fleetwide" arbitration system was considered and rejected by the Council in favor of the "last best offer" system, which is built on distinct, independent arbitrations. Each arbitration is between one IPQ Holder Arbitration Organization and one or more IFQ Holders in an Arbitration Organization, to determine the price and delivery terms for the specific IFQ Shares committed between those quota holders in the share-matching period. Amendment 18 requires information used and exchanged in an arbitration to be kept confidential to the parties and must not be shared outside the arbitration, even within a cooperative. The Council's confidentiality requirement and its rejection of fleetwide Binding Arbitration can be subverted by the data verification standards § 680.20(h)(6)(iii) and (iv) and by allowing multiple Arbitration Organizations to negotiate on behalf of an Omnibus FCMA bargaining cooperative § 680.20(h)(3)(i)(D).

The proposed rule, at § 680.20(h)(5), not only: (a) Allows a fleetwide arbitration by organizing a fleetwide FCMA cooperative that forms multiple Arbitration Organizations, but (b) allows those Arbitration Organizations to negotiate separately with all IPQ Holders. Such a possibility has antitrust implications by allowing the FCMA to collect cost data from all processors involved in binding arbitration. The proposed rule needs to be rewritten to prevent antitrust risk stemming from binding arbitration design/organization.

*Response:* This comment has been addressed in the responses to comments 164 and 166.

*Comment 170:* Why are open negotiations, in the proposed rule at § 680.20(h)(3)(ii), limited to the period prior to the season? Why can't negotiations on price and delivery terms occur anytime throughout the season? And why are they limited to

uncommitted IFQ/IPQ? Surely disputes could arise mid-season? Suppose wholesale prices rose dramatically mid-season. Surely all crew would want to re-negotiate contracts, unless the original contract stipulated an automatic adjustment mechanism.

*Response:* This comment has been addressed in response to comment 148. While it is possible that mid-season disputes could arise and parties would want to renegotiate terms, those terms could be addressed by stipulating that adjustment mechanisms, retroactive payments and the like could be part of the original contract. The rule has not been modified.

*Comment 171:* The proposed rule language at § 680.20(h)(3)(ii)(B) needs to be revised and clarified. It states “party to the contract” may initiate arbitration, yet, no “contract” is identified. The proposed rule at § 680.20(h)(1) refer to the bilateral (IFQ and IPQ holders) contract with the Arbitrator. Yet, only an IFQ Holder may initiate arbitration. Does this allow IPQ Holders to do so, and with which IFQ shares? Also, the language “with all Arbitrators in that fishery” is confusing. We presume this phrase means that the IFQ and IPQ Arbitration Organizations must choose one Arbitrator from the set of all Arbitrators. If this is the intent, it is unclear. Alternatively, this language could imply fleetwide arbitration, which violates Council intent.

*Response:* The regulation at § 680.20(h)(3)(ii)(B) has been modified to more clearly state that only the Arbitration IFQ holder may initiate arbitration. An IPQ holder cannot initiate an arbitration proceeding. The regulations at § 680.20(h)(3)(v) have been modified to more clearly state that an Arbitration IFQ holder can select “a Contract Arbitrator.” The intent is that only one Contract Arbitrator would participate in each arbitration proceeding.

*Comment 172:* Revisions are needed to § 680.20(h)(3)(iv)(B) of the proposed rule because the 50 percent share matching requirement was intended to limit frivolous and repeated arbitrations. Under the proposed rule, an omnibus FCMA cooperative can form, which may in turn form multiple Arbitration Organizations, each satisfying the 50 percent matching rule. Then, the omnibus FCMA would enter Binding Arbitration with EVERY processor. This structure would allow every harvester in the FCMA to see every processor’s data, thus creating a serious antitrust risk. Furthermore, it creates an incentive to violate the Council intent that Binding Arbitration is the option of last resort to resolve failed price disputes.

*Response:* The response to this comment was addressed in comment 166.

*Comment 173:* The proposed rule at § 680.20(h)(3)(iv)(D) suggests there would be two Contract Arbitrators, one for the IFQ holders and one for the IPQ holders? If so, how is one picked to conduct mediation/binding arbitration, if the parties cannot agree? How are bilateral disputes between two contract arbitrators to be resolved? This language needs to stipulate a single Contract Arbitrator is mutually chosen to comply with Amendment 18.

*Response:* The choice of the Contract Arbitrator(s) is addressed under § 680.20(e)(4) and is conducted prior to the start of the season. The Contract Arbitrator(s) selected for a fishery must be chosen by mutual agreement of the PQS holders and QS holders in the fishery. NMFS has determined that 50 percent of the PQS holders and 50 percent of the QS holders must agree to select the Contract Arbitrator(s). This process is intended to ensure that a pool of mutually acceptable Contract Arbitrator(s) is available for selection if a binding arbitration proceeding begins. The regulations at § 680.20(h)(3)(v) do not state how the Contract Arbitrator for a specific binding arbitration proceeding is selected. The regulations at § 680.20(h)(3)(v) have been modified to establish that the Arbitration IFQ holder would select the Contract Arbitrator subject to terms established in the contract among the Arbitration Organizations and the Contract Arbitrator. Because the Arbitration IFQ holder initiates the binding arbitration process by notifying the IPQ holder and the Contract Arbitrator, the choice of the Contract Arbitrator most appropriately lies with the Arbitration IFQ holder. Otherwise, the initiation of an arbitration proceeding could be delayed.

*Comment 174:* The proposed rule at § 680.20(h)(3)(v) states that Arbitration initiation must occur more than 15 days pre-season and that either an IFQ Holder or an IPQ Holder may initiate arbitration. Does this occur only after “share-matching” has occurred under § 680.20(h)(3)(iv)? If not, how are the IFQ and IPQ shares identified?

*Response:* The regulations at § 680.20(h)(3)(v) have been modified to state that the Arbitration IFQ holder initiates the binding arbitration proceeding. The timing of a binding arbitration proceeding is after the share matching process. Under the regulations at § 680.20(h)(3)(iv), share matching may begin at any point after 25 days prior to the start of the crab fishing season. The revised regulations at § 680.20(e)(2)(v) establish an

information release mechanism that requires uncommitted IPQ holders to notify Arbitration IFQ holders of the availability of uncommitted IPQ shares. This regulation has been modified to indicate that this notification must occur beginning not later than 25 days prior to the start of the crab fishing season so that the process is in place for share matching. The arbitration process described at § 680.20(h)(3)(v) establishes that the binding arbitration must begin not earlier than 15 days prior to the start of the season. The share matching process would begin first, if the Arbitration IFQ holder and IPQ holder agree on terms then binding arbitration is not necessary, if not then the process established under binding arbitration would begin. The rule stipulates that there would be one arbitration proceeding per crab QS fishery during this initial phase of the arbitration.

*Comment 175:* The proposed rule at § 680.20(h)(3)(vi) should be revised and clarified to conform to Council intent. It states that any IFQ holder may join an arbitration. How are IFQ holders notified? When may they join—only at the beginning? Does a joining IFQ holder receive any information on the failed price negotiations? From whom? Can a cooperative IFQ holder commit more QS to that arbitration once it has begun? An IFQ holder in failed price negotiations must be limited in an arbitration to the shares it submitted in the share-matching period. The purpose of the share-matching period was to link IFQ holders with IPQ holders so that further negotiations (after the open period) or mediation could take place after the number of IFQ and IPQ were committed. Arbitration would then occur for those shares if mediation failed. The purpose of the requirement at § 680.20(h)(3)(iv)(B) for an IFQ holder to submit at least 50 percent of its shares when doing share-matching was to prevent gaming the system. A cooperative IFQ holder must be limited in share-matching, mediation, and arbitration to the IFQ that it submits to share-matching.

The Council concept is that specific IFQ holders would commit shares to a specific IPQ holder and that those shares were committed to the entire process of share matching, mediation, and arbitration. None of the shares could be removed from that process and no additional shares could join that process. The share-matching period begins only twenty-five days prior to the season opening, and the last day for an arbitration decision is five days before the season. In a twenty-day period, there is no time for adding or subtracting shares from the process. No additional

shares should be added after the share-matching period.

*Response:* NMFS has modified the final rule at § 680.20(h)(3)(v) based on several other comments to clarify that there is one arbitration process per crab QS fishery prior to the start of the season for each IPQ holder, that an Arbitration IFQ holder with uncommitted IFQ may join a Binding Arbitration proceeding, and that an Arbitration IFQ must commit shares in order to participate in the share matching process. The process for an Arbitration Organization or third party to notify the Arbitration IFQ holder of uncommitted IPQ shares that are available for matching is provided at § 680.20(e)(3)(v).

Based on a previous response to comment, NMFS has revised the final rule at § 680.20(h)(3)(x) to require that the arbitration decision is binding on all the committed shares that are applied in the binding arbitration proceeding. The regulations have been modified at § 680.20(h)(3)(vi) to note that once Arbitration IFQ or IPQ are committed to a binding arbitration proceeding they cannot be uncommitted to that arbitration. The time frame established under the binding arbitration process limits the ability of Arbitration IFQ shares and IPQ shares to enter this initial arbitration proceeding. Once this binding arbitration proceeding has been completed, uncommitted IFQ holders may choose to opt-in and commit their IFQ to the IPQ holder if uncommitted IPQ is available under the provisions established at § 680.20(h)(9).

*Comment 176:* Data confidentiality at § 680.20(h)(3)(iv)(B) is problematic. There is an inconsistency between § 680.20(h)(4)(ii), which says "The Contract Arbitrator's decision may rely on any relevant information available. \* \* \*", and § 680.20(h)(4)(iii), which says "The Contract Arbitrator must receive and consider all data submitted by the parties." This broad provision allows submission and mandatory consideration of information about other arbitrations from participants in those other arbitrations. That must not be allowed. It is a clear violation of Council intent that arbitrations are bilateral. The fact that an Arbitration Organization can be engaged in more than one BA, or that one FCMA may be involved in as many binding arbitrations as there are processors in each fishery, implies that the Binding Arbitration might not be based solely on information germane to the bilateral dispute. Under this scenario, an IFQ holder could provide the results of a different arbitration or the information used in a different arbitration (an IFQ holder apparently

may participate in more than one arbitration since it could commit 50 percent of its shares to two different processors). An IFQ holder could secure and provide to the Arbitrator any IPQ holder cost data discovered during a different arbitration. There is no justification a Contract Arbitrator is to receive and consider information about other arbitrations or participants in those other arbitrations.

Assurance that data/information used in an arbitration remains confidential to the Binding Arbitration parties is essential but not guaranteed by the proposed rule. Sharing any of that information/data outside the arbitration or within a cooperative must not be allowed. Prevention of this possibility requires that no party invoking Binding Arbitration may be party to more than two binding arbitrations, directly or indirectly (50 percent rule). The proposed rule improperly suggests the Contract Arbitrator may share information and data with other parties § 680.20(h)(4)(iii). This allowance needs to be removed.

*Response:* Amendments 18 and 19 authorize the Contract Arbitrator to consider information received from the parties to an arbitration proceeding. Amendments 18 and 19 state that "The [Contract] Arbitrator will also receive and consider all data submitted by the IFQ holders and the IPQ holder." The Contract Arbitrator may consider other relevant data as well as data received directly from the parties to the arbitration proceeding as is noted in Amendment 18, the Contract Arbitrator "may gather additional data on the market and on completed arbitrations." The provision in the rule is consistent with Amendments 18 and 19.

Amendments 18 and 19 do not contain specific provisions that limit the ability of FCMA cooperatives to collectively negotiate. In fact, Amendments 18 and 19 state that "[a]ny parties eligible for collective bargaining under the Fishermen's Cooperative Marketing Act of 1934 (FCMA) will be eligible to participate collectively as a member of that FCMA cooperative in binding arbitration." This language indicates the Council intended to allow FCMA cooperative members to negotiate collectively. FCMA cooperatives may share information internally in order to collectively negotiate as an FCMA cooperative in a binding arbitration proceeding.

As noted in previous responses, § 680.20(e)(2)(iii) notes that each member of an Arbitration Organization is required to establish a contract with that Arbitration Organization that requires them to sign a confidentiality

agreement with any party with whom they are arbitrating stating they will not disclose at any time to any person any information received from the Contract Arbitrator or another person during the course of a binding arbitration proceeding. This requirement limits the ability of a party to an arbitration to share information gathered during one arbitration proceeding and use it in subsequent arbitrations. This requirement does not restrict an FCMA cooperative or another individual that has uncommitted IFQ from entering into multiple binding arbitration proceedings with multiple IPQ holders. Amendments 18 and 19 do not appear to limit the ability for an IFQ holder to enter into multiple binding arbitration proceedings.

*Comment 177:* The agency has specifically invited comment on the feasibility of basing the structure of the Arbitration System upon intra-industry contracts. I have strong reservations about whether this system has enough governance structure that it will be capable of making the decisions on selecting Market Analysts, Formula Arbitrators and Contract Arbitrators in a timely fashion. There appear to be too many decision points that require collective decision making on a constrained timely, and no safety net in the event that the necessary governance does not develop spontaneously. Reading the proposed rule, I was left confused and skeptical about how it is all supposed to come together.

*Response:* The Arbitration System was designed to meet the guidance in Amendments 18 and 19 that would leave many of the specific decisions about the Arbitration System to be established by contractual arrangements. There is the possibility under this Arbitration System that certain elements could not be implemented if parties do not agree. Specifically, the selection of the Market Analyst, Formula Arbitrator, and Contract Arbitrators require an agreement of at least 50 percent of the PQS and 50 percent of the QS holders. If this agreement does not occur, then the Arbitration System could not be used by IFQ or IPQ holders. Because this Arbitration System is considered to be an essential component of the Program as a whole, the final rule at § 680.20(e)(7) stipulates that CVO IFQ, CVC IFQ after June 30, 2008, and IPQ will not be issued for a fishery until the Market Analyst, Formula Arbitrator, and Contract Arbitrators have been selected. This provision would encourage resolution of potential conflicts. The Market Analyst, Formula Arbitrator, and Contract Arbitrators are intended to be

impartial third parties that can analyze fishery conditions and mediate disputes, and mutual agreement of qualified personnel should be possible by cooperative agreements.

*Comment 178:* The provisions § 680.20(e)(2)(v)(B)(1) and (2) create a paradox under which the persons (or organizations) required to deliver the notices are unlikely to be able to deliver the notices, because no person would be in a position to receive the information that needs to be disseminated or know the identities of the persons that need to receive the information. The provisions should be revised so that persons required to deliver notices (1) have access to the names of those required to receive the notice, (2) have access to the information required to be delivered, and (3) are required to maintain confidentiality.

*Response:* This comments has been previously addressed in response to comment 145.

*Comment 179:* The ability to initiate arbitration should rest exclusively with harvester IFQ holders at §§ 680.20(h)(2)(ii)(B), 680.20(h)(3)(iii)(C), 680.20(h)(3)(iv)(D), and 680.20(h)(3)(v). Section 680.20(h)(3)(ii) limits negotiations to "prior to the date of the first crab fishing season". Negotiation should be permitted at any time, including after the season opens, as long as participants are not committed to another share holder.

*Response:* This comment has been previously addressed in response to comment 139.

*Comment 180:* There are two problems with § 680.20(h)(3)(iv)(B).

(1) This provision requires an arbitration IFQ holder to commit at least 50 percent of the IFQ held to an IPQ holder to make a unilateral commitment. The provision should provide for the commitment of the lesser of 50 percent of the IFQ held and an amount of IFQ that results in the commitment of all of the processor's IPQ. In the absence of this provision, a harvester may be unable to commit any IFQ to a processor under the provision because the processor does not hold sufficient IPQ to take most of the harvester's IFQ.

(2) The regulation should consider a lower level than 50 percent for a cooperative to make a unilateral commitment, since a cooperative represents several share holders. It is quite likely that a cooperative may hold more IFQ than a processor may hold uncommitted IPQ. Further, in attempting to define "substantial" there is no grounds for creating a standard that results in a higher absolute quantity for

cooperative participants than for individuals. A more appropriate threshold would be 50 percent of the average share holding in the cooperative or the average share holding in the fishery.

*Response:* This comment has been previously addressed in response to comment 152.

*Comment 181:* Section 680.20(h)(3)(i)(A) and (B) should refer to "FCMA crab harvesting cooperatives". As written it could be interpreted to narrow the otherwise legal ability of more than one FCMA cooperative to act collectively under the shelter of the FCMA. This ability should not be restricted. It should also be recognized that harvesters are eligible to join an "FCMA marketing cooperative" whether they are in or out of a "FCMA crab harvesting cooperative" and may chose to join an umbrella "FCMA marketing cooperative" which holds no IFQ. Such a marketing cooperative simply engages in collective bargaining to the degree allowed by the FCMA, and its ability to do so should not be restricted by these regulations.

*Response:* NMFS agrees in part. The regulations are not intended to limit the ability of individuals to join FCMA cooperatives to serve different functions. IFQ holders are limited to joining one crab harvesting cooperative for a given fishery, but this is not intended to limit participation in FCMA cooperatives. The limits on FCMA cooperatives participating collectively in a Binding Arbitration proceeding is intended to reduce potential antitrust risks for participants. These restrictions would not limit the ability of a person to participate in an FCMA cooperative for purposes of marketing and still participate in an FCMA cooperative for collective negotiation as long as those two FCMA cooperatives were not collectively negotiating in a Binding Arbitration proceeding. NMFS has modified the regulations at § 680.20(h)(3)(i)(A) and (B) to clarify this point.

*Comment 182:* The proposed regulation should be amended to provide for separate Arbitration Organizations to be formed by unaffiliated holders of QS; holders of PQS; and affiliated holders of QS. The administrative obligations and responsibilities should be detailed in one location and must be material terms in the binding arbitration agreements.

The terms should require the following;

(1) Select and contract with a market analyst, formula arbitrator, and contract arbitrators;

(2) Establish a fund to pay expenses of these persons which are common to all;

(3) Agreement that IPQ shares and IFQ shares committed during the share matching period or during the arbitration cannot be withdrawn; and

(4) Agreement that all information gathered for the arbitration is strictly confidential to the arbitration and participants may not share any information received from the contract arbitrator with anyone.

*Response:* The regulations do require the formation of separate Arbitration Organizations by unaffiliated holders of QS; holders of PQS; and affiliated holders of QS (see § 680.20(d)(1)). The administrative obligations of the Arbitration Organizations are described under § 680.20(d) and § 680.20(e). These provisions stipulate that contractual agreements must be established among the members of the Arbitration Organization.

*Comment 183:* Arbitration Organizations should be given the ability to hire a third party for the delivery of notices regarding uncommitted IPQ for Share-Matching, uncommitted IPQ available for arbitration, and notification to uncommitted IFQ holders of the results of arbitrations involving IPQ holders with remaining uncommitted shares.

*Response:* This comment has been addressed in the response to comment 139.

*Comment 184:* The proposed regulations provide that a contract arbitrator may receive information from any holder of QS, PQS, IFQ, or IPQ on current ex-vessel prices, market prices, for any products, innovations or other matters, but may not share that information with the participants. The contract arbitrator has access to the Market Report for the fishery, which is essential, and should have access to the non-binding price formula. The non-binding price formula is based on the historic data needed to understand the historic division of revenues between harvesters and processors. These two data sources are adequate supplements to the information provided by the arbitration participants. The contract arbitrator should not have access to information from any sources other than the Market Report, the Non-Binding Price Formula, and the information submitted by the parties. Arbitration decisions based on information unknown or unavailable to the parties will completely undercut trust in the arbitration system and may allow arbitrary information into the proceeding.

*Response:* The Contract Arbitrator does have access to the information described under this comment. The ability of the Contract Arbitrator to have access to other data is not limited by this rule, but the Contract Arbitrator is required to consider certain standards during the evaluation of the offers made by IFQ and IPQ holders. This approach is supported by Amendments 18 and 19 which state that the Contract Arbitrator "will gather relevant independently and from the parties," and "will receive and consider all data submitted by the IFQ holders and the IPQ holder."

*Comment 185:* Section 680(e)(2)(iii) requires that each party to an arbitration sign a confidentiality agreement with the other party in the arbitration stating they will not disclose to any other person any information exchanged in the arbitration. If one party is a cooperative, the regulation should also require that the information not be disclosed to other members of the cooperative.

On May 18, 2004, Arnold & Porter provided an antitrust memorandum to NOAA recommending several significant changes in the arbitration program. On May 25, NOAA GC forwarded the memorandum and proposed changes to the Council motion for action in June 2004, which was taken. On pp. 26–30 of the Arnold & Porter memorandum, the authors cited strong concerns with information flow in arbitration. They recommended that the arbitrator be prohibited from sharing with the parties any information that he received from persons outside the arbitration. They also recommended a new requirement for a confidentiality agreement which they noted is standard in commercial arbitrations. The recommendations were based on a concern that sensitive pricing and cost information might be shared with or available to competitors.

In the NOAA GC recommended changes to the Council motion, the confidentiality agreement requirement was added. Part of the rationale states that there is a " \* \* \* risk of antitrust liability if cooperative or members of a cooperative share sensitive competitive information \* \* \* ". Both the Arnold & Porter memorandum and the NOAA GC recommendations point to the possibility of the sharing of sensitive information as a significant antitrust concern. Since it is possible that cooperatives will be formed with large numbers of participants, a single cooperative may be involved in several arbitrations, either in a single year or in succeeding years.

The confidentiality agreement should require that a cooperative protect and

partition confidential information within the cooperative so that only those members affected by a specific arbitration receive information from that arbitration. Although an FCMA cooperative is allowed under the antitrust laws to negotiate prices collectively, the FCMA does not condone all activity that might otherwise be in violation of the antitrust statutes. In the crab program's binding arbitration, an IPQ Holder is required by statute and regulation to participate in an arbitration at the sole discretion of an IFQ Holder. As a practical matter, the IPQ Holder must justify its price and delivery offer with cost data if it hopes to win an arbitration. Since the submission of such data is compelled by the program, in practice, every effort must be made to protect the confidentiality of that sensitive data and information.

*Response:* As the commenter notes, an FCMA cooperative is allowed under existing antitrust laws to negotiate collectively. The ability for an FCMA cooperative to negotiate collectively would be limited if information among members of a cooperative were further limited. The regulations have been modified based on previous comments to clarify that information gained from one arbitration proceeding may not be used in other arbitrations. These regulations are not intended to limit existing antitrust laws. As with all aspects of this program, NMFS, DOJ, and FTC retain the ability to review the conduct of parties and investigate any possible antitrust violations.

*Comment 186:* Some of the regulations in § 680.20 may be seen as limiting the ability of a non-IFQ holding FCMA Coop to act in behalf of other IFQ holding cooperatives and individual harvesters. Clarification should be given so the legal rights of fishermen provided under the FCMA are not truncated by the regulations of this section. The following text should be inserted: "Types of cooperatives governed under this section: The regulations in this section pertaining to non-affiliated harvester cooperatives apply only to crab harvesting cooperatives that have formed for the purpose of applying for and of fishing under a crab cooperative IFQ fishing permit issued by NMFS". Inclusion of this language is consistent with § 680.21 and would help to clarify activities permitted under the FCMA for collective bargaining cooperatives.

*Response:* The final rule at § 680.20(f), (g), and (h) has been modified throughout those paragraphs to note that the ability of IFQ holders to participate collectively is intended to be limited to those persons who are members of

FCMA cooperatives, distinct from the non-FCMA cooperatives that can form for purposes of harvesting IFQ crab.

*Comment 187:* Arbitration Organizations will incur some cost, perhaps substantial cost, preparing for and executing an arbitration proceeding. The proposed rule at § 680.20(e)(2)(vi)(A)(4) provides payment for analysts and arbitrators but does not provide for the sharing of the expenses of the Arbitration Organization initiating the action. Non-member IFQ holders may opt-in to an arbitration result without sharing the full cost of the arbitration. The result is a negative incentive for IFQ holders to support a professional, informed and useful Arbitration Organization. The burden of maintaining such an organization will fall to responsible IFQ holders while freeloaders wait for the smoke to clear and opt-in to the result.

One solution to this problem would be that the opt-in provision would only apply to IFQ holders who belong to the arbitration association directly involved in an arbitration proceeding. IPQ holders can notify other Arbitration Organizations of a proceeding and those organizations can do their own work and bring their own information and price ideas to the table at that time. Their members can then opt-in if they want to. Another alternative would be to allow an opt-in fee set by the arbitrator for IFQ holders who are not members of participant Arbitration Organizations. This alternative may also include opt-ins by affiliated vessels.

*Response:* The costs for engaging in an arbitration could be significant and NMFS agrees that it would be appropriate to consider fees for any post arbitration opt-in. The regulations at § 680.20(h)(9)(A) note that IFQ holders that opt-in do so under the terms of the arbitrated contract. The arbitrated contract could include a provision that requires a proportional payment of fees for any IFQ holder that opts-in to a completed arbitration contract. Limiting the ability of certain IFQ holders to opt-in based solely on their participation in a specific Arbitration Organization would run counter to the overall intent of the opt-in provisions. The regulations at § 680.20(h)(9) have been modified to state that the Contract Arbitrator may set the fees for the IFQ holder opting-in if those fees have not been determined in the Binding Arbitration contract.

*Comment 188:* The provision at § 680.20(2)(e)(vii) is important to avoid antitrust violations for Processors, but why is this provision extend to harvester Arbitration Organizations organized as FCMA collective bargaining associations? It is my

understanding that individual IFQ entities may form an Arbitration Organization with one member. Is that member then prohibited from forming a contract on his own behalf? This provision should apply to processor and affiliated Arbitration Organizations only.

*Response:* The Arbitration Organizations are not permitted to negotiate on behalf of their members to avoid potential complications of allowing associations that are not FCMA cooperatives, and therefore not accorded the antitrust protections of that Act, to negotiate collectively. In the case of an individual who wishes to form his own Arbitration Organization, that individual could still participate in contracts, but the roles of the Arbitration Organization under each contract would be considered separate. If a group of IFQ holders joins an FCMA cooperative and an Arbitration Organization, they could collectively bargain under the name of the FCMA cooperative, but not as the Arbitration Organization. The rule has not been modified.

*Comment 189:* Under § 680.20(e)(4), can Affiliated QS Arbitration Organizations also select “one Market Analyst, one Formula Arbitrator, and Contract Arbitrator(s) for each crab QS fishery” or are they lumped with either harvesters or processors? Since affiliated vessels cannot participate in arbitrations, should they have a voice in the matter? Define role of affiliated vessels in selection of analysts and arbitrators at § 680.20(e)(4).

*Response:* Affiliated QS holders are not permitted to participate in the selection of the Market Analyst, Formula Arbitrator, or Contract Arbitrator(s) as established under § 680.20(e)(4). Those regulations stipulate that only Arbitration QS holders and PQS holders can participate in the selection of these experts. A PQS holder who also holds QS could not participate in this selection process as a QS holder, but could participate as a PQS holder.

*Comment 190:* Because an FCMA collective bargaining association may not be a “harvesting” entity or an IFQ holder, and QS/IFQ holders are allowed to belong to both a harvesting and non-harvesting cooperative, the arbitrator, at § 680.20(g)(2)(iv), should be allowed to meet with representatives (employees and professional advisors) of the collective bargaining association cooperative or with members of that association.

*Response:* The regulations require that the contract with the Formula Arbitrator must specify that the Formula Arbitrator

may meet with members of any FCMA cooperative collectively and shall meet with distinct FCMA cooperatives separately. These requirements are intended to limit the ability of the Formula Arbitrator to meet with members of more than one FCMA cooperative simultaneously. Nothing in the contract requirements would limit the ability of a Formula Arbitrator to meet with members of the same FCMA cooperative and their representatives (employees and professional advisors) at the same time.

*Comment 191:* Under § 680.20(3)(i)(b), members of different crab harvesting cooperatives shall not participate collectively unless they are also members of the same non-IFQ holding FCMA collective bargaining association.

*Response:* NMFS agrees. The regulations have not been modified.

*Comment 192:* At § 680.20(3)(iv) in the proposed rule, a distinction should be made between individual IFQ and cooperative IFQ share matching commitment. I think the idea here is to disincentive frivolous share matching and “fishing expedition” arbitrations, however this provision would restrict the inner machinations of cooperatives whose members wish to harvest “their own” IFQ and to match their shares with traditional markets. It is a disincentive to cooperative and the provision should be modified to exclude harvesting cooperatives.

*Response:* The requirement to commit shares to the IPQ holder has been modified in response to previous comments. Twenty-five percent of the IFQ held by a cooperative would have to be matched. This requirement should permit cooperative members to negotiate internal arrangements adequate for them to establish markets with multiple partners if desired.

*Comment 193:* Independent harvesters who fail to match shares and form a contract or initiate arbitration prior to the arbitration initiation deadline (15-days before the season) may want to “cherry-pick” arbitration results for the highest price. However, if a processor has uncommitted IPQ but did not engage in an arbitration proceeding, this “last man” harvester is at the mercy of the processor and without recourse. This situation can be avoided by a share matching deadline prior to an arbitration initiation deadline or by eliminating the “15-day before the season” deadline for initiating arbitration.

*Response:* This comment has been addressed in response to comment 153.

*Comment 194:* How does one initiate a performance dispute arbitration 15 days prior to the season if there hasn't

yet been any performance to dispute? Remove deadline for initiating arbitration. In addition, a “statute of limitations” restricting performance dispute arbitrations to a reasonable time frame should be included.

*Response:* The time frame for performance disputes has been addressed in response to comment 155. NMFS agrees, that a time frame may be appropriate, but the specific timing of such a limitation is difficult to determine at this time. The contract terms with the Contract Arbitrator can establish a time-frame for an opt-in provision but that does not require a specific regulatory requirement in the regulations. The regulations at § 680.20(h)(9) have been modified to note that the Contract Arbitrator may specify a time-frame by which opt-in may be exercised for a particular arbitration decision.

*Comment 195:* A problem with the opt-in provision is that a single arbitration proceeding may result in multiple arbitration results. The opt-ins will want to join the arbitration with the best result. Again, there is disincentive to participate in the process, as it would be beneficial to sit back and select the highest result. In addition, the processor may not be able to accommodate the delivery terms extended to all the opt-ins (for example the plant capacity may not be adequate to handle the amount of crab required to be delivered between two specific dates). In addition, because affiliated vessels are left without recourse to arbitration, they should be allowed to opt in to an arbitration result provided an appropriate fee determined by the arbitrator goes to the harvester Arbitration Organization conducting the arbitration. Restrict opt-in provision to non-affiliated IFQ holders in the same Arbitration Organization. Allow some flexibility for delivery and perhaps other terms as determined by the arbitrator.

*Response:* The ability of an uncommitted Arbitration IFQ holder to opt-in to the best result is precisely what the opt-in provision is intended to allow. As noted in the response to comment 187, the Contract Arbitrator may establish fees for any opt-in contract. Affiliated IFQ holders are specifically excluded from the opt-in provisions based on concerns about increased risks of antitrust violations that may arise if affiliated members participate in price setting negotiations that could result in information being shared among harvesters and processors.

*Comment 196:* The quality specialist should only determine the quality of the crab, not the price. The quality

specialist may be eminently qualified to make judgments on the quality of crab and at the same time know nothing of crab prices. Section 680.20(h)(12)(ii) should be modified, appropriately.

*Response:* NMFS agrees. The quality specialist should determine the quality of the crab, but would likely be limited on his ability to comment on prices. NMFS has modified the final rule at § 680.20(h)(11) modified to limit the tasks of the quality specialist to that of determining the quality of the crab. Due to renumbering of this section the proposed § 680.20(h)(12)(ii) is renumbered § 680.20(h)(11)(ii).

*Comment 197:* The binding arbitration process should be strictly construed to give full effect to applicable antitrust law, and as a result, processor-affiliated harvesters should be prohibited from participating in the arbitration process. Though the Council motion did not prohibit processors and processor affiliates from participating in the binding arbitration process as IFQ holders, it did acknowledge that there were substantial antitrust concerns with such participation and authorized its prohibition to the extent necessary to comport with antitrust laws. The DOJ has already opined that participation by affiliated IFQ holders would violate applicable antitrust law because the binding arbitration process acts as a collaborative price setting mechanism. The prohibition in the proposed rule is therefore appropriate, both as a matter of complying with the mandate of the Council motion and as a preservation of the binding arbitration objectives.

*Response:* NMFS agrees. Affiliated IFQ holders will not participate in the arbitration process in the final rule.

*Comment 198:* To the extent the proposed rule restricts the ability of cooperatives to collaborate in the binding arbitration process, it does so inappropriately. Throughout § 680.20, cooperatives are restricted from collectively negotiating and sharing pricing information. Nothing in Amendment 18 prohibits cooperation between FCMA cooperatives. To the extent that the post-arbitration opt-in right is meaningful, it would presumably require knowledge of the arbitration decision, and in many cases, this knowledge will only be acquired on an inter-cooperative basis. Blocking the exchange of information under the guise of antitrust protection only serves to limit the negotiation power of unaffiliated harvesters that have formed FCMA cooperatives to counterbalance the pricing leverage granted to IPQ processors under the Program framework. Under applicable antitrust law, however, cooperatives formed

under the FCMA are permitted to engage in marketing activity, both individually and collectively. It is likely that the arbitration process will be deemed marketing activity within the scope of the FCMA cooperative antitrust exemption. Therefore, any prohibition on inter-cooperative negotiation and information sharing contained in the proposed rule should be replaced with a standard that permits such activity to the extent permitted by applicable antitrust law.

*Response:* The limitations on data exchanges is intended to reduce the potential increased risks of antitrust violations that could occur if information is freely traded among cooperatives that are not engaged in the same negotiations. While it may be the case that inter-cooperative information exchange among IFQ holders that are parties to different arbitration proceedings may not be a violation of antitrust laws, the risk of inappropriate information exchange is increased if this activity is specifically condoned. NMFS has adopted a risk averse policy as it pertains to Binding Arbitration. Information on the availability of uncommitted IPQ shares and the results of any arbitration decisions are made available through provisions at § 680.20(e)(2)(iv). This information exchange mechanism should provide an adequate mechanism to ensure that Arbitration IFQ holders with uncommitted shares are apprised of decisions in a timely fashion.

*Comment 199:* Membership in an Arbitration Organization should be permissive, not mandatory, and those who opt not to join should be required to remit their portion of the arbitration expense directly to NMFS. Membership on an Arbitration Organization should be permissive because many stakeholders in the Program cannot participate in binding arbitration or may opt not to do so. Eliminating the mandatory membership in Arbitration Organizations will decrease the overall cost of binding arbitration to the fishery, likely resulting in fewer price disputes.

*Response:* NMFS Disagrees. Amendments 18 and 19 clearly provide that the costs of arbitration are meant to be split among QS and PQS holders. Regulations at § 680.20(e)(2)(vi) establish Arbitration Organizations as a mechanism to ensure that the QS/IFQ and PQS/IPQ holders coordinate in the selection and the payment of the Market Analyst, Formula Arbitrator, and Contract Arbitrator. These costs are shared by all QS/IFQ and PQS/IPQ holders because the results of the Market Report, Non-Binding Price Formula, and the Contract Arbitrator are

available to all fishery participants. The costs of entering a lengthy season approach, share matching, Binding Arbitration, quality and performance disputes are established through the Arbitration Organizations. The Arbitration Organizations may establish methods for assessing increased fees to IFQ or IPQ holders that use a lengthy season approach, share matching, Binding Arbitration, quality and performance dispute mechanisms relative to other IFQ or IPQ holders that do not use those mechanisms. The specific method for sharing fees among the IFQ and IPQ holders may be determined by negotiation among the various Arbitration Organizations.

*Comment 200:* Consistent with the assertion that membership in Arbitration Organizations should be voluntary, the requirement at § 680.20(e)(vii) that transfer of QS, PQS, IFQ or IPQ be conditioned on the transferee's membership in an Arbitration Organization should be eliminated. This provision creates a condition to transfer eligibility that is dependent on resolution of private contract negotiations. To the extent negotiation of Arbitration Organization documents are contentious, this requirement diminishes the negotiating power of individuals in a position to receive QS or IFQ by transfer. Moreover, because this provision conditions the transfer of a Federal harvesting privilege on acts beyond the control of either the applicant or the agency, it is fundamentally unreasonable and unfair.

*Response:* The intent behind this provision was to ensure that if QS/IFQ or PQS/IPQ is transferred after the Annual Arbitration Organization Report or the start of the season that the recipient of that QS/IFQ or PQS/IPQ has fulfilled the requirements necessary in order to participate in the Arbitration System, including the payment of fees. The commenter is correct in that this requirement could limit the ability of transfers to occur and does condition the transfer on the transferee meeting certain private contractual arrangements. If a person receives QS/IFQ or PQS/IPQ by transfer, there is no requirement that they are members of an Arbitration Organization. NMFS agrees that this transfer restriction as a contract term is not well-suited to meeting these goals. NMFS is revising the regulations to delete this provision and adding a provision at § 680.20(c)(4) that requires that if a person receives QS/IFQ or PQS/IPQ by transfer they are required to join an Arbitration Organization upon transfer. Payment of fees or other cost sharing measures could be established

by the Arbitration Organization for any new members.

*Comment 201:* For the purpose of share matching under § 680.20(h)(3)(iv)(B), a cooperative's offer to match up uncommitted Arbitration IFQ should be deemed substantial if it is 50 percent or more of the average individual IFQ holder's remaining uncommitted Arbitration IFQ, not 50 percent or more if the cooperative's total uncommitted Arbitration IFQ. The proposed rule required that a cooperative seeking to commit Arbitration IFQ make an offer of at least 50 percent of that cooperative's uncommitted Arbitration IFQ. Because this requirement is beyond that expressed in the Council's motion, and because it would decrease the marketability of a cooperatives IFQ and its ability to take advantage of the arbitration process, the proposed rule should be modified to better comport with the Council's intent. And, because the Council's motion focuses on the substantiality of an individual's offer to match up uncommitted Arbitration IFQ, the proposed rule should permit cooperatives to meet this substantiality requirement by making an offer to commit Arbitration IFQ in an amount that is equal to 50 percent or more of an average individual IFQ holder's uncommitted Arbitration IFQ.

*Response:* This response has been addressed in the response to comment 152.

*Comment 202:* In the case of binding arbitration at § 680.20, there is good reason to apply greater restrictions on processor interest than apply elsewhere. The reason is that the exchange of information contemplated by the arbitration process is necessary to its effectiveness, but also an invitation to abuse, if made open to processors.

*Response:* The regulations regarding information exchange in the Arbitration System are intended to minimize antitrust risks to participants in the system while facilitating the exchange of information.

#### *Monitoring and Enforcement*

*Comment 203:* The additional requirements for CPs at § 680.23 will add undue costs to a system that already works. Finding additional space aboard a CP for larger floor scales in the observer area will be problematic, if not impossible. NMFS should adopt the following procedure:

Each day the observer on board the vessel will periodically take a sample and this crab will be held separately. The observer will record the number and total weight of the crab. This crab will be processed separately each day

and the observer and foreman will be available to verify the actual recovery rate of finished product. After 75 percent of the trip is complete, the observer and foreman will agree on an overall recovery percentage and both will sign a statement noting this rate and the process used to arrive at this rate. The final round weight to apply against the IFQ can be determined by taking the total net box weight and dividing it by the agreed upon recovery rate.

*Response:* NMFS disagrees. The method described by the commenter would put additional burden on the observer and would require NMFS to specify observer duties in regulations. Because the State of Alaska is responsible for setting levels of observer coverage and training, NMFS is not able to base a catch accounting system on presumed levels of observer coverage, nor does NMFS believe it is appropriate to specify observer duties in regulation.

*Comment 204:* The requirement for CPs to have internet connectivity at § 680.5(b) as part of interagency electronic reporting system is unreasonably burdensome on CPs for two reasons. First, the technology for reliable at-sea internet connectivity is not yet perfected and may not work in certain sea conditions. These vessels are relatively small by comparison to large trawl vessels and are not well suited to reliable data transfer by satcom internet due to the ship's motion. Second, there is a well tested and reliable data transfer system in place by text over satellite communications systems, and weekly production reports are now transferred in this fashion. Considering the expense and potential for unreliability, CPs should be allowed to report catch data using existing sat-com systems as used in WRPs.

*Response:* NMFS agrees. It was not NMFS' intent to require CPs to submit catch reports over the internet. This final rule amends the regulations at § 679.5(d)(2)(ii) to clarify that CPs are not required to use the Interagency Electronic Reporting System and may use other, NMFS approved, means of reporting catch.

*Comment 205:* The requirement at § 680.5(c)(2) to report daily catch for CPs is unreasonably burdensome and without good purpose. Daily reporting of crab catch is not required of the catcher vessel component of the fleet, reporting is at delivery or landing. Managers will not be using daily catch reports from CPs to manage the fishery but will assume that individual CP catch will be limited to the amount of IFQ they hold. WPRs, offload reports, and transfer logs will be required at the

point of delivery. These will be sufficient for managers and regulators to monitor the activity of the CP sector. Replace a daily catch reporting requirement for the CP fleet with a requirement for weekly report as required in other federal fisheries.

*Response:* NMFS agrees and has amended the final rule at § 680.5(d)(4) to require weekly, rather than daily, catch reporting for CPs. NMFS notes, however, that this change does not relieve the burden upon CPs to accurately account for catch internally on an ongoing basis.

*Comment 206:* The Council Motion recognized that onboard observer requirements for the BSAI crab fisheries should remain deferred to the Alaska Board of Fisheries, as prescribed in the FMP. Therefore, descriptive and regulatory language at § 680.23(h) of the proposed rule, regarding requirements for the provision of observer work stations, should be removed. If these provisions of the regulations, as written, are adopted into regulation, then every time the Alaska Board of Fisheries makes a regulatory change through its cyclic public process, a duplicative or parallel complimentary Council action would be required.

*Response:* NMFS disagrees that Amendment 18 prevents NMFS from implementing standards for observer work areas. While Amendment 18 does defer observer coverage to the State of Alaska, NMFS is responsible for ensuring that quotas are adequately monitored and reported. NMFS does not believe that Amendment 18 prevents NMFS from implementing regulations to adequately monitor and account for catch simply because they benefit or involve the observer.

However, NMFS agrees that duplicative regulations could be confusing and create potential regulatory conflict and such duplicative regulations could be created in the event that the State of Alaska implements regulations governing working facilities for observers on CPs. Further, catch accounting for CPs is based on not only on the round weight of crab as verified by the observer at-sea, but also upon a full accounting of product when the crab is landed. Although NMFS believes that catch accounting accuracy could be improved by implementing standards for the observers' work areas, NMFS concurs that the State should have the opportunity to address this issue. NMFS will revisit the situation in the future to determine whether additional regulations governing observer's work areas are necessary.

*Comment 207:* The requirement to land product processed on board at a

shoreside location in the U.S. accessible by road or regularly scheduled air service should be modified to specifically identify the port of Adak as a designated port. While Adak has regularly scheduled air service at this time, that may change. It is important to golden king crab CPs to have the ability to off-load product at the Adak port, rather than being forced to travel to Dutch Harbor to off-load.

*Response:* NMFS disagrees. There is no reason to suppose that Adak is any more likely to lose regularly scheduled air service than other small communities, such as Akutan, Sand Point, King Cove, or Saint Paul where crab product may be offloaded. All of these communities have received essential air service determinations from the Department of Transportation and are eligible to receive subsidized air service. In the unlikely event that a community where crab product had been offloaded for accounting were to lose regularly scheduled air service, NMFS would work closely with the affected vessels to ensure accurate and affordable catch accounting.

*Comment 208:* A product recovery rate should be an option instead of scales to weigh the catch. This is particularly true for smaller CPs that will have difficulty in installing the scales, due to space constraints and cost. The initial estimated cost of \$100,000 or more will be a significant financial hardship for the small vessel to absorb. The ability to have a product recovery rate established is available and NMFS should move forward with an analysis of this important issue.

*Response:* NMFS intends to further investigate recovery rate based accounting. However, at this time NMFS does not believe that a recovery rate accounting system is appropriate for several reasons. First, recovery rate data exist only for very short periods of the year and only for certain areas. Under a rationalized fishery, NMFS anticipates that fishing will take place during a much longer season and data are not available to predict the extent to which a change in fishing time or area will affect recovery rates. Second, recovery rates vary among vessels for numerous reasons. Most importantly, some vessels glaze crab prior to final packaging while others dry freeze the crab. NMFS would need to either develop seasonal rates, vessel specific glaze rates, or publish rates based on an absence of glaze. Such rates would unfairly debit quota from those boats that do glaze their finished product. Third, any recovery rate based accounting system would require observer coverage levels designed to ensure accurate accounting and an

observer training program. Finally, a rate-based accounting system would require development and specification of product recovery rates. Such a process would needlessly delay implementation of this action.

*Comment 209:* Where are the provisions to catch violators, fine them and jail them? Measures are necessary to prevent harvesters from catching more than they report to NMFS.

*Response:* NMFS agrees that enforcement is an important component of ensuring compliance with fishery regulations, and, therefore, NMFS has implemented monitoring and enforcement measures for this Program. NMFS believes the fines and other sanctions available under the Magnuson-Stevens Act are sufficient to deter unlawful activity.

*Comment 210:* The definition of Processing at § 680.2 should specifically state that deliveries for the purposes of live shipping are allowed. Crab delivered for the purpose of live shipment are not suitable for consumption or storage. In addition, live shipping is not considered "processing" as defined by the USCG. The intent is to continue to allow all typical pre-rationalization product forms.

*Response:* None of the regulations in this rule preclude any crab product form, including live crab, from being produced or shipped. The regulations require that all crab harvested by catcher vessels be landed at, and accounted for by, an RCR. This accounting must take place at the time of offloading and before any processing has taken place. After accounting, the receiver of the crab may ship the crab on in their unprocessed form or produce any product they wish. NMFS' definition of processing is designed to prevent a harvesting vessel from producing a crab product that is suitable for long term storage or whose weight would be different than live, whole crab before that crab has been properly accounted for at the time of landing or, for CPs, reporting.

*Comment 211:* The current proposed harvest overage cap of 3 percent is too low and places harvesters at a disadvantage. The overage cap should be increased to 5 percent.

*Response:* The harvest overage provision of 3 percent is a provision of Amendment 18. Section 313(j) of the Magnuson-Stevens Act requires NMFS to implement the Program provisions in Amendment 18. NMFS does not possess the discretion to alter the harvest overage provision as it exists in statute. Any change to the harvest overage provision requires an amendment to the

Program and should be addressed with the Council.

*Comment 212:* Concerning fishing overages, any overage of three percent or less of the "last trip" should be forfeited, with the proceeds to be dedicated to the observer program. Additional sanctions for overages above three percent may be necessary. Further a post-delivery harvester QS transfer process should be developed to accommodate in-season overages.

*Response:* See Response to comment 18 (post-delivery transfers) and 213 (IFQ overages). Amendment 18 does not direct how penalties will be administered or resolved for any IFQ overages. Nonetheless, NOAA does not have the authority to provide proceeds from any seizures resulting from a violation to any agency other than NOAA. Therefore, NOAA cannot forward any proceeds from IFQ overage seizures to the State of Alaska observer program.

*Comment 213:* The Council motion provides for the forfeiture of any overage from the last trip from a fishery and for penalties for any overage in excess of three percent of the unused IFQ on the last trip. These provisions appear to be missing from the regulation. The final rule should clarify that all overages are forfeited and that overages in excess of three percent are a violation.

*Response:* See Response to Comment 18 on post-delivery transfers. NMFS agrees that Amendment 18 states, "Overages up to 3 percent will be forfeited. Overages above 3 percent results in a violation and forfeiture of all overages." However, as a general policy, NMFS does not include penalties schedules in regulation. Therefore, NMFS has not included any regulatory language addressing overages and this discussion serves to inform the public of their rights and obligations regarding overages that occur during the last fishing trip.

The Council did not provide a carryover provision in this Program similar to the halibut and sablefish IFQ program and harvesters are prohibited from exceeding their IFQ. Thus, NMFS interprets that any overage of any allocation under the program is a violation. This means that NMFS will address any overage through an enforcement action. This is necessary because the Magnuson-Stevens Act requires that a violation must exist in order for NMFS to seize any crab or the proceeds from any crab.

NMFS also interprets the 3 percent statutory provision as a minimum standard by which penalties would be levied under the Program and additional

**DATES:** Written comments must be submitted on or before April 18, 2005.

**ADDRESSES:** Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at [dHynek@doc.gov](mailto:dHynek@doc.gov)).

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument and instructions should be directed to Dianne Stephan, National Marine Fisheries Service (NMFS), Highly Migratory Species Management Division, 1 Blackburn Drive, Gloucester, MA 01930 (phone (978) 281-9397).

**SUPPLEMENTARY INFORMATION:**

**I. Abstract**

Under the provisions of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*), the National Oceanic and Atmospheric Administration's National Marine Fisheries Service (NMFS) is responsible for management of the Nation's marine fisheries. In addition, NMFS must comply with the United States' obligations under the Atlantic Tunas Convention Act of 1975 (16 U.S.C. 971 *et seq.*). NMFS permits fishing vessels and dealers in order to collect the information necessary to comply with domestic and international obligations, secure compliance with regulations, and disseminate necessary information.

Current regulations at 50 CFR part 635.4 require that vessels participating in commercial and recreational fisheries for highly migratory species (HMS), dealers purchasing Atlantic HMS from a vessel, and dealers importing or exporting bluefin tuna or importing swordfish obtain a permit from NMFS. A final rule which will go into effect on July 1, 2005, (69 FR 67268, November 17, 2004) will also require the HMS International Trade Permit (ITP) for international trade of frozen bigeye tuna, southern bluefin tuna, and export of swordfish.

This action addresses the renewal of permit applications currently approved under 0648-0327, including vessel permits for Atlantic tunas, HMS charter/headboats, and HMS angling, and the HMS ITP. In addition, vessel permits for swordfish (directed, incidental, and hand gear) and sharks (directed and incidental) currently approved under collection 0648-0205 will be merged into this collection and renewed; dealer permits for sharks and swordfish currently approved under collection 0648-0205 will be merged into this

collection and renewed; and dealer permits for Atlantic tunas, currently approved under collection 0648-0202 will be merged into this collection and renewed.

**II. Method of Collection**

Applications for Atlantic Tunas, HMS Angling, and HMS Charter/Headboat Vessel Permits may be submitted online at [www.nmfspermits.com](http://www.nmfspermits.com), mailed, or faxed. All other applications including dealer permits and other vessel permits must be mailed.

**III. Data**

*OMB Number:* 0648-0327.

*Form Number:* None.

*Type of Review:* Regular submission.

*Affected Public:* Business or other for-profit organizations (vessel owners and dealers).

*Estimated Number of Respondents:* 45,520.

*Estimated Time Per Response:* 5 minutes for the HMS ITP Application, initial and renewal of Shark and Swordfish Dealer Permit Applications, and renewal of Atlantic Tunas Dealer Permit Application; 6 minutes for renewal application for the following vessel permits: Atlantic Tunas, HMS Charter/Headboat, and HMS Angling; 15 minutes for initial Atlantic Tunas Dealer Permit Application; 20 minutes for initial and renewal of Shark and Swordfish Vessel Permit Applications; and 30 minutes for initial applications for the following vessel permits: Atlantic Tunas, HMS Charter/Headboat, and HMS Angling.

*Estimated Total Annual Burden Hours:* 5,506.

*Estimated Total Annual Cost to Public:* \$1,477,988.

**IV. Request for Comments**

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection;

they also will become a matter of public record.

Dated: February 11, 2005.

**Gwellnar Banks,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 05-3037 Filed 2-16-05; 8:45 am]

**BILLING CODE 3510-22-P**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**Proposed Information Collection; Comment Request; Alaska Region Logbook Family of Forms**

**AGENCY:** National Oceanic and Atmospheric Administration (NOAA), DOC.

**ACTION:** Notice.

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

**DATES:** Written comments must be submitted on or before April 18, 2005.

**ADDRESSES:** Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at [dHynek@doc.gov](mailto:dHynek@doc.gov)).

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument and instructions should be directed to Patsy A. Bearden, (907) 586-7008 or [patsy.bearden@noaa.gov](mailto:patsy.bearden@noaa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Abstract**

The National Marine Fisheries Service (NMFS) Alaska Region manages the U.S. groundfish fisheries of the Exclusive Economic Zone (EEZ) off Alaska under the Fishery Management Plan for Groundfish of the Gulf of Alaska and the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Management Area (FMPs). The North Pacific Fishery Management Council prepared the FMPs pursuant to the Magnuson-Stevens Fishery Conservation and Management Act. The regulations implementing the FMPs are at 50 CFR part 679.

The recordkeeping and reporting requirements at 50 CFR part 679 form

the basis for this collection of information. NMFS Alaska Region requests information from participating groundfish participants. This information, upon receipt, results in an increasingly more efficient and accurate database for management and monitoring of the groundfish fisheries of the EEZ off Alaska.

## II. Method of Collection

Internet and facsimile transmission of paper forms. Paper reports, electronic reports, and telephone calls are required.

## III. Data

*OMB Number:* 0648-0213.

*Form Number:* None.

*Type of Review:* Regular submission.

*Affected Public:* Not-for-profit institutions; and business or other for-profit organizations.

*Estimated Number of Respondents:* 1,033.

*Estimated Time Per Response:* 18 minutes for Catcher Vessel trawl gear daily fishing logbook (DFL); 28 minutes for Catcher Vessel longline and pot gear DFL; 30 minutes for Catcher/processor trawl gear daily cumulative production logbook (DCPL); 41 minutes for Catcher/processor longline and pot gear DCPL; 31 minutes for Shoreside processor DCPL; 31 minutes for Mothership DCPL; 8 minutes for Shoreside Processor Check-in/Check-out Report; 7 minutes for Mothership or Catcher/processor Check-in/Check-out Report; 11 minutes for Product Transfer Report; 17 minutes for Weekly Production Report; 11 minutes for Daily Production Report; estimated time to electronically submit the Weekly Production Report (5 min./report); 5 minutes to electronically submit the check-in/check-out report; 35 minutes for Weekly Cumulative Mothership ADF&G Fish Tickets; 14 minutes for U.S. Vessel Activity Report; 23 minutes for buying station report.

*Estimated Total Annual Burden Hours:* 36,705.

*Estimated Total Annual Cost to Public:* \$188,000.

## IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information

on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: February 10, 2005.

**Gwellnar Banks,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 05-3038 Filed 2-16-05; 8:45 am]

**BILLING CODE 3510-22-P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[I.D. 111004F]

**Marine Mammals; File Nos. 393-1772, 545-1761, 587-1767, 1071-1770, 731-1774, 945-1776, 782-1719, 1000-1617**

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

**ACTION:** Receipt of applications for permits and for permit amendments.

**SUMMARY:** Notice is hereby given that the following applicants have applied in due form for a permit or permit amendment for scientific research on marine mammals:

Deborah A. Glockner-Ferrari, 39 Woodvine Court, Covington, LA 70433, (File No. 393-1772);

North Gulf Oceanic Society (Craig O. Matkin, Principal Investigator), 2030 Mary Allen Avenue, Homer, AK 99603, (File No. 545-1761); Dan R. Salden, Ph.D., Hawaii Whale Research Foundation, 52 Cheshire Drive, Maryville, IL 62062-1931, (File No. 587-1767);

The Dolphin Institute (Adam A. Pack, Ph.D., Principal Investigator), 420 Ward Avenue, Suite 212, Honolulu, HI 96814, (File No. 1071-1770);

Robin Baird, Ph.D., Cascadia Research, 218 1/2 W. 4<sup>th</sup> Avenue, Olympia, WA 98501, (File No. 731-1774);

Glacier Bay National Park and Preserve (Christine M. Gabriele, Principal Investigator) P.O. Box 140, Gustavus, AK 99826, (File No. 945-1776);

NMFS, National Marine Mammal Laboratory (NMML), 7600 Sand Point Way, NE, Seattle, WA 98102, (Permit No. 782-1719); and

Whitlow W. L. Au, Ph.D., University of Hawaii, P.O. Box 1106, Kailua, HI 96734 (Permit No. 1000-1617).

**DATES:** Written, telefaxed, or e-mail comments on the new applications and amendment requests must be received on or before March 21, 2005.

**ADDRESSES:** The applications and related documents are available for review upon written request or by appointment (See **SUPPLEMENTARY INFORMATION**).

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301) 427-2521, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period.

Comments may also be submitted by e-mail. The mailbox address for providing email comments is [NMFS.Pr1Comments@noaa.gov](mailto:NMFS.Pr1Comments@noaa.gov). Include in the subject line of the e-mail comment the following document identifier: File No. 393-1772, 545-1761, 587-1767, 1071-1770, 731-1774, 945-1776, 782-1719, or 1000-1617.

**FOR FURTHER INFORMATION CONTACT:** Carrie Hubard, Amy Sloan, or Ruth Johnson, (301)713-2289.

**SUPPLEMENTARY INFORMATION:** The subject permits and amendments are requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222-227), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

## Applications for Permits

Deborah A. Glockner-Ferrari (File No. 393-1772) requests a 5-year permit to continue long-term population studies of humpback whales (*Megaptera novaeangliae*) on their winter breeding grounds with a particular emphasis on defining life histories, documenting behavior and recording distribution. Incidental observations would be made