

that all information be accompanied by: (1) Supporting documentation such as maps, bibliographic references, or reprints of pertinent publications; and (2) the submitter's name, address, and any association, institution, or business that the person represents.

If, after the status review, we determine that listing the saltmarsh topminnow is warranted, we will propose critical habitat (see definition in section 3(5)(A) of the ESA), under section 4 of the ESA, to the maximum extent prudent and determinable at the same time we propose to list the species. Therefore, within the geographical range currently occupied by the saltmarsh topminnow, we request data and information on:

- (1) What may constitute "physical or biological features essential to the conservation of the species";
- (2) Where such physical and biological features are currently found; and
- (3) Whether any of these features may require special management considerations or protection.

In addition, we request data and information on "specific areas outside the geographical area occupied by the species" that are "essential to the conservation of the species." Please provide specific comments and information as to what, if any, critical habitat you think we should propose for designation if the species is proposed for listing, and why such habitat meets the requirements of section 4 of the ESA.

References Cited

A complete list of all references is available upon request from the Protected Resources Division of the NMFS Southeast Regional Office or the USFWS Panama City Ecological Office (see **ADDRESSES**).

Authority: The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: July 21, 2011.

Gregory E. Siekaniec,
Acting Director, U.S. Fish and Wildlife Service.

Dated: August 5, 2011.

Samuel D. Rauch III,
Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 100819383-0386-01]

RIN 0648-BA18

Fisheries of the Exclusive Economic Zone Off Alaska; Bering Sea and Aleutian Islands Management Area; Limited Access Privilege Program

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations that would implement Amendment 93 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP). This proposed rule would amend the Bering Sea and Aleutian Islands Amendment 80 Program to modify the criteria for forming and participating in a harvesting cooperative. This action is necessary to encourage greater participation in harvesting cooperatives, which enable members to more efficiently target species, avoid areas with undesirable bycatch, and improve the quality of products produced. This action is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act, the Fishery Management Plan, and other applicable law.

DATES: Comments must be received no later than September 9, 2011.

ADDRESSES: Send comments to James W. Balsiger, Ph.D., Administrator, Alaska Region, NMFS, Attn: Ellen Sebastian. You may submit comments, identified by RIN 0648-BA18, by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal at <http://www.regulations.gov>.
- *Fax:* (907) 586-7557, Attn: Ellen Sebastian.
- *Mail:* P.O. Box 21668, Juneau, AK 99802.
- *Hand Delivery to the Federal Building:* 709 West 9th Street, Room 420A, Juneau, AK.

All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (e.g., name, address) voluntarily submitted by the commenter

may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe portable document file (pdf) formats only.

Copies of Amendment 93, the Environmental Assessment (EA), Regulatory Impact Review (RIR), and the Initial Regulatory Flexibility Analysis (IRFA)—collectively known as the Analysis—for this action are available from the Alaska Region Web site at <http://alaskafisheries.noaa.gov>.

FOR FURTHER INFORMATION CONTACT:
Gwen Herrewig, (907) 586-7091.

SUPPLEMENTARY INFORMATION: The groundfish fisheries in the exclusive economic zone off Alaska are managed under the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (BSAI FMP). The FMP was prepared by the North Pacific Fishery Management Council (Council) under the Magnuson-Stevens Fishery Conservation and Management Act (MSA). Amendment 80 to the BSAI FMP implemented the Amendment 80 Program. Regulations implementing Amendment 80 were published on September 14, 2007 (72 FR 52668). These regulations are located at 50 CFR part 679.

Background

The Amendment 80 program is commonly known as a limited access privilege program (LAPP). Eligible fishery participants may receive exclusive access to specific fishery resources if certain conditions are met. Under the Amendment 80 Program, NMFS issues a quota share (QS) permit to a person holding the catch history of an original qualifying non-American Fisheries Act (AFA) trawl catcher/processor that met specific criteria designated by Congress under the Capacity Reduction Program (CRP) (Pub. L. 108-447). NMFS determined that 28 vessels met the criteria specified in the CRP. These vessels comprise the originally qualifying Amendment 80 vessels. NMFS determined the amount of QS issued based on the catch history of six Amendment 80 species (Atka mackerel, Aleutian Islands Pacific ocean perch, flathead sole, Pacific cod, rock sole, and yellowfin sole) in the Bering Sea and Aleutian Islands Management Area (BSAI), from 1998 through 2004, derived from the 28 originally

qualifying non-AFA trawl catcher processors.

A QS permit details the total number of QS units for each of the six allocated Amendment 80 species. A QS permit may not be subdivided, and QS allocations of specific QS species may not be transferred or otherwise reassigned. Once NMFS issues a QS permit, it may not be transferred separately from the originally qualifying Amendment 80 vessel to which it has been assigned, except under specific conditions.

NMFS may issue a QS permit based on the catch history of each of the 28 originally qualifying Amendment 80 vessels to either the owner of the originally qualifying Amendment 80 vessel, the owner of a replacement vessel if the original qualifying Amendment 80 vessel has been lost, or the holder of the License Limitation Program (LLP) license issued to the originally qualifying Amendment 80 vessel. The Amendment 80 Program defined a specific LLP license for each originally qualifying Amendment 80 vessel to which a QS permit may be assigned in cases where a vessel has been lost. Additional details on the transfer of QS permits to LLP licenses is provided in the final rule to implement Amendment 80 and are not repeated here (September 14, 2007; 72 FR 52668). NMFS issued QS to the owner of the Amendment 80 vessel in most cases. As of the publication of this proposed rule, NMFS has issued QS permits based on the catch history of 27 of the 28 originally qualifying Amendment 80 vessels. One originally qualifying Amendment 80 vessel owner did not submit an application as of the publication date of this rule.

Under the Amendment 80 Program, NMFS allocates a specific portion of the BSAI total allowable catch (TAC) to the Amendment 80 sector for each of the six defined Amendment 80 species. NMFS allocates the remainders of the TACs for Atka mackerel, Pacific cod, Pacific ocean perch, and yellowfin sole to non-Amendment 80 vessels participating in the BSAI trawl fisheries. In addition, NMFS allocates a specific portion of the allowable bycatch of BSAI halibut, Bristol Bay red king crab, snow crab, and Tanner crab to the Amendment 80 sector. This allowable bycatch is commonly known as prohibited species catch (PSC) because these species may not be retained, but are known to be incidentally taken in BSAI trawl fisheries. NMFS will limit groundfish fishing in the BSAI if the PSC limit for a species is reached. The specific groundfish species for which NMFS issues a QS permit, and the PSC species

assigned to the Amendment 80 sector, are shown in Table 1.

TABLE 1—GROUND FISH AND PSC SPECIES ASSIGNED TO THE AMENDMENT 80 PROGRAM

Groundfish species assigned to the Amendment 80 sector	PSC species assigned to the Amendment 80 sector
Aleutian Islands Pacific ocean perch.	Pacific halibut.
Atka mackerel	Zone 1 Bristol Bay red king crab.
Flathead sole	Zone 1 <i>Chionoecetes opilio</i> crab.
Pacific cod	Zone 2 <i>C. opilio</i> crab.
Rock sole	Zone 1 <i>C. bairdi</i> crab.
Yellowfin sole	Zone 2 <i>C. bairdi</i> crab.

The specific amounts of the TAC and PSC limits assigned to the Amendment 80 sector and the non-Amendment 80 BSAI trawl fishery on an annual basis are defined in regulations at 50 part 679 and are not repeated here (see Tables 33, 34, and 35 to part 679). The amount of the TAC and PSC assigned to the Amendment 80 sector is further divided between those who participate in Amendment 80 harvesting cooperatives, and those who participate in the “Amendment 80 limited access fishery.”

Generally, the Amendment 80 Program is intended to facilitate the formation of cooperatives. As described in Section 2 of the Analysis, cooperative management improves fishery management, because Amendment 80 participants who join a cooperative receive cooperative quota (CQ), which are exclusive harvest privileges for a portion of these fishery resources. The allocation of CQ allows vessel operators to make operational choices to improve fishing practices and reduce discards of fish, because the incentives to maximize catch rates to capture a share of the available catch are removed. Cooperatives fishing under an exclusive harvest privilege can tailor their operations to more efficiently target species, avoid areas with undesirable bycatch, and improve the quality of products produced. Participants in the limited access fishery do not receive an exclusive harvest allocation, and may have little incentive to coordinate harvest strategies if they perceive a benefit by competing with other participants in a race for fish.

A person who chooses to join a cooperative must designate the catch derived from his QS to the cooperative, the specific vessels that will be fishing for that cooperative, and the LLP licenses assigned to each designated vessel. For example, a person wishing to

participate in an Amendment 80 cooperative may assign all, or a portion, of the QS permits held by that person to an Amendment 80 cooperative by November 1 of each year to be eligible to fish in that cooperative for the following calendar year. Once a person assigns a QS permit, Amendment 80 vessel, or LLP license to a cooperative for a year, that person cannot reassign that QS permit, vessel, or LLP license to another cooperative or to the limited access fishery for that same calendar year. A person can also assign QS permits to the Amendment 80 limited access fishery if that person is unable or unwilling to meet the requirements established by an Amendment 80 cooperative. NMFS assigns any QS permits, vessels, and LLP licenses not assigned to a cooperative to the Amendment 80 limited access fishery by default.

The proportion of the TAC that is assigned to an Amendment 80 cooperative is based on the amount of QS held by the members of the cooperative relative to the total Amendment 80 QS pool for a given groundfish fishery. For example, if a cooperative was comprised of members holding QS permits with a total number of QS units equaling 40 percent of the Amendment 80 QS pool in the yellowfin sole fishery, that cooperative would receive CQ to harvest 40 percent of the annual total allowable catch (TAC) of yellowfin sole that is assigned to the Amendment 80 sector for that year. A similar calculation is made for all other Amendment 80 species and allocation of PSC limits. Any catch of groundfish or PSC species that is assigned CQ is debited from a cooperative's CQ account. NMFS allocates TAC and PSC limits first to cooperatives. The remaining TAC and PSC limits after allocation to cooperatives is available collectively to the participants in the Amendment 80 limited access fishery.

The Proposed Action

The proposed action would result in two changes to the Amendment 80 Program. First, it would reduce the minimum number of persons and licenses required to form a harvesting cooperative. Second, it would require that a person holding multiple QS permits, Amendment 80 vessels, and LLP licenses assign all those QS permits, vessels, and LLP licenses to either one or more cooperatives, or the limited access fishery, but not to both a cooperative and the limited access fishery. If approved, this second provision would not be applicable until

the first fishing year 2 years after the effective date of the final rule.

Modifying Cooperative Formation Standards

The first aspect of this proposed action would allow a cooperative to form with a minimum of two unique persons holding a total of at least seven QS permits. The current requirement is that a minimum of three unique persons and nine QS permits must be assigned to a cooperative. Reducing the number of unique persons and number of QS permits could provide additional opportunities for QS holders to establish cooperative relationships that could reduce the number of participants engaged in the race for fish.

Since the implementation of the Amendment 80 Program in 2008, some Amendment 80 sector participants have expressed concern that the current cooperative formation requirements could impede participants from joining a cooperative and receiving an exclusive allocation of Amendment 80 species. Most participants in the Amendment 80 sector have successfully established a cooperative in the first 3 years of the program. However, some participants have expressed concern that, over the long term, cooperative formation standards may put them at a disadvantage.

Section 2.4 of the Analysis prepared for this action notes that vessel owners would be likely to have weakened negotiating leverage when seeking membership in a cooperative if they cannot be competitive in the limited access fishery and if fishing options in the Gulf of Alaska would not be viable. Participants may find it difficult to receive the benefits of cooperative management if they cannot reach agreement on negotiated terms, if the limited access fishery is not an economically viable option, or if members of a cooperative are able to derive some benefit from forcing an entity into the limited access fishery.

Relaxing cooperative formation standards either by reducing the number of QS permits that must be assigned or the number of unique vessel owners required could: (1) Provide additional opportunities to QS holders to form cooperatives because more relationships are possible; (2) diminish the negotiating leverage of vessel owners who may be necessary to meet the threshold requirements under more stringent cooperative formation standards; (3) reduce the potential risk of any one company being unable to negotiate settlement and be able to fish only in the limited access fishery; and (4) reduce the incentive for members of

a cooperative to attempt to create conditions that are unfavorable for certain fishery participants to form a cooperative.

Section 2.4 estimates that there are approximately nine unique persons in the Amendment 80 sector holding 27 QS permits. Most, but not all, of these persons have joined a cooperative. The Alaska Seafood Cooperative (AKSC), formerly known as the Best Use Cooperative (BUC), includes most of the participants in the Amendment 80 sector. It is comprised of seven unique persons holding 17 to 18 QS permits annually during 2008 through 2011. The Amendment 80 limited access fishery had two to four unique persons holding seven to nine QS permits annually during 2008 through 2010. Recent business transactions in the Amendment 80 sector have resulted in a greater consolidation in the ownership of the Amendment 80 sector. In 2010, one of the QS permits that had been assigned to the limited access fishery was transferred to a participant in AKSC. In 2011, all Amendment 80 QS holders participated in a cooperative, with most participants joining AKSC. A second cooperative representing nine QS permits held by four unique persons was assigned to the Alaska Groundfish Cooperative (AGC). Two of the members of AGC own multiple QS permits and participate in both the AKSC and AGC.

Conditions in the Amendment 80 sector suggest that cooperative formation may continue to be challenging even though two cooperatives formed in 2011. For example, some AKSC members have raised concerns that accepting members into a cooperative could adversely affect the cooperative's internal management agreements and expose existing members to a potentially increased risk of enforcement actions under joint and several liability provisions because of perceived concerns about the past enforcement record of some Amendment 80 sector participants.

The Council considered extensive testimony and input from the Amendment 80 sector during the development of the proposed action, as well as a review of the suite of decisions that affect cooperative formation and the potential incentives to include or exclude a member from a cooperative. Section 2.3.8 of the Analysis describes these factors. The Council developed the alternatives listed below:

- Alternative 1: Status quo. A minimum of three unique QS holders holding at least nine QS permits are required to form a cooperative.
- Alternative 2: Reduce the number of unique QS holders required to form a

cooperative from the existing three QS holders to two or one unique QS holder.

- Alternative 3: Reduce the number of QS permits required to form a cooperative from the existing nine permits to eight, seven, six, or three permits.

- Alternative 4: Reduce both the number of unique QS holders and the number of QS permits required to form a cooperative (combination of Alternatives 2 and 3 above).

- Alternative 5: Allow a cooperative to form with a minimum of three unique QS holders holding at least nine QS permits (status quo), or a single or collective group of entities that represent 20 percent, 25 percent, or 30 percent of the sector QS.

- Alternative 6: Require that a cooperative accept all persons who are otherwise eligible to join a cooperative subject to the same terms and conditions as all other members.

Section 2.4 of the Analysis notes that less strict cooperative formation standards might provide greater opportunities for cooperatives to form, in general, and greater opportunities for any specific participant to find arrangements that allow them to participate in a cooperative. Overall, Section 2.4 of the Analysis concludes that relaxing the cooperative formation standard would provide an increased likelihood that a greater proportion of the TAC assigned to the Amendment 80 sector is harvested under cooperative management.

Ultimately, the Council chose Alternative 4 and the option for a minimum of two unique persons and seven QS permits. The Council chose an alternative that would provide some additional flexibility to the Amendment 80 sector to form cooperatives, without requiring drastic changes from the status quo structure of the most established cooperative, AKSC. The Council noted its preferred alternative would require more than one company to coordinate operations to receive an exclusive annual harvest allocation. The Council noted that maintaining a multi-company cooperative structure would extend the Council's overall goal of enhancing coordination among a variety of different industry participants.

Section 2.3.8 of the Analysis notes that the alternatives considered, including the Council's preferred alternative that comprises the proposed action, are consistent with the overall goals of the Amendment 80 Program, including the goal of allocating groundfish species to harvesting cooperatives to encourage fishing practices with lower discard rates and to improve the opportunity for increasing

the value of harvested species while lowering costs. The Council noted that modifying the cooperative standards originally selected under Amendment 80 to reflect the changing negotiating positions of various industry participants was responsive to the best available information on current fishery conditions. Public input during the Council's consideration of the proposed action generally supported the reduced cooperative formation standard as a mechanism to provide additional opportunities for cooperative formation. NMFS agrees with the Council's rationale for this proposed change. This proposed rule would not modify the specific species that are allocated or the amount of the TAC allocated to the Amendment 80 Program.

Requiring QS To Be Assigned to Cooperatives or the Limited Access Fishery

The second modification under this proposed action would require that a person assign all QS permits either to a cooperative or to the limited access fishery, but not to both during the same calendar year. If this provision is approved, it would not apply until the first fishing year 2 years after a final rule, if implemented, becomes effective.

Excluding a person from cooperative membership could benefit a cooperative, or specific members of a cooperative, who choose to participate in both a cooperative and the limited access fishery. For example, if a cooperative member who holds multiple QS permits and vessels can assign one vessel and QS permit to the limited access fishery and another vessel and QS permit to a cooperative, that member could harvest more fish in the limited access fishery than would be derived from their QS if it were assigned to a cooperative. A person participating in both a cooperative and the limited access fishery has an incentive to exclude participants in the limited access fishery from joining a cooperative or creating an additional cooperative. For example, a person participating in a cooperative and the limited access fishery could seek to exclude a person from fishing in a cooperative if the person to be excluded was unlikely to be able to join another cooperative. Under that scenario, the person excluded from a cooperative could be forced into the Amendment 80 limited access fishery. If the person participating in the cooperative also assigned a vessel to the Amendment 80 limited access fishery that was capable of effectively competing against the other Amendment 80 limited access fishery participants, that person could

maximize their catch in a race for fish. Under that scenario, a person with participation in both an Amendment 80 cooperative and the limited access fishery would have little incentive to allow a person to join a cooperative because they would lose access to fish that would otherwise be available in the Amendment 80 limited access fishery. Data from the first three years of the Amendment 80 Program indicate that one vessel owner with multiple vessels and QS permits has chosen to participate in both a cooperative and the limited access fishery. During the development of Amendment 93, participants in the limited access fishery testified that they have sought to join the existing cooperative (at that time, the Best Use Cooperative), but were unable to do so. The Council determined, and NMFS agrees, that this provision would reduce the incentive for a cooperative member to exclude another person from forming a cooperative in order to force them into a race for fish in the limited access fishery.

The requirement that a vessel owner and QS holder assign all QS permits and vessels to either a cooperative or the limited access fishery would not apply until the first fishing year 2 years after the final rule would be effective. For example, if the final rule became effective in October 2011, this requirement would not apply until the 2014 fishing year, but QS holders would have to assign all QS permits and vessels to one or more cooperatives or to the limited access fishery by the Amendment 80 annual cooperative application deadline of November 1, 2013. The proposed rule text implementing this provision uses the 2014 fishing year as the first year in which this provision would be applicable because, it assumes the final rule for this action would be published by the end of 2011. The Council determined, and NMFS agrees, that this 2-year delay would provide vessel owners and QS holders time to establish relationships to ensure that all QS permits and vessels could be assigned to either the limited access fishery or a cooperative. The 2-year delay would allow vessel owners to ensure that they are well-coordinated with other participants in the fishery and all of their QS permits can be assigned to either one or more cooperative, or the limited access fishery. Some industry participants have expressed concerns that the "all-in" nature of this requirement could create contentious and complicated cooperative negotiations if vessel owners are unable

to enter all their vessels into a cooperative. If this provision becomes effective, NMFS would enforce this provision by not allowing the owner of multiple QS permits or vessels to assign QS permits or vessels to one or more cooperatives and the Amendment 80 limited access fishery during the annual cooperative application process.

Conceivably, if a vessel owner is not able to assign all vessels or QS permits to a cooperative, that vessel owner would be required to assign those vessels or permits to the limited access fishery. Based on the demonstrated ability of the Amendment 80 participants to establish cooperatives, this scenario is unlikely. In 2011, both Amendment 80 cooperatives were comprised of vessel owners with a wide range of vessels. Their cooperative contracts govern the specific obligations that each member has and ensures that overall cooperative harvests meet those requirements. It is likely that these cooperative relationships will continue. The 2-year timeframe would provide the industry time to structure their cooperative contracts to incorporate "all-in" provisions necessary to allow owners of multiple vessels and QS permits to maintain membership in a cooperative.

Expected Effects of the Proposed Action

The RIR describes the predicted effects of the proposed action on harvesters, processors, communities, management and enforcement, consumers, and the nation (see **ADDRESSES**). Only the effects of the proposed action on harvesters are described here. Overall, the proposed action would be expected to increase the potential for cooperative formation. Vessels fishing under a cooperative would realize the benefits of LAPP management, including a strong incentive to reduce the race for fish. Based on a preliminary review of the first 3 years of the Amendment 80 Program (2008 through 2010) and past experience with cooperative-based management in other LAPPs (*e.g.*, AFA, Central GOA Rockfish Program, and BSAI Crab Rationalization Program), participation in a cooperative is likely to allow optimization of harvest rates for product recovery and quality, reduce incentives to operate in adverse weather conditions, facilitate reductions of bycatch, and streamline operations to maximize profits.

Recordkeeping and Reporting Requirements

NMFS would continue to oversee the submission of cooperative applications and the issuance and transfer of CQ. The

proposed rule would not change the information required to be submitted by cooperative applicants.

Classification

The Assistant Administrator for Fisheries, NOAA, has determined that this proposed rule is consistent with Amendment 93, the FMP, the MSA, and other applicable laws, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

Initial Regulatory Flexibility Analysis (IRFA)

An IRFA was prepared, as required by section 603 of the Regulatory Flexibility Act (RFA). Copies of the IRFA prepared for this proposed rule are available from NMFS (see **ADDRESSES**). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, the reasons why it is being considered, and a statement of the objectives of, and the legal basis for, this action are contained in the **SUMMARY** section of the preamble and are not repeated in detail here. The IRFA for this proposed action describes the reasons why this action is being proposed; describes the objectives and legal basis for the proposed rule; describes and estimates the number of small entities to which the proposed rule would apply; describes any projected reporting, recordkeeping, or other compliance requirements of the proposed rule; identifies any overlapping, duplicative, or conflicting Federal rules; and describes any significant alternatives to the proposed rule that accomplish the stated objectives of the MSA and any other applicable statutes, and that would minimize any significant adverse economic impact of the proposed rule on small entities. A summary of that analysis follows.

Rationale, Objectives, and Legal Basis of the Proposed Rule

The IRFA describes the reasons why this action is being proposed, describes the objectives and legal basis for the proposed rule, and discusses both small and other regulated entities to adequately characterize the fishery participants. The MSA is the legal basis for the proposed rule. The objectives of the proposed rule are to facilitate cooperative formation among the Amendment 80 sector to ensure that fishery participants can realize the intended benefits of fishing under an exclusive harvest privilege. The proposed rule would accomplish this

goal by reducing the minimum number of persons and licenses required for cooperative formation under the Amendment 80 Program. NMFS expects the proposed action to provide additional opportunities for cooperative formation among participants in the Amendment 80 sector.

Number of Small Entities To Which the Proposed Rule Would Apply

The directly regulated entities under this proposed rule are holders of Amendment 80 QS. For purposes of an IRFA, the Small Business Administration (SBA) has established that a business involved in fish harvesting is a small business if it is independently owned and operated, not dominant in its field of operation (including its affiliates), and if it has combined annual gross receipts not in excess of \$4.0 million for all its affiliated operations worldwide. A seafood processor is a small business if it is independently owned and operated, not dominant in its field of operation, and employs 500 or fewer persons on a full-time, part-time, temporary, or other basis, at all its affiliated operations worldwide. Because the SBA does not have a size criterion for businesses that are involved in both the harvesting and processing of seafood products, NMFS has in the past applied, and continues to apply, SBA's fish harvesting criterion for these businesses because catcher/processors are first and foremost fish harvesting businesses. Therefore, a business involved in both the harvesting and processing of seafood products is a small business if it meets the \$4.0 million criterion for fish harvesting operations. NMFS is reviewing its small entity size classification for all catcher/processors in the United States. However, until new guidance is adopted, NMFS will continue to use the annual receipts standard for catcher/processors. Even if additional catcher/processors would have been identified as small entities under a revised small-entity size classification, NMFS would have analyzed the effect on small entities using the same methods that were used in the IRFA prepared for the proposed rule. NMFS considered the effects of the proposed rule and attempted to reduce costs to all directly regulated entities regardless of the number of small entities.

The IRFA estimates that 28 non-AFA trawl catcher/processors could generate Amendment 80 QS, based on the provisions of the Amendment 80 Program. Those persons who apply for and receive Amendment 80 QS are eligible to fish in the Amendment 80 sector, and those QS holders would be

directly regulated by the proposed action. Based on the known affiliations and ownership of the Amendment 80 vessels, all but one of the Amendment QS holders would be categorized as large entities for the purpose of the RFA under the principles of affiliation, due to their participation in a harvest cooperative or through known ownership of multiple vessels, co-ownership and "shares" ownership among vessels, and other economic and operational affiliations. Thus, this analysis estimates that only one small entity would be directly regulated by the proposed action. It is possible that this one small entity could be linked by company affiliation to a large entity, which may then qualify that entity as a large entity, but complete information is not available to determine any such linkages.

The estimate of the number of small entities is conservative. Other supporting businesses may also be indirectly affected by this action if it leads to fewer vessels participating in the fishery. These impacts are analyzed in the RIR prepared for this action (see **ADDRESSES**).

Impacts on Directly Regulated Small Entities

The proposed action would modify the cooperative formation standards and requirements for assigning QS and Amendment 80 vessels to either a cooperative or the limited access fishery. The overall impact to small entities is expected to be positive. Impacts from the proposed rule would accrue differentially (*i.e.*, some entities could be negatively affected and others positively affected). The Council considered an extensive range of alternatives and options as it designed and evaluated the potential for changes to the Amendment 80 sector, including the "no action" alternative.

Six alternative approaches for modifying cooperative formation criteria were considered. Alternative 1: Status quo. A minimum of three unique QS holders holding at least nine QS permits are required to form a cooperative. Alternative 2: Reduce the number of unique QS holders required to form a cooperative from the existing three QS holders to two or one unique QS holder. Alternative 3: Reduce the number of QS permits required to form a cooperative from the existing nine permits to eight, seven, six, or three permits. Alternative 4: Reduce both the number of unique QS holders and the number of QS permits required to form a cooperative (combination of Alternatives 2 and 3 above). Alternative 5: Allow a cooperative to form with a minimum of

three unique QS holders holding at least nine QS permits (status quo), or a single or collective group of entities that represent 20 percent, 25 percent, or 30 percent of the sector QS. Alternative 6: Require that a cooperative accept all persons who are otherwise eligible to join a cooperative subject to the same terms and conditions as all other members. The Council recommended Alternative 4, reducing the number of unique QS holders to two unique persons and reducing the number of QS permits required to form a cooperative to seven QS permits, as its preferred alternative.

Two alternative approaches were considered for the QS and vessel assignment provision. Alternative 1: status quo. QS holders with multiple QS permits and vessels may assign those QS permits and vessels to one or more cooperatives and the limited access fishery. Alternative 2: QS holders with multiple QS permits and vessels may assign those QS permits and vessels to one or more cooperatives or the limited access fishery, but not both. If approved, this alternative would be effective two years after the effective date of the final rule.

Collectively, the alternatives and options considered under these two proposed actions provided a broad suite of alternatives from which the Council

chose to modify the factors affecting cooperative formation.

Compared with the status quo, the proposed action selected by the Council minimizes the adverse economic impacts on the directly regulated small entity. The alternatives under consideration in this proposed rule would be expected to provide greater opportunity for cooperative formation among the various industries. In no case are these combined impacts expected to be substantial. Alternative 4 of action 1, with the two unique persons and seven QS permit option, would not be expected to adversely affect the existing Amendment 80 cooperatives, but could provide additional cooperative formation opportunities for participants in the Amendment 80 limited access fishery. The proposed QS assignment provision would reduce the incentive for owners of multiple vessels to exclude a person from a cooperative. This proposed provision would be expected to enhance the likelihood of cooperative formation.

Projected Reporting, Recordkeeping and Other Compliance Requirements

Existing recordkeeping and reporting requirements necessary to apply to form an Amendment 80 cooperative would not be modified.

Duplicate, Overlapping, or Conflicting Federal Rules

No Federal rules that might duplicate, overlap, or conflict with this proposed action have been identified.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: August 3, 2011.
Samuel D. Rauch III,
Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 679 is proposed to be amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for 50 CFR part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*; 1801 *et seq.*; 3631 *et seq.*; Pub. L. 108–447

2. In § 679.91, paragraphs (h)(3)(ii), (h)(3)(iii), and (h)(3)(xii) are revised to read as follows:

§ 679.91 Amendment 80 Program annual harvester privileges.

- * * * * *
- (h) * * *
- (3) * * *

(ii) What is the minimum number of Amendment 80 QS permits that must be assigned to an Amendment 80 cooperative to allow it to form? Any combination of at least seven Amendment 80 QS permits which would include Amendment 80 LLP/QS licenses.

(iii) How many Amendment 80 QS holders are required to form an Amendment 80 cooperative? At least two Amendment 80 QS holders each of whom may not have a ten percent or greater direct or indirect ownership interest in any of the other Amendment 80 QS holders.

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(xii) Can an Amendment 80 QS permit, Amendment 80 LLP license, or Amendment 80 vessel be assigned to an Amendment 80 cooperative and the Amendment 80 limited access fishery?

No, an Amendment 80 QS permit, Amendment 80 LLP license, or Amendment 80 vessel assigned to an Amendment 80 cooperative may not be assigned to the Amendment 80 limited access fishery for that calendar year. Prior to the 2014 fishing year, a person holding multiple Amendment 80 QS permits, Amendment 80 LLP licenses, or owning multiple Amendment 80 vessels is not required to assign all Amendment 80 QS permits, Amendment 80 LLP licenses, or Amendment 80 vessels to the same Amendment 80 cooperative or the Amendment 80 limited access fishery. Starting with the 2014 fishing year and thereafter, a person holding multiple Amendment 80 QS permits, Amendment 80 LLP licenses, or owning multiple Amendment 80 vessels must assign all Amendment 80 QS permits, Amendment 80 LLP licenses, or Amendment 80 vessels to either one or more Amendment 80 cooperatives, or the Amendment 80 limited access fishery.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 680

[Docket No. 0812081573-1423-02]

RIN 0648-AX47

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

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations implementing Amendment 30 to the Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs (FMP). This proposed rule would amend the Bering Sea/Aleutian Islands Crab Rationalization Program (CR Program) to modify procedures for producing and submitting documents that are required under the Arbitration System to resolve price, delivery, and other disputes between harvesters and processors. This action is necessary to improve the quality and timeliness of market information used to conduct arbitration proceedings. This action is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act, the FMP, and other applicable law.

DATES: Comments must be received no later than September 9, 2011.

ADDRESSES: Send comments to Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Ellen Sebastian. You may submit comments, identified by "RIN 0648-AX47," by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal Web site at <http://www.regulations.gov>.
- *Mail:* P.O. Box 21668, Juneau, AK 99802.
- *Fax:* (907) 586-7557.
- *Hand delivery to the Federal Building:* 709 West 9th Street, Room 420A, Juneau, AK.

All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All personal identifying

information (e.g., name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe portable document file (pdf) formats only.

Copies of Amendment 30, the Regulatory Impact Review/Initial Regulatory Flexibility Analysis (RIR/IRFA) and the categorical exclusion prepared for this action—as well as the Environmental Impact Statement (EIS) prepared for the CR Program—may be obtained from the NMFS Alaska Region at the address above or from the Alaska Region Web site at <http://alaskafisheries.noaa.gov>. NMFS determined that this proposed action was categorically excluded from the need to prepare an environmental assessment under the National Environmental Policy Act.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to NMFS Alaska Region by e-mail to OIRA_Submission@omb.eop.gov, or fax to 202-395-7285.

FOR FURTHER INFORMATION CONTACT: Forrest R. Bowers, 907-586-7240.

SUPPLEMENTARY INFORMATION: The king and Tanner crab fisheries in the exclusive economic zone of the Bering Sea and Aleutian Islands (BSAI) are managed under the FMP. The FMP was prepared by the North Pacific Fishery Management Council (Council) under the Magnuson-Stevens Fishery Conservation and Management Act. Amendments 18 and 19 to the FMP implemented the CR Program. Regulations implementing the FMP, including the CR Program, are located at 50 CFR part 680.

Background

Under the CR Program, NMFS issued quota share (QS) to persons based on their qualifying harvest histories in the BSAI crab fisheries during a specific time period. Each year, the QS issued to a person yields an amount of individual fishing quota (IFQ), which is a permit providing an exclusive harvesting privilege for a specific amount of raw crab pounds, in a specific crab fishery, in a given season. The size of each annual IFQ allocation is based on the

amount of QS held by a person in relation to the total QS pool in a crab fishery. For example, a person holding QS equaling 1 percent of the QS pool in a crab fishery would receive IFQ to harvest 1 percent of the annual total allowable catch (TAC) in that crab fishery. Catcher processor license holders were allocated catcher processor vessel owner (CPO) QS for their history as catcher processors; and catcher vessel license holders were issued catcher vessel owner (CVO) QS based on their history as a catcher vessel.

Under the CR Program, 97 percent of the initial allocation of QS was issued to vessel owners as CPO or CVO QS; the remaining 3 percent was issued to vessel captains and crew as CPC or CVC QS based on their harvest histories as crew members onboard crab fishing vessels. Ninety percent of the annual CVO IFQ is issued as A shares, or Class A IFQ, which are subject to landing requirements in specific geographic regions, and must be delivered to a processor holding unused individual processor quota (IPQ). The remaining 10 percent of the annual CVO IFQ is issued as B shares, or Class B IFQ, which may be delivered to any processor and are not subject to regionalization. CPO, CPC, and CVC IFQ are not subject to regionalization and are not required to be matched with a processor holding IPQ.

NMFS also issued processor quota shares (PQS) to processors based on their qualifying processing histories in the BSAI crab fisheries during a specific time period. These PQS yield annual IPQ, which represent a privilege to receive a certain amount of crab harvested with Class A IFQ. IPQ are issued in an amount equivalent to the Class A IFQ, creating a one-to-one correspondence between Class A IFQ and IPQ. Prior to the start of a crab fishing season, Class A IFQ and IPQ holders match their shares with one another, thereby determining their markets for the coming year. These matches may be modified during the crab season, but both parties must consent to any modifications.

Arbitration System

The CR Program requires holders of Class A IFQ to deliver their catch to processors holding IPQ for a specific crab fishery within a specific geographic region. Potential disputes among harvesters and processors during price and delivery negotiations can occur, and the share matching requirements can exacerbate these disputes. To fairly address potential price and delivery disputes that may arise between Class A IFQ holders and IPQ holders, the CR