

C2 Crab Processing Use Caps

Final Action



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History of Action

June 2021

October 2022

February 2023

October 2023

December 2023



- Council received 5 letters proposing changes to current regulations that prohibit crab processing facilities from using more than 60% of the Eastern Aleutian Islands golden king crab (EAG) IPQ
- Council also received a proposal to change the start date for both AI golden king crab fisheries
- In response, the Council tasked a discussion paper on both issues.

- The Council bifurcated these issues and scheduled this facility use cap piece independently.

- The AP/ Council reviewed a discussion paper for the EAG facility use cap
- Public testimony added a request to include exemptions to the PQS/ IPQ use caps for custom processed Bristol Bay red king crab (BBR) and south-designated Bering Sea snow crab (BSS).
- Council established a purpose and need statement, 2 action alternatives

- The AP/ Council reviewed an initial review analysis
- Identified both action alternatives as preliminary preferred alternatives

- Possible final action



Acronyms and terms for reference

PQS = processing quota share, long-term processing privilege (in “units”)

IPQ = individual processing quota, annual issuance of processing opportunity (in pounds), share-match with A share IFQ

Use caps = limit to the amount of a privilege that can be held or used

Leasing PQS= (sale of IPQ) temporary contractual arrangement where the associated risk and responsibility of the IPQ is passed on to the IPQ holder

Custom processing IPQ = contractual arrangement where the IPQ holder contracts with an unaffiliated processor facility to process their crab, but the responsibility and liability remain with the IPQ holder

Affiliation = relationship between entities used for accounting (e.g., use caps); CR Program uses the 10% rule- if an entity has a 10% or greater interest, ownership is 100% attributed to that entity

RCR = Registered Crab Receiver, An RCR permit is required for any person who receives unprocessed CR crab from the person(s) who harvested the crab, including catcher processors

Regional delivery requirements = some IFQ has a requirement that it is landed in a certain region (North – N of 56°20' N lat; South – not the North region; or West - W of 174° W long)

ROFR = right of first refusal, a provision of the CR Program that provides a representative community entity – that represents a location of historical crab processing – the opportunity to acquire PQS (and other assets) by agreeing to the same terms of a pending transaction



Acronyms page 2, terms described throughout document;
*note these are not necessarily regulatory definitions



Catcher vessel owner shares

(percent based on historical activity)

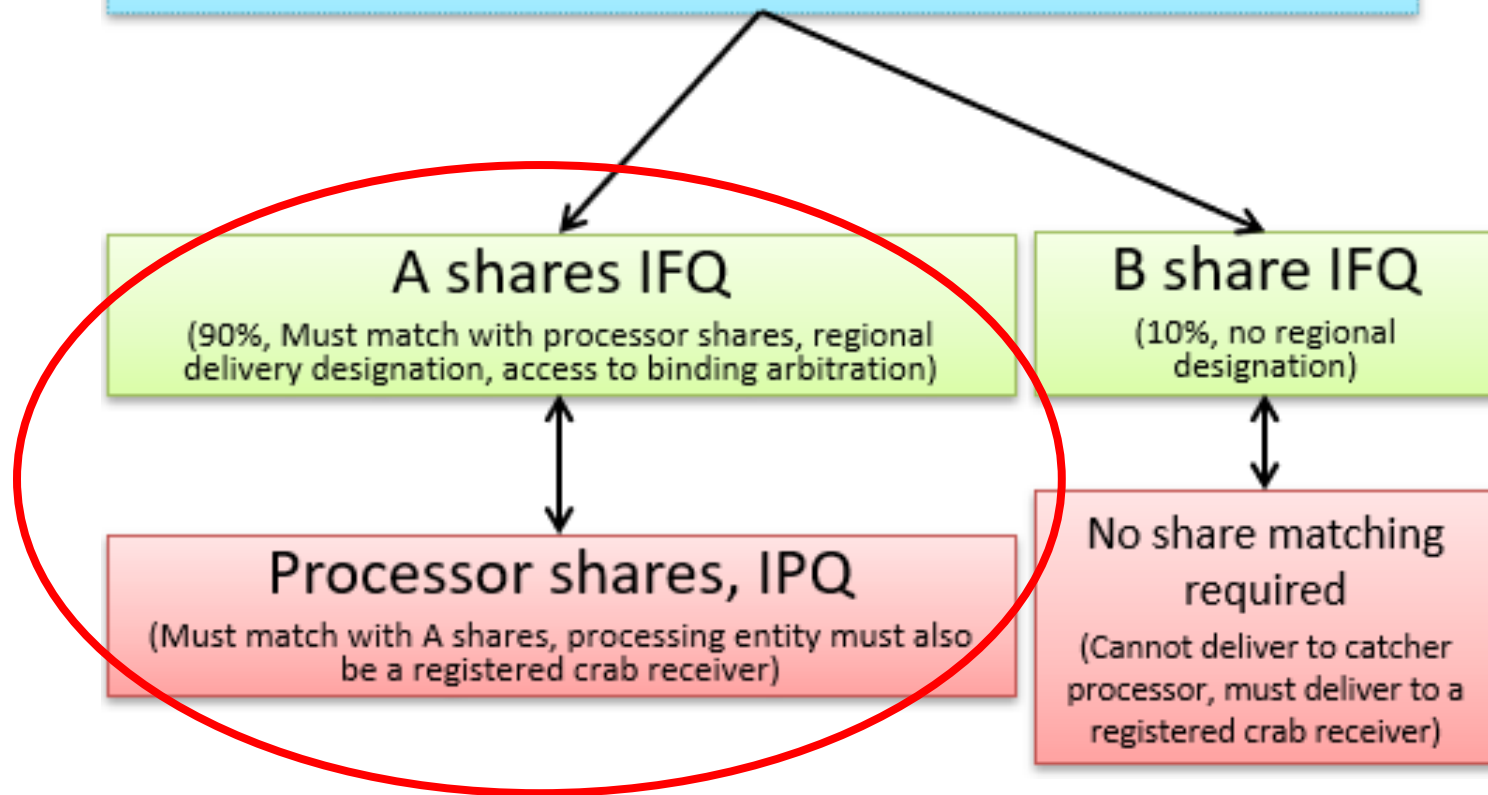


Figure 3-1, page 18



Purpose and need for action



- Significant percent of crab individual processing quota (IPQ) held by people who are not affiliated with a processing facility (i.e., requires custom processing)
- EAG and WAI have a unique cap that limits facilities to processing more than 60% of the IPQ issued for EAG or WAI
 - Action to remove cap could increase market opportunity for EAG
- PQS/ IPQ use caps include any custom processed IPQ for BBR, south-designated BSS and WAG IPQ processed east of 174° W longitude
 - Declines in BSS and BRR could lead to years with small fishery catch limits, which could create production inefficiencies with current caps
 - Action to exempt custom processing from these caps could increase efficiencies and increase the net benefits generated from these species
- Preserve ownership and entity use caps to limit consolidation



Alternatives- Alternative 2 and 3 identified as preliminary preferred alternatives

Alternative 1. No action.

Alternative 2. Remove the EAG and WAI processing facility use caps at §680.7(a)(9).

Alternative 3. Exempt custom processing of

- **BSS IPQ with a south-region designation,**
- **BBR IPQ, and**
- **WAG IPQ processed east of 174° W longitude**

**from the PQS/IPQ and processing facility use caps under the program.
Regionalization would still apply.**



Regulatory caps on crab processing

Limits to how much PQS a person can hold §680.42(b)(i)

- No more than 30% of the PQS initially issued in the fishery
- Includes affiliations – 10% rule
- Exceptions for PQS holders that received an initial allocation in excess of this amount based on historical processing “grandfathered in” above the use caps

Limits to how much IPQ a person can “use” §680.42(b)(ii) and §680.7(a)(7)

- No more than the amount of IPQ resulting from 30% of the PQS initially issued
- Except if they were “grandfathered in”

Prohibition on how much a shoreside or stationary floating processor can process (even if they don't own IPQ) §680.7(a)(8)

- No more than 30% of the IPQ issued for a crab fishery
- Except if they were “grandfathered in”



Regulatory caps on crab processing

ORIGINALLY, the 30% caps on the *use* of IPQ originally included summing the total amount of IPQ that is:

- (1) held by that person;
- (2) held by other persons who are affiliated with that person through common ownership or control; and
- (3) any IPQ crab that is **custom processed** at a facility an IPQ holder owns.

NOW, there are a number of exemptions to this calculation.



Regulatory caps on crab processing - Amendments

Amendment 27 (effective June 2009)

Exempted customed processed IPQ from the PQS/ IPQ use caps in the following fisheries:

- Bering Sea snow crab with a north region designation
- Western Aleutian Islands golden king crab fishery, provided that IPQ crab is processed west of 174° W. long;
- Western Aleutian Islands red king crab fishery
- Eastern Aleutian Islands golden king crab fishery
- St. Matthews blue king crab fishery
- Pribilof red and blue king crab fishery

→ But also, added new 60% facility use cap to EAG and WAI fisheries for any shoreside or stationary floating processor east of 174° W. long;



Regulatory caps on crab processing - Amendments

Amendment 27 (effective June 2009)

These exemptions for custom processed IPQ only apply for processors operating at either a shore-based or a stationary floating processor facility that are within community boundaries.

In addition, an exemption was included for IPQ crab not counting to PQS/ IPQ use caps if it is or was subject to ROFR

AND

- Has been transferred from the initial recipient to another person
 - Received by an RCR who is not the initial recipient of those PQS, and
 - Received by an RCR within the boundaries of the eligible crab community for which that PQS and IPQ derived from that PQS is, or was, designated in the ROFR.
- This exemption is relevant for BBR and BSS (Table 3-3; page 20)



Regulatory Caps on Crab Processing - Amendments

Amendment 41 (effective June 2013)

- Established process for exempting from regional delivery requirements
- Includes exemption for custom processed IPQ counting toward the PQS/IPQ use caps

Amendment 47 (effective January 2017)

- Added *C. bairdi* fisheries to the list of fisheries for which custom processed IPQ does not count towards PQS/IPQ use caps
 - This leaves BBR, BSS with a south region designation, and WAG crab processed east of 174° W. long as the only fisheries for which custom processed IPQ DOES count toward the PQS/ IPQ use caps
- A discussion paper followed considering other types of options (raise the caps, convert to B shares, and only apply exemptions when the capacity did not exist), but these options did not appear to achieve the intended goal.



Description of affected crab fisheries

- EAG and WAG fisheries
- WAI fishery
- BSS fishery
- BRR fishery

- TAC & harvest
- # of vessels & landings
- Ex vessel price and gross value
- Spatial distribution of harvest
- PQS & IPQ holder information
- # of processing facilities and location



Crab processing communities - profiles

Six communities received deliveries of BBR, BSS, EAG, or WAG between 2015 – 2022:

- Adak
- Akutan
- Dutch Harbor/ Unalaska
- King Cove
- Kodiak, and
- St. Paul



This section used existing sources to provide a consolidated profile for each community.



Alt 1: No action

Represents status quo regulations

- Processing facilities east of 174° W longitude would continue to be prohibited from using more than 60% of the IPQ issued in the EAG and WAI crab fisheries
- Custom processed IPQ for south-region BSS, BRR, and WAG processed east of 174° W longitude would continue to count toward the PQS/ IPQ use caps (unless qualified through ROFR exemptions)
 - The 2023/24 season was an example of challenges with the PQS/ IPQ caps for BBR.

Consolidation/ loss of processors can still occur under status quo

- Although use caps can provide market space for another processing facility – it does not guarantee that a processing facility will be available
- These decisions may be external to the use caps



Effects of Alt 2: Remove EAG and WAI facility use caps

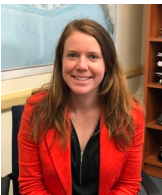
- Would allow additional custom processed IPQ to the facility near the cap
- Distributional impacts across processing facilities
- If the WAI fishery opens, this action could allow for more efficient deliveries and processing, especially if a TAC is small.



Effects of Alt 3: Exempting custom processed IPQ from PQS/ IPQ use caps



Source: A. Olson



Changes

- Would allow processing facility companies to process over the 30% use cap for BBR, south-region BSS, and WAG - with custom processed IPQ not counting towards the caps
- Would align the application of PQS/ IPQ use caps across crab fisheries

The same

- A person's direct and indirect PQS and IPQ holdings would still count towards the PQS/ IPQ use caps
- Regionalization would still apply



Effects of Alt 2 and Alt 3 – Processors and harvesters

Processors

- Increased net benefits and production efficiency at the processor sector level
- Distributional impacts to owners of processing facilities (some may have more IPQ to process, some less)
- Beneficial to unaffiliated IPQ holders by potentially providing more custom processing market opportunities (such as this live market) and more competition for facilities
 - Unless the number of independent active facilities decreases (not expected in the short-term)
- Continued opportunities to enter into the processing market by purchasing or leasing PQS, or accepting deliveries of B or C class IFQ or CDQ crab

Harvesters

- Beneficial to harvesters that share-match with unaffiliated IPQ holders by potentially providing more custom processing market opportunities (such as this live market) and more competition for facilities
 - Unless the number of independent active facilities decreases (not expected in the short-term)



Effects of Alt 2 and Alt 3 - Communities

EAG, BRR, BSS, & WAG processing communities: Dutch Harbor/Unalaska, King Cove, St. Paul, Kodiak, Akutan, & Adak

- Consolidation and movement of IPQ can already occur under status quo
- Impacts would only be realized to the extent that this action encourages the movement of shares to – or away from – recent processing communities
- Difficult to predict, but the marginal impacts from this action are not expected to be large



Management and enforcement considerations

- NOAA Office of Law Enforcement has consistently identified challenges with monitoring and enforcing PQS/ IPQ use caps.
 - Complex web of entity affiliations
 - Complex regulations with many nuanced exemptions
- Due to this complexity, they are generally monitored and enforced on an ad hoc basis, when issues are suspected.
- Alternative 2 and 3 should reduce the monitoring and enforcement burden.
 - If adopted together, use caps would be consistent across fisheries.
 - And monitoring and enforcement would essentially be at the holder level – PQS and IPQ.



Next Steps

- Identify a preferred alternative(s) for final action.

Questions?

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Thank you to contributors

Listed in Section 5, page 64

