


Public Testimony Sign-Up Sheet

Agenda Item ~~C-2(a)~~ C-2(a) ACTIVE PARTICIPATION

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NOTE to persons providing oral or written testimony to the Council: Section 307(1)(I) of the Magnuson-Stevens Fishery Conservation and Management Act prohibits any person "to knowingly and willfully submit to a Council, the Secretary, or the Governor of a State false information (including, but not limited to, false information regarding the capacity and extent to which a United State fish processor, on an annual basis, will process a portion of the optimum yield of a fishery that will be harvested by fishing vessels of the United States) regarding any matter that the Council, Secretary, or Governor is considering in the course of carrying out this Act.

MEMORANDUM

TO: Council, SSC and AP Members
FROM: Chris Oliver 
Executive Director
DATE: November 28, 2007
SUBJECT: BSAI Crab Issues

ESTIMATED TIME 10 HOURS (All C-2 items)

ACTION REQUIRED

Preliminary review of the analysis

BACKGROUND

(a) C share 'active participation'

The crab rationalization program is unique in several ways, including the allocation of a portion of the harvest share pool to captains for exclusive use by captains and crew (C shares). In the first two years of the program, some participants have questioned the specific provisions defining active participation requirements for C share acquisition and use. During the transition to the rationalization program, the fleet contracted substantially, eliminating eligibility of several for crew to acquire C shares. In addition, some participants believe a strict owner-on-board requirement is overly restrictive. To address these issues, the Council has identified alternatives to the current active participation requirements for analysis. At this meeting, the Council is scheduled to review the analysis to provide staff with any additional guidance necessary to respond to the concerns to be addressed by the proposed action. The draft analysis is attached (Item C-2(a)(1)).

Preliminary Review Draft

REGULATORY IMPACT REVIEW

and

INITIAL REGULATORY FLEXIBILITY ANALYSIS

**OF PROVISIONS
DEFINING ACTIVE PARTICIPATION REQUIREMENTS
FOR THE ACQUISITION AND USE OF C SHARES**

For a proposed Regulatory Amendment to
Implement Amendment ___ to the Fishery Management Plan for Bering Sea and
Aleutian Islands King and Tanner Crabs.

December 2007

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1 Introduction

In August of 2005, fishing in the Bering Sea and Aleutian Island crab fisheries began under a new share-based management program (the “program” or the “rationalization program”). The program is unique in several ways, including the allocation of a portion of the harvest share pool to captains for exclusive use by captains and crew (C shares). Under the program, individuals holding C share IFQ are required to be onboard the vessel harvesting those IFQ. After the third year of the program, leasing of C shares is prohibited. In addition, to acquire C shares a person must have actively participated in a fishery subject to the program during the preceding 365 days. At its June 2007 meeting, based on public testimony and input from the Advisory Panel, the Council directed staff to analyze elements and options revising the active participation requirements for C share acquisition and purchase.

This document contains a Regulatory Impact Review (Section 2) and an Initial Regulatory Flexibility Analysis (Section 3) of alternatives to modify the active participation requirements for the acquisition and use of C shares. Section 4 contains a discussion of the Magnuson Stevens Act National Standards and a fishery impact statement.¹

This document relies on information contained in the Bering Sea/Aleutian Islands Crab Fisheries Final Environmental Impact Statement/Regulatory Impact Review/Initial Regulatory Flexibility Analysis/Social Impact Assessment (NMFS/NPFMC, 2004). Throughout this analysis, that document is referred to as the “Crab EIS”.

2 Regulatory Impact Review

This chapter provides an economic analysis of the action, addressing the requirements of Presidential Executive Order 12866 (E.O. 12866), which requires a cost and benefit analysis of federal regulatory actions.

The requirements of E.O. 12866 (58 FR 51735; October 4, 1993) are summarized in the following statement from the order:

In deciding whether and how to regulate, agencies should assess all costs and benefits of available regulatory alternatives, including the alternative of not regulating. Costs and benefits shall be understood to include both quantifiable measures (to the fullest extent that these can be usefully estimated) and qualitative measures of costs and benefits that are difficult to quantify, but nonetheless essential to consider. Further, in choosing among alternative regulatory approaches agencies should select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity), unless a statute requires another regulatory approach.

E.O. 12866 further requires that the Office of Management and Budget review proposed regulatory programs that are considered to be “significant”. A “significant regulatory action” is one that is likely to:

¹ The proposed action is a minor change to a previously analyzed and approved action and the proposed change has no effect individually or cumulatively on the human environment (as defined in NAO 216-6). The action only addresses changes in eligibility to purchase or receive annual allocations from shares and will have no effect on the human environment, beyond those examined in the EIS.

- Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, local or tribal governments or communities;
- Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
- Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

2.1 Purpose and Need Statement

The Council has adopted the following the Purpose and Need Statement for this action:

Owner on board requirements and leasing prohibitions on C shares are scheduled to go into effect after the third year of fishing under the program. Those rules may be overly burdensome to active captains and crew given the current fleet fishing patterns in which vessels may not be active in all fisheries some years. Also, under the current rules in the program, C share holders that are cooperative members are exempt from owner on board requirements and leasing prohibitions. Revisions to the current participation requirements are necessary to establish reasonable participation requirements for C share holders and to ensure that the all C share holders remain active in the fisheries.

The current requirement that a person have participated in the fishery during the 365 days preceding an acquisition of C shares has the effect of preventing some displaced long-time captains and crew from acquiring share holdings to secure or maintain positions in the fisheries. A revision to the current requirements for active participation could address this problem by providing long-term participants with the opportunity to acquire shares.

2.2 Description of Alternatives

The Council has identified the following alternatives for this action:

Options for revision of active participation requirements for C share holders:

Option 1: To receive an annual allocation of IFQ, a C share holder must have participated in at least one delivery in a fishery subject to the crab rationalization program in the 365 days preceding the application for IFQ.

Suboption: Establish a mechanism for the annual allocation of C share IFQ to ensure that 3 percent of the TAC is available to active C share holders

Option 2: If a C share holder has not demonstrated active participation in a rationalized crab fishery for a period of 3 consecutive seasons, that C share holder will be required to divest of all C share holdings. This provision will not require individuals to divest of Quota Share until a) 5 b) 7 years after implementation of the crab program.

Options to address current transition:

For a period of 3, 5, or 7 years from the implementation of the program, C shares can also be acquired by an individual who:

- 1) is a U.S. citizen,

2) has at least 150 days of sea time as part of a harvesting crew in any U.S. commercial fishery (historic participation), and

Option 1: received an initial allocation of C shares

Option 2: demonstrates participation in a rationalized crab fishery during

a. 3 of the 5 seasons or

b. 2 of the 3 seasons

immediately preceding implementation of the crab rationalization program

2.3 Existing Conditions

This section describes the relevant existing conditions in the crab fisheries. The section begins with a brief description of the management of the fisheries under the rationalization program, followed by descriptions of the harvesting and processing sectors in the fisheries. The description of the harvesting sector includes information concerning captains and crew and the allocations of C shares necessary to understand the conditions in the fishery related to this action.

2.3.1 Management of the fisheries

The following nine crab fisheries are managed under the rationalization program:

Bristol Bay red king crab,
Bering Sea *C. opilio*,
Eastern Bering Sea *C. bairdi*,
Western Bering Sea *C. bairdi*,
Pribilof red and blue king crab,
St. Matthew Island blue king crab,
Western Aleutian Islands red king crab,
Eastern Aleutian Islands golden king crab, and
Western Aleutian Islands golden king crab.

Under the program, holders of LLP licenses endorsed for a fishery were issued vessel owner quota shares (QS), which are long term shares, based on their qualifying harvest histories in that fishery. Catcher processor license holders were allocated catcher processor vessel owner QS for their history as catcher processors; catcher vessel license holders were issued catcher vessel QS based on their history as a catcher vessel. QS annually yield individual fishing quota (IFQ), which are privileges to harvest a particular amount of crab in pounds in a given season. The size of each annual IFQ allocation is based on the amount of QS held in relation to the QS pool in the fishery. So, a person holding 1 percent of the QS pool would receive IFQ to harvest 1 percent of the annual total allowable catch (TAC) in the fishery. Ninety percent of the catcher vessel owner IFQ are issued as "A shares" or "Class A IFQ," which must be delivered to a processor holding unused individual processor quota (IPQ).² The remaining 10 percent of these annual IFQ are issued as "B shares" or "Class B IFQ," which may be delivered to any processor.³ Processor quota shares (PQS) are long term shares issued to processors. These PQS yield annual IPQ, which represent a privilege to receive a certain amount of crab harvested with Class A IFQ. IPQ are

² Currently, C shares are an exception to this generalization. Those shares are not subject to IPQ landing requirements during the first three years of the program. During that period, the IPQ corresponding to the C share allocations are withheld. The Council is considering an amendment to extend the exemption of IPQ landing requirements on C shares indefinitely.

³ The terms "A share" and "Class A IFQ" are used interchangeably in this paper, as are the terms "B share" and "Class B IFQ".

issued for 90 percent of the TAC, creating a one-to-one correspondence between Class A IFQ and IPQ.⁴

In addition to processor share landing requirements, Class A IFQ (along with IPQ) are subject to regional landing requirements, under which harvests from those shares must be landed in specified regions. The following regional designations are defined for the different fisheries in the program:

- Bristol Bay red king crab – North/South division at 56°20'N latitude
- Bering Sea *C. opilio* – North/South division at 56°20'N latitude
- Eastern Bering Sea *C. bairdi* – none (or undesignated)
- Western Bering Sea *C. bairdi* – none (or undesignated)
- Pribilof red and blue king crab – North/South division at 56°20' N latitude
- St. Matthew Island blue king crab – North/South division at 56°20'N latitude
- Western Aleutian Islands red king crab – undesignated and West of 174°W longitude
- Eastern Aleutian Islands golden king crab – South of 56°20'N latitude
- Western Aleutian Islands golden king crab – South of 56°20'N latitude

The A share/B share allocation structure has the effect of limiting market choices of participants, since only the 10 percent allocation of B shares are free to be sold to any buyer. Under this structure, the 90 percent A share allocation (with corresponding IPQ) is intended primarily to add stability to the processing sector and provide a means for compensated removal of processing capacity from the fisheries. The 10 percent B share allocation is intended to provide negotiating leverage to harvesters, an opportunity for entry to the processing sector, and a check on the processing market (by providing a negotiated market price)⁵. To aid participants in resolving price disputes relative to A share landings, the Council developed a binding arbitration program. The arbitration program is established through a set of private contracts that must meet requirements set out in the regulation. Holders of Class A IFQ and holders of IPQ must join arbitration organizations. These organizations, in turn, must enter contracts that define the arbitration program and select arbitrators. The arbitration program is an elaborate structure that serves several functions, including establishing a system for more orderly matching of Class A IFQ with IPQ, developing a market report and non-binding price formula to inform price negotiations, and providing a binding arbitration process to resolve impasses in negotiations.

Under the rationalization program, 97 percent of the initial allocation of QS was allocated to vessel owners. Vessel owner shares may be acquired by any individual who is a U.S. citizen with at least 150 days of sea time in a harvest capacity in a U.S. commercial fishery. Corporations and partnerships can also acquire these shares provided a U.S. citizen who meets the 150 day sea time requirement owns at least 20 percent of the corporation. The remaining three percent of the initial allocation of QS was issued to captains as "C shares", based on their harvest histories as captains. C share allocations are subject to management provisions not applicable to owner shares to ensure that active fishermen receive the benefits

⁴ Although 90 percent of IFQ issued each year are issued as A shares, individual allocations can vary from 90 percent. Holders of PQS and their affiliates receive their entire IFQ allocations as A shares (and are not allocated B shares). The rationale for issuing only A shares to PQS holders and their affiliates is that these persons do not need the extra negotiating leverage derived from B shares. To maintain 10 percent of the IFQ pool as B shares requires that unaffiliated QS holders receive more than 10 percent of their allocation as B shares (and less than 90 percent A shares).

⁵ It should be noted that the limitation on the market resulting from the 90 percent A share/IPQ allocation dampens the market for B share landings by limiting the size of the open market for landings. So, the B share price (while providing an indication of the free market price) may not reflect the price that would exist in the absence of the A share/IPQ allocations.

of those shares. C shares may only be acquired by individuals who meet the sea time requirement and are active in the fisheries, where 'active' is defined as having participated in a landing within 365 days of the share acquisition. An owner-on-board provision and leasing prohibition are also applied to C shares, intended to ensure that C shares would benefit active captains and crew. The Council recognized that logistical complications would likely arise early in the program, as a result of the interaction of owner-on-board requirements, leasing prohibitions, fleet contraction, and the landing requirements on A shares. To aid in overcoming these complications, the Council exempted C shares from the landing requirements of A shares and prohibitions on leasing for the first three seasons under the program (see 50 CFR 680.41(e) and 50 CFR 680.42(b)(6) and (c)(5)).⁶ Since the arbitration system applies only to A shares, the exemption of C shares from the 90/10 A share/B share split effectively exempts C share from the arbitration system. The Council is currently considering an amendment to the program that would indefinitely exempt C shares from the A share/B share division, effectively removing any processor share and regional landing requirements from C shares. The effects of an amendment exempting C shares from processor share and regional landing requirements currently under consideration are discussed where relevant in this analysis.

Holders of harvest shares are permitted to form harvest cooperatives to coordinate the harvest of their allocations. If a harvester chooses to join a cooperative, the annual allocation of IFQ is made to the cooperative and fished in accordance with the cooperative agreement. To ensure captains and crew are an integral part of the overall fishery, C share holders are permitted to join cooperatives (see 50 CFR 680.21(a)(1)). As incorporated into regulation, this provision effectively removes any prohibition on leasing of and owner-on-board requirements for C shares. Once a C share QS holder joins a cooperative, any IFQ are allocated to the cooperative. The leasing prohibition and owner-on-board requirements apply only to individual holders of C share IFQ; separate use provisions apply to IFQ held by a cooperative (see 50 CFR 680.21(c)(2)).

2.3.2 The harvest sector

Under the rationalization program, QS are allocated in two types. Vessel owner shares are allocated for 97 percent of the fishery; crew shares are allocated for the remaining 3 percent of the fishery. Both share types are divided among catcher vessels and catcher processors, depending on the type of operation that led to the initial allocation. Catcher vessel QS carry regional designations, which apply to annual allocations of Class A IFQ. The distribution of catcher vessel QS holdings varies substantially across fisheries (see Table 1 and Table 2). The regional distribution of shares differs with landing patterns that arise from the geographic distribution of fishing grounds and processing activities. In general, crew share holdings are more concentrated than vessel owner shares. This concentration arises both from the initial allocation and from consolidation that has occurred since implementation (see p. 23, RAM, 2006 and Table 1 and Table 2).

Table 1. Catcher vessel owner quota share holdings as a percent of the catcher vessel owner share pool.

⁶ Although the owner-on-board exemption is not explicitly created, by allowing leasing of C share IFQ for the first three years of the program, a holder of those shares is effectively relieved of the owner-on-board requirement.

cvo qs

Fishery	Share holdings by region						Across regions			
	Region	QS holders	Percent of pool	Mean holdings	Median holdings	Maximum holding	QS holders	Mean holdings	Median holdings	Maximum holding
Bristol Bay red king crab	North	32	2.5	0.08	0.04	0.24	236	0.42	0.36	3.60
	South	234	97.5	0.42	0.36	3.60				
Bering Sea <i>C. opilio</i>	North	202	46.9	0.23	0.17	1.35	221	0.45	0.43	2.85
	South	205	53.1	0.26	0.19	2.82				
Eastern Bering Sea <i>C. bairdi</i>	Undesignated	234	100.0	0.43	0.33	2.83	234	0.43	0.33	2.83
Western Bering Sea <i>C. bairdi</i>	Undesignated	234	100.0	0.43	0.33	2.85	234	0.43	0.33	2.85
Eastern Aleutian Island golden king crab	South	13	100.0	7.69	6.98	21.39	13	7.69	6.98	21.39
Western Aleutian Island golden king crab	Undesignated	13	50.0	3.84	1.82	20.46	13	7.69	3.31	45.51
	West	9	50.0	5.56	2.33	25.04				
Western Aleutian Island red king crab	South	32	100.0	3.13	0.88	22.09	32	3.13	0.88	22.09
St. Matthew Island blue king crab	North	121	78.3	0.65	0.58	3.43	132	0.76	0.65	4.54
	South	84	21.7	0.26	0.14	2.23				
Pribilof red and blue king crab	North	85	67.5	0.79	0.55	3.10	112	0.89	0.53	3.43
	South	76	32.5	0.43	0.26	2.82				

Source: NMFS Restricted Access Management IFQ database, crab fishing year 2007-2008.

Note: These share holdings data are publicly available and non-confidential.

Table 2. Catcher vessel crew quota share holdings as a percent of the catcher vessel crew share pool.

cvc qs

Fishery	Share holdings by region						Across regions			
	Region	QS holders	Percent of pool	Mean holding	Median holding	Maximum holding	QS holders	Mean holding	Median holding	Maximum holding
Bristol Bay red king crab	North	13	2.6	0.20	0.17	0.32	153	0.65	0.55	2.07
	South	153	97.4	0.64	0.52	2.07				
Bering Sea <i>C. opilio</i>	North	129	47.6	0.37	0.31	1.94	134	0.75	0.69	2.11
	South	127	52.4	0.41	0.34	1.59				
Eastern Bering Sea <i>C. bairdi</i>	Undesignated	150	100.0	0.67	0.62	2.09	150	0.67	0.62	2.09
Western Bering Sea <i>C. bairdi</i>	Undesignated	150	100.0	0.67	0.62	2.09	150	0.67	0.62	2.09
Eastern Aleutian Island golden king crab	South	11	100.0	9.09	9.18	20.14	11	9.09	9.18	20.14
Western Aleutian Island golden king crab	Undesignated	8	51.4	6.43	4.87	18.30	8	12.50	9.67	37.75
	West	7	48.6	6.94	4.89	19.45				
Western Aleutian Island red king crab	South	4	100.0	25.00	16.53	57.26	4	25.00	16.53	57.26
St. Matthew Island blue king crab	North	63	80.9	1.28	1.26	2.72	69	1.45	1.41	3.32
	South	42	19.1	0.46	0.17	2.57				
Pribilof red and blue king crab	North	33	70.3	2.13	2.13	4.83	150	0.67	0.62	2.09
	South	31	29.7	0.96	0.79	4.03				

Source: NMFS Restricted Access Management IFQ database, crab fishing year 2007-2008.

Note: These share holdings data are publicly available and non-confidential.

Annual harvest allocations are also issued in various classes (see Table 3), which limit the operation type and define share holder type and applicable landing restrictions.

Table 3. IFQ allocation by share type (2006-2007).

Fishery	Catcher vessel			Catcher processor		Total
	Owner		Captain/crew	Owner	Captain/crew	
	Class A	Class B				
Bristol Bay red king crab	11,647,090	1,294,110	402,768	615,655	14,669	13,974,292
Bering Sea <i>C. opilio</i>	26,121,324	2,902,364	929,338	2,898,453	57,982	32,909,461
Eastern Bering Sea <i>C. bairdi</i>	1,374,311	152,697	46,358	109,989	4,146	1,687,501
Western Bering Sea <i>C. bairdi</i>	801,857	89,097	27,047	64,175	2,419	984,595
Eastern Aleutian Islands golden king crab	2,245,212	249,468	80,075	125,227	0	2,699,982
Western Aleutian Islands golden king crab	1,140,787	126,752	41,914	1,089,563	30,989	2,430,005

Source: NMFS Restricted Access Management IFQ database, crab fishing year 2006-2007.

Prior to the implementation of the rationalization program, the BSAI crab fisheries were prosecuted as a limited access, derby fishery, under which the participants raced for crab after the opening with the fishery closing once managers estimated that the guideline harvest level (GHL)⁷ was fully taken. This limited access management creates an incentive for all license holders to participate in the fishery, since a person cannot receive a return from the fishery without participating. The results of this incentive were evident in the crab fisheries. For the last several years of limited access management, seasons in the two largest fisheries ranged from a few days to a few weeks, despite harvest levels near historic lows. From the 2000 season through 2004 season, Bristol Bay red king crab fishery harvests ranged from a low of 7.5 million pounds to high of 14.5 million pounds, while Bering Sea *C. opilio* harvests ranged from 22.2 million pounds to 30.8 million pounds. Between 150 and 250 vessels participated annually in each fishery.

Under the rationalization program, participants are allocated exclusive shares of the TAC. Since allocations are exclusive, participants do not need to race to prevent others from preempting their catch. To improve returns from the fisheries, participants have an incentive to reduce costs. One obvious means of reducing costs is fleet consolidation. Stacking quota on fewer vessels can save on costs not only of capital, but also on maintenance, insurance, crew, fuel, and other variable input costs. Examining data from the first two years of the program and the years immediately preceding implementation shows a drastic reduction in the fleet under the program (see Table 4). Although precise estimates of crew are not currently available, industry participants believe that most vessels are operated by a crew of six (including the captain). The fleet contraction that occurred after implementation of the rationalization resulted in substantial losses of crew positions in the crab fisheries, as those positions declined proportionally with fleet contraction. At the start of the program, C shares were allocated only to captains. Given the level of fleet consolidation, it is likely that many initial recipients of these shares have lost their captain positions under the program. This relatively high level of inactivity may explain the consolidation of C shares in cooperatives.

Under the rationalization program fleets (and likely corresponding captains and crews) declined to between one-half and one-third of their pre-rationalization levels. Assuming that each vessel employs 6 crew (including the captain), annual average captain and crew participation in the Bering Sea *C. opilio* and Bristol Bay red king crab fisheries dropped from in excess of 1000 to 500 or fewer. Captain and crew participation in the Eastern Aleutian Islands golden king crab fishery dropped from in excess of 100 to fewer than 40. Captain and crew participation in the Western Aleutian Islands golden king crab fishery dropped from annual averages of approximately 40 to approximately 20.

⁷ Historically, the GHL specified a range of allowable catch, providing in-season managers with some discretion to close the fishery based on their assessment of stock conditions. In making these assessments, managers would rely on survey information, as well as in-season and cross-season variations in catch rates. In more recent years, managers specified GHLs as specific amounts, managing the fishery in-season to allow harvest of that specific amount.

Table 4. Catch and number of vessels by operation type (2001 to 2006-2007).

Fishery	Season	Catch	Catch (as percent of total**) by		Number of vessels participating		
			catcher vessels	catcher processors	catcher vessels	catcher processors	all unique vessels
Bering Sea <i>C. opilio</i>	2001	22,940,704	86.5	13.5	201	8	207
	2002	29,609,702	94.4	5.6	182	9	190
	2003	25,410,122	96.8	3.2	185	5	190
	2004	21,939,493	97.0	3.0	183	6	189
	2005	22,655,777	97.1	2.9	161	6	167
	2005 - 2006	33,248,009	92.2	7.2	76	4	78
	2006 - 2007	32,699,911	90.9	8.4	66	4	70
Bristol Bay red king crab	2000	7,468,240	97.2	2.8	238	6	244
	2001	7,681,106	95.9	4.1	224	8	230
	2002	8,770,348	96.6	3.4	234	9	241
	2003	14,237,375	95.2	4.8	242	8	250
	2004	13,889,047	95.7	4.3	243	8	251
	2005 - 2006	16,472,400	96.7	3.3	88	4	89
	2006 - 2007	13,887,531	*	*	79	3	81
Eastern Bering Sea <i>C. bairdi</i>	2006 - 2007	1,267,106	*	*	33	3	36
Western Bering Sea <i>C. bairdi</i>	2005 - 2006	791,025	*	*	42	2	43
	2006 - 2007	633,910	*	*	34	2	36
Eastern Aleutian Islands golden king crab	2000 - 2001	3,086,890	*	*	15	0	15
	2001 - 2002	3,128,409	100.0	0.0	19	0	19
	2002 - 2003	2,765,436	100.0	0.0	19	0	19
	2003 - 2004	2,900,247	100.0	0.0	18	0	18
	2004 - 2005	2,846,273	100.0	0.0	20	0	20
	2005 - 2006	2,569,209	*	*	6	1	7
	2006 - 2007	2,692,009	*	*	5	1	6
Western Aleutian Islands golden king crab	2000 - 2001	2,902,518	*	*	11	1	12
	2001 - 2002	2,693,221	*	*	8	1	9
	2002 - 2003	2,605,237	*	*	5	1	6
	2003 - 2004	2,637,161	*	*	5	1	6
	2004 - 2005	2,639,862	*	*	5	1	6
	2005 - 2006	2,382,468	*	*	2	1	3
	2006 - 2007	2,002,186	*	*	2	1	3
All fisheries	2000 - 2001				246	10	253
	2001 - 2002				235	11	243
	2002 - 2003				238	11	247
	2003 - 2004				245	9	254
	2004 - 2005				247	9	256
	2005 - 2006				100	5	101
	2006 - 2007				87	5	91

Sources: ADFG fishtickets and NMFS RAM catch data (for 2005-2006 and 2006-2007)

* Withheld for confidentiality.

** Catch as a percent of IFQ allocations for 2005-2006 and 2006-2007 seasons.

Note: "All fishery" participation in a season includes all fisheries prosecuted between August 1 and July 31.

Most harvesters (including C share holders) have elected to join cooperatives, so most annual allocations are made to cooperatives (see Table 5). The holders of between 75 and 95 percent of the C shares by fishery are cooperative members. As cooperative shares, these shares may be more easily consolidated, since transfers among cooperative members are administered by the cooperative (rather than by NOAA Fisheries).

Table 5. Catcher vessel C share IFQ held by cooperatives (2006-2007).

Fishery	Catcher vessel captain and crew IFQ		Percent of vessel captain and crew IFQ held by cooperatives
	held by cooperatives	in total	
Bristol Bay red king crab	350,720	402,768	87.1
Bering Sea <i>C. opilio</i>	817,980	929,338	88.0
Eastern Bering Sea <i>C. bairdi</i>	35,133	46,358	75.8
Western Bering Sea <i>C. bairdi</i>	20,496	27,047	75.8
Eastern Aleutian Islands golden king crab	76,855	80,075	96.0
Western Aleutian Islands golden king crab	38,303	41,914	91.4

Source: NMFS Restricted Access Management IFQ database, crab fishing year 2006-2007.

In the catcher vessel sector, the portions of annual allocations that are harvested are fairly consistent across the various share types (see Table 6 and Table 7).⁸ C share harvests, however, have lagged slightly behind A share and B share harvests. The reason for this lag is not apparent. In some cases, it is possible that C shares are given lower harvest priority than A shares or B shares. C share holders likely have less negotiating leverage because of their relatively small share holdings. It is also possible that some share holders (including cooperatives) have reserved C shares to address late season contingencies, because of absence of landing limitations on C shares.

Table 6. Percentage of catcher vessel allocation harvested by share type (2005-2006).

Fishery	A shares	B shares	C shares
Bristol Bay red king crab	99.9	99.5	94.8
Bering Sea <i>C. opilio</i>	99.5	99.1	93.6
Western Bering Sea <i>C. bairdi</i>	58.3	40.9	27.7
Eastern Aleutian Islands golden king crab	95.1	92.6	95.9

Source: NMFS Restricted Access Management IFQ database, crab fishing year 2005-2006.

Information from the Western Aleutian Islands golden king crab fishery is withheld for confidentiality.

Table 7. Percentage of catcher vessel allocation harvested by share type (2006-2007).

Fishery	Class A	Class B	Class C
Bristol Bay red king crab	99.5	98.6	94.6
Bering Sea <i>C. opilio</i>	99.3	97.9	96.4
Eastern Bering Sea <i>C. bairdi</i>	79.0	67.8	54.2
Western Bering Sea <i>C. bairdi</i>	68.3	55.2	48.2
Eastern Aleutian Islands golden king crab	100.0	100.0	*

Source: NMFS Restricted Access Management IFQ database, crab fishing year 2006-2007.

* Withheld for confidentiality.

Information from the Western Aleutian Islands golden king crab fishery is withheld for confidentiality.

The distribution of harvests across vessels varies slightly by catcher vessel share type (see Table 8 and Table 9). A shares, which are the large majority of shares in the fisheries, are harvested by all vessels; B shares are harvested by slightly fewer vessels; and C shares are harvested by fewer vessels yet. The concentration of share use is higher for C shares than for the other two catcher vessel share types. In general, concentration of vessel harvests increased from the 2005-2006 season to the 2006-2007 season. An exception is the decline in concentration of catch on the four vessels harvesting the most crab in the

⁸ Since few catcher processors participate in the fisheries, catcher processor data are not provided here to avoid releasing confidential data. Prior to the next draft of this analysis, a review of catcher processor data will be undertaken to determine whether any additional relevant information may be released.

Bristol Bay red king crab fishery, which fell by more than 0.5 percent from 2005-2006 to 2006-2007.

Table 8. Catch of catcher vessel shares by share type (2005-2006).

	Bristol Bay red king crab			Bering Sea <i>C. opilio</i>			Western Bering Sea <i>C. bairdi</i>			Eastern Aleutian Island golden king crab		
	A shares	B shares	C shares	A shares	B shares	C shares	A shares	B shares	C shares	A shares	B shares	C shares
Number of catcher vessels harvesting share type	85	67	64	73	54	50	27	14	8	6	6	4
Average vessel harvest as percent of the share type	1.2	1.5	1.6	1.4	1.9	2.0	3.7	7.1	12.5	16.7	16.7	25.0
Median vessel harvest as percent of the share type	0.9	0.9	0.9	1.1	1.2	1.0	2.0	2.8	8.2	11.9	14.7	18.4
Average of highest four vessel harvests as percent of the share type	3.9	5.6	6.3	3.8	7.0	8.2	13.3	18.9	22.8	19.8	20.1	25.0

Source: NMFS Restricted Access Management IFQ database, crab fishing year 2005-2006.
Information from the Western Aleutian Islands golden king crab fishery is withheld for confidentiality.

Table 9. Catch of catcher vessel shares by share type (2006-2007).

	Bristol Bay red king crab			Bering Sea <i>C. opilio</i>			Eastern Bering Sea <i>C. bairdi</i>			Western Bering Sea <i>C. bairdi</i>			Eastern Aleutian Island golden king crab		
	A shares	B shares	C shares	A shares	B shares	C shares	A shares	B shares	C shares	A shares	B shares	C shares	A shares	B shares	C shares
Number of catcher vessels harvesting share type	76	61	56	63	49	44	27	11	11	17	6	7	5	4	3
Average vessel harvest as percent of the share type	1.3	1.6	1.8	1.6	2.0	2.3	3.7	9.1	9.1	5.9	16.7	14.3	20.0	25.0	33.3
Median vessel harvest as percent of the share type	1.1	1.1	1.1	1.3	1.6	1.4	1.9	12.1	6.8	4.8	12.7	8.6	15.3	21.8	*
Average of highest four vessel harvests as percent of the share type	3.3	5.8	7.1	4.8	6.1	8.7	12.8	16.3	17.9	13.5	23.0	23.1	23.9	25.0	*

Source: NMFS Restricted Access Management IFQ database, crab fishing year 2006-2007.
* Withheld for confidentiality.
Information from the Western Aleutian Islands golden king crab fishery is withheld for confidentiality.

Examining the distribution of C share landings by catcher vessels shows the relatively small amounts of landings attributed to C shares on a vessel basis (see Table 10). The four vessels harvesting the most C shares in Bering Sea *C. opilio* fishery in the first two years of the program averaged approximately 75,000 pounds of C share landings (less than a full trip). Average and median vessel harvests in all fisheries were substantially lower than this amount. Given these relatively small amounts of C shares harvested, it is apparent that cost effective harvest of C share allocations requires their aggregation with owner shares.

Table 10. C share landings by catcher vessels (2005-2006 and 2006-2007 seasons).

Season	Bristol Bay red king crab		Bering Sea <i>C. opilio</i>		Eastern Bering Sea <i>C. bairdi</i>		Western Bering Sea <i>C. bairdi</i>		Eastern Aleutian Island golden king crab		
	2005-2006	2006-2007	2005-2006	2006-2007	2005-2006	2006-2007	2005-2006	2006-2007	2005-2006	2006-2007	
Number of catcher vessels	64	56	50	44	closed		11	8	7	4	3
Average vessel harvest	7,120	6,806	18,108	20,840			2,286	1,385	1,863	19,427	23,585
Median vessel harvest	4,278	4,235	9,192	12,168			1,715	911	1,121	14,322	*
Average harvest of four highest harvesting vessels	28,606	26,982	73,890	78,001			4,511	2,527	3,016	19,427	*

Source: NMFS Restricted Access Management IFQ database, crab fishing year 2006-2007.
* Withheld for confidentiality.
Information from the Western Aleutian Islands golden king crab fishery is withheld for confidentiality.

2.3.3 C shares

Most C share holders have used their shares through cooperatives. Under this arrangement, the shares are allocated to the cooperative and fished in coordination with all of the cooperative's shares under the cooperative agreement. Cooperative use of shares simplifies transfers (particularly transfers within the cooperative which require no agency administration). The cooperative structure also simplifies share use

in instances where the cooperative manager effectively oversees and coordinates share use across the cooperative's fleet. The ability to rely on a cooperative manager to coordinate share use removes that burden from a crewmember who is engaged in the fishery.

Currently, most C share holders are compensated for landings based on a royalty, much as lessors of vessel owner shares are compensated. In most cases, the compensation is a percentage of the ex vessel price paid for the landing. Since C share landings are said to bring a price similar to B shares in the current market, the royalty payments are generally thought to be similar to those received for B share leases. Some cooperatives are said to average royalties across all cooperative IFQ, which could reduce C share royalties by averaging in pricing of Class A IFQ that may bring a lower ex vessel price. The use of a royalty system (and the amount of the royalty) generally applies whether or not the holder of the C shares fishes on the harvesting vessel. Likewise, crew shares paid by a vessel owner typically are not affected by C share holdings of the crew. So, in most cases, the monetary compensation for C share holdings is separate from and independent of the compensation for activity as a crewmember of the holder.

In general, cooperatives have managed their shares (including C shares) as a pool. Underages (or unused cooperative IFQ) are often distributed across all share holders, including C share holders, in proportion to share holdings. This method of distributing IFQ usage across share holders would ensure that C share holders share in both benefits and costs of the cooperative's ability to precisely manage the harvest of its share holdings.

Vessel owners report that C share holdings currently have little effect on hiring decisions. Most vessel owners continue to hire based on performance related criteria. Given the relatively small pool of C shares and limits on aggregation, whether C shares could have an influence on employment decisions in the future is questionable. Some vessel owners, however, have supported their crews' acquisition of C shares, including providing financial support. These vessel owners believe that C share purchases can instill an ownership interest that could add longevity particularly for proven crew.

In the first three calendar years since allocation of C share QS, substantial portions of the C share QS pools have been transferred (see Table 11). Over 20 percent of the C share QS has been transferred in four of the fisheries in the first three years of the program. The transfer market seems to have slowed in the third year, which may be a reflection of persons no longer employed in the fisheries, who have decided to leave the fisheries, divesting of their shares in the first two years. Although a large portion of the C share QS pool has been traded in each year, these transfers are a relatively small portion of the total QS pool. In most years and fisheries, a substantially larger portion of the total QS transfers have been transfers of vessel owner shares.

Table 11. Transfers of C share QS by year and fishery.

Year	Fishery	Sector	Number of transfers	Number of unique transferrors	Number of unique transferees	QS transferred		
						Units	as a percent of the C share QS pool	as a percent of total QS pool
2005	Bristol Bay red king crab	CV	23	21	16	1,354,425	11.3	0.3
	Bering Sea <i>C. opilio</i>	CV	28	15	13	2,879,962	9.5	0.3
	Bering Sea <i>C. bairdi</i>	CV/CP	19	18	13	539,625	9.0	0.3
	Eastern Aleutian Islands golden king crab	CV	2	2	1	43,372	14.5	0.4
	St. Matthew Island blue king crab	CV	6	4	4	38,779	4.3	0.1
	Western Aleutian Islands golden king crab	CV	2	1	1	75,643	6.3	0.2
2006	Bristol Bay red king crab	CV	27	21	18	1,237,670	10.3	0.3
	Bering Sea <i>C. opilio</i>	CV/CP	38	19	18	3,272,503	10.8	0.3
	Bering Sea <i>C. bairdi</i>	CV	4	4	4	181,990	3.0	0.1
	Eastern Bering Sea <i>C. bairdi</i>	CV	20	17	16	491,486	8.2	0.2
	Pribilof red and blue king crab	CV	3	2	2	48,351	5.4	0.2
	St. Matthew Island blue king crab	CV	11	6	6	79,301	8.8	0.3
	Western Bering Sea <i>C. bairdi</i>	CV	20	17	16	491,486	8.2	0.2
2007	Bristol Bay red king crab	CV	5	4	3	237,937	2.0	0.1
	Bering Sea <i>C. opilio</i>	CV	4	2	2	513,925	1.7	0.1
	Eastern Aleutian Islands golden king crab	CV	2	2	2	35,191	11.7	0.4
	Eastern Bering Sea <i>C. bairdi</i>	CV	2	2	2	97,301	1.6	0.0
	St. Matthew Island blue king crab	CV	3	2	2	26,880	3.0	0.1
	Western Bering Sea <i>C. bairdi</i>	CV	2	2	2	97,301	1.6	0.0

Source: NMFS Restricted Access Management transfer data.
Note: Percentages are based on quota share pool as of 2007.
Data for 2007 are partial year data, as of November 2007.

2.3.4 The processing sector

Under the crab program, crab harvested with Class A IFQ, which make up 90 percent of the catcher vessel owner share allocation, must be delivered to the holder of IPQ. The remaining 10 percent of harvests made with catcher vessel owner shares (harvest made with Class B IFQ) are open to competition among all processors (including those who do not hold processing shares). Currently, annual allocations arising from C share QS are subject to the same competition that exists for Class B IFQ. Annual C share allocations are currently scheduled to be subject to the Class A/Class B IFQ division of catcher vessel owner shares after the third year of fishing under the program. The Council, however, is considering an amendment that would exempt C shares from this division, indefinitely exempting C shares from processor share and regional landing requirements. Processing QS holdings are substantially more concentrated than either catcher vessel owner or catcher vessel crew QS holdings (see Table 12).

Table 12. Processing quota share holdings as a percent of the processing quota share pool.

pqs

Fishery	Share holdings by region				Across regions				
	Region	QS holders	Mean holding	Median holding	Maximum holding	QS holders	Mean holding	Median holding	Maximum holding
Bristol Bay red king crab	North	2	1.28	1.28	2.33	16	6.25	2.60	23.16
	South	16	6.09	2.60	20.83				
Bering Sea <i>C. opilio</i>	North	8	5.87	5.51	15.46	20	5.00	2.08	25.18
	South	18	2.95	0.25	9.72				
Eastern Bering Sea <i>C. bairdi</i>	Undesignated	23	4.35	0.83	24.26	23	4.35	0.83	24.26
Western Bering Sea <i>C. bairdi</i>	Undesignated	23	4.35	0.83	24.26	23	4.35	0.83	24.26
Eastern Aleutian Island golden king crab	South	8	12.50	6.04	45.91	8	12.50	6.04	45.91
Western Aleutian Island golden king crab	Undesignated	8	6.25	0.41	33.29	9	11.11	1.03	62.98
	West	9	5.56	0.49	29.69				
Western Aleutian Island red king crab	South	9	11.11	1.03	62.98	9	11.11	1.03	62.98
St. Matthew Island blue king crab	North	6	13.06	8.92	29.94	12	8.33	5.06	32.67
	South	9	2.41	1.76	7.81				
Pribilof red and blue king crab	North	6	11.26	12.01	23.28	14	7.14	3.17	24.49
	South	11	2.95	0.98	13.50				

Source: NMFS Restricted Access Management IFQ database, crab fishing year 2007-2008.

Note: These share holdings data are publicly available and non-confidential.

Processor share allocations are subject to up to three different geographic provisions. First, most shares are subject to regional landing requirements, under which the share holder must take delivery within a specified region. Second, for the first two years of the program, most processor quota shares were subject to a “cooling off” provision, which required IPQ to be used in the “community of origin” (or community of the processing history that led to the initial allocation of the underlying processing quota shares) subject to minor exceptions.⁹ Third, most processor shares are subject to a ‘right of first refusal’ held by an entity designated by the community of origin. The right is triggered by the sale of shares for use outside the community of origin.¹⁰ The right of first refusal is a weak protection in some respects. It does not apply to the use of shares outside the community of origin by the PQS holder. In addition, the right lapses after 3 consecutive years of use of IPQ outside of the community of origin by the PQS holder. The right also does not apply to transfers of IPQ, unless a person other than the PQS holder has used more than 20 percent of the IPQ outside the community of origin in three of the five years preceding the IPQ transfer. The permeability of the right of first refusal limits its potential to prevent the migration of processing from the community of origin.

Since the “cooling off” provision limited movement of processing from the community of origin during the first two years of the program, the distribution of processing of landings in the first two years of the program may not be representative of future landings distributions. The distribution of rights of first refusal should provide a reasonable indication of the starting point of the distribution of processing across communities.¹¹ In reviewing this distribution, it should be noted that changes are likely to occur as processors move shares to realize efficiencies in the fisheries. Since the right of first refusal does not apply to all transfers of IPQ and does not apply to the processing of shares by the PQS holder outside of

⁹ Movement of the lesser of 10 percent of and 500,000 pounds of the IPQ in a community of origin could be moved annually during the cooling off period.

¹⁰ In addition, the entity designated jointly by the City of Kodiak and Kodiak Island Borough has a right of first refusal on PQS initially allocated based on processing in communities in the Gulf of Alaska north of 56°20’N latitude.

¹¹ The distribution of community interests differ slightly under the cooling off period and the right of first refusal. Cooling off protections operate at the borough level, if a borough exists, and, if not, at the city level. The right of first refusal entity is jointly appointed by the city and borough, if both exist, and by the applicable community government, if only one exists.

the community of origin, that provision should be viewed as only a starting point for the examining the geographic distribution of processing. Changes in the distribution of processing are likely to vary with conditions in the fisheries and cannot be predicted.

Table 13. PQS regional and right of first refusal designations (2006-2007).

pqs/06-07

Fishery	Region	Community of Right of First Refusal	Number of PQS holders	Percent of PQS pool
Bristol Bay red king crab	North	St. Paul	2	2.6
		Akutan	1	19.9
	South	False Pass	1	3.7
		King Cove	1	12.8
		Kodiak	3	3.8
		None	3	2.7
		Port Moller	3	3.5
		Unalaska	11	51.1
		Total		97.4
	Bering Sea <i>C. opilio</i>	North	None	3
St. George			2	9.7
St. Paul			6	36.3
South		Total		47.0
		Akutan	1	9.7
		King Cove	1	6.3
		Kodiak	4	0.1
		None	4	1.8
Total			53.0	
E. Aleutian Islands golden king crab		South	Akutan	1
	None		1	0.9
	Unalaska		7	98.1
Pribilof Island red and blue king crab	North	None	1	0.3
		St. Paul	5	67.3
	Total		67.5	
	South	Akutan	1	1.2
		King Cove	1	3.8
Kodiak		4	2.9	
Unalaska		5	24.6	
Total		32.5		
St. Matthews blue king crab	North	None	5	64.6
		St. Paul	4	13.8
	Total		78.3	
	South	Akutan	1	2.7
King Cove		1	1.3	
Kodiak		1	0.0	
Unalaska		6	17.6	
Total		21.7		
W. Aleutian Islands golden king crab	Undesignated	NA	9	50.0
	West	NA	10	50.0
W. Aleutian Islands red king crab	South	NA	10	100.0

Source: NMFS RAM PQS holdings 2006-2007.

2.3.5 Ex vessel pricing

Assessing ex vessel prices under the rationalization program is complicated by several factors. The two different catcher vessel owner IFQ types may bring different prices because of the different limitations on

use of those shares and the effects of the arbitration program. The two different types of IFQ that are unrestricted by limits on landings (catcher vessel owner Class B IFQ and C share IFQ) could bring different prices because of the difference in negotiating leverage of their holders. Data limitations, however, complicate efforts to discern differences in ex vessel prices across the share types. The most obvious source of information for establishing such leverage would be price information from deliveries. Current data sources, however, do not provide final prices by share type. The only data that show price by share type are elandings data collected by NOAA Fisheries. These data are collected at the time of landing and do not include any post-landing adjustments or bonuses, which are reported to be an important part of pricing under current practices. Those data suggest that on average B and C share landings received a premium relative to A share landings. The exception is the *C. bairdi* fishery in the first year of the program, when C shares appeared to receive a lower price on landing than harvests by the other share types. Specific elandings prices are not reported here because the amount of any premium on B share and C share landings may not be accurate, since post-landing bonuses are not included in any prices.

Participants in the fisheries report the extent to which B and C share deliveries have drawn a premium varies across processors and fisheries. Some processors (including processors not holding IPQ) are reported to have paid bonuses to attract deliveries of B share harvests. Participants report that premiums for B and C share deliveries are typically a few cents, but have ranged as high as approximately ten cents. Some processors have chosen not to compete for landings of B share and C share harvests, but have accepted deliveries of B and C share harvests at the same price as A share landings.¹² Under these circumstances, the B and C share harvests received by the processor have typically come from the same fleet delivering A share harvests. In some cases, B and C share deliveries are reported to have brought lower prices than A share deliveries. This conclusion would appear to be supported by the average reported price for C share deliveries in elandings data in the *C. bairdi* fisheries, which was lower than the average reported price for A share deliveries in the first season.

Any absence of a substantial premium on B and C share landings in the program to date could be explained by a few factors other than the utility of those unrestricted shares in serving their purpose as competitive market shares. In the first two years of the program, crab markets have been at some of their lowest levels in recent years. In such a market, it is possible that the difference between a competitive price and the price arrived at through the arbitration standard is relatively small. Even in better markets, it is possible that the standard, under which the historic division of revenues is a primary consideration, would result in a price similar to the competitive price. Those historic prices were determined in a competitive market, but albeit a market under a different management structure. In addition, some harvesters are reported to have used B and C shares to realize efficiencies in harvesting. B and C share harvests have supplemented a partial delivery of A shares to limit the need for an additional trip to harvest (and independently market) the B and C share catch. Also, when making A share harvests, some harvesters avoid underages that would require an additional trip, knowing that B and C shares can be used to cover any A share harvest overage. These uses of B and C shares clearly benefit harvesters, but detract from the use of B and C shares to pursue competitive markets.

2.3.6 First wholesale and consumer markets

¹² Some participants have suggested that processors are reluctant to bid up the price for B shares in part because they fear that arbitrators may simply equate A share ex vessel prices with B share ex vessel prices.

This section briefly summarizes market conditions in the first two years of the program and the expected market conditions in the coming year using the market report produced for participants in the arbitration system. A brief summary of recent first wholesale prices is also included.

Crab markets in general suffer from great volatility. In general, the red king crab market and prices are greatly influenced by Japanese demand, U.S. demand, and Russian production. In the first year of the program (2005), the Russian supply of red king crab increased substantially, pushing prices down. In the second year, a drop in Russian production and a more aggressive Japanese market buoyed prices of red king crab. That recovery in prices has continued to date and is expected to continue (Sackton, 2007a).

Like red king crab prices, prices for *C. opilio* (snow crab) are greatly influenced by Japanese and U.S. demand. In the *C. opilio* market, however, the primary competition in production is the east coast of Canada. In the first year of the program prices for *C. opilio* reached extremely low levels due to poor demand in both the Japanese and U.S. markets. In the second year, the price recovered, approaching all time highs stimulated in part by demand from buyers drawn to the snow crab market by the low prices in the preceding year. In the coming year, it is possible that prices could decline significantly particularly from build up of Canadian inventories or if sellers of crab appear too eager to sell their product. *C. bairdi* prices have generally tracked closely with *C. opilio* prices with *C. bairdi* drawing a premium over *C. opilio* (Sackton, 2007c).

In the first year of the program, Aleutian Islands golden king crab prices declined substantially, tracking the price for red king crab products. In the second year an abundance of competing small sized red king crab imports further weakened prices. Going into the third year of the program it is thought that the price recovery could be stalled, as the increase in demand for golden king crab seems to have leveled. Overall, the increase in demand for crab products is expected to result in either stable or rising prices for golden king crab in the coming year (Sackton, 2007b).

First wholesale prices for red and golden king crab show a notable decline in 2005, the first year of the rationalization program (Table 14). The price drop is not evident in *C. opilio*, likely because that fishery is prosecuted early in the year, so these data reflect prices for production from the January 2005 fishery (prior to implementation of the rationalization program).

Table 14. First wholesale prices of crab species by product type (2001-2005).

Species	Product	2001	2002	2003	2004	2005
Red King Crab	Shellfish Sections	8.93	11.58	9.82	9.25	8.52
	Whole	5.14	9.80	8.26	8.40	7.94
Golden King Crab	Shellfish Sections	6.95	7.58	7.89	6.02	6.00
	Whole	5.17	4.99	5.76	5.83	5.59
<i>C. opilio</i> (snow) crab	Shellfish Sections	3.73	3.58	4.40	4.79	3.85
	Whole	*	*	*	*	*

Source: ADFG COAR data.

*Prices with fewer than 4 observations are confidential.

2.3.7 Communities

Several communities have historically been home to processors that have taken delivery of crab from the Bering Sea and Aleutian Islands crab fisheries. Limited information concerning the geographic distribution of processing in the crab fisheries can be released because relatively few processors

participate in the fishery in any location. In the years preceding implementation of the rationalization program, only data from the Bristol Bay red king crab and the Bering Sea *C. opilio* fisheries can be released (see Table 15). In addition, activity on floating processors may be associated with a particular community, but is not attributed to community in these records. Dutch Harbor processors received slightly less than a majority of the landings in both major fisheries. Discerning the landings of any other community in isolation is difficult because of aggregations required by confidentiality rules.

Table 15. Distribution of processing in the Bristol Bay red king crab and Bering Sea *C. opilio* fisheries prior to the rationalization program (2001-2005).

Fishery	Year	Communities	Number of processors	Pounds processed*	Percent of processed pounds
Bristol Bay red king crab	2001	Adak, Akutan, King Cove, Floaters	6	2,663,437	34.7
		Dutch Harbor	5	3,902,545	50.8
		Catcher processors	6	312,939	4.1
		Kodiak	6	798,932	10.4
	2002	Akutan, King Cove, Floaters	6	3,372,188	38.5
		Dutch Harbor	6	4,276,910	48.8
		Catcher processors	8	300,425	3.4
		Kodiak, St. Paul	4	820,497	9.4
	2003	Akutan, King Cove, Sand Point, Floaters	10	5,207,419	36.6
		Dutch Harbor	7	7,131,382	50.1
		Catcher processors	8	680,080	4.8
		Kodiak, St. Paul	5	1,218,494	8.6
2004	Akutan, St. Paul, King Cove, Floaters	7	5,932,888	42.7	
	Dutch Harbor	6	6,504,531	46.8	
	Catcher processors	8	602,749	4.3	
	Kodiak	4	848,879	6.1	
Bering Sea <i>C. opilio</i>	2001	Akutan, King Cove, Kodiak	3	1,889,513	8.2
		Dutch Harbor	5	7,916,618	34.5
		Catcher processors	7	3,099,567	13.5
		St. Paul, Floaters	8	10,034,268	43.7
	2002	Dutch Harbor, King Cove, Kodiak	9	13,646,381	46.1
		Catcher processors	8	1,671,036	5.6
		St. Paul, Floaters	8	14,292,205	48.3
	2003	Akutan, King Cove, Kodiak	3	2,162,245	8.5
		Dutch Harbor	6	10,308,648	40.6
		Catcher processors	5	803,452	3.2
		St. Paul, Floaters	8	12,135,777	47.8
	2004	Akutan, King Cove, Kodiak	4	2,287,481	10.4
Dutch Harbor		6	8,714,351	39.7	
Catcher processors		6	664,660	3.0	
St. Paul, Floaters		8	10,273,001	46.8	
2005	Akutan, King Cove, Kodiak	3	2,206,008	9.7	
	Dutch Harbor	6	9,759,358	43.1	
	Catcher processors	6	648,967	2.9	
	St. Paul, Floaters	5	10,041,444	44.3	

*Excludes deadloss.

Source: ADF&G fish ticket data

Rights of first refusal are granted to all communities with crab processing in recent history (see Table 13). The distribution of these rights is a general starting point for the distribution of landings in communities in the various fisheries.

Seven Alaska communities have historically received substantial landings from the Bering Sea and Aleutian Islands crab fisheries: Unalaska, Akutan, King Cove, St. Paul, St. George, Adak, and Kodiak. These communities vary in their geographic relation to the fishery; their historical relationship to the fishery; and the nature of their contemporary engagement with the fisheries through local harvesting, processing, and support sector activity or ownership. Each of these factors influences the direction and magnitude of potential social impacts associated with the proposed action.

Commercial fishing and seafood processing play a significant role in the economic success of Unalaska. The community is home to the greatest concentration of processing and catcher vessel activity than any other Alaska community (EDAW, 2005). Pollock accounts for nearly 70 percent of the total wholesale value processed in Dutch Harbor in 2005. The second largest contributor to total wholesale value processed in Dutch Harbor is crab at nearly 20 percent. Of the crab species, red king crab provided the largest contribution at \$51 million in the 2005 followed by snow crab at \$33 million. Dutch Harbor based processors received a substantial share of the processor share allocations in most crab fisheries under the rationalization program. These shares are subject to rights of first refusal of the Dutch Harbor community entity. These shares are unlikely to migrate out of the community because crab processing at most facilities plays an important part in an integrated operation that serves several fisheries.

Once heavily dependent upon salmon, the community of King Cove is now more diversified, processing groundfish and crab from the GOA and BSAI. The community is home to several large crab vessels, and is also home to Peter Pan Seafoods, the only shore based processor located in the community. The plant processes salmon, crab, halibut, and groundfish. Approximately 80 percent of King Cove's work force is employed full time in the commercial fishing industry (EDAW, 2005). This likely underestimates the dependency of the local economy on the importance of commercial fishing in the community. For several years now, the amount of crab and the total value of the crab processed in King Cove have been declining, while groundfish has increased. The decline in crab production was due primarily to a decline in quotas related to reduced stocks. In addition, AFA sideboard caps on BSAI crab have also limited the amount of crab that can be processed in King Cove. Under the rationalization program, crab processing has remained an important component of the diversified processing undertaken at the shore plant in King Cove. Yet, rapid fleet contraction under the program, particularly in the Bristol Bay red king crab and Bering Sea *C. opilio* fisheries, has affected King Cove. Between 10 and 15 crew jobs are estimated to have been lost in each of these two fisheries. Fleet contraction is also believed to have caused a drop in demand for harbor and moorage services and goods and services from fishery support businesses in King Cove. It is difficult to attribute these effects to the change in crab management, since data isolating spending of crab vessels and fishery participants from spending associated with other fishery and non-fishery activities are not available (see Lowe, et al., 2006).

The economy of Akutan is heavily dependent upon the groundfish and crab fisheries in the BSAI and GOA. The community is home to one of the largest shore based seafood processing plants in the area and is also home to a floating processor. The community also provides some limited support services to the fishing community. In addition, Akutan is a Community Development Quota (CDQ) community. The vast majority of catch landed in Akutan comes from vessels based outside of the community. Most of those vessels focus primarily on pollock, Pacific cod, and crab. The large shore plant is operated by Trident Seafoods. The shore processor is a multi-species plant, processing primarily pollock, Pacific cod, and crab. Given that the plant is an AFA-qualified plant with its own pollock co-op, pollock is the primary species in terms of labor requirements and economic value. However, the shore plant also accounts for a significant amount of the regional crab processing and also provides for a significant amount of the processing value at the plant (EDAW, 2005). As with plants in Dutch Harbor and King Cove, crab has remained an important part of a diverse operation at the shore plant in Akutan since implementation of the rationalization program.

Although the economy of Kodiak is more diversified compared to King Cove and Akutan, fishing is a significant economic activity in the community. Excluding the USCG, four of the top ten employers in Kodiak in 2003 were fish processors. Salmon and herring account for 42 percent of the total wholesale value during 2005. Halibut, sablefish, and other groundfish contributed 22 percent of the total wholesale value, while Tanner crab contributed less than 5 percent of the total wholesale value. Unlike Unalaska,

King Cove, and Akutan, Kodiak is home to an extensive resident fishing fleet. The total number of vessels is less than 600, with less than 300 that actively fished in 2002. Total estimated gross revenue of Kodiak permit holders was \$111 million for 2002. Kodiak is also home to numerous shore based processors. Species that typically contribute more than 10 percent of the total value are Pacific cod, pollock, and salmon. The processors located in Kodiak provide a large amount of diversity in size, volume, and species processed. The products produced by the shore plants range from large quantity canning of salmon to fresh and fresh-frozen products. The rapid fleet contraction under the crab rationalization program is also thought to have affected Kodiak. Kodiak crew are estimated to have lost 125 positions in the Bristol Bay red king crab and approximately 60 positions in the Bering Sea snow crab fishery in the first year of the program. A study of the effects of the rationalization program on Kodiak during the program's first year found anecdotal evidence suggesting declines in spending at some businesses, but evidence of a broad decline in total local spending could not be identified. The study cautioned that effects may lag, so these findings should be viewed as preliminary (Knapp, 2006).

Unlike King Cove, Akutan, Unalaska, or Kodiak, St. Paul is primarily dependent upon the processing of snow crab harvested in the North Pacific. According to ownership data, all crab deliveries to the Pribilof Islands are made by non-resident vessels. Since 1992, the local shoreplant on St. Paul has been the primary processor for crab. St. Paul is a primary beneficiary of the North/South regional distribution of shares in the rationalization program. This limitation on landings should ensure that a substantial portion of the processing in the Bering Sea *C. opilio* fishery is undertaken in St. Paul. In the long run, it is possible that St. George could obtain a greater share of North landings, but most participants currently prefer St. Paul's harbor facilities to those available in St. George.

As with St. Paul, St. George has depended primarily on processing of crab from the Bering Sea *C. opilio* fishery. Processing of crab in St. George has been exclusively by floating processors. Since 2000, little or no crab processing has taken place in St. George. Prior to the rationalization program, the loss of processing activity is primarily attributable to the decline in crab stocks. Under the rationalization program, no processing has returned to St. George. Processing shares were subject to the 'cooling off' provision requiring the processing of landings with those shares to be undertaken in St. George. Yet, harbor breakwater damage caused by a storm has prevented deliveries to the community during the first two years of the program. Whether the community can attract crab landings in the future depends in large part on its ability to provide a harbor perceived to be safe and suitable by participants.

The community of Adak, until recently, had no direct or indirect ties to commercial fishing because the island was home to a Naval Air Station since the 1940s. However, the U.S. Navy closed the air station several years ago, leaving the island to the local residents. As a result, the Aleut Corporation is trying to transform the island into a commercial fishing center in the Western Aleutians area of the Bering Sea. Most commercial fishing deliveries to Adak are to a single processing plant from larger vessels from outside the area since the community has a very limited small boat residential fleet. Of the species processed, cod, halibut, and black cod are the primary species. A few aspects of the rationalization program are structured specifically to support Adak. First, ten percent of the TAC in the Western Aleutian Islands golden king crab fishery is allocated to a community entity representing Adak. This allocation is intended to support fishery development (including both harvesting and processing) in the community. Adak is also an intended beneficiary of a regional designation on one-half of the shares in the Western Aleutian Islands golden king crab fishery, which require crab harvested with those shares to be processed west of 174° West longitude. Currently, Adak is the only community in the West region with a shore-based processing plant. Processing of the West region allocation in Adak is not a certainty, since the rules in the fishery permit processing of those landings on floating processors.

2.4 Analysis of alternatives

Through this action, the Council will determine active participation requirements for the acquisition and use of C shares. The effects of this action are almost exclusively those realized by C share holders, persons wishing to acquire C shares, and managers. As such the analysis of effects of each proposed alternative is contained in a single section, which discusses effects on these different persons.

In analyzing the alternatives in this action, the Council should consider the interaction of these measures with other aspects of the program, especially the processor share and regional landing requirements applicable to Class A IFQ. Under the current management, the 90/10 A share/B share split, including A share landing requirements, are scheduled to apply to C share IFQ allocations starting in the 2008-2009 fishing year. The Council is currently considering an amendment to that provision that would exempt C share IFQ allocations from the 90/10 A share/B share split indefinitely. Potential effects of the differences in landing requirements applicable to C share IFQ are discussed throughout this analysis.

Overall, the interactive effects of application of A share landing requirements on this action are limited. Those effects are mitigated substantially by C share holders choosing to join cooperatives. In the most recent fishing season, a large majority of C share holders have elected to join cooperatives (see Table 5). Consequently, coordination requirements arising from the application of A share landing requirements to C share IFQ will have little effect on most C share holders.¹³

2.4.1 Effects of provisions revising eligibility to acquire C shares

The first part of this action considers providing persons formerly active in the fishery, who are no longer active, with eligibility to acquire C shares for a transition period.

Status quo

Under the status quo, to acquire C shares a person must be an individual with at least 150 days of sea time in a harvest capacity in a U.S. commercial fishery and have been active in one of the rationalized crab fisheries in the preceding 365 days. Participation is defined as being on board a vessel as either captain or crew during at least one landing.¹⁴ Under this standard, captains and crew displaced by the fleet contraction, who have not found a position in one of the fisheries, would not be permitted to acquire C shares, until participating in a landing. Based on the fleet contraction that occurred in the first two years of the program, it is likely that as many as two-thirds of the persons that would have met this standard prior to the implementation of the program would not currently meet the standard. Assessing the effects of the status quo, it is helpful to separate persons not meeting the standard into two categories, those who received an initial allocation of C shares and those who did not.

Initial allocations were made only to state permit holders, who are generally captains, who met specific historic and recent participation requirements as permit holders. Historic participation was demonstrated by having at least one landing in three of the qualifying years in the fishery. Recent participation was demonstrated by having landings in two of the three seasons preceding April of 2002 (when the Council

¹³ The A share landing requirements can be expected to affect the price received by C share holders. The price effect is independent of the coordination effect at issue here.

¹⁴ Participation in a landing may be demonstrated by a fish ticket on which the person is the permit holder, an IFQ landing receipt showing the person as the hired master, or an affidavit of the vessel owner. These methods of demonstrating participation are not at issue in this action.

selected its preliminary preferred alternative for the initial allocation of C shares).¹⁵ Based on these criteria, NOAA Fisheries made initial allocations to 231 permit holders (see Table 16). Of these initial recipients, 97 are estimated to have remained active as card holders¹⁶ (i.e., most likely as captains) in the first year of the program, while 84 are estimated to have remained active as card holders in the second year of the program. Data showing activity as crew are not available. It is possible that additional recipients of initial allocations were active as crew, but it is believed that most captains who have not retained a position as captain are not active in the fisheries. Under the status quo, inactive persons, including recipients of an initial allocation, would not be able to acquire additional C shares.

Table 16. Initial allocation of C share QS.

initial - c share

Fishery	Initial recipients	Mean allocation (as percent)	Median allocation (as percent)
Bristol Bay red king crab	181	0.6	0.5
Bering Sea <i>C. opilio</i>	155	0.6	0.6
Bering Sea <i>C. bairdi</i>	176	0.6	0.5
Eastern Aleutian Island golden king crab	13	7.7	8.2
Western Aleutian Island golden king crab	9	11.1	6.2
Western Aleutian Island red king crab	4	25.0	20.8
St. Matthew Island blue king crab	72	1.4	1.4
Pribilof red and blue king crab	40	2.5	2.4
All - unique recipients	231		

Source: NMFS Restricted Access Management Database.

Note: The initial allocation originally included a single allocation of shares for harvest of Bering Sea *C. bairdi*

Two sets of persons active on vessels in the fisheries prior to implementation of the rationalization program did not receive an initial allocation. Captains that did not meet both the historic and recent participation criteria did not receive initial allocations. Comparing the number of recipients of initial allocations with the number of active vessels in the fisheries, it appears that at least 25 captains who were active in the fisheries in the 5 years preceding implementation of the program did not receive an initial allocation. In addition, no crew, regardless of their record of participation, received initial allocations.¹⁷ Based on the number of vessels participating in the fisheries prior to implementation of the rationalization program, at least 750 former crew active in the five years preceding implementation of the program are no longer active in the crab fisheries, and are unable to acquire C shares.¹⁸ Any of these persons that did not secure a position on a vessel in the fisheries after the program was implemented would not be permitted to

¹⁵ Exceptions to the recent participation requirements were made to address specific circumstances in certain fisheries. Recent participation requirements for the Bering Sea *C. bairdi*, the Western Aleutian Islands golden king crab, St. Matthew Island blue king crab, and the Pribilof red and blue king crab fisheries were based on participation on other fisheries included in the program, since those fisheries were closed in most years immediately preceding adoption of the program. Also, in the Pribilof fishery participants that worked on vessels less than 60 feet in length were exempt from any recency requirement, since most of those smaller vessels did not participate in other fisheries included in the program.

¹⁶ Card holders are the IFQ holder or other person authorized to make deliveries of IFQ. In most instances, card holders are believed to be the captain of the vessel harvesting the IFQ.

¹⁷ It is likely that some persons fall into both categories. Persons moving from the deck to a captain position did not meet the eligibility criteria for a captain, and therefore did not receive an allocation, would be in both categories.

¹⁸ This estimate is based on the assumption that each vessel employs 5 crew (excluding the captain).

acquire C shares under the existing active participation requirement.

Under the status quo, persons formerly active in the fisheries (including initial recipients of C shares, captains, who did not receive an initial allocation of C shares, and crew), but currently inactive, cannot acquire C shares. A few different influences could motivate the purchase of shares by these persons. Some of these persons could view share holdings as providing a potential avenue to reemployment in the fisheries. These persons may believe that share holdings could improve their chances of gaining employment in the fisheries. If a vessel owner views a potential crewmember's share holdings as an indication of that person maintaining a long term interest in the fishery, that vessel owner could be induced to hire the person over other applicants that have no share holdings. Similarly, some crew applicants could believe that share holdings could provide leverage for entering the fishery. For example, a potential crewmember could attempt to use share holdings to induce a vessel owner to hire him. To date, vessel owners have not indicated that share holdings are a consideration in hiring. Instead vessel owners are said to focus on performance related information when making crew hires. Given that C shares are only 3 percent of the quota share pool (and are subject to a 2 percent cap in most fisheries), the potential for a C share holder to amass C share holdings in an amount that would induce a vessel owner to hire the person is limited (see Table 17). It is possible, however, that C share holdings could affect a vessel owner's hiring decision between two relatively close candidates.

Some persons who have had extended careers in the fisheries could also view C share holdings as a reasonable means of maintaining an interest in the fisheries. These persons may accept being displaced from employment in the fisheries, but wish to maintain a long term interest in the fisheries. Under the status quo, these persons would not be permitted to acquire C shares.

Table 17. Most recent TAC and C share caps based on that TAC.

Fishery	Most recent opening		Share cap	
	Year	TAC	as a percent of pool	in pounds (based on most recent TAC)
Bristol Bay red king crab	2006 - 2007	13,974,300	2	8,385
Pribilof red and blue king crab	1998	1,250,000	4	1,500
St. Matthews blue king crab	1998	4,000,000	4	4,800
Western Aleutian Islands red king crab	2003 - 2004	500,000	20	3,000
Eastern Aleutian Islands golden king crab	2006 - 2007	2,700,000	20	16,200
Western Aleutian Islands golden king crab	2006 - 2007	2,430,000	20	14,580
Bering Sea <i>C. opilio</i>	2006 - 2007	32,909,400	2	19,746
Western Bering Sea <i>C. bairdi</i>	2006 - 2007	984,600	2	591
Eastern Bering Sea <i>C. bairdi</i>	2006 - 2007	1,687,500	2	1,013

Source: Crab SAFE, 2006.

Note: Estimates are based on assumption that C share IFQ are 3 percent of the TAC.

Options to change eligibility to acquire C shares

This action is proposed to expand the pool of eligible persons to include persons who were active in the crab fishery immediately prior to implementation of the program, but who do not meet the requirement for activity in the 365 days preceding the transfer. This eligibility would exist for a transition period, after which the current active participation rule would apply to all share purchases. This analysis first considers the provisions that define eligibility to acquire C shares, then considers the provisions that define the term

(or number of years) of eligibility.

The action includes options defining persons receiving transitional eligibility to acquire C shares for two groups of people, persons that received initial allocations and persons who demonstrated threshold participation in the years preceding implementation of the program. In the second year of the program, approximately 147 persons who received an initial allocation under the program did not participate in program as a card holder. These

Options to address current transition:

For a period of 3, 5, or 7 years from the implementation of the program, C shares can also be acquired by an individual who:

- 1) is a U.S. citizen,
- 2) has at least 150 days of sea time as part of a harvesting crew in any U.S. commercial fishery (historic participation), and

Option 1: received an initial allocation of C shares

Option 2: demonstrates participation in a rationalized crab fishery during:

- a. 3 of the 5 seasons or
- b. 2 of the 3 seasons

immediately preceding implementation of the crab rationalization program.

persons would all be eligible to acquire C shares under the first option under consideration. While the option to extend transitional eligibility to recipients of initial allocations of C shares would address their concern, the provision will not help certain persons that may be similarly aggrieved under the current active participation requirements. By definition, the initial allocation was made only to captains (i.e., named permit holders on fish tickets). Displaced crew who had similar participation, but were not permit holders did not receive an initial allocation and would be excluded from eligibility by this provision. In addition, persons that had considerable participation in the years immediately preceding implementation of the rationalization program, but did not participate prior to 2001 were excluded from the initial allocation (as all qualifying periods ended by 2000). These persons may have more recent participation than some persons who received an initial allocation, since eligibility for an allocation could be achieved by participation prior to June 2001.¹⁹

The second pair of options would allow persons who participated in at least one of the rationalized fisheries during either 3 of the 5 years preceding implementation of the rationalization program or 2 of the 3 years preceding the rationalization program to purchase C shares. Since participation records for crew are not available, estimates of eligibility under this provision are not possible. Examining vessel participation patterns, however, provides some basis for assessing the potential effects of the provision (see Table 18). A total of 255 vessels participated in at least 3 of the 5 years immediately preceding the rationalization program, while 253 participated in at least 2 of the 3 years immediately preceding program implementation. Assuming continuous crew participation, these data suggest that approximately 1500 crew (including captains) would meet these eligibility criteria. If the persons who received initial allocations of C shares that are currently active are assumed to be among those meeting the participation criteria, then approximately 1400 persons would be eligible to acquire C shares by either of these provisions.

Table 18. Vessel participation in the years immediately preceding implementation of the rationalization program (2000-2001 to 2004-2005).

¹⁹ To receive an initial allocation a person also needed to meet a recent participation requirement. That requirement could be met by fishing that occurred on or before June of 2001.

Participation in years preceding implementation	Number of vessels	Percent of participating vessels
1 of 5 years	18	6.5
2 of 5 years	6	2.2
3 of 5 years	16	5.7
4 of 5 years	20	7.2
5 of 5 years	219	78.5
1 of 3 years	13	4.9
2 of 3 years	15	5.6
3 of 3 years	238	89.5

Source: ADFG fishtickets.

Two competing effects are likely to arise from these provisions expanding eligibility to acquire C shares. First, persons who are provided eligibility by the provision, who wish to purchase shares could benefit from the ability to compete for their purchase. These persons may wish to acquire C shares to either maintain a connection or interest in the fisheries. Long term participants who are unlikely to reenter the fisheries as captain or crew, in particular, may use C share acquisitions to maintain a tie to the fisheries. In addition, some of these newly eligible persons may acquire C shares to bolster their position to reenter the fisheries. Whether vessel owners will view C share holdings as a compelling reason to hire someone is questionable, but it is possible that the commitment to the fisheries shown by C share holdings could be a consideration in a hiring decision.

The benefit to those receiving transition eligibility and the effects on the market for C shares could be influenced by other factors. Most importantly, the rules governing C share use will affect whether persons with transitional eligibility will benefit from that eligibility. Specifically, if C share holders are required to be active to receive IFQ allocations (as is addressed in the second part of this action) or are required to divest after a period of inactivity, transitional eligibility could have little effect on persons receiving that eligibility. Persons who receive transition eligibility will be much less likely to enter the market for C shares, if they do not receive IFQ or are required to divest their C share holdings after a period of inactivity. Persons wishing to purchase C shares to maintain an interest in the fishery (but who do not intended to be active as crew) will be unlikely to enter the market during the transitional eligibility if they will not derive any benefit from the shares unless they are active. Also, persons wishing to use C shares to leverage a crew position are much less likely to enter the C share market, if they perceive a risk that they will not be able to locate an acceptable crew position.

The competing effect of the transitional eligibility will be felt by persons active as captains and crew in the fisheries. Persons currently participating in the fisheries as captain and crew are likely to be disadvantaged by an increase in competition for C shares that could arise from providing transition eligibility to persons no longer active in the fisheries. If only initial recipients of C shares are given eligibility, approximately 150 additional persons would be eligible to acquire C shares. Under the current rule, more than 600 persons are likely to be eligible to acquire C shares. So, the pool of eligible persons could increase by as much as 25 percent under the option that would grant eligibility to initial recipients of C shares. If the Council selects one of the broader options that grants eligibility to persons meeting participation thresholds for the years prior to implementation of the program, eligibility would be granted to substantially more persons. Under such a provision the number of persons who could acquire C shares could as much as triple from the current level (if crew participation patterns are similar to vessel participation patterns). Although the pool of eligible persons would expand substantially, the change in

competition for C shares is uncertain. It is likely that many of the persons eligible under these provisions are unlikely to attempt to acquire C shares, as most are unlikely to attempt to reenter by acquiring shares. It is possible that some of the people eligible under this provision will attempt to purchase shares, which would put additional pressure on the C share market, which would affect the cost of shares and the ability of currently active captains and crew to purchase shares.

The effects of the transitional eligibility proposed by this action will also depend on several other factors. The development of the loan program could also influence the effects of transitional eligibility by affecting the availability of funds for share purchases. Depending on loan eligibility provisions, the program could either compound or limit the effect of any transitional eligibility provision adopted by the Council. If persons eligible under the transition provision are not eligible for loans, there may be less pressure on the market from those persons. If persons eligible under the transition provision are also eligible for loans, additional market competition could arise. The removal of A share landing requirements on C shares could compound any additional market pressure on C shares arising from this action. C shares could trade for a higher price, if those landing requirements are removed, as is currently being considered by the Council. Lastly, the restructuring of the crab program, which is currently under consideration by the Council can also be expected to affect share prices. If persons interested in C share acquisitions believe that changes to the program arising from Council restructuring of the program are likely, it is possible that those changes could affect the C share market. Potential buyers may be less or more likely to participate in the market, if they perceive that restructuring might change the terms of their share holdings (or the share holdings of others). Given the uncertainty of that action, it is not possible to predict these effects.

The Council has elected to consider three options defining the term of the transitional eligibility to acquire C shares. That eligibility could extend for 3, 5, or 7 years from implementation of the program. Any action under this amendment is unlikely to be implemented prior to the 2008-2009 fishing season (i.e., the fourth year of fishing under the program). Consequently, limiting transitional eligibility to a period of 3 years after implementation is unlikely to have any effect. **The option to limit eligibility to 3 years after implementation should be deleted.**

The option to extend transitional eligibility for 5 years from implementation would likely provide between 1 and 2 years of eligibility, while the option to extend that eligibility for 7 years from implementation would likely provide between 3 and 4 years of that eligibility. A short period during which a relatively large number of persons are eligible to acquire shares could cause some disruption to the market, if a noticeable portion of the group is very active. The shorter period is likely to cause greater disruption, particularly if persons benefiting from the transitional eligibility believe that a limited portion of the C share pool is likely to come onto the market during the brief period. Also, if C share holders perceive an increase in demand from these temporarily eligible persons, C share holders may be inclined to enter the market as sellers during this period. The relatively low ownership caps in the fisheries limit the potential for a few persons to disrupt the market, but if a large number of persons qualify for the provision, it is possible that their collective influence on the market could be substantial. The longer eligibility period could disperse the impact of qualifying additional persons for the market, but a 3 to 4 year period is a relatively short period of time during which additional persons in the market could be noticeable. Under either option defining the term, it is possible that as the end of the eligibility period approaches additional activity in the market could be stimulated. Persons that are likely to lose their transitional eligibility could perceive a last opportunity to participate in the market leading to higher

demand.²⁰

The effects of options to provide transitional eligibility on managers are expected to be relatively minor. Under the current eligibility provisions, a participant can demonstrate activity as a permit holder on a fish ticket or through affidavits of vessel owners. These (with other additional forms of evidence) could also be used to show participation under the options for this action.²¹ The applications would be required to be slightly more extensive than the existing forms (requiring several years of participation instead of a single year's activity as required under the current rules), but would effectively use the same (or similar) evidence. In addition, since the transitional eligibility would only apply for a period of years, the added burden of accommodating persons receiving that eligibility would be only for the period of the provision. The enforcement burden arising out of this revision would also be relatively minor. Although a substantial number of persons could become eligible from this provision, the general approach to enforcement would be to pursue any case of possible inappropriate applications. Although this could result in a larger number of cases, the potential number of cases would be limited by the number of persons applying for eligibility and the potential for persons to misrepresent their prior fishing activity. Although some misreporting is possible, it is not believed that a substantial number of persons misreporting fishing history to create transitional eligibility will result. The potential for misreporting is reduced, if C share holders are required to be active in the fisheries to receive initial allocations (or to avoid a forced divestiture), since most persons who are not confident of meeting future active participation requirements are unlikely to acquire shares.

2.4.2 Effects of provisions revising active participation requirements for C share holders

The second part of this action considers revision of the rules governing active participation requirements of C share holders.

Status quo

Under the status quo, individuals who hold C share IFQ are required to be on board the vessel harvesting those IFQ. If a C share holder joins a cooperative, the IFQ are allocated to the cooperative, effectively removing the onboard requirement with respect to those IFQ. This disparate treatment of individual C share holders and C share holders who are cooperative members has several effects. First, the incentive for a C share holder to join a cooperative is increased by relief from the owner on board obligation. Second, to the extent that the current rule is intended to ensure C share holders are on board when their IFQ holdings are harvested, the rule is likely ineffective. As currently formulated, the rule ensures either C share owner on board or cooperative membership. Data are unavailable to show the extent to which C share holders are onboard for the harvest of their IFQ. Card holder activity, however, suggest that a large majority of the permit holders who received an initial allocation of C shares are no longer active as captains.²² The extent to which these persons are active as crew is not known. Also, a large majority of C share holders have elected to join cooperatives. Although the motivations for cooperative membership go far beyond avoiding owner on board requirements, the relief from owner on board requirements must especially appeal to C share holders who are no longer active in the fishery.

²⁰ These effects, however, will depend on the number of persons granted transitional eligibility and whether those persons are active in the C share market. This activity will greatly depend on the rules governing C share use; specifically, whether C share holders are required to be active to receive IFQ allocations and whether inactive C share holders will be required to divest of their shares.

²¹ It may be advisable to allow other persons to sign affidavits attesting to participation, to address the contingency of a vessel owner being unavailable. These specifics could be addressed in the development of specific regulations.

²² In the second year of the program, 147 of the 231 initial recipients of C shares were not active as card holders.

In the long run, as active C share holders retire from captain and crew positions, it can be expected that many may elect to continue to remain members of cooperatives and retain their C share holdings through established relationships. Over time, the number of active C share holders can be expected to decline, as active C share holders retire. Some active C share holders can be expected to remain, particularly as new acquisitions will only be permitted by persons active in the fishery. Yet, at any one time, a large portion of the C share pool could be held by persons that are not active as captains or crew.

An additional effect of the current participation requirements is that the market for C shares could be less fluid. If only active captains and crew are permitted to receive benefits from C shares, it is likely that the market for these shares will be more active, since persons who retire or exit from captain and crew positions will transfer shares. Without this requirement for active participation, it is likely that C shares will be held persons who have left their captain and crew positions and participate as cooperative members. The added flexibility for C share holders allowed through the absence of active participation requirements for cooperative members could also increase the value of C shares. Whether a price increase is observed depends on whether the absence of active participation requirements for cooperative members under the status quo reduces supply of C shares in the market or increases demand.

Options to change active participation requirements for C share holders

Two options are under consideration that would change the active participation requirements for C share holders. Under the first option, no IFQ would be issued to C share QS holders, unless that C share holder demonstrated active participation in one of the rationalized fisheries in the 365 days preceding the issuance of IFQ. This provision parallels the current provision governing eligibility to acquire C shares, which requires active participation within 365 days of a C share acquisition. During the second and third year of the program 119 and 130 C share holders are estimated to have not participated as card holders (i.e., captains) in the preceding season (see Table 19 and Table 20).²³ Whether these C share holders were active as crew is not known. Those who were not active as crew would not receive IFQ allocations in the year following their inactivity under the first option. The share of the C share QS pool held by persons inactive as card holders is a substantial (and in some cases a majority) of the C share QS pool.

Options for revision of active participation requirements for C share holders:

Option 1: To receive an annual allocation of IFQ, a C share holder must have participated in at least one delivery in a fishery subject to the crab rationalization program in the 365 days preceding the application for IFQ.

Suboption: Establish a mechanism for the annual allocation of C share IFQ to ensure that 3 percent of the TAC is available to active C share holders

Option 2: If a C share holder has not demonstrated active participation in a rationalized crab fishery for a period of 3 consecutive seasons, that C share holder will be required to divest of all C share holdings. This provision will not require individuals to divest of Quota Share until a) 5 b) 7 years after implementation of the crab program.

A slight change in the percent of C share holders (and the portion of the C share QS pool held by those persons) active as card holders has occurred over the first two years of the program. The change in percent of C share holders that are inactive as card holders varies across the fisheries. In some fisheries, the percent of C share holders active in the fishery grew from the first to the second year, while dropping

²³ It is notable that more unique C share holders participated in the fisheries as card holders than unique vessels participated in the fisheries, suggesting that some vessels are using multiple captains and that C share holders occupy most captain positions in the fisheries.

in other fisheries. Overall, the number of C share holders active as card holders, however, dropped slightly in the second year. From the first to the second year, the number of C share holders declined by one person, while 12 fewer C share holders were active.

Whether this drop is an actual decline in C share holder activity is not known. It is possible that some C shares have been acquired by crew (other than captains) who are less likely to be card holders. During this same period, the percent of the C share QS pool held by persons active as card holders dropped in all fisheries. Again, the extent to which this decline represents an actual decline in active participation by holders of C share QS or a change in the composition of C share holders (from captains to crew) is not known.

Table 19. C share QS holders in 2006-2007 with active participation (at least one landing in any rationalized crab fishery) in 2005-2006 as a card holder.

2006-2007					
Fishery	Active (as a card holder)	Number of C share holders	Percent of C share holders	Percent of QS	Total C share holders in the fishery
Bristol Bay red king crab	Inactive	79	50.6	44.1	156
	Active	77	49.4	55.9	
Bering Sea <i>C. opilio</i>	Inactive	60	44.1	38.1	136
	Active	76	55.9	61.9	
Eastern Aleutian Islands golden king crab	Inactive	3	27.3	22.7	11
	Active	8	72.7	77.3	
Eastern Bering Sea <i>C. bairdi</i>	Inactive	90	57.7	50.7	156
	Active	66	42.3	49.3	
Pribilof red and blue king crab	Inactive	22	56.4	55.4	39
	Active	17	43.6	44.6	
St. Matthews Island blue king crab	Inactive	36	52.2	50.8	69
	Active	33	47.8	49.2	
Western Aleutian Island golden king crab	Inactive	4	44.4	37.6	9
	Active	5	55.6	62.4	
Western Aleutian Island red king crab	Inactive	2	50.0	69.2	4
	Active	2	50.0	30.8	
Western Bering Sea <i>C. bairdi</i>	Inactive	90	57.7	50.7	156
	Active	66	42.3	49.3	
All fisheries	Inactive	119	55.6	NA	214
	Active	95	44.4		

Sources: NMFS RAM catch data for 2005-2006 and QS holder data for 2006-2007.

Under this first option, C share holders who are not active in the preceding year would not receive an annual IFQ allocation. Based on current C share holder participation, it is possible that a substantial share of the C share QS pool would not be allocated IFQ in several of the fisheries. Under the current rules, approximately 3 percent of the QS pool is allocated as C share QS. If these IFQ allocations are not made to C share QS holders who are not active, it is possible that the C share IFQ allocation could be reduced by as much as 50 percent (i.e., C share IFQ would total approximately 1.5 percent of the total IFQ pool, instead of 3 percent). To ensure that C shares continue to be 3 percent of the IFQ pool, a suboption is proposed that would require the annual allocation of IFQ to C share QS to sum to 3 percent of the total IFQ pool. If this provision is adopted, the agency would annually allocated 97 percent of the IFQ pool to vessel owners and 3 percent of the IFQ to holders of C shares. The 3 percent allocation to C share holders would be allocated only to C share QS holders that meet the active participation requirements based on

their respective C share holdings. By separating the calculation of IFQ allocations to C share QS holders from allocations of IFQ to vessel owner QS holders, the allocation of IFQ to C share QS holders would be maintained at 3 percent of the total IFQ pool regardless of whether some C share QS holders do not receive IFQ allocations because of their failure to meet active participation requirements. This approach to allocations could be justified, if the Council believes that the 3 percent IFQ allocation to active captains and crew should be maintained, regardless of whether some C share QS holders fail to meet the requirements for an annual allocation.

Table 20. C share QS holders in 2007-2008 with active participation (at least one landing in any rationalized crab fishery) in 2006-2007 as a card holder.

2007-2008					
Fishery	Active (as a card holder)	Number of C share holders	Percent of C share holders	Percent of QS	Total C share holders in the fishery
Bristol Bay red king crab	Inactive	105	50.5	48.3	208
	Active	103	49.5	51.7	
Bering Sea <i>C. opilio</i>	Inactive	139	45.7	42.6	304
	Active	165	54.3	57.4	
Eastern Aleutian Islands golden king crab	Inactive	6	42.9	43.0	14
	Active	8	57.1	57.0	
Eastern Bering Sea <i>C. bairdi</i>	Inactive	108	56.8	53.0	190
	Active	82	43.2	47.0	
Pribilof red and blue king crab	Inactive	41	62.1	58.3	66
	Active	25	37.9	41.7	
St. Matthews Island blue king crab	Inactive	55	49.5	51.3	111
	Active	56	50.5	48.7	
Western Aleutian Island golden king crab	Inactive	10	58.8	42.1	17
	Active	7	41.2	57.9	
Western Aleutian Island red king crab	Inactive	2	40.0	69.2	5
	Active	3	60.0	30.8	
Western Bering Sea <i>C. bairdi</i>	Inactive	104	58.8	53.0	177
	Active	73	41.2	47.0	
All fisheries	Inactive	130	61.0	NA	213
	Active	83	39.0		

Sources: NMFS RAM catch data for 2006-2007 and QS holder data for 2007-2008.

The principle of withholding annual IFQ allocations from inactive C share holders and boosting the annual allocations to active C share holders to ensure 3 percent of the IFQ pool is allocated as C shares is relatively straightforward. Implementation of this provision, from a management standpoint, could be complex and the desired goal may not be fully achievable. Withholding IFQ allocations requires the person whose allocation is withheld the opportunity to challenge the decision not to withhold the IFQ. To provide this opportunity and not exceed a TAC may require the agency to reserve IFQ to be allocated, in the event a person successfully challenges the agency decision to withhold the allocation. A brief description of the management process for withholding allocations and the extent to which TAC must be reserved to ensure available TAC for successful challenges appears at the end of this section. That discussion will be supplemented in the next draft of this paper.

As an alternative (or possibly in addition) to the option to withhold annual allocations from C share holders not meeting active participation requirements, the Council has put forth an option to require a C share holder to divest of C share QS, if active participation requirements are not met for a period of 3

consecutive years. The rationale for requiring divestment is that C share QS holders who are inactive for an extended period effectively withhold these shares from other active captains and crew, who might wish to develop or expand their C share holdings.²⁴ Failing to require divestment, it is possible that some C share holders may maintain their holdings for an extended period. The incentive for inactive C share holders divesting their QS, absent a requirement, could be rather minor given that C share holdings are a relatively small portion of the QS pool and result in very small annual IFQ allocations. For example, in the halibut and sablefish IFQ program many small share holders have never fished their IFQ, yet have not chosen to divest of those shares. So, without a divestment requirement, it is possible that a portion of the C share QS pool could remain latent for extended periods of time, reducing the size and activity in the C share QS market.

Two options are under consideration for determining the timing of any required divestiture of shares, 5 years after program implementation and 7 years after program implementation. Delaying implementation of the provision should allow participants time to assess the transition of the fishery under the new management and determine whether they will be active in the new fishery. Under the current timeline for implementation of this action, it is likely that the 5th year implementation option would provide between one and two years notice to C share holders that are inactive. Implementation in the 7th year would provide approximately three to four years notice. Either of these timelines should provide sufficient notice to C share holders to allow them to prepare for implementation of the provision. Although these share holders might be able to plan for implementation of the provision, the more compressed timeline (5 years after implementation) could have some ramifications for C share holders and those wishing to acquire C shares.

One fear of some current C share holders is that a divestment option could flood the market with C shares, substantially diminishing their value. Given the portion of the C share pool held by persons who appear to be inactive, it is possible that a divestment requirement could increase the shares in the market. The potential to flood the market, however, is limited to some degree by withholding the divestment requirement until either the 5th or the 7th year after implementation. Delay in imposition of the divestment requirement will allow share holders a window of time during which shares can be divested (prior to the requirement taking effect) which should disperse the flow of shares into the market. Yet, given the large number of C share holders that appear to be inactive, it is possible that a large portion of that pool could come into the market over a period of 2 or 3 years, even under the second option. Even if as much as 50 percent of the C share pool comes on to the market, it will be only 1.5 percent of the entire QS pool in a fishery. Under the most limited eligibility provision for acquisition of C shares, as many as 600 persons are currently qualified to acquire C shares. In most fisheries, compulsory divestment should not affect the market. It is possible that in the Aleutian Islands golden king crab fisheries, which have few participants, the market for C shares could be small enough to allow some interested buyers to take advantage of the compulsory divestment. Whether this market power would result depends on whether participants in those fisheries are willing to compete for the C shares and whether participants in other fisheries (who would satisfy a general active participation requirement) would be interested in acquiring the shares.

Although the likelihood of the divestiture provision alone reducing share prices substantially is small in most fisheries, it is possible that the divestiture provision could interact with other actions under consideration by the Council, which could affect prices of C shares at the time the divestiture provision takes effect. If the current action to revise the rationalization program is perceived to be either increase or

²⁴ A rationale for requiring divestment could be to ensure 3 percent of the annual IFQ are allocated to active C share QS holders. A more direct and reliable method of ensuring that the 3 percent IFQ allocation could be through the suboption, assuming that option can be effectively implemented.

decrease C share holdings, it is possible that the C share market could be greatly affected. For example, if the Council appears to be creating a larger allocation of C shares, possibly redistributing shares from the vessel owner pool to persons eligible for a C share allocation based on their active participation, persons who are eligible to purchase C shares may be more or less active in the existing C share market. These persons might be more active, if they perceive the reallocation as providing a start in the C share market that they can build on with additional acquisitions. They could be less active, if they perceive the allocation as providing an adequate number of shares that they will not need to supplement with purchases from the market. In either case, any C share holders required to divest under a provision requiring active participation could be affected by the change in the market activity of others.

Implementation of either of the provisions revising active participation requirements for C share holders is likely to be challenging administratively and logistically. Under the first option, requiring a QS holder to be active to receive an annual IFQ allocation, a person must be permitted to challenge any finding of non-participation. Until the finding is final, IFQ would need to be reserved to ensure shares are available in the event the person prevails. Typically, a person has 60 days to appeal a finding. At the end of the time period for filing an appeal, any person who failed to contest a finding of non-participation would be likely be unable challenge the finding. For persons not filing an appeal, IFQ would not be required to be reserved after the appeal filing deadline has passed. IFQ would be required to be reserved for any person filing an appeal until the appeal is finalized.

Under the current timetable for IFQ issuance, a persons application is due on August 1st. IFQ are issued in the Aleutian Island golden king crab fisheries almost immediately, since that fishery opens on August 15th. If proof of participation is first required with the application for IFQ, it would not be possible to finalize any determination concerning active participation. Whether any findings concerning active participation can be finalized in other fisheries that have later IFQ issuances is uncertain. To address this concern, it might be possible to require a separate filing of active participation verification earlier than the application for IFQ, allowing some findings of non-participation to be finalized prior to IFQ issuances. This would result in less of the IFQ pool being required to be reserved to ensure adequate IFQ to cover possible findings of participation. Additional information concerning this issue, including discussion of any feasible administrative processes that will address the issue, will be included in the next draft of this paper.

It should be noted that this administrative issue could also complicate any attempt to administer a mechanism to ensure that 3 percent of the IFQ pool is allocated to active C share holders. Since a portion of the IFQ pool must be reserved to address the possible claims of active participation, it must be decided whether the IFQ reserved for those claims count toward the 3 percent C share allocation. Depending on the level of active participation in the fleet, it is possible that a substantial portion of the 3 percent could be made up of reserved, but unallocated IFQ, if the reserved shares are counted toward the 3 percent C share allocation.²⁵

Additional complications could arise in administering a provision that requires a person to divest of shares. Such a process would certainly require an administrative process that allows the person a reasonable opportunity to challenge the divestiture requirement. An appeals process that is ultimately challengeable in court must be provided. Typically, these processes are costly and time consuming for managers. Administration of LLP appeals has taken several years. Although LLP holders far outnumber C

²⁵ This problem is exacerbated, if C shares are subject to the A share/B share split. In that event, 90 percent of the reserved IFQ would be A shares, which, if not issued, would create a mismatch of Class A IFQ and IPQ. This issue may not be arise, if the Council elects not to apply the Class A IFQ/Class B IFQ split to C shares.

share holders, it is possible that the administration of divestiture requirements under this option could take several years to complete. In addition, filing requirements will need to be defined for assessing active participation. If three years of inactivity are required prior to compulsory divestiture, it is possible that information for demonstrating activity or inactivity in the first or second year could be stale by the time the case is adjudicated. In addition, a process for enforcing the provision would need to be developed. For example, a person who does not comply with a revocation finding could either be subject to penalties or a forced revocation. At this stage, it is not clear whether one of these different approaches (or another approach altogether) is more appropriate. Additional information concerning this process will be included in the next draft of this paper.

Additionally, for both of these measures, it could be appropriate to include a medical hardship provision that would allow persons unable to participate to receive allocations during the term of the hardship. Currently, an exemption to the prohibition on leasing of C shares allows a person to lease those shares in the event of hardship (injury, medical incapacity, loss of vessel, etc.), upon documentation and approval, (similar to CFEC medical transfers) for the term of the hardship/disability, not to exceed of 2 years over a 10 year period.

2.4.3 Net benefits to the Nation

This action is likely to have little or no effect on net benefits to the Nation. Although the changes this action will have distributional effects on persons holding or interested in holding C shares, it will not affect production from the fisheries.

3 Regulatory Flexibility Analysis

3.1 Introduction

The Regulatory Flexibility Act (RFA), first enacted in 1980, and codified at 5 U.S.C. 600-611, was designed to place the burden on the government to review all regulations to ensure that, while accomplishing their intended purposes, they do not unduly inhibit the ability of small entities to compete. The RFA recognizes that the size of a business, unit of government, or nonprofit organization frequently has a bearing on its ability to comply with a Federal regulation. Major goals of the RFA are: 1) to increase agency awareness and understanding of the impact of their regulations on small business; 2) to require that agencies communicate and explain their findings to the public; and 3) to encourage agencies to use flexibility and to provide regulatory relief to small entities.

The RFA emphasizes predicting significant adverse impacts on small entities as a group distinct from other entities and on the consideration of alternatives that may minimize the impacts, while still achieving the stated objective of the action. When an agency publishes a proposed rule, it must either, (1) "certify" that the action will not have a significant adverse effect on a substantial number of small entities, and support such a certification declaration with a "factual basis", demonstrating this outcome, or, (2) if such a certification cannot be supported by a factual basis, prepare and make available for public review an Initial Regulatory Flexibility Analysis (IRFA) that describes the impact of the proposed rule on small entities.

Based upon a preliminary evaluation of the proposed pilot program alternatives, it appears that "certification" would not be appropriate. Therefore, this IRFA has been prepared. Analytical requirements for the IRFA are described below in more detail.

The IRFA must contain:

1. A description of the reasons why action by the agency is being considered;
2. A succinct statement of the objectives of, and the legal basis for, the proposed rule;
3. A description of, and where feasible, an estimate of the number of small entities to which the proposed rule will apply (including a profile of the industry divided into industry segments, if appropriate);
4. A description of the projected reporting, record keeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities that will be subject to the requirement and the type of professional skills necessary for preparation of the report or record;
5. An identification, to the extent practicable, of all relevant Federal rules that may duplicate, overlap, or conflict with the proposed rule;
6. A description of any significant alternatives to the proposed rule that accomplish the stated objectives of the Magnuson-Stevens Act and any other applicable statutes, and that would minimize any significant adverse economic impact of the proposed rule on small entities. Consistent with the stated objectives of applicable statutes, the analysis shall discuss significant alternatives, such as:
 - a. The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities;
 - b. The clarification, consolidation or simplification of compliance and reporting requirements under the rule for such small entities;
 - c. The use of performance rather than design standards;
 - d. An exemption from coverage of the rule, or any part thereof, for such small entities.

The “universe” of entities to be considered in an IRFA generally includes only those small entities that can reasonably be expected to be directly regulated by the proposed action. If the effects of the rule fall primarily on a distinct segment of the industry, or portion thereof (e.g., user group, gear type, geographic area), that segment would be considered the universe for purposes of this analysis.

In preparing an IRFA, an agency may provide either a quantifiable or numerical description of the effects of a proposed rule (and alternatives to the proposed rule), or more general descriptive statements if quantification is not practicable or reliable.

3.1.1 Definition of a Small Entity

The RFA recognizes and defines three kinds of small entities: 1) small businesses; 2) small non-profit organizations; and 3) and small government jurisdictions.

Small businesses: Section 601(3) of the RFA defines a “small business” as having the same meaning as a “small business concern,” which is defined under Section 3 of the Small Business Act. A “small business” or “small business concern” includes any firm that is independently owned and operated and not dominate in its field of operation. The U.S. Small Business Administration (SBA) has further defined a “small business concern” as one “organized for profit, with a place of business located in the United States, and which operates primarily within the United States, or which makes a significant contribution to the U.S. economy through payment of taxes or use of American products, materials, or labor. A small business concern may be in the legal form of an individual proprietorship, partnership, limited liability company, corporation, joint venture, association, trust, or cooperative, except that where the form is a joint venture there can be no more than 49 percent participation by foreign business entities in the joint venture.”

The SBA has established size criteria for all major industry sectors in the U.S., including fish harvesting and fish processing businesses. A business “involved in fish harvesting” is a small business if it is independently owned and operated and not dominant in its field of operation (including its affiliates), and if it has combined annual 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 (including its affiliates) and employs 500 or fewer persons, on a full-time, part-time, temporary, or other basis, at all its affiliated operations worldwide. 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. A wholesale business servicing the fishing industry is a small business if it employs 100 or fewer persons on a full-time, part-time, temporary, or other basis, at all its affiliated operations worldwide.

The SBA has established “principles of affiliation” to determine whether a business concern is “independently owned and operated.” In general, business concerns are affiliates of each other when one concern controls or has the power to control the other or a third party controls or has the power to control both. The SBA considers factors such as ownership, management, previous relationships with or ties to another concern, and contractual relationships, in determining whether affiliation exists. Individuals or firms that have identical or substantially identical business or economic interests, such as family members, persons with common investments, or firms that are economically dependent through contractual or other relationships, are treated as one party, with such interests aggregated when measuring the size of the concern in question. The SBA counts the receipts or employees of the concern whose size is at issue and those of all its domestic and foreign affiliates, regardless of whether the affiliates are organized for profit, in determining the concern’s size. However, business concerns owned and controlled by Indian Tribes, Alaska Regional or Village Corporations organized pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601), Native Hawaiian Organizations, or Community Development Corporations authorized by 42 U.S.C. 9805 are not considered affiliates of such entities, or with other concerns owned by these entities, solely because of their common ownership.

Affiliation may be based on stock ownership when: (1) A person is an affiliate of a concern if the person owns or controls, or has the power to control 50% or more of its voting stock, or a block of stock which affords control because it is large compared to other outstanding blocks of stock, or (2) If two or more persons each owns, controls or have the power to control less than 50% of the voting stock of a concern, with minority holdings that are equal or approximately equal in size, but the aggregate of these minority holdings is large as compared with any other stock holding, each such person is presumed to be an affiliate of the concern.

Affiliation may be based on common management or joint venture arrangements. Affiliation arises where one or more officers, directors, or general partners control the board of directors and/or the management of another concern. Parties to a joint venture also may be affiliates. A contractor and subcontractor are treated as joint venturers if the ostensible subcontractor will perform primary and vital requirements of a contract or if the prime contractor is unusually reliant upon the ostensible subcontractor. All requirements of the contract are considered in reviewing such relationship, including contract management, technical responsibilities, and the percentage of subcontracted work.

Small organizations: The RFA defines “small organizations” as any nonprofit enterprise that is independently owned and operated and is not dominant in its field.

Small governmental jurisdictions: The RFA defines small governmental jurisdictions as governments of cities, counties, towns, townships, villages, school districts, or special districts with populations of fewer than 50,000.

3.2A description of the reasons why action by the agency is being considered

The Council developed the following purpose and need statement defining its rationale for considering this action:

Owner on board requirements and leasing prohibitions on C shares are scheduled to go into effect after the third year of fishing under the program. Those rules may be overly burdensome to active captains and crew given the current fleet fishing patterns in which vessels may not be active in all fisheries some years. Also, under the current rules in the program, C share holders that are cooperative members are exempt from owner on board requirements and leasing prohibitions. Revisions to the current participation requirements are necessary to establish reasonable participation requirements for C share holders and to ensure that the all C share holders remain active in the fisheries.

The current requirement that a person have participated in the fishery during the 365 days preceding an acquisition of C shares has the effect of preventing some displaced long-time captains and crew from acquiring share holdings that would be useful for securing or maintaining position in the fisheries. A revision to the current requirements for active participation could address this problem by providing long-term participants with the opportunity to acquire shares.

3.3 The objectives of, and the legal basis for, the proposed rule

Under the current regulatory structure, Bering Sea/Aleutian Islands crab resources are managed by NOAA Fisheries and the State of Alaska, under the FMP. The authority for this action and the FMP are contained in the Magnuson-Stevens Act, as amended by the Consolidated Appropriations Act of 2004.

3.4 A description of, and where feasible, an estimate of the number of small entities to which the proposed rule will apply

Estimates of the number of small C share holders under the program are complicated by limited share holder information. Although all C shares are held by individuals that can be specifically identified, some C share holders have substantial interests in entities holding vessel owner shares, as well as interests in vessels participating in other fisheries. Since these entities frequently operate under different names, fully identifying the interests of C share holders is not possible. A total of 216 persons hold C shares. Conservatively, all of these individuals are believed to be small entities.

3.5 A description of the projected reporting, record keeping, and other compliance requirements of the proposed rule

The reporting, record keeping, and other compliance requirements of the proposed rule will not change. As such, this action requires no additional reporting, record keeping, or other compliance requirements.

3.6 An identification, to the extent practicable, of all relevant Federal rules that may duplicate, overlap, or conflict with the proposed rule

The analysis uncovered no Federal rules that would conflict with, overlap, or be duplicated by the pilot program alternatives.

3.7 A description of any significant alternatives to the proposed rule that accomplish the stated objectives of the Magnuson-Stevens Act and any other applicable statutes, and that would minimize any significant adverse economic impact of the proposed rule on small entities

The Council has identified the following alternatives for this action:

Options for revision of active participation requirements for C share holders:

Option 1: To receive an annual allocation of IFQ, a C share holder must have participated in at least one delivery in a fishery subject to the crab rationalization program in the 365 days preceding the application for IFQ.

Suboption: Establish a mechanism for the annual allocation of C share IFQ to ensure that 3 percent of the TAC is available to active C share holders

Option 2: If a C share holder has not demonstrated active participation in a rationalized crab fishery for a period of 3 consecutive seasons, that C share holder will be required to divest of all C share holdings. This provision will not require individuals to divest of Quota Share until a) 5 b) 7 years after implementation of the crab program.

Options to address current transition:

For a period of 3, 5, or 7 years from the implementation of the program, C shares can also be acquired by an individual who:

- 3) is a U.S. citizen,
- 4) has at least 150 days of sea time as part of a harvesting crew in any U.S. commercial fishery (historic participation), and

Option 1: received an initial allocation C shares

Option 2: demonstrates participation in a rationalized crab fishery during

a. 3 of the 5 seasons or

b. 2 of the 3 seasons

immediately preceding implementation of the crab rationalization program.

ADD SUMMARY OF EFFECTS HERE

4 National Standards and Fishery Impact Statement

4.1 National Standards

Below are the ten National Standards as contained in the Magnuson-Stevens Act, and a brief discussion of the consistency of the proposed alternatives with each of those National Standards, as applicable.

National Standard 1

Conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery.

Nothing in the proposed alternatives would undermine the current management system that prevents overfishing.

National Standard 2

Conservation and management measures shall be based upon the best scientific information available.

The analysis draws on the best scientific information that is available, concerning the Bering Sea and Aleutian Island crab fisheries. The most up-to-date information that is available has been provided by the managers of these fisheries, as well as by members of the fishing industry.

National Standard 3

To the extent practicable, an individual stock of fish shall be managed as a unit throughout its range, and interrelated stocks of fish shall be managed as a unit or in close coordination.

The proposed action is consistent with the management of individual stocks as a unit or interrelated stocks as a unit or in close coordination.

National Standard 4

Conservation and management measures shall not discriminate between residents of different states. If it becomes necessary to allocate or assign fishing privileges among various U.S. fishermen, such allocation shall be (A) fair and equitable to all such fishermen, (B) reasonably calculated to promote conservation, and (C) carried out in such a manner that no particular individual, corporation, or other entity acquires an excessive share of such privileges.

The proposed alternatives would treat all participants the same, regardless of their residence. The proposed change would be implemented without discrimination among participants and is intended to contribute to the fairness and equity of the program by ensuring that holders of C shares have requisite fishery participation. The action will not contribute to an entity acquiring an excessive share of privileges.

National Standard 5

Conservation and management measures shall, where practicable, consider efficiency in the utilization of fishery resources, except that no such measure shall have economic allocation as its sole purpose.

The action is intended to result in a more equitable distribution of interests in the fisheries and will not affect production efficiency in the fisheries.

National Standard 6

Conservation and management measures shall take into account and allow for variations among, and contingencies in, fisheries, fishery resources, and catches.

None of the alternatives would be expected to affect changes in the availability of Bering Sea and Aleutian Island crab resources each year. Any such changes would be addressed through the annual allocation process, which is not affected by the alternatives.

National Standard 7

Conservation and management measures shall, where practicable, minimize costs and avoid unnecessary duplication.

The management action will not duplicate other measures and will have minor (but unavoidable) effects on costs of management, which will be incurred in implementing these measures.

National Standard 8

Conservation and management measures shall, consistent with the conservation requirements of this Act (including the prevention of overfishing and rebuilding of overfished stocks), take into account the importance of fishery resources to fishing communities in order to (A) provide for the sustained participation of such communities, and (B) to the extent practicable, minimize adverse economic impacts on such communities.

This action is anticipated to have no effects on communities. The action will not jeopardize sustained participation of any community in the fishery.

National Standard 9

Conservation and management measures shall, to the extent practicable, (A) minimize bycatch, and (B) to the extent bycatch cannot be avoided, minimize the mortality of such bycatch.

Implementing this action will have no effect on bycatch.

National Standard 10

Conservation and management measures shall, to the extent practicable, promote the safety of human life at sea.

The rationalization program should reduce the incentives for crab fishermen to fish in inclement weather, or fish in a manner that compromises safety. The alternatives considered under this action do not affect any potential benefits arising out of those incentives.

4.2 Section 303(a)(9) – Fisheries Impact Statement

Section 303(a)(9) of the Magnuson-Stevens Act requires that any management measure submitted by the Council take into account potential impacts on the participants in the fisheries, as well as participants in adjacent fisheries. The impacts of the alternatives on participants in the harvesting sector and processing sector have been discussed in previous sections of this document. This action will have no effect on participants in other fisheries.

5 References

North Pacific Fishery Management Council/National Marine Fisheries Service (August 2004a) Environmental Impact Statement, Voluntary Three-Pie Cooperative Program for the Bering Sea and Aleutian Islands Crab Fisheries.

Sackton, John (2007b) "2007 Market Analyst Report on Red King Crab", August 25, 2007.

Sackton, John (2007b) "Golden King Crab Price Formula Arbitrator and Market Report", June 25, 2007.

Sackton, John (2007c) "Snow Crab and Bairdi Market Report", August 25, 2007.

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Alaska State Legislature

Representative Gabrielle LeDoux
House District 36

November 28, 2007

North Pacific Fishery Management Council
605 West 4th
Suite 306
Anchorage, Alaska 99501-2252

LATE COMMENT

Dear Council Members,

I have heard from a number of my constituents about the unfairness of current Bering Sea crab allocations. They have offered several options to you for reallocation, including allocating shares to crewmen who worked on crab boats before rationalization. As you are no doubt aware, crab rationalization has led to a severe consolidation of the crab fleet, meaning fewer boats and fewer jobs.

Please give full consideration to these proposals.

Sincerely,

A handwritten signature in cursive script that reads "Gabrielle LeDoux".

Representative Gabrielle LeDoux

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LATE COMMENT

Kodiak Island Borough

Office of the Borough Mayor

710 Mill Bay Road

Kodiak, Alaska 99615

Phone (907) 486-9310 Fax (907) 486-9391

November 29, 2007

Via Fax (907) 271-2817

Mr. Eric Olson, Chairman
North Pacific Fishery Management Council
605 West 4th Avenue, Suite 306
Anchorage, AK 99501-2252

RECEIVED
NOV 29 2007
N.P.F.M.C.

Dear Chairman Olson:


As you are aware, the Kodiak Island Borough has been impacted by the Bering Sea/Aleutian Island (BSAI) Crab Rationalization program. As a result of our concerns about the impact of BSAI Crab Rationalization, the Kodiak Island Borough joined in commissioning a study by the University of Alaska to help quantify the impacts. One clearly documented result of rationalization has been the consolidation of the crab fishing fleet and the subsequent loss of crew positions in the fishery. The loss of these jobs and the changed nature of crew positions in the fishery have impacted the social and economic fabric of our community.

The Kodiak Island Borough supports the Council's efforts to evaluate and consider modifications to the BSAI Crab Rationalization Program. We urge the Council to include in the evaluation process program modifications that will address frequently expressed concerns about the program's impacts on deckhands and hired skippers. We support a thorough review and analysis of the BSAI Crab Rationalization Program and its impacts on fisheries employment and community economics.

We appreciate the Council's redefinition of the Bering Sea Crab Advisory Committee with the inclusion of additional "stakeholders." We intend to fully participate in the Committee process and believe that it has to address the concerns of crew members if it is to be successful.

Sincerely,

OFFICE OF THE BOROUGH MAYOR


Jerome M. Selby

Cc: Senator Gary Stevens
Representative Gabrielle LeDoux
Denby Lloyd, Commissioner, Alaska Department of Fish and Game
Cora Crome, Fisheries Policy Advisory, State of Alaska
Kodiak Island Borough Assembly
Kodiak Fisheries Advisory Committee

Alaska State Legislature

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REPRESENTATIVE Paul Seaton
District 35

North Pacific Fishery Management Council
605 W 4th Avenue, Suite 306
Anchorage, AK 99501-2252

RECEIVED
NOV 29 2007
N.P.F.M.C.

November 28, 2007

To Whom It May Concern:

Please see the enclosed letter concerning crab rationalization and crewmen's share. The letter was sent to the National Marine Fisheries Service Office of Sustainable Fisheries in September. I encourage the North Pacific Fisheries Management Council to give serious consideration to this issue at their December meeting.

Sincerely,

LATE COMMENT

Rep. Paul Seaton

Enc: letter to National Marine Fisheries Service

Alaska State Legislature

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REPRESENTATIVE Paul Seaton

District 35

September 27, 2007

Alan Risenhoover, Director
Office of Sustainable Fisheries,
National Marine Fisheries Service

RE: LAPP Guidance – Fishery Participant Access Privileges

Mr. Risenhoover,

Thank you for the opportunity to provide input on Limited Access Privilege Program (LAPP) provisions in the Magnuson-Stevens Fishery Conservation and Management Act.

In considering creation of harvest privileges under a LAPP, NMFS and the Management Councils should establish a fishery participant access privilege utilizing the federal mandate at 46 U.S.C. Sec 10601 for crewmembers and other fishery participants to contractually receive a set percentage of the proceeds from the fish harvest.

The arrangement required by this section has been adequate to meet the needs of vessel owners, corporations, and participants in the past. A LAPP that denies crewmembers and other participants the percentage of the catch based on qualifying years and the crew contracts during those years, should not be authorized.

Consider the creation of a LAPP category for fishery participants based on the requirement in 46 U.S.C. Sec 10601. This category could allow for sale of quota within the qualifying groups (crew or captains) or between all access privilege holders depending on the design management goals of each particular fishery.

Sincerely,

Representative Paul Seaton
Alaska State Legislature
House District 35