

## **Proposed Action on Revisions to the BSAI Crab Rationalization C Share Active Participation Requirements – Request for Council Clarifications**

**Sarah Marrinan NPFMC Staff, 3.25.23**

An initial review analysis to modify the Bering Sea and Aleutian Islands (BSAI) Crab Rationalization Program (CR Program) active participation requirements for captains and crew holding crew quota (C shares) is scheduled for June 2023. At this April meeting staff request clarification on the Council's purpose and need; specifically, if the need still exists given emergency action taken in 2022 and if the need is still focused on years identified for COVID-19 challenges (i.e., 2019/20, 2020/21, and 2021/22) or if the need has shifted to other factors (e.g., low catch limits).

Secondly, if the need is still focused on these three COVID-19 years, it is too late for the proposed action to be implemented as expressed in the alternative set. Alternative 2, Option 2 (listed below) suggests exempting "COVID-19 years" (2019-2022) from participation requirements. It is not possible to implement an exemption soon enough to avoid some C shares potentially being withheld or revoked at the start of the 2023/2024 crab fishing year (July 1, 2023) due to not meeting participation requirements in 2019-2022. While it could potentially be possible to re-issue quota shares which would also require rule-making, given the amendment process and timeline, the alternative cannot be implemented as currently written.

Therefore, depending on the scope of the Council's purpose and need statement, the Council may wish to consider refinements of the alternatives prior to extensive analysis. This could be achieved through a motion clarifying the purpose and need and/or alternative set at the April meeting or by clarifying the purpose and having a discussion paper returned to the Council in June to flesh out the alternatives more fully rather than an analysis for initial review. This may change the timeline; however, as described below, even the current timeline will not prevent some C share holders from having their quota share revoked if they have not met the active participation requirements or divested their quota share by the start of the 2023/2024 crab fishing year.

### **C Share Active Participation Requirements**

NMFS initially issued C shares to individuals holding State of Alaska Commercial Fisheries Entry Commission Interim Use Permits, generally vessel captains, who met specific historic and recent participation requirements in CR Program fisheries. When initially establishing C shares, the Council intended that individuals holding C shares be active in CR Program fisheries. In 2008, the Council recommended Amendment 31 to revise the original active participation requirements to establish more reasonable participation requirements for holders of C shares and new entrants that want to purchase CVC QS, and to ensure that C share holders remain active in the fisheries. NMFS implemented Amendment 31 in 2015 (80 FR 15891, 03/26/2015).

Each year by June 15, CVC and CPC QS holders submit an Application for Annual Crab Individual Fishing Quota (IFQ) Permit in order to receive IFQ, an exclusive harvest privilege for a portion of the total allowable catch (TAC) for each CR Program fishery in which the person holds QS. In the application, the CVC QS holder must provide evidence that they meet the participation requirements.

Following the implementation of Amendment 31, since June 2018, in order to receive an annual allocation of C share IFQ, the regulations require a C share QS holder to have either:

- (1) participated as crew in at least one delivery in a CR Program fishery in the three crab fishing years preceding the crab fishing year for which the holder is applying for IFQ; or
- (2) if the individual was an initial recipient of C shares, participated as crew in at least 30 days of fishing in a commercial fishery managed by the State of Alaska or a U.S. commercial fishery

in Federal waters off Alaska in the three crab fishing years preceding the crab fishing year for which the holder is applying for IFQ (§ 680.40(g)(2)).

The regulations also require holders of C share QS to meet similar participation requirements over a span of 4 years in order to retain their C share QS (§ 680.40(m)).

If a C share QS holder fails to satisfy the participation requirements three crab fishing years in a row, NMFS will send that individual a notice of withholding and will not issue IFQ for the subsequent crab fishing year (§ 680.40(g)(3)(i)). If a C share QS holder fails to satisfy the participation requirements four crab fishing years in a row and does not divest (transfer) his or her C share QS, NMFS will revoke the C share QS (§ 680.40(m)(4)).

There are exemptions from these requirements for closed fisheries. As stated in regulations at § 680.40(g)(2), if the individual holds C share QS in a single CR crab fishery and that CR crab fishery is closed to fishing for an entire crab fishing year, NMFS will exclude that crab fishing year when determining whether the individual has satisfied this participation requirement. Therefore, if a C share holder only holds Bristol Bay red king crab (BBRKC) C shares, active participation has not been counted since the 2020/21 season. If they hold just Bering Sea snow crab (BSS) C shares or both BBRKC and BSS C shares, active participation has not been counted since the 2021/22 season. However, if a C share holder holds both Eastern or Western *C. bairdi* C shares (which were open in the 2022/23 season) in addition to C shares from a closed fishery (Bristol Bay red king crab or BSS), they are still required to meet active participation requirements.

### **Recent Emergency Action and Proposed Amendments**

In June 2022, the Council requested the Secretary of Commerce promulgate emergency regulations under the authority of Section 305(c) of the Magnuson-Stevens Act to temporarily suspend the active participation requirement for captains and crew holding crew quota or C shares under the BSAI CR Program. Specifically, the Council requested the Secretary and NMFS suspend the recent participation requirements for Catcher Vessel Crew (CVC) QS and Catcher Processor Crew (CPC) QS and suspend any revocation of and issue all IFQ for the CVC QS and CPC QS for this upcoming 2022/23 fishing season.

The Secretary agreed this proposal fit the emergency criteria and NOAA fisheries issued an emergency rule (87 FR 42390, July 15, 2022) which was effective July 15, 2022 through January 11, 2023. This means that no CR Program C share quota was withheld or revoked during the 2022/23 application period, regardless of participation status in the preceding four years.

In addition to the request for the emergency rule, in June 2022, the Council also initiated an initial review analysis to analyze potential changes to the C share participation requirements. The purpose and need in the motion lists both the COVID-19 pandemic and the unforeseen decline of the BSS fishery as the motivation for action. The June 2022 motion is as follows:

*Purpose and Need:  
The CVC and CPC shares have a participation requirement of one delivery during the previous 4 consecutive years. With the ongoing impacts of the COVID-19 pandemic, now in its third year, some crew members have not been able to comply with the participation requirement. With the unforeseen circumstance of the decline of the BSS stock and potential fishery closures, there will be less opportunity for crew to participate in crab fisheries.*

Alternative 1 - No action

Alternative 2 - Modify the CVC QS and CPC QS recent requirement

Option 1: Restart the recent participation requirement beginning in 2023/24 fishing year.

Do not count 2019/20, 2020/21, 2021/22, toward the recent participation requirement.

Option 2: Give the Regional Administrator the authority to suspend the CVC QS and CPC QS recent participation requirement.

However, in the NMFS Management Report in October 2022, NMFS alerted the Council that due to the time needed for the Council to analyze and NMFS to implement a potential change to regulations, the current active participation requirement is unlikely to be modified in regulations prior to the start of the 2023/2024 crab fishing year on July 1, 2023. NOAA Fisheries encouraged all Crab C share holders to review the information and examples published on its website and in this BSAI Crab C Share Active Participation Bulletin regarding the participation requirements that will apply to Crab C share holders for the 2023/2024 crab fishing year. NMFS encouraged C share holders who, without the emergency rule, would have otherwise had their IFQ withheld or QS revoked in the 2022/2023 crab fishing year to participate in a qualifying fishery this year to avoid a similar situation in the upcoming 2023/2024 crab fishing year.

Therefore, while an initial review analysis of the previously-stated alternatives is scheduled for June 2023, these alternatives will not prevent some C share holders from having IFQ withheld or QS revoked at the start of the 2023/2024 crab fishing year if the holder fails to meet the active participation requirements and they have not divested by this time.<sup>1</sup> This means the Council's Alternative 2, Option 2 as written (i.e., exempting three "COVID-19 years") could not be effectively implemented, as the deadline for revoking some quota will have already passed. Some of the individual C shares holders the Council would consider exempting through this proposed action would already have their QS revoked if they have not divested by this time.

There may be ways to address this intent, such as possibly re-issuing C shares that have been revoked through a rule-making package. This process would take time and require additional analytical effort, through slightly redefined alternatives. Note that in the event that IFQ is withheld or QS is revoked, the amount of resulting crab IFQ is redistributed to the remaining CVC QS holders.

Additionally, the option to grant the Regional Administrator the authority to suspend the CVC QS and CPC QS recent participation requirement (Alternative 2, Option 2) lacks the specificity to direct the circumstances to which this would apply. If the Council wished to remove participation requirements entirely, this is a policy decision the Council would likely wish to be explicit about. If there were some conditions under which the Council did not want C share requirements to apply (e.g., low TAC thresholds, medical conditions, etc.) the Council would likely wish to be deliberative about this too, to provide a clear framework for implementation and avoid a situation where NMFS needed to make judgment calls on the specific circumstances of individual QS holders.

The Secretary's promulgation of the emergency rule in part addressed the Council's purpose and need statement by extending the opportunity for active participation one additional year (2022/23) due to the unforeseen circumstances of the pandemic, without consequences for previous years of inactivity. Given this, it is unclear if the Council continues to support the established purpose and need or if there is a different policy focus for C share active participation requirements.

**Staff is specifically looking for clarification to the following questions:**

- **Does the Council still perceive a need for action?**
- **Is the need primarily focused on exempting active participation during the three years listed in the previous alternative set (i.e., intersection of "COVID-19 years" and low TACs) or for other reasons (e.g., closed fisheries or low TAC in general)?**
  - **Is the Council intending to include those who have had QS revoked in 2023 or subsequent years in the action (i.e., re-issuing QS)?**

**These clarifications would help refine a set of workable alternatives. Alternatives could either be identified at the April meeting or informed through the tasking of a discussion paper in place of an analysis.**

---

<sup>1</sup> NMFS Restricted Access Management (RAM) Program cannot determine how many C share holders fail to meet the participation requirements until the application deadline of June 15, 2023. However, as of 3/1/23 NMFS estimates that up to ten C share holders may be at the threshold of either having their IFQ withheld and/or their QS revoked. In 2022/23, there were a total of 148 CVC and CPC holders.