

DRAFT FOR INITIAL REVIEW

Regulatory Impact Review For a Proposed Amendment to the Fishery Management Plan for Bering Sea/ Aleutian Islands King and Tanner Crab

Active Participation Requirements for Crab Crew Shares

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Abstract: This Regulatory Impact Review analyzes proposed management measures that would apply exclusively to those who hold crew quota share (i.e., C shares) in the Bering Sea Aleutian Islands Crab Rationalization Program. The measures under consideration are modifications to the C share active participation requirements, including providing exemptions to these requirements during certain circumstances identified in previous and future years. Specifically, the conditions of the COVID-19 pandemic and recent closed crab fisheries have resulted in challenges with traveling to port communities and a substantial decline in the number of vessels needed to harvest the remaining total allowable catch. These factors have made it difficult for all C share holders to achieve the required active participation and it is expected that future low total allowable catches may create similar challenges for C share holders in achieving active participation requirements.

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Acronyms and Abbreviations

| Acronym or Abbreviation | Meaning |
|-------------------------|--|
| ABC | Acceptable biological catch |
| ACA | Adak Community Allocation |
| ADF&G | Alaska Department of Fish and Game |
| AFSC | Alaska Fisheries Science Center |
| AKFIN | Alaska Fisheries Information Network |
| BSAI | Bering Sea and Aleutian Islands |
| C shares | Crew quota share (CVC or CPC) |
| CDQ | Community Development Quota |
| CFR | Code of Federal Regulations |
| COAR | Commercial Operators Annual Report |
| Council | North Pacific Fishery Management Council |
| CPC | Catcher processor crew (quota share) |
| CPO | Catcher processor owner (quota share) |
| CR Program | Crab Rationalization Program |
| CVC or C shares | Catcher vessel crew (quota share) |
| CVO | Catcher vessel owner (quota share) |
| E.O. | Executive Order |
| EEZ | Exclusive Economic Zone |
| FMP | Fishery management plan |
| FR | <i>Federal Register</i> |
| IAD | Initial Administration Determination |
| IFQ | Individual fishing quota |
| IPQ | Individual processing quota |
| lb(s) | Pound(s) |
| Magnuson-Stevens Act | Magnuson-Stevens Fishery Conservation and Management Act |
| NEPA | National Environmental Policy Act |
| NMFS | National Marine Fishery Service |
| NOAA | National Oceanic and Atmospheric Administration |
| NPFMC | North Pacific Fishery Management Council |
| OFL | Overfishing level |
| PPA | Preliminary preferred alternative |
| PQS | Processing quota share |
| QS | Quota share |
| RA | Regional Administrator |
| RAM | Restricted Access Management |
| RCR | Registered crab receiver |
| RFA | Regulatory Flexibility Act |
| RIR | Regulatory Impact Review |
| SAFE | Stock Assessment and Fishery Evaluation |
| SSC | Scientific and Statistical Committee |
| TAC | Total allowable catch |
| U.S. | United States |

| Acronym | Crab Fisheries |
|---------|--|
| AIG | Aleutian Islands golden king crab (East and West fisheries combined) |
| BBR | Bristol Bay red king crab |
| BSS | Bering Sea snow crab |
| BST | Bering Sea Tanner crab (east and west fisheries combined) |
| EAG | Eastern Aleutian Islands golden king crab |
| EBT | Eastern Bering Sea Tanner crab |
| PIG | Pribilof Islands golden king crab |
| PIK | Pribilof Islands red king crab |
| SMB | St. Matthew Island blue king crab |
| WAG | Western Aleutian Islands golden king crab |
| WAI | Western Aleutian Islands (Adak) red king crab |
| WBT | Western Bering Sea Tanner crab |

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Executive Summary

The Bering Sea Aleutian Islands (BSAI) Crab Rationalization (CR) program, implemented on March 2, 2005, established both harvester quota share (QS) and processor quota share (PQS) which are revocable privileges that allow the holder to harvest or process a specific percentage of the annual total allowable catch (TAC) in a CR Program fishery. Three percent of the harvesting QS was initially allocated to individuals holding State of Alaska Commercial Fisheries Entry Commission Interim Use Permits, generally vessel captains, who met specific historic and recent participation requirements. This is referred to as crew share (or C shares) and includes catcher vessel crew (CVC) shares and catcher processor crew (CPC) shares depending on the type of vessel the history was accrued from.

Both in original design and reinforced through the subsequent Amendment 31 to the BSAI King and Tanner Crab Fishery Management Plan (80 FR 15891, 03/26/2015), the Council intended that individuals holding C shares be active in CR Program fisheries. Since June 2018 (three years after implementation of Amendment 31), in order to receive an annual allocation of C share Individual Fishing Quota (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 of 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)).

In order to retain C share, a QS holders of C share has four seasons to meet these same requirements (§ 680.40(m)). The Council recommended revocation of C share QS if the QS holder continues to be inactive as an incentive for C share QS holders to divest so that the QS is not held inactive for extended periods of time.

Purpose and Need Statement

In June 2022, the Council initiated an initial review analysis to analyze potential changes to the C share participation. **The Council adopted the following purpose and need in June 2022.**

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.

The Council clarified the policy scope of this action in **April 2023** (Appendix 1). **At this time, the Council stated an interest in maintaining the concept of active participation for C share QS in the CR Program. This is a central policy decision, which may be useful to articulate in a purpose and need statement.** It should be clear whether an alternative to remove C share active participation requirements entirely fits within the Council's purpose and need for action or if action is based around extenuating circumstances and/ or creating additional flexibilities.

In April 2023 the Council identified a need to allow for exemptions both due to the previous conditions under the pandemic which overlapped with closed fisheries and low TACs, as well as future possible conditions. The analysis was requested to explore solutions to addressing both past and future conditions under which exemptions and modifications to the program's active participation requirements may be warranted.

Alternatives

The Council adopted the following alternatives for analysis in June 2022.

Alternative 1 - No action

Alternative 2 - Modify the CVC QS and CPC QS recency 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

In **April 2023**, the Council provided additional direction for analysis of these alternatives as well as further concepts to explore that would support the Council's purpose and need for action. While there was not adequate public notification for the Council to change its alternative set in April 2023, all proposed concepts are further explored in the analysis of impacts (Section 3.4). As stated in the motion (Appendix 1), the Council requested staff analyze the effectiveness of:

- Suspending the recent participation requirement after the pandemic and, beginning in 2023/24, only count fishing years where at least 15, 20, 25, or 30 BSAI crab vessels fish. Also analyze not counting 2019/20, 2020/21, 2021/22, through 2023/2024 toward the recent participation requirement. ***This constitutes additional considerations relative to Alternative 2, Option 1 and the addition of a minimum vessel threshold. The concept of a minimum threshold of participating vessels is considered under Alternative 2, Option 2 along with other criteria that could suspend active participation requirements in future years.***
- Analyze giving the Regional Administrator (RA) the authority to suspend the CVC QS and CPC QS recent participation requirement in years of low BSAI crab quota where few vessels fish or due to other unforeseen circumstances (e.g., a pandemic). Include potential criteria that the Council could select to guide future decisions by the RA to suspend the CVC QS and CPC QS recent participation requirement. ***This clarifies the information requested relative to Alternative 2, Option 2.***
- Expand participation requirements for non-initial issues to match the requirements of initial issues. In other words, "within the previous three years, participate in a BSAI crab trip OR participate as crew in at least 30 days of fishing in a commercial fishery off Alaska" for all CVC QS and CPC QS. ***This is not currently an alternative, but analysis provides additional information relative to this request.***
- Not revoking any CVC or CPC QS associated with a closed fishery. ***This is not currently an alternative, but analysis provides additional information relative to this request.***
- Reissue any CVC QS and CPC QS that were revoked between July 2023 and the effective date of the proposed action. ***This is not currently an alternative, but could work in tandem with Alternative 2, Option 1. This concept is considered along with Alternative 2, Option 1.***

Table 2 organizes the types of actions that are considered in the analysis based around the goals of the action. These three types of actions are not mutually exclusive from one another. The first type of action focuses on the accounting from past years (2019/20- 2022/23) and a desire to create exemptions due the challenges with the COVID-19 pandemic combined with stock declines and fishery closures that began around the same time period. The second type of action includes consideration of suspending active participation requirements in the future based on some threshold that signifies a diminished opportunity to participate as crew on an active vessel. This include the consideration of not revoking any C shares when the fishery is closed. The final type of action considered is intended to create additional opportunity for non-initial recipients of C share to demonstrate active participation through non-BSAI crab fisheries.

Table 1 Types of actions considered in the analysis (the three types of actions are not mutually exclusive)

| Goal of action | Thresholds considered | Actions considered | Process |
|--|--|---|---|
| 1. Provide exemptions for the “COVID- years” | The conditions under 2019/2020 - 2022/2023 (COVID + closed fisheries) | <ul style="list-style-type: none"> Restart requirements in 2023/24. No revocation until 2027/28, and/or Reissue C shares that were revoked in the interim | Regulatory change |
| 2. Create process for future exemptions due to stock declines | <ul style="list-style-type: none"> Low TAC, Rebuilding plan, Min # of fisheries, Min # of active vessels, or Closed fisheries | <ul style="list-style-type: none"> Restart requirements, No withholding or revocation in that year, or Exclude year in the count | <ul style="list-style-type: none"> Regulatory change or Annual determination by NMFS Regional Administrator based on criteria |
| 3. Expand opportunity to demonstrate active participation for non-initial recipients | | Allow 30 days participation in any state or federal fishery to qualify as active participation | Regulatory change |

Analysis of Alternatives

Alternative 1: No action

Under no action, C share holders must continue to demonstrate participation requirements as defined by regulations at § 680.40 (m) in order to have their C share IFQ issued, and regulations at § 680.43 in order to retain C share quota.

An emergency rule effective July 15, 2022 through January 11, 2023 (87 FR 42390) temporarily suspended the active participation requirements for C share holders, in that no C share IFQ was withheld and no C share QS was revoked in the 2022/23 application period. This emergency rule provided C share holders an additional year opportunity to meet active participation requirements or transfer C share QS. However, beginning in the 2023/24 application cycle, the federal regulations to demonstrate active participation will again be applicable.

The overall intent of the C share IFQ eligibility and the C share QS revocation provisions is that, over time, C share QS will be held by and available for persons meeting the minimum participation threshold specified by the applicable provisions (NPFMC 2013). The C share active participation requirements were redesigned through Amendment 31 to incentivize individuals to divest their C share QS when they are no longer participating actively onboard crab vessels. The requirements were also intended to provide a reasonable buffer understanding that vessels may not be active in all years.

However, under no action, it is expected more individuals than in the recent past would be in a situation of needing to transfer C shares or being delinquent on active participation requirements. As demonstrated with the recent low TACs and current fishery closures (Figure 2), the limited number of vessels that have been participating in recent years (Table 4), and the number of crew positions which has declined even further than the available data demonstrates (Table 5), there is less opportunity for crab C share holders to serve as active crew on vessels. Moreover, with closed fisheries, there is likely a limited market for selling C shares to qualified individuals. It is expected demand for C share QS is low (particularly in closed fisheries) and increased C share supply on the market could lower the value for all those holding C

shares. This could represent a substantial financial loss for C share holders, some of which may have financed the purchase of C shares.

Alternative 2, Option 1: “Restart C share active participation requirements and reissue C share QS that is revoked in the interim

The first option under Alternative 2 would restart the recent participation requirement beginning in 2023/24 fishing year. The option says the 2019/20, 2020/21, and 2021/22 seasons would not count towards the recent participation requirements (the Council’s April 2023 motion clarifies the 2022/23 crab year would be included in this consideration). The analysts assume this means all C share holders would be considered active in these seasons and the rolling accounting of active participation would restart in 2023/24. Hypothetically, this means the earliest any C share holder could have their IFQ withheld would be for the 2026/27 season and the earliest any C share holder could have their QS revoked would be the 2027/28 season.

However, contrary to the intent of Alternative 2, Option 1, it is not possible to implement an exemption soon enough to avoid some C shares potentially being withheld or revoked for the time period the Council may be seeking to exempt. Even with the most expeditious timeline for analysis and rule-making, regulatory action could not be implemented until the 2025/26 application cycle at the earliest. This means C share holders may have C share IFQ withheld or QS revoked in the 2023/2024 and 2024/25 application years due to not meeting participation requirements from 2019-2023; the years the Council may be seeking to exempt. If a regulatory package was implemented in October 2024, the only crab year Alternative 2, Option 1 would affect is the 2025/26 season. Therefore, this analysis also explores the possibility of reissuing any revoked C share QS between the upcoming application cycle and the time when proposed action to change C shares becomes effective.

At the time when this analysis is written, it is not possible to know the number of C share holders that are out of compliance with C share active participation requirements such that they will have their C share IFQ withheld or their QS revoked prior to the 2023/24 seasons. This is because the application deadline is not until June 15, 2023 and C share holders have (and use) this full timeline to submit applications and provide evidence of active participation. No C share QS has been revoked thus far in the program. However, the administrative process has been inconsistent in the recent past, and it is expected that there have been C share holders who have not met participation requirements in previous years.

This process would not be ideal for C share holders who were at risk of having their QS revoked. If their C share QS was revoked at the beginning of the 2023/24 season due to failure to meet active participation requirements in the 2019/20-2022/23 seasons, they would need to wait until the rule-making process was complete before they could once again earn revenue off the C share IFQ. Given the uncertainty in implementation and expected timeline, C share holders that are out of compliance with the active participation requirements may determine that selling their C share QS prior to revocation provides them greater benefits. As explained in Section 3.2.3, any transfers of C share QS would need to occur prior to June 15 or C share QS will be revoked.

For revoked C Share QS in the interim, the C share QS pool would be slightly smaller. Current regulations establish the process by which the C share QS pool would remain 3% of the IFQ TAC, so all other C share holders would de facto receive slightly greater pounds of crab for harvest.

Alternative 2, Option 2: Provide NMFS Regional Administrator the authority to suspend C share active participation requirements

The second option under alternative 2 would give the RA of NMFS the authority to suspend the C share QS recent participation requirements. Council clarification of this option in April 2023 provides examples of times when an exemption from the active participation requirements may be warranted, including in years of low BSAI crab quota where few vessels fish or due to other unforeseen circumstances (e.g., a

pandemic). The Council requested the analysis include potential criteria that the Council could select to guide future decisions by the RA to suspend the C share recent participation requirements.

Under this option, an annual process may be defined where the RA uses criteria developed by the Council to identify whether the forthcoming season would meet a threshold which warrants additional flexibility for active participation. It would be advantageous for an announcement to be made prior to the season opening to give the C share holders adequate time to know and plan for years where they are required to be active.

Any criteria defined by the Council would need to be very specific. The RA and the public must be able to clearly understand and be able to distinguish years in which recent participation is required versus when exemptions are made so that it is unambiguous when the RA must withhold IFQ or revoke QS. The RA should be able to apply the criteria in an unambiguous way that is fair and equitable to all fishery participants and apply consistently across C share holders and years. These criteria would need to be clear enough to fulfill the Council's role of providing management guidance to NOAA, and to support the RA's decision-making in light of the interests involved and litigation that could occur.

Criteria could include a threshold that signifies diminished opportunity to actively participate, for example:

- A certain low level of TAC,
- A fishery that is subject to a rebuilding plan,
- A threshold minimum number of fisheries that are open, or
- A threshold minimum number of participating vessels.

The example of having a minimum number of vessels before active participation is required was specifically identified in the Council's April 2023, therefore the analysis explores this type of threshold in more detail. The motion states "only count fishing years where at least 15, 20, 25, or 30 BSAI crab vessels fish." It is unclear if the examples cited were meant to be thresholds for individual fisheries or the whole fleet across fisheries; therefore, the analysis explores both scenarios. In addition, a vessel count threshold could be considered with sub-groups of fisheries.

While a vessel count threshold could be monitored and enforced by NMFS, this type of threshold poses challenges for C share holders pre-season if they need to determine whether they need to participate to meet the requirements, and it is unclear what number of vessels will be actively participating in that year. This threshold may make it more difficult for C share holders to keep track of their own record of participation and which years have counted.

Under current regulations, C share holders are not required to actively participate every year. Therefore, a year in which the threshold is triggered would not simply "exempt" the C share holder from active participation requirements in that year. **In addition to defining the criteria, the Council would need to identify how the exemption would be implemented by NMFS when the criteria is triggered.** Analysts have identified several mutually exclusive ways this could occur:

- NMFS could consider C share holder "active" in the years where the threshold is triggered.
 - This matches the process proposed under Alternative 2, Option 1 for restarting participation requirements in 2023/24, as depicted in Figure 9.
 - This option is essentially wiping the slate clean and restarting the 3-year rolling requirement when the threshold is triggered. If threshold is triggered often, active participation requirements would rarely be enforced.
- NMFS could refrain from withholding or revoking any C shares in the season following a threshold being triggered.

- This is similar to the implementation of the July 15, 2022 emergency rule. No C shares were withheld or revoked for the 2022/23 season, but active participation continued to be accounted for on a rolling basis, including during the 2022/23 year. This provided C share holders an additional year to demonstrate the active participation requirements, but did not de facto consider them to be active during the 2022/23 year. If they were in a position to have their IFQ withheld in 2022/23 (but did not due to the emergency rule) and they did not demonstrate active participation that year or divest, they would be in a position to have their QS revoked in 2023/24.
- If C share holders were unable to be active during the years triggered by the threshold, this would provide them one additional year after the threshold (the first year at a higher TAC or when more vessels were participating for example) to achieve the active participation requirements.
- Similar to implementation of the 2022 emergency rule, there could be situations where IFQ is not withheld, but in season following a threshold being triggered, C share holders are at risk of having their QS revoked due to a long stretch of inactivity.
- NMFS could exclude the years in which a threshold is triggered from the 3-year evaluation.
 - This option would rely on the years prior to the threshold being triggered to demonstrate active participation.
 - This option would penalize those who demonstrated active participation during the recent seasons, but not the seasons prior.

Based on the Council's stated examples, it appears this flexibility would be used when there are limited opportunities across the fleet (e.g., low TACs, unforeseen circumstances, etc.) but the Council should consider whether this option would also apply to individuals with extenuating circumstances (e.g., medical conditions, family emergencies etc.).

Overall, the high level of specificity the Council would likely need to define criteria under which the RA would act, makes this option essentially the same as defining criteria in regulations. It does not necessarily provide a nimbler option for extenuating circumstances, as may be the intent.

Analysis of additional concepts for possible action

Based on the Council's motion in April 2023, two additional concepts are explored in the analysis.

Initial recipients of C share QS have broader opportunities to demonstrate active participation through current regulations. The first additional concept the Council asked staff to explore in its April 2023 motion, is the possibility of **expanding participation requirements for non-initial recipients to match the requirements of initial recipients**. In other words, "within the previous three years, participate in a BSAI crab trip OR participate as crew in at least 30 days of fishing in a commercial fishery off Alaska" for all CVC QS and CPC QS.

In recent situations with closed fisheries and possible future low TACs, this would provide an alternative outlet for a non-initial recipients to achieve active participation requirements. Any State or Federal fishery off of Alaska would qualify (salmon, crab, groundfish, and/or other species) using any gear type. Fishing effort could be combined from different fisheries to demonstrate the necessary 30 days of participation.

While some initial-recipient C share holders have used non-BSAI crab fisheries to meet the active participation requirements, NMFS Restricted Access Management (RAM)'s database for active participation simply provides record of whether qualified evidence was provided. Therefore at this time, the analysis does not provide information on how often this option is currently employed or what fisheries are submitted as evidence. It is believed that affidavits establishing non-BSAI crab fishery participation are submitted less often than affidavits demonstrating BSAI crab participation, but they are certainly

submitted. As during the analysis for Amendment 31, it is expected that this expanded definition of active participation would create substantial additional opportunities for C share holders.

The second additional concept the Council asked staff to explore is in considering a broader **exemption for active participation for CVC or CPC QS associated with a closed fishery**. Current regulations have narrow language that provides an exemption from active participation requirements in the case of a closed fishery. Regulations at § 680.40(m)(2)(i) state, “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.” However, a C share holder may hold QS in more than a single fishery, and both of those fisheries may be closed. Under a strict letter-of-the-law interpretation this regulation may not provide an exemption from the active participation requirements in this case, despite fitting the spirit and intent of the regulation. This could be a housekeeping amendment to change the language and clarify the intent in the process. For instance, a possible housekeeping amendment could clarify that if an individual holds C share QS in only closed fisheries, they are exempt from active participation requirements during the closed years.

In addition, if the individual holds C share QS in one fishery that is open and C share QS in a fishery that is closed and has failed to meet the active participation requirements four years in a row, the regulations state, “...the Regional Administrator will revoke all CVC QS and CPC QS held by an individual who has not met the participation requirements set forth in § 680.40(m)” (emphasis added; § 680.43). This essentially applies a rule of, “if a C share holder can participate anywhere, they must participate.” The Council could consider applying severability to closed fishery C share QS to lower this standard, such that an individual with shares in multiple fisheries who fails to meet participation requirements may have their QS revoked except the QS in affected by closures.

Although it is the intention of C share active participation requirements to ensure C share QS remains with active captains and crew in the fisheries, compelling the sale of C share QS in a closed fishery may not have the intended effect. In a closed fishery, it is likely that the demand is extremely limited, particularly as the pool of qualified individuals declines. If the BBR and BSS fisheries remain closed or with low TACs in the next few years, and there remains limited opportunities to crew, there could be an increase in supply of C shares on the market as C share holders near the season where they would be at risk of having their QS revoked. This could result in a thin market with low prices and decrease the value of the C share QS for all holders. If a C share holder recently financed their purchase of C share QS, this could have severe financial implications.

Additional Monitoring and Enforcement Considerations

Administration of the existing C share participation requirements has been difficult due to multiple factors involved in determining the most relative and current data submitted by participants over a potential multi-year application cycle. The application review process requires several layers of manual review and judgment by NMFS staff to determine which years would count toward the three or four qualifying years due to the closed fishery exception. Additionally, due to the potential for data entry errors, NMFS staff must do a comprehensive review of prior years’ submissions to determine the most recent documentation submitted for each CVC or CPC QS holder. For example, NMFS staff may be required to compile qualifying participation data by reviewing and analyzing participation data submitted over a multi-year timespan. The submitted annual participation data may exist in many formats, through both electronic and/or paper record submission. Additionally, this data may meet qualifications based on an attested affidavit submission in one year and/or through fish tickets demonstrating a crab landing in the following year.

Under all action alternatives identified in this analysis, it is important to consider the level of complexity created from additional exemptions and flexibility in the active participation regulations. The more complex the regulations are, and the greater the number and type of individual exemptions, the more

challenging these regulations are for the public to comply with and for them to understand whether they are in compliance. Additional complexity also increases the challenges for NMFS to monitor and enforce in and already complicated regulatory framework.

The CR Program includes a federal Cost Recovery Program which authorizes the collection of actual management and enforcement costs for up to three percent of ex-vessel gross revenues. To the extent that changes proposed under the action alternatives could increase staff time spent on administering the active participation provision, this could result in increased management costs recoverable under the CR cost recovery program.

1 Introduction

This document analyzes proposed management measures that would apply exclusively to those who hold crew quota share (or C share) in the Bering Sea Aleutian Islands (BSAI) Crab Rationalization Program (CR Program). The measures under consideration are modifications to the C share active participation requirements, including providing exemptions to these requirements during certain circumstances identified in previous and future years. Specifically, the conditions of the COVID-19 pandemic and recent closed crab fisheries have resulted in challenges with traveling to port communities and a substantial decline in the number of vessels used to harvest the remaining total allowable catch (TACs). These factors have made it difficult for some C share holders to achieve the required active participation and it is expected that future low TACs may create similar challenges for C share holders to achieve active participation requirements.

This document is a Regulatory Impact Review Analysis (RIR).¹ An RIR evaluates the benefits and costs of the action alternatives, as well as their distribution. This RIR addresses statutory requirements of the Magnuson Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act, 16 U.S.C. 1801, et seq.), the National Environmental Policy Act (NEPA), Presidential Executive Order 12866, and some of the requirements of the Regulatory Flexibility Act. An RIR is a standard document produced by the North Pacific Fishery Management Council (Council) and National Marine Fisheries Service (NMFS) Alaska Region to provide the analytical background for decision-making.

1.1. History of this Action at the Council

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 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) quota share (QS) and Catcher Processor Crew (CPC) QS, collectively known as C shares, and suspend any revocation of and issue all Individual Fishing Quota (IFQ) for the CVC QS and CPC QS for the 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.

In **April 2023**, the Council staff requested clarification on the Council's purpose and need for action. Staff also notified the Council of challenges with implementing one of the proposed alternatives given the analytical process and rulemaking timeline necessary before changes could occur. A three-page memo was prepared and presented on this topic in staff tasking (NPFMC 2023). Specifically, staff requested clarification on whether the need for action still existed given emergency action taken in 2022 and if the

¹ NMFS has preliminarily determined this action does not have the potential to individually or cumulatively have a significant effect on the quality of the human environment and qualifies for a Categorical Exclusion under NEPA. The proposed action is expected to fall within Category A1 Trust Resource Management Action - an action that is a technical correction or a change to a fishery management action or regulation, which does not result in a substantial change in any of the following: fishing location, timing, effort, authorized gear types, or harvest levels. The action can be reviewed independently from other actions under NEPA, and there are no extraordinary circumstances that may require further analysis in an Environmental Assessment or an Environmental Impact Statement.

need was still focused on years identified for COVID-19 challenges (i.e., 2019/20, 2020/21, and 2021/22) or if the need includes possible future conditions. Staff also emphasized that 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 or even the 2024/25 season for C share holder that did not meet C share participation requirements in 2019-2023.

In response, the Council provided clarification on its policy focus for the proposed action (Appendix 1). The Council stated an interest in maintaining the concept of active participation for C share QS in the CR Program. However, it requests staff explore ways to provide exemptions from these requirements under recent and future conditions, such as closed fisheries or low crab TACs, where there is less opportunity for C share holders to work as crew on an active CR Program fishing vessel.

While there was not adequate public notification for the Council to change its purpose and need or alternative set at this meeting, the Council requested the analysis provide information for broader types of changes that may support its purpose and need. For example, information may be provided to support concepts such as expanding participation requirements for non-initial recipients to match the requirements of initial issues, establishing TAC or other thresholds under which exemptions from active participation may be warranted, and not allowing C share QS that are associated with a closed fisheries to be revoked. The Council also stated an interest in considering ways to re-issue any C share QS that is revoked between July 2023 and the effective date of the proposed action.

This Initial Review Analysis provides additional information to support this intent. The Council indicated that it may refine its purpose and need and set of alternatives in response to this information at Initial Review.

1.2. Purpose and Need

The Council adopted the following purpose and need in **June 2022**.

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.

As stated in Section 1.1, the Council clarified the policy scope of this action in **April 2023** (Appendix 1). **At this time, the Council stated an interest in maintaining the concept of active participation for C share QS in the CR Program. This is a central policy decision, which may be useful to articulate in a purpose and need statement.** It should be clear whether an alternative to remove C share active participation requirements entirely fits within the Council's purpose and need for action or if action is based around extenuating circumstances and/ or creating additional flexibilities.

In April 2023 the Council identified a need to allow for exemptions both due to the previous conditions under the pandemic which overlapped with closed fisheries and low TACs, as well as future possible conditions. The analysis was requested to explore solutions to addressing both past and future conditions under which exemptions and modifications to the program's active participation requirements may be warranted.

2 Description of Alternatives

The Council adopted the following alternatives for analysis in June 2022.

Alternative 1 - No action

Alternative 2 - Modify the CVC QS and CPC QS recency 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

In **April 2023**, the Council provided additional direction for analysis of these alternatives as well as further concepts to explore that would support the Council's purpose and need for action (Appendix 1). While there was not adequate public notification for the Council to change its alternative set in April 2023, all proposed concepts are further explored in the analysis of impacts (Section 3.4). As stated in the motion, the Council requested staff analyze the effectiveness of:

- Suspending the recent participation requirement after the pandemic and, beginning in 2023/24, only count fishing years where at least 15, 20, 25, or 30 BSAI crab vessels fish. Also analyze not counting 2019/20, 2020/21, 2021/22, through 2023/2024 toward the recent participation requirement. ***This constitutes additional considerations relative to Alternative 2, Option 1 and the addition of a minimum vessel threshold. The concept of a minimum threshold of participating vessels is considered under Alternative 2, Option 2 along with other criteria that could suspend active participation requirements in future years.***
- Analyze giving the Regional Administrator the authority to suspend the CVC QS and CPC QS recent participation requirement in years of low BSAI crab quota where few vessels fish or due to other unforeseen circumstances (e.g., a pandemic). Include potential criteria that the Council could select to guide future decisions by the Regional Administrator to suspend the CVC QS and CPC QS recent participation requirement. ***This clarifies the information requested relative to Alternative 2, Option 2.***
- Expand participation requirements for non-initial issues to match the requirements of initial issues. In other words, "within the previous three years, participate in a BSAI crab trip OR participate as crew in at least 30 days of fishing in a commercial fishery off Alaska" for all CVC QS and CPC QS. ***This is not currently an alternative, but analysis provides additional information relative to this request.***
- Not revoking any CVC or CPC QS associated with a closed fishery. ***This is not currently an alternative, but analysis provides additional information relative to this request.***
- Reissue any CVC QS and CPC QS that were revoked between July 2023 and the effective date of the proposed action. ***This is not currently an alternative, but could work in tandem with Alternative 2, Option 1. This concept is considered along with Alternative 2, Option 1.***

Table 2 organizes the types of actions that are considered in the analysis based around the goals of the action. These three types of actions are not mutually exclusive from one another. The first type of action focuses on the accounting from past years (2019/20- 2022/23) and a desire to create exemptions due the challenges with the COVID-19 pandemic combined with stock declines and fishery closures that began around the same time period. The second type of action includes consideration of suspending active participation requirements in the future based on some threshold that signifies a diminished opportunity to participate as crew on an active vessel. This include the consideration of not revoking any C shares when

the fishery is closed. The final type of action considered is intended to create additionally opportunity for non-initial recipients of C share to demonstrate active participation through non-BSAI crab fisheries.

Table 2 Types of actions considered in the analysis (the three types of actions are not mutually exclusive)

| Goal of action | Thresholds considered | Actions considered | Process |
|--|--|---|--|
| 1. Provide exemptions for the "COVID- years" | The conditions under 2019/2020 - 2022/2023 (COVID + closed fisheries) | <ul style="list-style-type: none"> Restart requirements in 2023/24. No revocation until 2027/28, and/or Reissue C shares that were revoked in the interim | Regulatory change |
| 2. Create process for future exemptions due to stock declines | <ul style="list-style-type: none"> Low TAC, Rebuilding plan, Min # of fisheries, Min # of active vessels, or Closed fisheries | <ul style="list-style-type: none"> Restart requirements, No withholding or revocation in that year, or Exclude year in the count | <ul style="list-style-type: none"> Regulatory change or Annual determination by NMFS Regional Administer based on criteria |
| 3. Expand opportunity to demonstrate active participation for non-initial recipients | | Allow 30 days participation in any state or federal fishery to qualify as active participation | Regulatory change |

2.1. Alternative 1, No Action

Under no action, C share holders must continue to demonstrate participation requirements as defined by regulations at § 680.40 (m) in order to have their C share IFQ issued, and regulations at § 680.43 in order to retain C share quota. These requirements are thoroughly detailed in Section 3.2.2 of this document. An emergency rule effective July 15, 2022 through January 11, 2023 (87 FR 42390) temporarily suspended the active participation requirements for C share holders, in that no C share IFQ was withheld and no C share QS was revoked in the 2022/23 application period. This emergency rule provided C share holders an additional year opportunity to meet active participation requirements or transfer C share QS. However, beginning in the 2023/24 application cycle, the federal regulations to demonstrate active participation will again be applicable.

2.2. Alternative 2, Modify C Share Requirements

There are two options listed under **Alternative 2** that could modify the C share active participation requirements. In April 2023, the Council clarified and expanded on these options.

The **first option** would restart the recent participation requirement beginning in 2023/24 fishing year. The option says the 2019/20, 2020/21, and 2021/22 seasons would not count towards the recent participation requirements (the Council's April 2023 motion clarifies the 2022/23 season would be included in this consideration). The analysts assume this means all C share holders would be considered active in these seasons rather than interpreting the option as relying on the previous years (2016/17, 2017/18, and 2018/19) to demonstrate the active participation. The latter scenario would penalize those who demonstrated active participation during the recent seasons, but not 2016/17, 2017/18, and 2018/19 crab years. Since the option indicates the recent participation requirement would *restart* beginning in 2023/24, this aligns with the practice of having all C share holders considered active during the recent seasons.

However, as highlighted to the Council in October 2022² and April 2023 (NPFMC 2023), 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 2019-2023. Therefore, this analysis also explores the possibility of reissuing any revoked C share QS between the upcoming application cycle and the time when proposed action to change C shares becomes effective. No C shares QS has been revoked prior to this time period.

The **second option** would give the Regional Administrator of NMFS the authority to suspend the C share QS recent participation requirements. This option does not yet define the circumstances to which this flexibility would apply. In addition, it is not clear whether this flexibility is intended for personal extenuating circumstances, fleet-wide circumstances, or both. Council clarification from April 2023 used the examples of fleet-wide circumstances such as years of low BSAI crab quota where few vessels fish or due to other unforeseen circumstances (e.g., a pandemic).

The Council indicated that analysis should include potential criteria that the Council could select to guide future decisions by the Regional Administrator to suspend the CVC QS and CPC QS recent participation requirement. As part of these criteria the analysis considers establishing a minimum number of vessels participating in the fishery as a trigger for suspending active participation requirements (as requested in the April 2023 motion). The motion states “only count fishing years where at least 15, 20, 25, or 30 BSAI crab vessels fish.” It is not clear whether this is meant to represent vessels in *any* BSAI crab fishery, in *each* BSAI crab fishery, or some other distinction (e.g., in each of the historically large BSAI crab fisheries – BBR, BSS, and BST). The analysis in Section 3.4.2.2 considers these thresholds by several definitions based on previous participation in the fisheries.

2.3. Additional Concepts for Possible Action

Based on the Council’s motion in April 2023, **two additional concepts are explored** in the analysis.

Initial recipients of C share QS have broader opportunities to demonstrate active participation through current regulations. In demonstrating active participation, initial recipients can participate as crew in at least 30 days of fishing in a commercial fishery off Alaska *or* they can participate as crew in a BSAI crab trip. Non-initial recipients must participate as crew in a BSAI crab trip. This analysis provides information and consideration for a possible **regulatory change to broaden the requirements for non-initial recipients to match that of initial recipients**.

Current regulations have narrow language that provides an exemption from active participation requirements in the case of a closed fishery. Regulations at § 680.40(m)(2)(i) state, “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.” However, a C share holder may hold QS in more than a single fishery, and both of those fisheries may be closed. Under a strict letter-of-the-law interpretation this regulation may not provide an exemption from the active participation requirements in this case, despite fitting the spirit and intent of the regulation. In addition, if the individual holds C share QS in one fishery that is open and C share QS in a fishery that is closed and has failed to meet the active participation requirements four years in a row, the regulations state, “...the Regional Administrator will revoke **all** CVC QS and CPC QS held by an individual who has not met the participation requirements set forth in § 680.40(m)” (emphasis added; § 680.43). The analysis explores potential impacts of **changing regulations so no C shares would be revoked in a fishery that was closed in the previous year**.

² NMFS Management Report: <https://meetings.npfmc.org/CommentReview/DownloadFile?p=602071f0-9323-41c6-8dfe-1f288d22091d.pdf&fileName=B2%20NMFS%20Report.pdf>

3 Regulatory Impact Review

The preparation of an RIR is required under Presidential Executive Order (E.O.) 12866 (58 FR 51735, October 4, 1993). The requirements for all regulatory actions specified in E.O. 12866 are summarized in the following Statement from the E.O.:

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 nevertheless 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 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:

- 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, the environment, public health or safety, or State, 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 E.O. 12866.

3.1. Statutory Authority

Under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) (16 U.S.C. 1801, et seq.), the United States has exclusive fishery management authority over all marine fishery resources found within the exclusive economic zone (EEZ). The management of these marine resources is vested in the Secretary of Commerce (Secretary) and in the regional fishery management councils. In the Alaska Region, the Council has the responsibility for preparing fishery management plans (FMPs) and FMP amendments for the marine fisheries that require conservation and management, and for submitting its recommendations to the Secretary. Upon approval by the Secretary, NMFS is charged with carrying out the Federal mandates of the Department of Commerce with regard to marine and anadromous fish.

The CR Program fisheries in the EEZ off Alaska are managed under the Fishery Management Plan (FMP) for the BSAI and Tanner crab. The proposed actions under consideration would amend this FMP and Federal regulations at 50 CFR 680. Actions taken to amend FMPs or implement regulations governing these fisheries must meet the requirements of applicable Federal laws, regulations, and Executive Orders.

3.2. Management of the Crab Fisheries

This section describes the relevant management components of the crab fisheries under the Crab Rationalization Program (CR Program) as well as some historical context for these regulations.

3.2.1. Crab Rationalization Management

The CR program was implemented on March 2, 2005 (70 FR 10174). The CR Program is a “voluntary three pie cooperative” program which allocates BSAI crab resources among harvesters, processors, and coastal communities. Program components include quota share (QS) allocations, processor quota share (PQS) allocations, individual fishing quota (IFQ) and individual processing quota (IPQ) issuance, quota transfers, use caps, crab harvesting cooperatives, protections for historical processing communities, protections for Gulf of Alaska groundfish fisheries, an arbitration system, monitoring, economic data collection, Federal cost recovery fee collection and separate (10%) allocations for the Western Alaska Community Development Quota (CDQ) Program and the Adak Community Allocation (ACA).³ The following sections provide context for the management of the CR Program that is relevant to the proposed action. For more exhaustive detail on the management of the CR Program fisheries see Section 2 of the Ten-Year Program Review for the BSAI CR Program (NPFMC 2017) and Federal regulations at 50 CFR 680.

One of the main components of the CR Program was in establishing both harvester QS and PQS, which are revocable privileges that allow the holder to harvest or process a specific percentage of the annual TAC in a CR Program fishery. Approximately 97% of the QS (referred to as “owner QS”) in each program fishery (see Figure 1) were initially allocated to the License Limitation Program license holders based on their catch histories in the fishery. These owner QS were further allocated as catcher vessel owner (CVO) shares and catcher processor owner (CPO) shares, depending on the type of vessel the history was accrued from.

The remaining 3% of the QS (referred to as “C shares” or “crew QS”) were initially allocated to captains 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. The C shares were also allocated as either catcher vessel crew (CVC) QS or catcher processor crew (CPC) shares, resulting in four different types of harvester QS.

An individual’s QS holdings equates to specific pounds of IFQ which is calculated on an annual basis. The size of each annual IFQ allocation is based on the amount of QS held by a person in relation to the total QS pool in a crab fishery. For example, an individual holding C share QS equaling one percent of the C share QS pool in a crab fishery would receive IFQ to harvest one percent of the annual TAC allocated to C share QS in that crab fishery.

CVO IFQ are issued in two classes, Class A IFQ and Class B IFQ. Crab harvested using Class A IFQ are required to “share-match” with IPQ, which is the annual issuance of PQS based on the TAC. This means crab harvested using Class A IFQ must be delivered to a processor holding unused IPQ. In addition, most Class A IFQ are subject to regional share designations, whereby harvests are required to be delivered within an identified region. Class B IFQ, as well as C shares and CDQ shares can be delivered to any registered crab receiver (RCR).

³ The CDQ Program allocates 10% of the TAC for BBR, BSS, EBT, WBT, EAG, WAI, SMB and PIK across six CDQ groups. The ACA allocates 10% of the WAG TAC to the Adak Community Development Corporation.

Crab Fishery TAC - 10% for CDQ & Adak = IFQ allocation

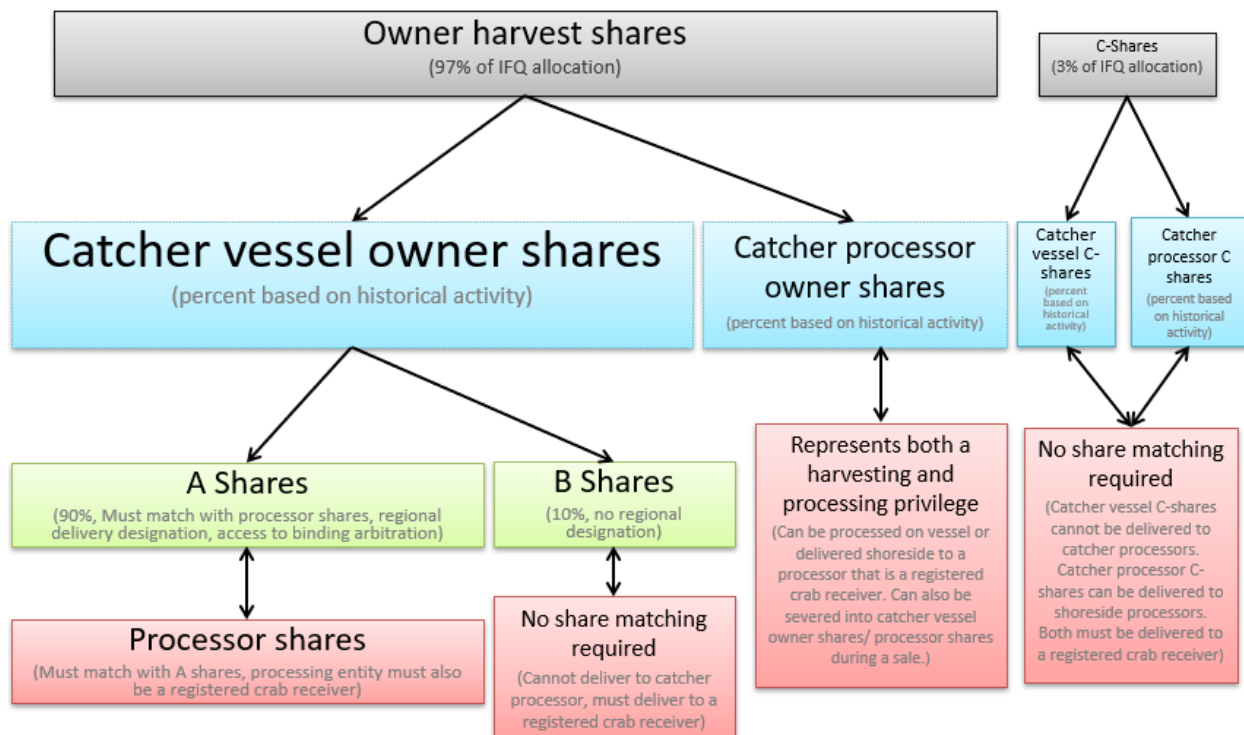


Figure 1 Diagram of quota shares in the CR Program

Note: See BSAI Crab Rationalization Program ten-year review (NPFMC 2017) for more information on the categories of quota described in this figure.

To receive C share QS by transfer, current regulations at § 680.41(c)(1) require an applicant to meet eligibility requirements at the time of transfer. To meet these eligibility requirements, an individual may submit an Application for BSAI Crab Eligibility to Receive QS/ PQS by Transfer in advance of, or concurrently with, their Application for Transfer of Crab QS or PQS. The regulations require that an individual must be a U.S. citizen with

- (1) at least 150 days of sea time as part of a harvesting crew in any U.S. commercial fishery; and
- (2) participation as crew in one of the CR Program fisheries in the 365 days prior to the date the transfer application is submitted to NMFS.

Individual use caps are imposed on the use and holdings of harvest shares by any person in order to prevent excessive consolidation of shares under the program. Different caps apply to owner share holdings and C share holdings (see Table 3). Individual use caps vary across program fisheries because of different fleet characteristics and the differences in historic dependency of participants on the different fisheries. In addition, any CR Program holdings by CDQ groups, who each represent the interests of one or more BSAI communities, are subject to higher caps. A “grandfather” provision exempted persons who received an initial allocation of QS in excess of the cap.

Table 3 QS use caps for CVO/CPO, CVC/CPC, and CDQ groups

| Fishery | CVO/CPO | | CVC/CPC | | CDQ holdings of CVO/CPO | |
|---------|---------------------------------------|-------------|------------------------------------|-------------|---------------------------------------|-------------|
| | As a % of the initial CVO/CPO QS pool | In QS units | As a % of the initial C share pool | In QS units | As a % of the initial CVO/CPO QS pool | In QS units |
| BBR | 1% | 3,880,000 | 2% | 240,000 | 5% | 19,400,000 |
| BSS | 1% | 9,700,000 | 2% | 600,000 | 5% | 48,500,000 |
| EBT | 1% | 1,940,000 | 2% | 120,000 | 5% | 9,700,000 |
| WBT | 1% | 1,940,000 | 2% | 120,000 | 5% | 9,700,000 |
| PIK | 2% | 582,000 | 4% | 36,000 | 10% | 2,910,000 |
| SMB | 2% | 582,000 | 4% | 36,000 | 10% | 2,910,000 |
| EAG | 10% | 970,000 | 20% | 60,000 | 20% | 1,940,000 |
| WAG | 10% | 3,880,000 | 20% | 240,000 | 20% | 7,760,000 |
| WAI | 10% | 5,820,000 | 20% | 360,000 | 20% | 11,640,000 |

Source: 50 CFR 680.42(a); <https://alaskafisheries.noaa.gov/sites/default/files/reports/1415ifquotacaps.pdf>

3.2.2. C Share Requirements Under Amendment 31

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.

Since Amendment 31 was implemented in 2015 (80 FR 15891, 03/26/2015), each year by June 15, CVC and CPC QS holders submit an Application for Annual Crab IFQ Permit in order to receive IFQ, an exclusive harvest privilege for a portion of the 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.

Since June 2018 (three years after implementation of Amendment 31), 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 of 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)).

In order to retain C share, a C share holder has four seasons to meet these same requirements (§ 680.40(m)). The Council recommended revocation of C share QS, if the QS holder continues to be inactive, as an incentive for C share QS holders to divest so that the QS is not held inactive for extended periods of time. Regulations specify a notification and appeals process, detailed in Section 3.2.3.

The regulations include narrow exemptions from these requirements for closed fisheries. As stated in regulations at § 680.40(g)(2)(i), “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, for example if a C share holder only holds BBR C shares, active participation has not been counted since the 2020/21 season. However, if a C share holder holds both EBT or WBT C shares (which were open in the 2022/23 season) in addition to C shares from a closed fishery such as BRR, they are still required to meet

active participation requirements. Section 3.3.4 demonstrates that most C share holders hold C share QS in multiple fisheries.

In addition to establishing the process whereby C share may be revoked under Amendment 31, the Council established a regulatory mechanism to ensure that three percent of the QS for each CR Program crab fishery is allocated as IFQ to holders of C share QS. By separating the calculation of IFQ allocations to C share QS holders from allocation of IFQ to vessel owner QS holders, the allocation of IFQ to C share QS holders would be maintained at three percent of the IFQ TAC, regardless of whether some C share QS is revoked and removed from the C share QS pool.

3.2.3. Management Timeline for Crab Fisheries

Current federal regulations define the crab fishing year as spanning July 1 through June 30 of the subsequent year (§ 680.2 “Crab fishing year”). The individual crab fishing seasons open at different times in the crab fishing year, as determined by ADF&G based on the biology of each stock. Crab IFQ and IPQ are issued based on openings for the specific fisheries, once the SSC/ Council has approved the overfishing level (OFL) and acceptable biological catch (ABC) and subsequently, the TAC has been set by ADF&G. This nearly always represents a tight turn-around between TAC-setting and IFQ issuance and includes additional coordination with industry to begin the clock for IFQ/IPQ share matching.

The EAG and WAG fisheries have traditionally been the first crab fisheries to open, beginning on August 1. The EAG and WAG IFQ/IPQ is issued in August once cost recovery fees have been paid. The SSC/ Council sets the AIG OFL and ABC at the June Council meeting and the State announces TACs shortly after. This creates a tight turnaround time between when IFQ is issued and when IFQ fishing begins. In recent years the EAG and WAG seasons have opened earlier by ADF&G to accommodate vessels that were participating in the ADF&G survey,⁴ but IFQ was still not issued until after Aug 1. Crab landed prior to IFQ issuance was exclusively crab contributing to the State of Alaska Cost Recovery Program, CDQ, or ACA (Adak Community Allocation) crab. Other crab fisheries (i.e., BRR, BSS, EBT, and WBT) typically open by State regulation on October 15. The IFQ/ IPQ for these crab fisheries can be issued once the SSC/ Council has set the OFL and ABC at the October Council meeting and the State has officially announced the TACs.

Under the current regulations, all applications for IFQ, IPQ, and cooperative IFQ must be filed with the NMFS Restricted Access Management (RAM) Division by June 15 (§ 680.4(f)(1)). This application deadline moved earlier in the year from Aug 1 to June 15 under Amendment 31. This change was in response to the challenges that arose from the insufficient amount of time available for NMFS to resolve IFQ and IPQ application disputes prior to the date by which NMFS must issue IFQ, IPQ, and cooperative IFQ. Applications that are unresolved at the time when IFQ and IPQ are issued can result in a mis-match of A share IFQ to the IPA it must be matched with. The proposed rule for Amendment 31 cited about 30 to 40 persons that fail to file applications for IFQ or IPQ, or have issues with their applications that result in them receiving an IAD notifying them of either their failure to file or the discrepancies in their application, and informing them that they will not receive an annual allocation of IFQ or IPQ. NMFS tends to prioritize review of applications based on the timing of fishery opening, for example, EAG/WAG issues would get addressed first.

The notification process for having C share IFQ withheld and the process for having C share QS revoked are similar. NMFS will issue a Notice of C Share QS Inactivity to an individual holding C share QS if,

⁴ The 2019/20 EAG and WAG season was set to open on July 15 to April 30. In the 2020/21 season, the COVID-19 pandemic prevented the survey from occurring and the season was scheduled August 1 to April 30, with the WAG closing date pushed back to May 13, 2021. In 2021/22, the season was once again opened early (on July 1) by commissioner's permit in order to accommodate vessels participating in the survey. In 2021, the first IFQ landing occurred Aug. 15, 2021 and in 2022 the first IFQ landing occurred Aug. 12. A discussion paper was tasked to consider moving the AIG IFQ season forward; however, this action is yet to be scheduled.

after reviewing the QS holder's Applications for Annual Crab IFQ Permit, it is determined they have failed to meet the participation requirements. This does not occur on a set date, but given the June 15 application deadline, this typically would occur early July. A C share QS holder who receives such a Notice will have 30 days to provide the information demonstrating participation as crew that meets the requirements if the IFQ may be withheld and 60 days if the QS may be revoked. NMFS will then send an Initial Administration Determination (IAD) to the C share QS holder following the expiration of the 30- or 60-day evidentiary period if NMFS determines that the information or evidence provided fails to demonstrate participation as crew or if the additional information or evidence is not provided within the time period specified. The IAD will explain the basis for the withholding of IFQ or for the revocation determination. A C share QS holder who receives an IAD may appeal under the appeals procedures set forth at 15 CFR part 906.

To ensure correct issuance of IFQ and IPQ (including the prescribed distribution of Class B IFQ derived from PQS holder affiliations), NMFS does not process any transfers of QS and PQS from the date applications for IFQ and IPQ are due (June 15) until issuance of those IFQ and IPQ (§ 680.41(b)(1)). This means for fisheries that open in October, a C share holder may not have an opportunity to transfer their C share QS after they receive an official Notice of C Share QS Inactivity.

3.3. Description of Affected Fisheries

This section provides relevant background and data on the CR Program fisheries. Much of the information was gathered from publicly available sources including the most recent Crab Economic SAFE (Garber-Yonts, et al. 2023) and the NMFS QS holder database.⁵ For additional background and data, the reader should consult these sources.

There are **nine** crab fisheries managed under the BSAI CR Program,⁶ specifically:

BBR Bristol Bay red king crab

BBS Bering Sea snow crab (*C. opilio*)

EBT Eastern Bering Sea Tanner crab (*C. bairdi*) – East of 166° W

WBT Western Bering Sea Tanner crab (*C. bairdi*) – West of 166° W

PIK Pribilof Islands blue and red king crab

SMB Saint Matthew Island blue king crab

WAG Western Aleutian Islands (Adak) golden king crab – West of 174° W

EAG Eastern Aleutian Islands (Dutch Harbor) golden king crab – East of 174° W

WAI Western Aleutian Islands (Petrol Bank District) red king crab – West of 179° W

⁵ A snapshot of QS holder information for each year is available on NMFS website at:

<https://www.fisheries.noaa.gov/alaska/commercial-fishing/permits-and-licenses-issued-alaska#bsai-crab>

⁶ Some crab fisheries are considered one unit stock for assessment purposes but are managed as more than one fishery. For example, Eastern and Western Aleutian Islands golden king crab are assessed as one stock but are managed as distinct fisheries with separate TACs. There are 10 stocks assessment conducted for the BSAI crab fisheries: Eastern Bering Sea snow crab, Bristol Bay red king crab, Eastern Bering Sea Tanner crab, Pribilof Islands red king crab, Pribilof District blue king crab, Saint Matthew blue king crab, Norton Sound red king crab (not rationalized), Aleutian Islands golden king crab, Pribilof Islands golden king crab (not rationalized), and Western Aleutian Islands red king crab (not fully rationalized).

When the CR Program was implemented in 2005, the Eastern Bering Sea Tanner crab fishery and Western Bering Sea Tanner crab fishery were one fishery for management purposes.⁷ This document uses the acronym **BST** (Bering Sea Tanner) to describe this fishery. The combined Eastern and Western Aleutian Islands golden king crab fisheries may be referred to as **AIG** (Aleutian Islands golden) in some places in this document.

3.3.1. Fishery Status and TACs

Figure 2 demonstrates the years in which CR Program fisheries have been open and the TAC for the years that were open since 2005/06. Not shown in the graphic is the PIK fishery which has been closed since 1999 and the WAI which has been closed since the 2003/04 season. The numeric values in Figure 2 represent the total TAC allocations (in millions of pounds) including both CDQ and IFQ allocations. There were only four of the nine CR Program fisheries open in 2022/23: WAG and EAG as well as EBT and WBT.

As demonstrated, the BBR fishery has seen an 87% decline in TAC since the 2007/08 season when it was set at a CR Program peak of 20.38 million lb. The BBR fishery has not been declared to be overfished, however, the ADF&G closed the fishery for the 2021/22 and 2022/23 seasons due to the stock not meeting the thresholds outlined in the state harvest strategy (5 AAC 34.816). This was the first BBR fishery closure since the 1995/96 season. The BBR fishery has traditionally been an important central species for many vessels in the CR Program given the relatively high ex vessel price it yields (Figure 4).

The largest volume of crab is traditionally harvested in the BSS fishery. As a result of the 2021 stock assessment, the Council declared the BSS crab stock overfished on October 19, 2021, and the BSS fishery opened for the 2021/22 season with a sharply reduced TAC. The BSS fishery TAC declined 88% from the 2020/21 season (45 million lb) to 5.6 million lb in the following 2021/22 season. The stock further declined in 2022 and the fishery was subsequently closed by ADF&G for the 2022/23 season. The Council took final action on a preferred alternative rebuilding plan at its February 2023 meeting.

The Eastern Bering Sea Tanner crab stock has a single ABC and OFL set each year; however, it has been managed in two distinct areas (east and west of 166° W longitude) for TAC-setting purposes since the beginning of the CR Program. The stock is generally cyclical and has gone through cycles of being declared overfished and rebuilt, with fishery closures in 1997 to 2005 and then again between 2010 and 2012. The directed fisheries were both open for the 2013/14 to 2015/16 seasons with a combined TAC of 3.11 million lb in 2013/14, 15.11 million lb in 2014/15, and 19.67 million lb in 2015/16. The total retained catch in 2015/16 (19.64 million lb) was the largest taken in the fishery since 1992/93. In 2016/17, ADF&G determined that mature female biomass did not meet the criteria for opening a fishery according to the regulatory harvest strategy, and the TAC was set at zero. Consequently, there was no directed harvest in 2016/17. In 2017/18 and 2018/19, ADF&G determined that a directed fishery could occur in the area west of 166°W longitude, and 100% of the TAC was taken. In 2019/20, mature male biomass did not meet ADF&G criteria for opening a fishery, and there was no directed fishery harvest. The fishery was open for the 2021/22 and 2021/22 seasons for the area west of 166°W longitude. In 2022/23, both EBT and WBT were opened, for a combined TAC of 2.01 million lb.

The AIG stock is also managed under one OFL, but with two distinct management areas (east and west of 174° W longitude; EAG and WAG, respectively) for TAC-setting. The WAG and EAG TACs have been relatively stable because these fisheries have been managed by the Alaska Board of Fisheries (BOF) under a constant-catch harvest strategy. The BOF intended that the fixed harvest levels in regulation 5 AAC 34.612 would remain stable “*until the Aleutian Islands golden king crab stock assessment model*

⁷ Both Eastern and Western Bering Sea Tanner crab are part of the “Eastern Bering Sea Tanner crab” stock. This stock was further divided into an Eastern and Western fishery through Amendment 20 in an effort to reduce localized depletion.

and a state regulatory harvest strategy are established”. Establishing a stock assessment for AIG has been challenging as it does not have a fishery-independent bottom trawl survey, thus area-swept abundance estimates are not available as with other BSAI crab stocks. An AIG stock assessment model was accepted by the Council’s Scientific and Statistical Committee (SSC) in October 2016 which is the only crab assessment that relies solely on fishery CPUE as an index of abundance. Since 2019/20, the EAG and WAG TACs have been based on the harvest strategy adopted by the BOF in March 2019, which has led to more variable TACs.

The SMB fishery was closed for the 2016/17 and subsequent crab seasons. In October 2018, the Council declared the SMB fishery to be overfished and adopted a rebuilding plan in June 2020. The fishery has not been open to directed fishing since this time although the rebuilding plan allows for a fishery under the state harvest strategy.

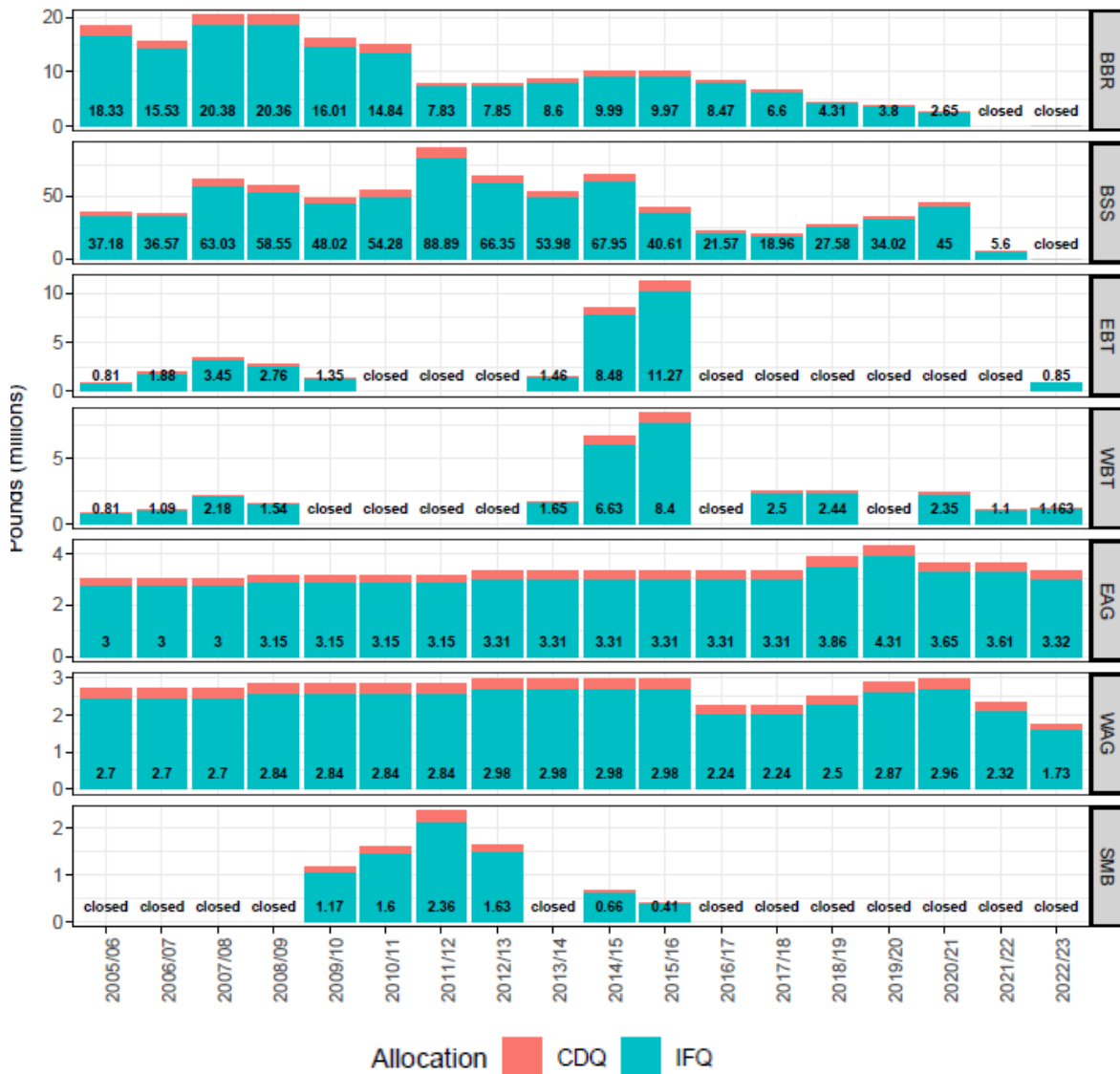


Figure 2 TAC and management program allocations

Source: From Figure 3.1 in the Economic SAFE (Garber-Yonts, et al. 2023)

Notes: Numeric values indicate total TAC/GHL allocations (in millions of pounds) to directed fishing. PIK is not included as this fishery has been closed since 1998. WAI is not included as this fishery has been closed since the 2003/04 season.

Given the flexibility and efficiencies of the CR Program fisheries through assigned IFQ, cooperative management, and the ability for post-delivery transfers of IFQ, the TAC tends to be fully harvested in all CR fisheries. Since the CR Program began, vessels have always harvested 99-100% of the BBR and BSS fishery TACs. When open, the WBT and EBT fisheries have had more variable prosecution rates. However, since 2015/16 when these fisheries have been open, prosecution rates have been 98-100%, with the exception of the 2020/21 season at 62% of the WBT TAC (Table 4.1; Garber-Yonts et al. 2023). WAG and EAG fisheries have also had consistently high prosecution rates. In these fisheries generally 97-100% of the TAC is harvested, with two recent seasons in which 94% of the WAG TAC was harvested (2020/21 and 2021/22) (Nichols & Shaishnikoff 2022).

3.3.2. Fishery Value and Price

Crab fishery ex vessel and wholesale value, as well as the production volume trends by crab fishery are demonstrated in Figure 3. Figure 4 provides the ex vessel and wholesale prices by fishery. Trends are provided in these figures from 1998 through 2021, the most recent value and volume data available when the Economic SAFE was produced.

During 2021, across all fisheries managed under the BSAI Crab FMP, the total volume of ex-vessel landings was 51 million pounds, a 20% increase from the previous year (Garber-Yonts et al. 2023). Processing sector finished production volume during 2021 was 33 million pounds aggregated over all BSAI crab species and product forms, also increasing 20% from the previous year. Ex-vessel and first-wholesale price records were set across all BSAI crab fisheries that were open to commercial harvest during 2021 (Figure 4).⁸ The effect of a net increase in production volume across open crab fisheries, combined with changes in market prices, produced an aggregate 36% increase in ex-vessel revenue over all fisheries in 2021, totaling \$297 million for the year, and with aggregate first wholesale revenues increasing by 31% to \$372 million. This is despite the closure of the BBR fishery in the 2021/22 season.

However, Figure 3 does not capture the substantial decline in value or volume of harvested crab from 2022 or 2023,⁹ which would include impacts from the joint closures of the BBR and BSS fisheries in the 2022/23 season. As the total volume and value for the BBR and BSS commercial fisheries was zero in 2022/23 season, this means total volume and value for the CR Program fisheries was generated from just the four remaining fisheries (EBT, WBT, EAG, and WAG). In 2020, the last year both the BBR and BSS crab fisheries were both open, these four fisheries (EAG, WAG, EBT, and WBT) represented only 14% of the total volume and 21% of the total gross first wholesale value of CR Program crab. Therefore, it is clear the additional seasons not included in the figures (2021/22 and 2022/23) represent substantial decline in both the volume harvested and value generated from crab fisheries.

Historically, the BSS fishery has provided the greatest gross revenue due to the sheer total volume of crab harvested. In 2020, the BSS crab total ex vessel value was 4.1 times that of the BBR fishery (\$138 million relative to \$33 million, respectively), but the harvested weight of BSS crab sold to the processors was 12.7 times greater than the BBR fishery (2.64 million lbs relative to 33.61 million lbs, respectively). The weighted average ex vessel price of BSS in 2020 was \$4.10/ lb with a weighted average first wholesale price of \$8.34/ lb. In 2020, the weighted average ex vessel price for BBR was \$12.73/ lb (wholesale price of \$22.41).

⁸ The 2023 Crab Economic SAFE (Garber-Yonts et al. 2023; p 72- 74) provides a discussion of market dynamics that may have contributed to these record-setting prices.

⁹ The 2023 value data should be available from ADF&G fish tickets April 2024. Depending on the timeline for analysis, 2022 and 2023 data could be included in an update for future drafts of this analysis.

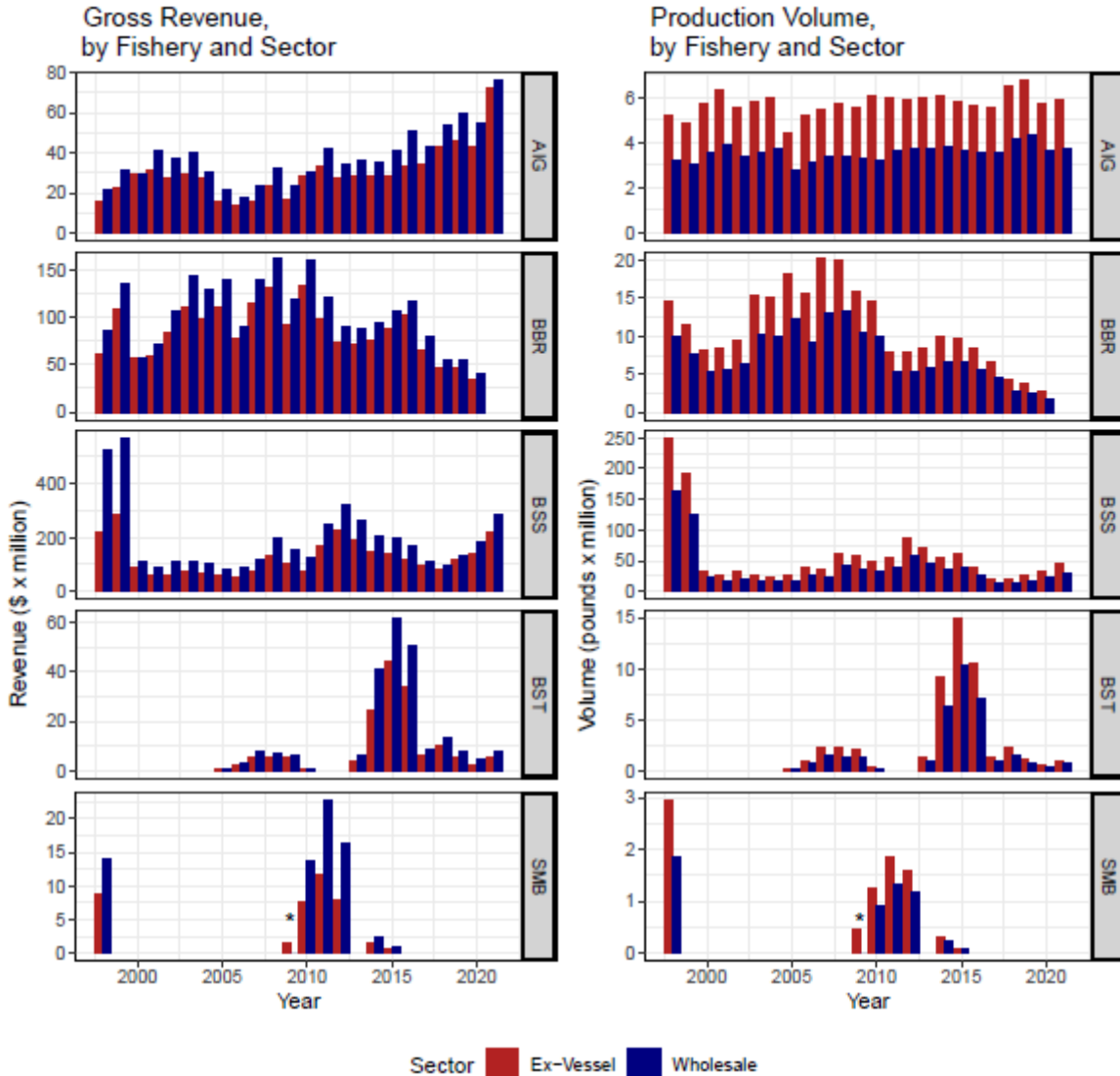


Figure 3 Ex vessel and first wholesale gross revenue and production volume

Source: From Figure 3.3 in the Economic SAFE; corresponding with Table 4.4 and 4.7 (Garber-Yonts, et al. 2023)

Notes: Data shown by calendar year. Asterisks indicate data were not plotted due to confidentiality. Includes commercial harvest from IFQ and CDQ management programs and commercial pounds harvested by catcher/processors. All dollar values are adjusted for inflation to 2021-equivalent value. PIK is not included as this fishery has been closed since 1998. WAI is not included as this fishery has been closed since the 2003/04 season.

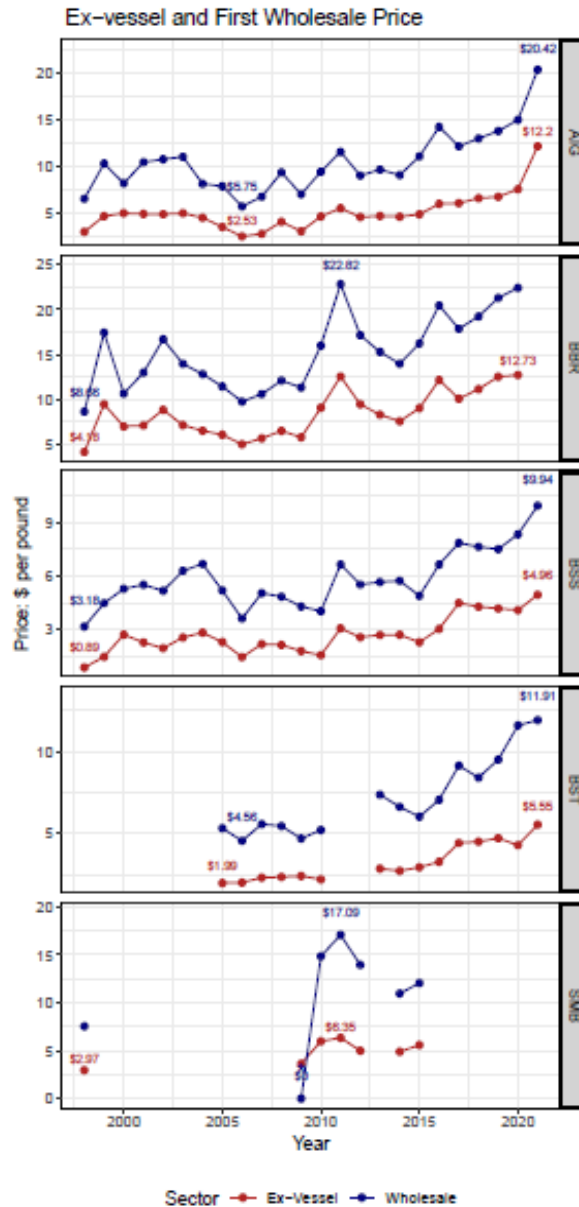


Figure 4 Ex vessel and first wholesale prices

Source: From Figure 3.4 in the Economic SAFE; corresponding with Table 4.4. and 4.6 (Garber-Yonts, et al. 2023)

Notes: Data shown by calendar year. Asterisks indicate data were not plotted due to confidentiality. All dollar values are adjusted for inflation to 2021-equivalent value. Note that ex-vessel and first whole prices shown in figure represent weighted mean of values derived from aggregate volume and revenue from calendar year sales reported in crab catcher vessel and processor EDR data. PIK is not included as this fishery has been closed since 1998. WAI is not included as this fishery has been closed since the 2003/04 season.

The distinct catcher vessel IFQ types (Class A IFQ v. Class B and C share IFQ) may bring different prices because of the different limitations on use of those shares and the effects of the arbitration system on Class A IFQ landing prices. Class A IFQ must be delivered to a holder of unused IPQ and are subject to the arbitration system, which guides both delivery negotiations and price formation. Class B and C share IFQ may be marketed and sold freely to any RCR. Moreover, negotiations of prices and terms of delivery are likely to occur independently for the different share types to avoid potential infractions of the statute in the Magnuson-Steven Act that prohibits processors from using IPQ to leverage Class B IFQ deliveries.¹⁰

Figure 5 demonstrates that subtle price differentials have occurred, most often with C share IFQ and other undesignated types of IFQ (CVO B shares, CPO, CDQ and Adak shares) demonstrating a slight price premium relative to CVO A shares. However, generally, aggregated undesignated types of IFQ ex vessel prices track closely with ex vessel prices received from CVO A shares. Harvesting representatives have reinforced these data, stating that they can sometimes achieve a higher price for their C shares and other undesignated shares, relative to share-matched A shares (J. Jacobsen, 5.5.2023, personal communication). However, this depends on a number of factors such as market conditions and how the harvesting cooperative intends to use their undesignated shares. For instance, undesignated IFQ can be available to round out a delivery if a vessel has a small overage relative to its available A share IFQ. Cooperatives also have more flexibility in aggregating and landing undesignated IFQ remaining at the end of the season, than A share IFQ that is already share-matched. Thus, whether it can generate a higher price than A share IFQ or not, C shares and other undesignated IFQ plays an important role in the efficiency of the harvesting sector.

¹⁰ MSA § 313 108-199 (j)(2) "...If the Secretary determines that a processor has leveraged its Individual Processor Quota shares to acquire a harvesters open-delivery "B shares", the processor's Individual Processor Quota shares shall be forfeited."

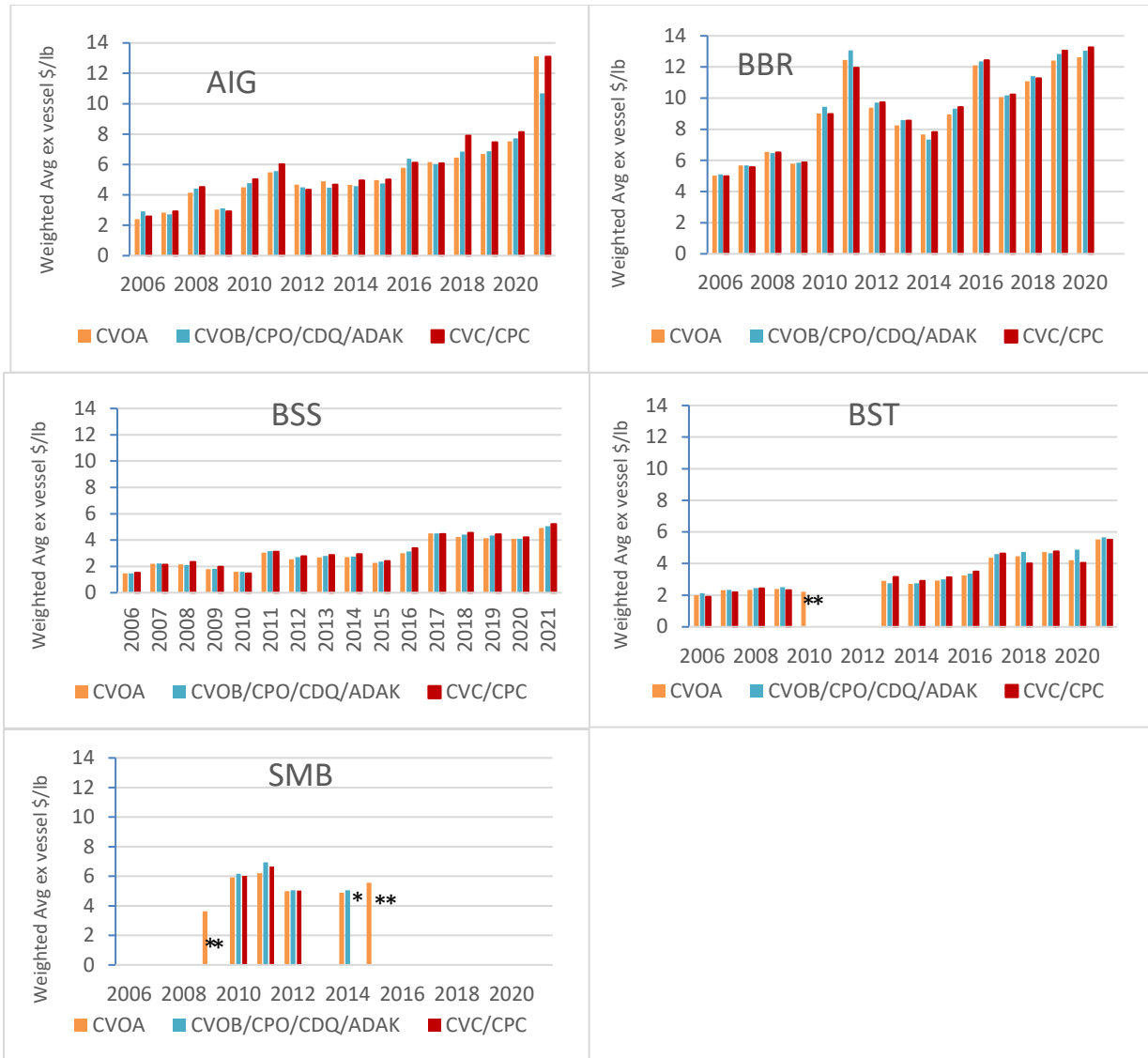


Figure 5 Weighted average ex vessel price (\$/lb) by QS type and fishery

Source: From Table 4.6 in the Economic SAFE (Garber-Yonts, et al. 2023)

Notes: Except where noted, data reflect total catcher-vessel sector commercial volume and revenue value across all management programs (LLP/open access, IFQ, CDQ, ACA). Beginning in 2012, data include ex-vessel sales reported by catcher/processor sector. Weighted average price is calculated as the ratio of aggregate gross revenue value to sold volume, and thus does not include a measure of distributional variation. Asterisks indicate data suppressed due to confidentiality. All dollar values are adjusted for inflation to 2021-equivalent value. Data shown by calendar year. PIK is not included as this fishery has been closed since 1998. WAI is not included as this fishery has been closed since the 2003/04 season.

3.3.3. Vessels and Crew

Table 4 demonstrates the number of total active vessels participating in each CR Program fishery. There has been a slow but distinct downward trend in the number of participating vessels since rationalization, but a stark drop from the 2020/21 season to the most recent 2022/23 season. In the 2020/21 season, the BBR, BSS, WBT, EBT, EAG, and WAG fisheries were prosecuted by an active fleet of 65 catcher vessels and two catcher processors. In the 2021/22 season, with the closure of the BRR fishery, the remaining fisheries were prosecuted by 46 catcher vessels and two catcher processors. In the 2022/23 season, with the joint closure of the BRR and BSS fisheries, the four remaining CR fisheries were

prosecuted by 22 catcher vessels. In recent years, 1-2 catcher processors have operated in each of the BBR, BSS, and BST fisheries, with one catcher processor in the WAG fishery in 2012; all other vessels have delivered shoreside.

Table 4 Number of active vessels, 2005/06- 2022/23

| Season | BBR | BSS | EAG | EBT | WAG | WBT | SMB | All fisheries |
|---------|-----|-----|-----|-----|-----|-----|-----|---------------|
| 2005/06 | 89 | 78 | 7 | | 3 | 42 | | 102 |
| 2006/07 | 81 | 69 | 6 | 37 | 4 | 39 | | 91 |
| 2007/08 | 74 | 78 | 4 | 20 | 3 | 34 | | 87 |
| 2008/09 | 78 | 77 | 3 | 22 | 3 | 42 | 7 | 89 |
| 2009/10 | 70 | 68 | 3 | 17 | 3 | | 11 | 78 |
| 2010/11 | 65 | 68 | 3 | | 3 | | 18 | 77 |
| 2011/12 | 62 | 72 | 3 | | 3 | | 17 | 78 |
| 2012/13 | 64 | 70 | 3 | | 4 | | | 81 |
| 2013/14 | 63 | 70 | 3 | 30 | 3 | 64 | 4 | 75 |
| 2014/15 | 63 | 70 | 3 | 42 | 2 | 58 | 3 | 78 |
| 2015/16 | 64 | 70 | 3 | 49 | 2 | 62 | | 80 |
| 2016/17 | 63 | 63 | 4 | | 3 | | | 72 |
| 2017/18 | 61 | 63 | 4 | 10 | 3 | 34 | | 70 |
| 2018/19 | 55 | 61 | 3 | 8 | 3 | 36 | | 66 |
| 2019/20 | 56 | 59 | 3 | | 3 | | | 66 |
| 2020/21 | 47 | 62 | 3 | | 3 | 41 | | 67 |
| 2021/22 | | 42 | 3 | | 3 | 20 | | 48 |
| 2022/23 | | | 3 | 17 | 3 | 14 | | 22 |

Source: ADF&G Fish Tickets, data compiled by AKFIN

Notes: Data shown by fishing season. Shaded cells represent closed fisheries. The total all fisheries column shows the total unique vessels landing CR crab.

Crab catcher vessels typically employ 5-7 crew members, with 6 being the most common in the BBR, BSS and BST crab fisheries. The AIG fisheries typically employ 7 crew members per vessel (Table 4.13; Garber-Yonts, et al. 2023). Table 5 demonstrates the total number of crew positions across fisheries. In this table each crew position in a fishery is counted as a unique position, although when BBR, BSS, and BST fisheries are open many crew members participate in more than one of these fisheries. The percent change column shows the variability that has occurred over time in available crew positions, with a peak in the timeseries presented in 2015 at 1,349 crew positions and 2021 representing less than half of this

number (634 positions) due to the closure of the BBR fishery. Again, 2022 and 2023 are not shown, but these years will represent even further reduced crew positions due to the joint closures of the BRR and BSS fisheries.

Table 5 Crew positions in the crab harvesting sector

| Year | AIG | BBR | BSS | BST | SMB | Sum of positions | Percent change |
|------|-----|-----|-----|-----|-----|------------------|----------------|
| 2009 | 35 | 443 | 536 | 102 | 39 | 1,155 | |
| 2010 | 35 | 422 | 444 | 21 | 63 | 985 | -15% |
| 2011 | 36 | 413 | 453 | 0 | 112 | 1,014 | 3% |
| 2012 | 46 | 428 | 502 | 0 | 106 | 1,082 | 7% |
| 2013 | 44 | 418 | 481 | 156 | 0 | 1,099 | 2% |
| 2014 | 35 | 422 | 480 | 279 | 24 | 1,240 | 13% |
| 2015 | 35 | 441 | 491 | 365 | 17 | 1,349 | 9% |
| 2016 | 36 | 423 | 463 | 296 | 0 | 1,218 | -10% |
| 2017 | 36 | 419 | 441 | 100 | 0 | 996 | -18% |
| 2018 | 37 | 365 | 436 | 211 | 0 | 1,049 | 5% |
| 2019 | 37 | 370 | 428 | 139 | 0 | 974 | -7% |
| 2020 | 35 | 333 | 417 | 163 | 0 | 948 | -3% |
| 2021 | 37 | 0 | 448 | 149 | 0 | 634 | -33% |

Source: From Table 4.13 in the Crab Economic SAFE (Garber-Yonts, et al. 2023)

Notes: Data shown by calendar year. Data are summarized over all harvesting sectors (CVCP) to preserve confidentiality. Crew positions are calculated using eLandings data on count of crew on-board reported by trip.

Figure 6 provides a geographical representation of the crew that have been employed and income generated in the CR Program fisheries, from 2017 through 2021. This information is important in understanding recent community connections to the CR fisheries, as well as the distributional impacts that have occurred from closed crab fisheries and the proposed actions. Figure 6 includes counts of individual crew members (including captains) by location of residence, the share (percentage) of total employment attributable to each location of residence, and the estimated amount of crew income flowing to communities/locations. The bottom figures demonstrate geographic distribution for Alaska residents in greater detail. Over the 2017 to 2021 period, Alaska and Washington have alternated between first and second largest state-level source for crab fishing crew members, with Alaska residents averaging a 34% share of crab crew employment over the period, and Washington state residents averaging 35%.

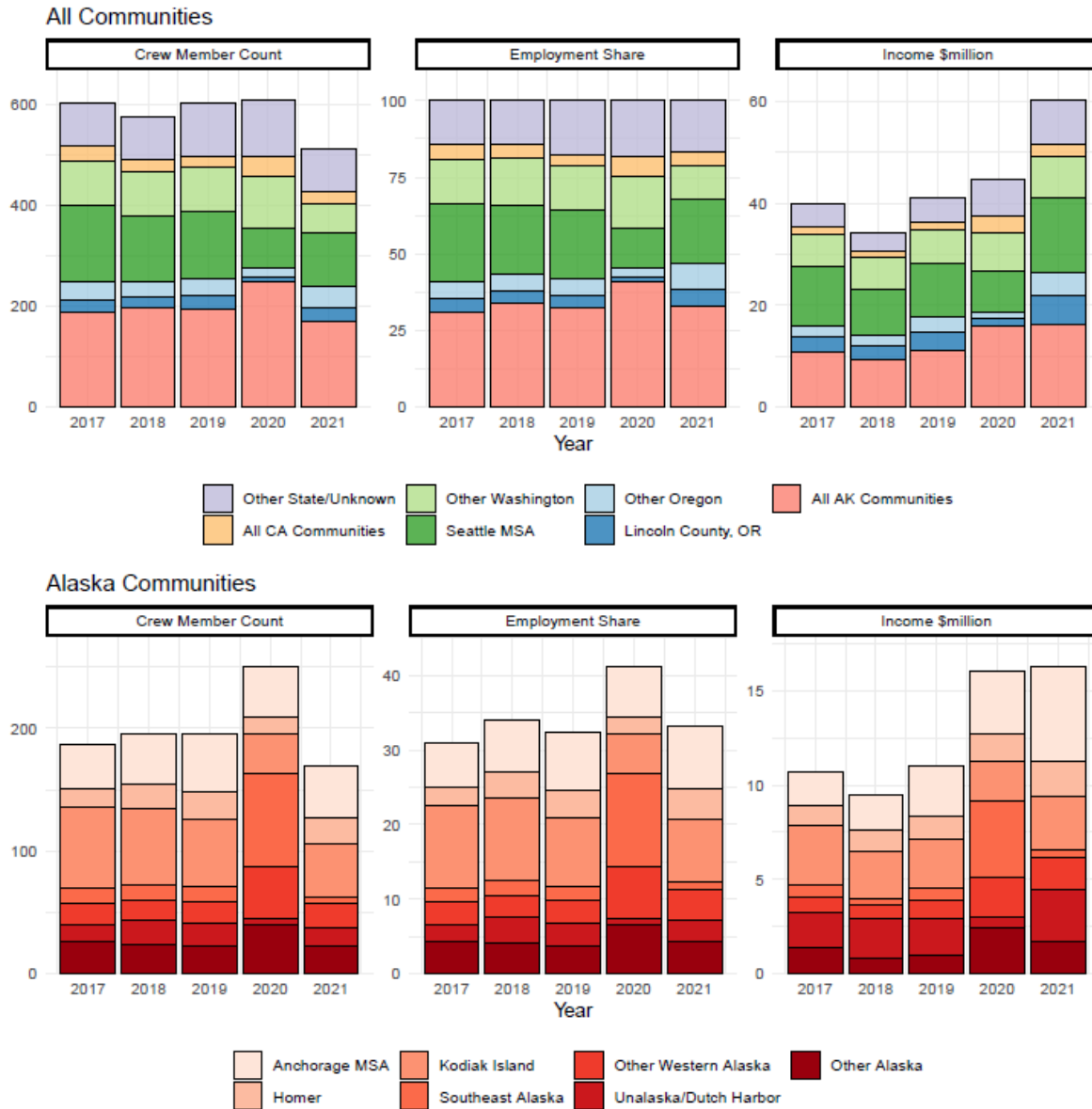


Figure 6 Estimated crew employment and income, by community/ region of residence

Source: Figure 1.8 in the Crab Economic SAFE; corresponding with Table 1.4 (Garber-Yonts, et al. 2023)

Notes: 'Crew member count' reports the number of individual vessel crew across all CR Crab fisheries identified as residents of the listed community or location. 'Employment share' reports the proportion of the total vessel employment pool associated by residence with the listed community or location. 'Income' (reported in \$million, inflation-adjusted to 2021-equivalent value) is the estimated amount of vessel labor income, by community/location of residence, that is distributed to vessel crew members in aggregate. This estimate is derived by apportioning vessel-level fishing crew and captain labor payments among crew members reported in the EDR and CFEC gear operator permit holders with recorded landings of CR crab, then aggregating payments by community of residence. This method does not control for differential pay rates across positions, apart from deck crew and captain, or other differentiating factors, such as experience or length of employment.

3.3.4. Quota Share Holders

Table 6 presents trends on the count of C share holders by fishery since the CR Program began and Table 7 displays characteristics of recent holdings. The BBR and BSS C share QS has been consolidated overtime by qualified individuals, with 66 less BBR C share holders in 2023 (102 individuals) compared

to 2005 (168 individuals) and 50 less BSS C share holders in 2023 (96 individuals) compared to 2005 (146 individuals). EBT and WBT C share QS has also been consolidated from 156 C share holders in 2005 to 110 in 2023. For fisheries that have often been closed during this period (PIK, SMB, and WAI), the count of C share holders has had very little change. The EAG and WAG fisheries have historically been fairly consolidated both in terms of participating vessels and QS holders (hence a higher QS use cap). These fisheries have seen limited change in C share holdings over the demonstrated time period.

In general, crew share holdings are more concentrated than vessel owner shares (NPFMC 2017). This concentration arises both from the initial allocation and from consolidation that has occurred since implementation. It is likely that the requirement to have recently participated as crew in order to receive C share QS by transfer as well as the continued active participation requirements, both narrow the pool of eligible and interested buyers.

There are also some C share holders that have reached the QS use caps for CVC and CPC shares (see Table 3) and cannot receive more C share QS by transfer even though they may meet the recent participation qualifications. In 2023, 17% of the BBR C Share holders, 18% of the BSS C share holders and 11% of each of the BST C share holders held 2% of the C share QS pool – the maximum amount they could hold. The EAG, WAG and WAI CVC and CPC holdings are capped at 20% of the C share QS pools. In the EAG fishery in 2023, 3 of the 10 C share holders have this maximum amount (30% of the C share holders), in the WAG fishery, 2 of the 8 C share holders are at or over 20% (C share holders can hold more than the caps if they were ‘grandfathered into’ the program with more history). The WAI only comprises of 4 C share holders, 3 of which are at or over the cap. There is a cap of 4% of the C share QS pool for the SMB fishery, as well as the long-time closed PIK fishery. The SMB fishery only has 1 C share holder at that level and the PIK fishery has 6 (15.4%) of the C share QS holders at that level.

Table 6 Number of total CVC and CPC QS holders, 2005-2023

| Year | BBR | BSS | EAG | EBT | PIK | SMB | WAG | WAI | WBT | Total |
|------|-----|-----|-----|-----|-----|-----|-----|-----|-----|-------|
| 2005 | 168 | 146 | 11 | | 40 | 70 | 9 | 4 | | 205 |
| 2006 | 156 | 136 | 11 | 156 | 39 | 69 | 9 | 4 | 156 | 214 |
| 2007 | 151 | 134 | 11 | 154 | 39 | 68 | 9 | 4 | 154 | 211 |
| 2008 | 144 | 131 | 10 | 149 | 39 | 68 | 8 | 4 | 149 | 206 |
| 2009 | 141 | 127 | 11 | 150 | 39 | 68 | 8 | 4 | 150 | 207 |
| 2010 | 140 | 125 | 10 | 149 | 39 | 68 | 8 | 4 | 149 | 204 |
| 2011 | 140 | 125 | 10 | 149 | 39 | 67 | 8 | 4 | 149 | 203 |
| 2012 | 137 | 124 | 10 | 148 | 39 | 66 | 8 | 4 | 148 | 202 |
| 2013 | 132 | 124 | 10 | 146 | 40 | 66 | 8 | 4 | 146 | 203 |
| 2014 | 128 | 121 | 10 | 143 | 39 | 65 | 9 | 4 | 143 | 204 |
| 2015 | 127 | 120 | 9 | 141 | 39 | 64 | 9 | 4 | 141 | 203 |
| 2016 | 123 | 117 | 9 | 140 | 39 | 65 | 9 | 4 | 140 | 201 |
| 2017 | 111 | 109 | 9 | 125 | 39 | 63 | 9 | 4 | 125 | 175 |
| 2018 | 109 | 108 | 9 | 122 | 39 | 63 | 9 | 4 | 122 | 172 |
| 2019 | 107 | 103 | 9 | 117 | 39 | 63 | 9 | 4 | 117 | 166 |
| 2020 | 103 | 96 | 10 | 112 | 39 | 61 | 8 | 4 | 112 | 164 |
| 2021 | 102 | 96 | 10 | 110 | 39 | 60 | 8 | 4 | 110 | 162 |
| 2023 | 102 | 96 | 10 | 110 | 39 | 60 | 8 | 4 | 110 | 162 |

Source: NMFS Restricted Access Management QS database sourced through AKFIN.

Notes: Black cells represent a year when EBT and WBT were combined as a single BST fishery.

Table 7 C shareholdings by QS type for 2023

| Fishery | Shareholdings by QS operational type | | | | | Shareholdings across QS type | | |
|---------|--------------------------------------|-----------------|--------------------|---|--|------------------------------|---|--|
| | QS type | # of QS holders | % of the C QS pool | Mean holdings (as a % of C shares in fishery) | Max holdings (as a % of C shares in fishery) | # of QS holders | Mean holdings (as a % of C shares in fishery) | Max holdings (as a % of C shares in fishery) |
| BBR | CPC | 9 | 3.5% | 0.4% | 1.2% | 102 | 0.4% | 1.2% |
| | CVC | 101 | 96.5% | 0.4% | 1.1% | | | |
| BSS | CPC | 7 | 5.9% | 0.7% | 1.6% | 96 | 0.3% | 1.6% |
| | CVC | 94 | 94.1% | 0.3% | 1.3% | | | |
| EAG | CVC | 10 | 100.0% | 5.6% | 12.6% | 10 | 5.6% | 12.6% |
| EBT | CPC | 16 | 8.2% | 0.5% | 1.5% | 110 | 0.5% | 1.7% |
| | CVC | 105 | 91.8% | 0.5% | 1.7% | | | |
| PIK | CVC | 39 | 100.0% | 1.4% | 4.8% | 39 | 1.4% | 4.8% |
| SMB | CVC | 60 | 100.0% | 0.9% | 2.5% | 60 | 0.9% | 2.5% |
| WAG | CPC | 2 | 42.5% | 21.3% | 41.7% | 8 | 5.6% | 41.7% |
| | CVC | 7 | 57.5% | 3.6% | 11.2% | | | |
| WAI | CPC | 1 | 13.6% | 13.6% | 13.6% | 4 | 20.0% | 49.5% |
| | CVC | 4 | 86.4% | 21.6% | 49.5% | | | |
| WBT | CPC | 16 | 8.2% | 0.5% | 1.5% | 110 | 0.5% | 1.9% |
| | CVC | 105 | 91.8% | 0.5% | 1.9% | | | |

Source: NMFS Restricted Access Management QS database sourced through AKFIN

Most C share holders holds C share in more than one CR Program fishery. Table 8 demonstrates the overlap of holdings for each two fisheries in 2023. For instance, of the 102 individuals that hold BBR C share QS, 82 of them also hold BSS C share QS. Over 40 individuals hold C share QS in 5 CR Program fisheries (Table 9), the most common number of fisheries to be diversified in.

Table 8 Count of individuals holding crab CVC and CPC QS by species, 2023

| | BBR | BSS | EAG | EBT | PIK | SMB | WAG | WAI | WBT |
|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|
| BBR | 102 | 82 | 3 | 84 | 21 | 47 | 3 | 2 | 84 |
| BSS | | 96 | 3 | 79 | 21 | 44 | 4 | 2 | 79 |
| EAG | | | 10 | 3 | 0 | 2 | 4 | 2 | 3 |
| EBT | | | | 110 | 23 | 53 | 5 | 3 | 109 |
| PIK | | | | | 39 | 11 | 0 | 1 | 22 |
| SMB | | | | | | 60 | 1 | 2 | 52 |
| WAG | | | | | | | 8 | 2 | 5 |
| WAI | | | | | | | | 4 | 3 |
| WBT | | | | | | | | | 110 |

Source: NMFS Restricted Access Management QS database sourced through AKFIN

Table 9 Number of fisheries that owners hold C share QS in

| Number of fisheries they hold C share QS in | Number of C share holders |
|---|---------------------------|
| 1 | 37 |
| 2 | 25 |
| 3 | 15 |
| 4 | 32 |
| 5 | 41 |
| 6 | 10 |
| 7 | 2 |

Source: NMFS Restricted Access Management QS database sourced through AKFIN

Average IFQ lease rates for C share IFQ appear to follow the patterns as other share types (see Table 4.25; in Garber-Yonts et al. 2023). Between 2012 and 2021, for BBR average lease rates have been between 62-65% of the ex vessel price, the BSS average lease rates were fairly consistently 46% of the ex vessel price and BST average lease rates were 28-31% the ex vessel price. AIG fisheries have had slightly more variable average IFQ lease rates between 36-51% for all QS types aggregate from 2012- 2021.

3.3.5. C Share Quota Markets

Permanent sale transfer of CR Program QS can occur under a framework of federal regulations through applications filed and approved by NMFS RAM.

Figure 8 illustrates the count of QS transfers that have occurred by share type and fishery (top figures) and the volume of QS units transferred (bottom figures; see Table 3.25 and 3.26 in Garber-Yonts et al. 2023). During the first two years of the CR program, sales of CVC QS represented a large proportion of the number of total QS transfers, though representing a small fraction of the total QS transferred. This makes sense given the number of initial recipients of C shares (e.g., 181 in the BBR fishery) relative to the total owner share initial recipients (e.g., 252 in the BBR fishery) and the fact that C shares represented only 3% of all harvesting QS. Many C share holders received a small amount of CVC, which some recipients chose to aggregate by selling or leasing. Subsequently, the number of CVC QS sales has varied in most years between three and 10 in the BBR fishery and two to 14 in the BSS fishery. However, a notable increase in sale activity occurred in 2017/18, with 17 sales in the BBR fishery, (totaling 9% of the

CVC share pool), and 26 sales in the BSS fishery (7% of the share pool), and again in 2019/20 with 12 and 24 CVC sales in BBR and BSS, respectively (7% of the respective pools).

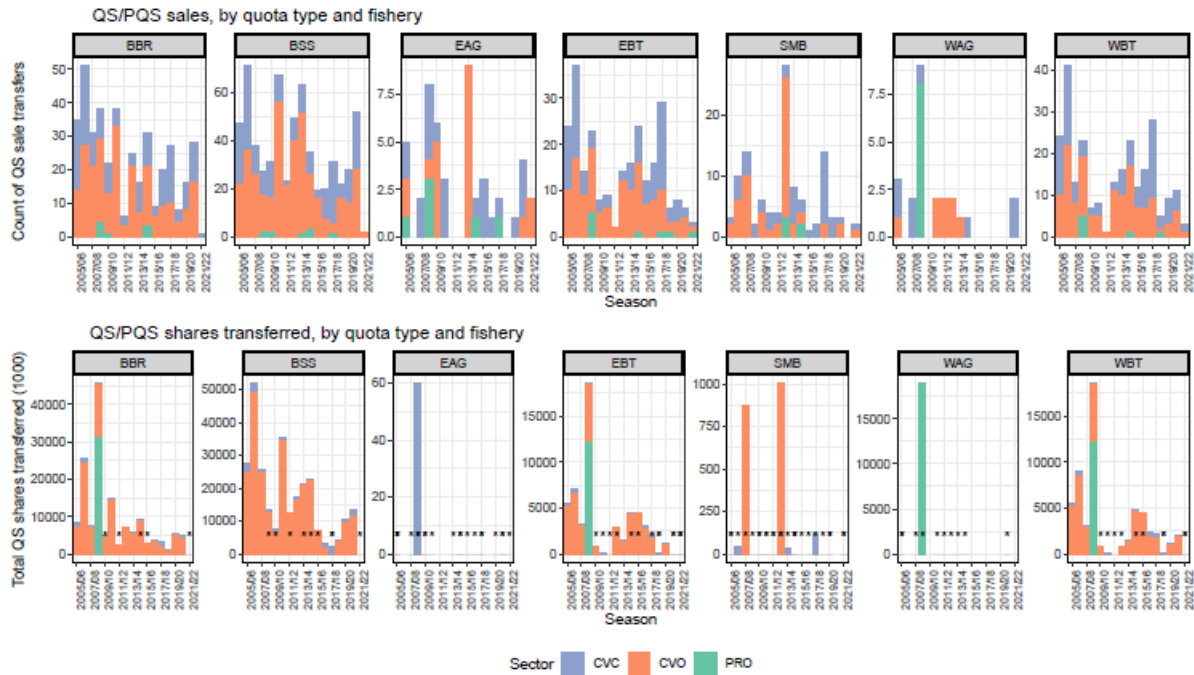


Figure 3.8: QS and PQS sales

Figure 7 QS and PQS sales

Source: Figure 3.8 in the Economic SAFE (Garber-Yonts, et al. 2023); NMFS Restricted Access Management – Quota transfer data

Notes: Counts of QS sales are non-confidential, however, number of shares transferred in individual QS sales is confidential information and aggregate QS units sold is suppressed in the figure where fewer than 3 transfers occurred during the reporting year.

C share QS tends to be sold for a slightly lower per unit price than other share types (see Table 3.30 in Garber-Yonts et al. 2023), which is likely due to the additional qualifications to purchase narrowing the pool of eligible individuals. It is also likely due to the additional requirements to remain active in the fishery and demonstrate this active participation. During 2019/20, the average price for quota share in the BBR fishery fell to a historic low, with CVC shares selling at an average \$0.30/share and CVO at \$0.36/share (which corresponded to about \$50/lb of CVC and \$60/lb of CVO in that year), compared to prices averaging \$0.88 and \$1.09 per share, respectively, over the previous 15 seasons.

BBS quota share prices reached recent lows during the 2018/19 season when the TAC was cut to the previous low (before 2021/22) of 19 million pounds, with CVC shares selling at an average \$0.28/share and CVO at \$0.53/share, the lowest price levels since the 2007/08 season. Share prices in the BSS pools increased over the most recent 2 seasons, corresponding to increasing TAC levels, with CVC shares selling at an average \$0.57/share and CVO at \$0.86/share during 2020/21. Data for the 2021/22 season are not yet available, so the effects of closure of the BBR fishery and historically low BSS TAC cannot yet be assessed. However, it is expected that demand has been and will continue to be extremely limited.

3.3.6. C Share Active Participation Data

Since the participation requirements for Crab C share QS holders were implemented in 2015 and started to become constraining on July 1, 2018 (for IFQ withholding) and July 1, 2019 (for revoking C share

QS), NMFS has withheld IFQ in two situations, and no CVC or CPC QS has been revoked as a result of the active participation requirements.

Annually, NMFS reviews documentation submitted in the three or four previous years to evaluate if a specific applicant has met the participation requirements. Documentation of participation is not required to be submitted annually, as participation does not need to be demonstrated every year. In the time period since 2018, there have been inconsistencies in the annual review of crab crew share recent participation requirements. NMFS electronic records may contain some minor gaps and data anomalies due to inconsistencies in administrative review procedures. As a result, it is possible that a small number of C share holders should have had their annual IFQ withheld or QS revoked in a past year and did not.

In response, NMFS has revised the annual procedures for reviewing annual CR Program IFQ/IPQ applications and will be conducting a thorough review of paper records for the upcoming application period for the 2023/24 crab fishing year which are due June 15, 2023.

To aid in this process, on May 16, 2023, NMFS requested crew share holders provide documentation of their most recent participation with their application for the upcoming 2023/24 crab fishing year annual application deadline (June 15, 2023). This request is to ensure that NMFS has the most current data to base decisions on and help make the application review process as efficient as possible.

3.4. Analysis of Impacts

3.4.1. Alternative 1, No Action

Under the no action alternative, regulations for C share would remain as they are described in Section 3.2.2, which require a demonstration of active participation in order to retain crab C shares. In order to receive an annual allocation of C share IFQ, the regulations require a C share QS holder to have either 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 if they are an initial issue, they could also have participated as crew in at least 30 days of fishing in a commercial fishery managed by the of State of Alaska or a U.S. commercial fishery in Federal waters off Alaska in the three preceding crab fishing years. If the C share holder does not meet the participation requirements for four years in a row or transfer their C share QS to an eligible participant, C share QS will be revoked. If QS is revoked, the C share pool is adjusted so the TAC may still be harvested by the remaining C share holders.

The overall intent of the C share IFQ eligibility and the C share QS revocation provisions is that, over time, C share QS will be held by and available for persons meeting the minimum participation threshold specified by the applicable provisions (NPFMC 2013). The C share active participation requirements were redesigned through Amendment 31 to incentivize individuals to divest their C share QS when they are no longer participating actively onboard crab vessels. The requirements were also intended to provide a reasonable buffer understanding that vessels may not be active in all years.

Under no action, it is expected more individuals than in the recent past would be in a situation of needing to transfer C shares or being delinquent on active participation requirements. As demonstrated with the recent low TACs and current fishery closures (Figure 2), the limited number of vessels that have been participating in recent years (Table 4), and the number of crew positions which has declined even further than the available data demonstrates (Table 5), there is less opportunity for crab C share holders to serve as active crew on vessels. Moreover, with closed fisheries, there is likely a limited market for selling C shares to qualified individuals. It is expected demand for C share QS is low (particularly in closed fisheries) and increased C share supply on the market could lower the value for all those holding C shares. This could represent a substantial financial loss for C share holders, some of which may have financed their purchase of C shares.

Figure 8 demonstrates three example scenarios for C share holders under the status quo regulations. The crab fishing years spans from July 1 through June 30 of the subsequent year. Amendment 31 instituted the current C share active participation requirements effective May 1, 2015. This meant that no C share IFQ would be withheld until July 1, 2018, after a C share holder had failed to demonstrate active participation for three consecutive years. No C share QS would be revoked until July 1, 2019, after a C share holder had failed to demonstrate active participation for four consecutive years. Also notable in this timeline, the 2021/22 BBR fishery season closed for the first time since 1995/96 and the BSS crab fishery had a significantly reduced TAC that year. Both the BBR fishery and BSS fisheries were closed in the 2022/23 season. The emergency rule explained in Section 1.1, took effect for the 2022/23 season so that no IFQ was withheld and no C share QS was revoked in this application cycle.

In example 1, an individual C share holder demonstrated meeting the active participation requirements in the 2015/16, 2016/17 and 2018/19 crab years. Since they did not provide evidence of active participation in 2019/20 – 2021/22, they would have had their C share IFQ withheld for the 2022/23 season. However, the emergency rule was in place at this time, so their IFQ was issued in the 2022/23 season. If the individual holding the C share QS does not transfer this C share QS to a qualified individual or participate in the 2022/23 season and provide evidence, NMFS would revoke their QS at the start of the 2023/24 year.

In example 2, an individual C share holder demonstrated meeting the active participation 2015/16-2019/20 seasons. They did not demonstrate participation in the three consecutive seasons 2020/21-2022/23, and therefore had their C shares IFQ withheld in 2023/24 season. If they failed to demonstrate participation in the 2023/24 season and do not transfer their C share QS, NMFS would revoke their QS in 2024/25.

Example 3 provides the same history of participation as example 2, however, in 2023/24 this individual demonstrated active participation. In 2024/25 their IFQ would be issued again.

| Crab year | Amend 31 requirements became effective | | Beginning July 1, 2018 RAM may withhold IFQ | | Beginning July 1, 2019 RAM may revoke QS | | no BBR | | Emergency rule- no IFQ withheld no QS revoked | | | | | |
|-----------|--|---------|---|---------|--|---------|---------|---------|---|------------|---------|---------|---------|---------|
| | 2015/16 | 2016/17 | 2017/18 | 2018/19 | 2019/20 | 2020/21 | 2021/22 | 2022/23 | 2023/24 | 2024/25 | 2025/26 | 2026/27 | 2027/28 | 2028/29 |
| Example 1 | A | A | 0 | A | 0 | 0 | 0 | 0 | QS revoked | | | | | |
| Example 2 | A | A | A | A | A | 0 | 0 | 0 | IFQ withheld; 0 | QS revoked | | | | |
| Example 3 | 0 | 0 | A | A | A | 0 | 0 | 0 | IFQ withheld; A | 0 | 0 | A | 0 | 0 |

Figure 8 C share holder example scenarios

A = active, 0 = inactive; BBR= Bristol Bay red king crab; Bering Sea snow crab; QS = quota share; IFQ = Individual Fishing Quota; RAM = Restricted Access Management
Crab seasons are from July 1- June 30.

3.4.2. Alternative 2, Modify C Share Requirements

Alternative 2 considers criteria and methods to suspend C share active participation requirements for certain years in which active participation requirements may be particularly difficult to achieve. For example, the Council's purpose and need (and April 2023 motion) highlights the previous challenges with the pandemic and closed fisheries of past recent years. These factors have made it difficult for all C share holders to achieve the required active participation and it is expected that future low TACs may create similar challenges for C share holders to achieve active participation requirements.

3.4.2.1. Option 1: "Restart" C Share Active Participation Requirements and Reissue C Share QS that is Revoked in the Interim

The Council's first option suggests restarting the recent participation requirement beginning in 2023/24 fishing year. The option says the 2019/20, 2020/21, and 2021/22 seasons would not count towards the recent participation requirements (the Council's April 2023 motion clarifies the 2022/23 season would be included in this consideration). The analysts assume this means all C share holders would be considered active in these seasons rather than interpreting the option as relying on the previous years (2016/17, 2017/18, and 2018/19) to demonstrate the active participation. The latter scenario would ignore the active participation of those who were crew members during these recent seasons. Since the option indicates the recent participation requirement would *restart* beginning in 2023/24, this aligns with the practice of having all C share holders considered active during the recent seasons.

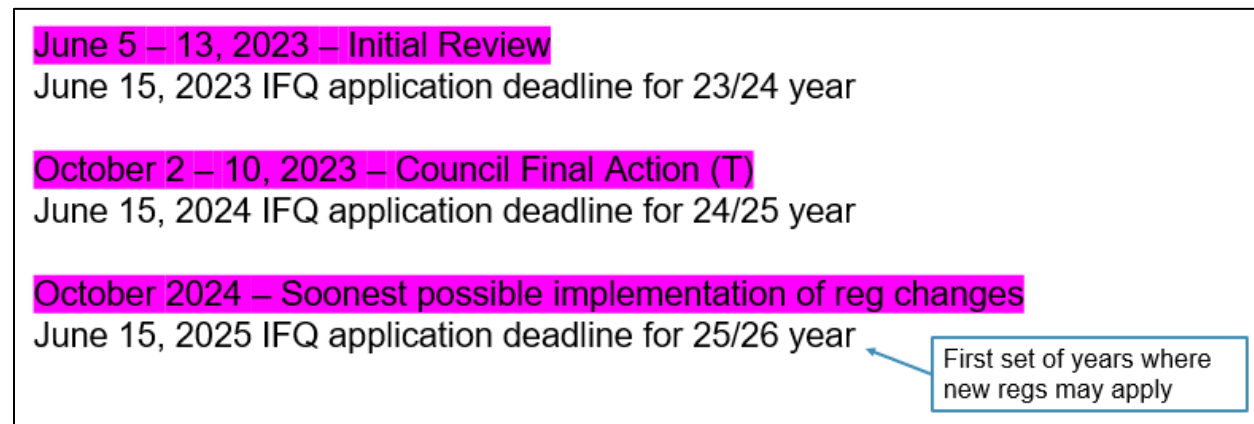
Figure 8 demonstrates hypothetical scenarios of what this could look like with three examples for C share holders. If implementation of the requirements restarted in 2023/24, this means NMFS would not withhold any more C share IFQ until July 1, 2026 as a result of active participation requirements and it would not revoke any more C share QS until July 1, 2027. As shown in Figure 8, C share holders would need to demonstrate evidence of active participation at least once in the 2023/24- 2025/26 seasons or transfer their C share QS to a qualified individual to prevent having their IFQ withheld in July 2026 (unless the Council adopted an additional exemption as discussed in Section 3.4.2.2). If the C share holder did not meet this standard, as demonstrated in example 1 and 3 of Figure 7, they would not have their C share IFQ issued for the 2026/27 season. In example 1, the individual failed to provide evidence of active participation in the 2026/27 season as well and had their C share QS revoked as a result in July 2027. In example 3, the individual provided evidence of active participation in the 2026/27 season and their C share IFQ was issued again for the 2027/28 season.

| Crab year | Amend 31 requirements became effective | | | Beginning July 1, 2018 RAM may withhold IFQ | | Beginning July 1, 2019 RAM may revoke QS | | Emergency rule- no IFQ withheld no QS revoked | | Active participation requirements restart | | | Beginning July 1, 2026 RAM may withhold IFQ again | | Beginning July 1, 2027 RAM may revoke QS again |
|-----------|--|---------|---------|---|---------------------|--|---------------------|---|---------|---|---------|--------------------|---|---------|--|
| | 2015/16 | 2016/17 | 2017/18 | 2018/19 | 2019/20 "EXEMPT YR" | 2020/21 "EXEMPT YR " | 2021/22 "EXEMPT YR" | 2022/23 "EXEMPT YR" | 2023/24 | 2024/25 | 2025/26 | 2026/27 | 2027/28 | 2028/29 | |
| Example 1 | A | A | 0 | A | ⊖ A | ⊖ A | ⊖ A | ⊖ A | 0 | 0 | 0 | IFQ withheld; 0 | QS revoked | | |
| Example 2 | A | A | A | A | A | ⊖ A | ⊖ A | ⊖ A | 0 | A | A | A | A | A | |
| Example 3 | A | A | A | A | A | ⊖ A | ⊖ A | ⊖ A | 0 | 0 | 0 | IFQ withheld; A | A | 0 | |

Figure 9 C share holder example scenarios under Alt 2, Option 1

*These scenarios are truly hypothetical because regulations could not be implemented soon enough to exempt these years as described
A = active, 0 = inactive; BBR= Bristol Bay red king crab; Bering Sea snow crab; QS = quota share; IFQ = Individual Fishing Quota; RAM = Restricted Access Management
Crab seasons are from July 1- June 30.

However, contrary to what is proposed under Alternative 2, Option 1, it is not possible to implement an exemption soon enough to avoid some C shares potentially being withheld or revoked for the time period the Council is considering. The timeline in the box below demonstrates that regulatory action could not be implemented until the 2025/26 application cycle at the earliest. This means C share holders may have C share IFQ withheld or QS revoked in the 2023/2024 and 2024/25 application years due to not meeting participation requirements from 2019-2023; the years the Council may be seeking to exempt. If a regulatory package was implemented in October 2024 (as suggested in the hypothetically timeline below), the only crab year Alternative 2, Option 1 would affect is the 2025/26 season.



The Council was alerted to this logistical challenge in the NMFS Management Report in October 2022 and a memo to the Council in April 2023. In response, the Council requested the analysis also explore reissuing any CVC QS and CPC QS that were revoked between July 2023 and the effective date of the proposed action.

Under this possible alternative, until a regulatory package was implemented, any C share holders that do not meet the active participation requirements for four years in a row as prescribed in current regulations and have not transferred their QS to an eligible individual, would have their C share QS revoked as prescribed in current regulations. However, the Council could include an alternative that would reissue the same number of C share QS units to any individual that had their QS revoked, during a specified time period. This reissuance would take effect after rule-making of a proposed Council amendment.

At the time when this analysis is written, it is not possible to know the number of C share holders that are out of compliance with C share active participation requirements such that they will have their C share IFQ withheld or their QS revoked prior to the 2023/24 seasons.¹¹ This is because the application deadline is not until June 15, 2023 and C share holders have (and use) this full timeline to submit applications and provide evidence of active participation. No C share QS has been revoked thus far in the program. However, the administrative process has been inconsistent in the recent past, and it is expected that there have been C share holders who have not met participation requirements in previous years.

This process would not be ideal for C share holders who were at risk of having their QS revoked. If their C share QS was revoked at the beginning of the 2023/24 season due to failure to meet active participation requirements in the 2019/20-2022/23 seasons, they would need to wait until the rule-making process was complete before they could once again earn revenue off the C share IFQ. Given the uncertainty in implementation and expected timeline, C share holders that are out of compliance with the active participation requirements may determine that selling their C share QS prior to revocation provides them

¹¹ RAM cannot determine how many C share holders fail to meet the participation requirements until the application deadline of June 15, 2023. However, based on the 2022/23 records when the emergency rule took effect, RAM estimated that up to ten C share holders may have been at the threshold of either having their IFQ withheld and/or their QS revoked.

greater benefits. As explained in Section 3.2.3, any transfers of C share QS would need to occur prior to June 15 or C share QS will be revoked.

For revoked C Share QS in the interim, the C share QS pool would be slightly smaller. Current regulations establish the process by which the C share QS pool would remain 3% of the IFQ TAC, so all other C share holders would de facto receive slightly greater pounds of crab for harvest. Typically, the QS pool does not change over time. It would be important to keep track of the reasons for changes in the QS pool overtime

3.4.2.2. Option 2: Provide NMFS Regional Administrator the Authority to Suspend C Share Active Participation Requirements

In Alternative 2, Option 1, regulations would be changed to provide the NMFS RA with the authority to suspend the CVC QS and CPC QS recent participation requirements on an annual basis. Analysts assume the intent of this option is to create a process that is more efficient and responsive to extenuating circumstances that may warrant an exemption from the requirements. Council clarification of this option in April 2023 provides examples of times when an exemption from the active participation requirements may be warranted, including in years of low BSAI crab quota where few vessels fish or due to other unforeseen circumstances (e.g., a pandemic). The Council requested the analysis include potential criteria that the Council could select to guide future decisions by the RA to suspend the C share recent participation requirements.

Under this option, an annual process may be defined where the RA uses criteria developed by the Council to identify whether the forthcoming season would meet a threshold which warrants additional flexibility for active participation. It would be advantageous for an announcement to be made prior to the season opening to give the C share holders adequate time to know and plan for years where they are required to be active.

Any criteria defined by the Council would need to be very specific. The RA and the public must be able to clearly understand and be able to distinguish years in which recent participation is required versus when exemptions are made so that it is unambiguous when NMFS must withhold IFQ or revoke QS. These criteria should assist NMFS in applying the criteria in an unambiguous way that is fair and equitable to all fishery participants, applied consistently across C share holders and years. These criteria would need to be clear enough to fulfill the Council's role of providing management guidance to NMFS, and to support the RA's decision-making in light of the interests involved and litigation that could occur. For instance, waiving the participation requirements "in years of low BSAI crab quota, where few vessels fish, or due to other unforeseen circumstances" broadly would not provide enough concrete direction to guide NMFS action or inform the public as to whether the waiver would occur. It would place the decision almost entirely within the judgment of the RA to interpret and define, rather than setting specific conditions under which the RA should be empowered to assess clear indicators to determine whether the test is met. By default, the RA may be likely to err on the side of applying the participation requirements, except in situations where NMFS received a clear direction from the Council based on its policy goals.

Criteria to Suspend C Share Participation Requirements

Criteria to temporarily suspend C share participation requirements could include a threshold that signifies diminished opportunity to actively participate. For example:

- A certain low level of TAC, using:
 - individual TAC thresholds,
 - aggregate TAC threshold from a sub-group of CR fisheries (e.g., BBR, BSS, WBT, EBT), or

- aggregated CR Program TAC thresholds. (Note this aggregated TAC option would not allow for pre-season notification to C share holders in the WAG and EAG fisheries. These fisheries typically open in July or August prior to the announcement of the BBR, BSS, WBT, EBT TACs which typically occurs in October.)
- A fishery that is subject to a rebuilding plan (This is not identical to but could overlap with the considerations for closed fisheries discussed in Section 3.4.3.2.)
- A threshold minimum number of fisheries that are open. (This option would also not provide for pre-season notification to C share holders in the WAG and EAG fisheries.)
- A threshold minimum number of vessels participating. This example was specifically identified in the Council's April 2023 motion, therefore the analysis explores this type of threshold in more detail.

The April 2023 Council motion suggested only counting fishing years where at least 15, 20, 25, or 30 vessels fished (see Appendix 1). Table 4 documents the number of vessels that have been actively participating in each CR Program fishery during seasons that are opened. The total number of active vessels has dropped from 80 in the 2015/16 season, to 67 in the 2020/21 season, with an abrupt drop to 22 in the 2022/23 season. It is unclear if the examples cited were meant to be thresholds for individual fisheries or the whole fleet across fisheries; therefore, the analysts explore both scenarios.

If the threshold is defined as a season in which 30 vessels (or 15, 20, or 25) fished across all crab fisheries, then looking retrospectively, the 2022/23 season would be the only season thus far for which the C share active participation requirements may not have applied. With 22 active vessels, the 2022/23 season would have been lower than the threshold of 30 or 25. In considering a vessel threshold across all CR Program fisheries, note that with an average of 6 crew positions per vessel, 15-30 vessels represents 90 to 180 crew positions. Contrasted with the 162 current C share QS holders, this number of vessels would be too low to provide opportunity for all C share holder to participate as crew. Granted, it is not expected or required that all C share holders will participate as active crew every year.

If the threshold is defined individually for each crab fishery, then the EAG and WAG would routinely meet this threshold at all proposed levels since these fisheries have each been prosecuted by 3 vessels (5 in total) since 2018. If considered individually, the WBT fishery would have met these thresholds in some of the years it was open and the EBT fishery more often. Table 10 demonstrates these vessel counts again and highlights the years that could have met the thresholds with 30 or less participating vessels. The BBR and BSS fisheries would not have individually met these proposed vessel thresholds in any of the years prior to the seasons being closed, but it is possible they could meet these thresholds in future years if the TAC is low. In considering a vessel threshold defined individually for each crab fishery, establishing different thresholds for each fishery may have the desired effect of linking an exemption from active participation requirements to the reduced opportunity to crew on a crab vessel. It is also important to note that there are different C share use caps limiting the holding across CR fisheries (Table 3) and the fisheries with historically fewer vessels (i.e., EAG, WAG, and WAI) have fewer C share holders and more consolidated C share holdings (Table 7).

In addition, a vessel count threshold could be considered with sub-groups of fisheries. For example, there has been substantial vessel overlap in BBR, BSS, WBT, and EBT participation when these fisheries are all open. These fisheries have historically been complementary to one another; joint participation can offset some of the operating costs and allow for more efficient prosecution of a cooperative's IFQ. Additionally in the past, the adverse impacts from low TAC or fishery closure for one of these fisheries have been mitigated by the ability to participate in the other fisheries. Therefore, for many participants, the cumulative performance of this group of fisheries can more directly represent opportunity than individual fishery performance.

Table 10 Number of active vessels in the EBT, WBT and unique vessels in both BST fisheries

| Year | EBT | WBT |
|---------|-----|-----|
| 2005/06 | | 42 |
| 2006/07 | 37 | 39 |
| 2007/08 | 20 | 34 |
| 2008/09 | 22 | 42 |
| 2009/10 | 17 | |
| 2010/11 | | |
| 2011/12 | | |
| 2012/13 | | |
| 2013/14 | 30 | 64 |
| 2014/15 | 42 | 58 |
| 2015/16 | 49 | 62 |
| 2016/17 | | |
| 2017/18 | | 34 |
| 2018/19 | | 36 |
| 2019/20 | | |
| 2020/21 | | 41 |
| 2021/22 | | 20 |
| 2022/23 | 17 | 14 |

Source: ADF&G Fish Tickets, data compiled by AKFIN

Notes: Data shown by fishing season. Shaded cells represent closed fisheries. Highlighted cells represent seasons when 30 or fewer vessels participated.

A threshold for active participation that is linked to the number of active vessels in the CR Program fisheries could be monitored by RAM by retroactively when considering whether to apply the requirement to the previous year. However, this type of threshold poses challenges for C share holders pre-season if they are determining whether they need to participate to meet the requirements, and it is unclear what number of vessels will be actively participating in that year. This threshold may make it more difficult for C share holders to keep track of their own record of participation and which years have counted. If the Council wants to apply a concrete threshold under which active participation requirements would not apply for C shares, and base it off of some metric connected with the opportunity to fish, a threshold that can be identified prior to the season would provide C share holders with more public notice and a greater ability to comply with the requirements.

In addition, an active participation exemption that is based off of the number of vessels participating may have the perverse incentive of pressuring cooperative managers to consolidate crab IFQ onto fewer vessels than they otherwise may have, particularly if the fishery(ies) were close to the vessel count thresholds. This could have the impact of further reducing available crew positions among active crew members.

Application of Active Participation Suspension

Under current regulations, C share holders are not required to actively participate every year. Therefore, a year in which the threshold is triggered would not simply “exempt” the C share holder from active participation requirements in that year. **In addition to defining the criteria, the Council would need to identify how the exemption would be implemented by NMFS when the criteria is triggered.** Analysts have identified several mutually exclusive ways this could occur:

- NMFS could consider C share holder “active” in the years where the threshold is triggered.
 - This matches the process proposed under Alternative 2, Option 1 for restarting participation requirements in 2023/24, as depicted in Figure 9.
 - This option is essentially wiping the slate clean and restarting the 3-year rolling requirement when the threshold is triggered. If threshold is triggered often, active participation requirements would rarely be enforced.
- NMFS could refrain from withholding or revoking any C shares in the season following a threshold being triggered.
 - This is similar to the implementation of the July 15, 2022 emergency rule. No C shares were withheld or revoked for the 2022/23 season, but active participation continued to be accounted for on a rolling basis, including during the 2022/23 year. This provided C share holders an additional year to demonstrate the active participation requirements, but did not de facto consider them to be active during the 2022/23 year. If they were in a position to have their IFQ withheld in 2022/23 (but did not due to the emergency rule) and they did not demonstrate active participation that year or divest, they would be in a position to have their QS revoked in 2023/24.
 - If C share holders were unable to be active during the years triggered by the threshold, this would provide them one additional year after the threshold (the first year at a higher TAC or when more vessels were participating for example) to achieve the active participation requirements.
 - Similar to implementation of the 2022 emergency rule, there could be situations where IFQ is not withheld, but in season following a threshold being triggered, C share holders are at risk of having their QS revoked due to a long stretch of inactivity.
- NMFS could exclude the years in which a threshold is triggered from the 3-year evaluation.
 - This option would rely on the years prior to the threshold being triggered to demonstrate active participation.
 - This option would penalize those who demonstrated active participation during the recent seasons, but not the seasons prior.

Based on the Council’s stated examples, it appears this flexibility would be used when there are limited opportunities across the fleet (e.g., low TACs, unforeseen circumstances, etc.) but the Council should consider whether this option would also apply to individuals with extenuating circumstances (e.g., medical conditions, family emergencies etc.). Current regulations do not allow for exemptions based on personal extenuating circumstances. However, this was intended to be accounted for by providing C share holders three fishing seasons to demonstrate active participation before any action is taken. Individual exemptions have been made in the case of holding C share QS in closed fisheries (as described below), and this requires manual monitoring of individual QS holdings relative to active participation records. Additional individual exemptions to active participation requirements would provide more flexibility for C share QS holders in retaining their QS. However, it would also create additional complexity for the public and NMFS to consider.

Overall, the high level of specificity the Council would likely need to define criteria under which the RA would act, makes this option essentially the same as defining criteria in regulations. It does not necessarily provide a nimbler option for extenuating circumstances, as may be the intent.

3.4.3. Analysis of Additional Concepts for Possible Action

3.4.3.1. Fisheries that Qualify for Active Participation

The first additional concept the Council asked staff to explore in its April 2023 motion, is the possibility of expanding participation requirements for non-initial recipients to match the requirements of initial recipients. In other words, “within the previous three years, participate in a BSAI crab trip OR participate as crew in at least 30 days of fishing in a commercial fishery off Alaska” for all CVC QS and CPC QS. Currently under this provision, recipients of an initial allocation who are employed exclusively in state or federal fisheries outside of the crab fisheries, are not permitted to acquire C share QS, but can maintain eligibility to receive annual C share IFQ allocations for any QS they hold. These provisions were intended to substantially broaden the opportunity of persons formerly engaged in the crab fisheries, which was considered to be a reasonable response to the displacement of persons by fleet contraction that occurred after rationalization.

In recent situations with closed fisheries and possible future low TACs, this would provide an alternative outlet for a non-initial recipient to achieve active participation requirements. Any state or federal fishery off of Alaska would qualify. Fishing effort could be combined from different fisheries to demonstrate the necessary 30 days of participation. This could include any state commercial fisheries for example Bristol Bay sockeye salmon fishing, the Kodiak Tanner crab fishery, or State of Alaska Pacific cod fisheries. It could also include crewing in federal fisheries such as Pacific cod pot fishing, halibut or sablefish IFQ fishing, participating in the Pacific cod Freezer Longline fishery, or trawl fisheries (e.g., Amendment 80, AFA, trawl Pacific cod).

Data are not available on crew participation across fisheries, but consistent with the analysis for Amendment 31, it is expected that this expanded definition of active participation would create substantial additional opportunities for C share holders. While some initial-recipient C share holders have used non-BSAI crab fisheries to meet the active participation requirements, efforts to date have not been made to systematically record how many or which fisheries C share holders have used to meet this requirement. In the past, NMFS RAM has simply checked an active participation flag in the system if the C share holder meets the qualifications. The most common affidavit submitted to demonstrate active participation comes from a vessel owner attesting to a C share holder's CR Program crab landing. The 30-day affidavit is also used by those who qualify, although likely less frequently (B. Brown, personal communication, 5/15/23).

3.4.3.2. Addressing Closed Fisheries

The Council also indicated an interest in considering a broader exemption for **active participation for CVC or CPC QS associated with a closed fishery**. This analysis explores ways the current regulations could be expanded and the possible implications.

Section 3.2.2 describes that current regulations allow for a narrow opportunity for an exemption from the C share active participation requirements stating, “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” (§ 680.40(g)(2)(i)). Therefore, by the strict language of the regulations, if individual holds C share QS in more than a single CR fishery, and they have not met the active participation requirements, they would be at risk of having C share IFQ withheld or C share QS revoked regardless of whether just one or all of the fisheries they hold C share QS in are closed.

It appears this exemption related to closed fisheries arose from an inquiry to NMFS during the Amendment 31 rule-making process. The original proposed language for 50 CFR 680.40(g) and (m) required C share holders to participate as crew in one delivery in any crab fishery in the four years prior, or their shares could be revoked. There was no language waiving participation in a closure situation. In

the final rule (80 FR 15891), NMFS stated that it received an inquiry, not formally submitted as a comment, regarding participation requirements for holders of C share QS in a fishery that is closed. NMFS considered the issue important and amended the language to remove the requirement in specific instances, saying "NMFS emphasizes that the exclusion of years applies solely to those individuals who hold C share QS in just one CR Program crab fishery and that fishery is closed for an entire crab fishing year." It appears the motivation behind the exemption would also apply to situations where an individual holds C share QS in multiple fisheries and all of those fisheries are closed, but the publication of the final rule states that it applies to only holders of QS in just one fishery. In practice, this exemption has not been limited to owners in a single fishery. This could be a housekeeping amendment to change the language and clarify the intent in the process. For instance, a possible housekeeping amendment could clarify that if an individual holds C share QS in *only* closed fisheries, they are exempt from active participation requirements during the closed years.

In addition, the Council may consider not revoking C share QS in a closure situation, even if an individual holds C share QS in another fishery that is open. Under current regulations (§ 680.43(a)), if a C share holder does not meet active participation requirements to retain their C share QS, they would have *all* C share QS revoked, including that in a closed fishery. This essentially applies a rule of, "if a C share holder can participate anywhere, they must participate." The Council could consider applying severability to closed fishery C share QS to lower this standard, such that an individual with shares in multiple fisheries who fails to meet participation requirements may have their QS revoked except the QS in affected by closures. This would still require participation in active fisheries, but without prejudice against C share QS in closed fisheries.

In the 2022/23 season, the BBR and BSS fisheries were closed but the EBT and WBT fisheries were open with a modest TAC (2.013 million lbs for both fisheries). As described in Section 3.3.5, C share QS holders tend to hold a portfolio of QS and BBR/ BSS/ EBT/ WBT is a popular combination. Of the 162 total C share holders in 2023, 74 individuals (46%) held the combination of BSS, BBR, EBT and WBT. A demonstration of active participation would still be expected on the same three-year rolling basis for these individuals despite the diminished opportunity to participate. Even with the housekeeping amendment described above, if the BST fisheries remained open, these C share QS holders would be required to demonstrate active participation, transfer their C share QS to qualified individuals, or risk having all of their C share QS revoked. If the BBR and BSS fisheries remain closed or with limited TACs, the ability to demonstrate active participation may be challenged by limited crew positions.

Although it is the intention of C share active participation requirements to ensure C share QS remains with active captains and crew in the fisheries, compelling the sale of C share QS in a closed fishery may not have the intended effect. In a closed fishery, it is likely that the demand for C shares is extremely limited, particularly as the pool of qualified individuals declines. If the BBR and BSS fisheries remain closed or with low TACs in the next few years, and there remains limited opportunities to crew, there could be an increase in supply of C shares on the market as C share holders near the season where they would be at risk of having their QS revoked. This could result in a thin market with low prices and decrease the value of the C share QS for all holders. If a C share holder recently financed their purchase of C share QS, this could have severe financial implications.

3.4.4. Additional Monitoring and Enforcement Considerations

Administration of the existing C share participation requirements has been difficult due to multiple factors involved in determining the most relative and current data submitted by participants over a multi-year application cycle. The application review process requires several layers of manual review and judgment by NMFS staff to determine which years would count toward the three and four qualifying years due to the closed fishery exception. Additionally, due to the potential for data entry errors, NMFS staff must do a comprehensive review of prior years' submissions to determine the most recent documentation submitted

for each CVC or CPC QS holder. For example, NMFS staff may be required to compile qualifying participation data by reviewing and analyzing participation data submitted over a multi-year timespan. The submitted annual participation data may exist in many formats, through both electronic and/or paper record submission. Additionally, this data may meet qualifications based on an attested affidavit submission in one year and/or through fish tickets demonstrating a crab landing in the following year.

Under all action alternatives identified in this analysis, it is important to consider the level of complexity created from additional exemptions and flexibility in the active participation regulations. The more complex the regulations are, and the greater the number and type of individual exemptions, the more challenging these regulations are for the public to comply with and for NMFS to administer. Additionally, modifications to allow for electronic submission of the annual QS application and automating the review process for these provisions would improve the administrative process for the annual review of this provision. However due to current staffing limitations, and ongoing large scale IT Infrastructure projects, this is unlikely to be a high priority for NMFS in the near future.

NMFS implemented a cost recovery program for the CR Program in 2005 (70 FR 10174, March 2, 2005). CR Program cost recovery authorizes the collection of actual management and enforcement costs for up to three percent of ex-vessel gross revenues. Under the regulations implementing the CR cost recovery program, cost recovery fees must be paid in equal shares by the harvesting and processing sectors. The processing sector, specifically RCRs, are responsible for collecting the fee from the harvesters and submitting this and their own self-collected fee amount to NMFS. Catcher/processors, i.e., (vessels that harvest and process crab) pay the full fee. To the extent that changes proposed under the action alternatives could increase staff time spent on administering the active participation provision, this could result in increased management costs recoverable under the CR cost recovery program.

The BSAI Crab Quota Share Loan Program was implemented in 2011 (75 FR 78619, December 16, 2010). The program provides low interest loans to assist captains and crew in the purchase of QS for the CR Program. The loan program is accessible only to active fishery participants and can be used to purchase either CR Program QS or Crew QS.

3.4.5. Affected Small Entities (Regulatory Flexibility Act Considerations)

Section 603 of the Regulatory Flexibility Act (RFA) requires that an initial regulatory flexibility analysis be prepared to identify whether a proposed action will result in a disproportionate and/or significant adverse economic impact on the directly regulated small entities, and to consider any alternatives that would lessen this adverse economic impact to those small entities. NMFS prepares the IRFA in the classification section of the proposed rule for an action. Therefore, the preparation of a separate IRFA is not necessary for the Council to recommend a preferred alternative. This section provides information about the directly regulated small entities that NMFS will use to prepare the Initial Regulatory Flexibility Analysis for this action if the Council recommends regulatory amendments.

This section also identifies the general nature of the potential economic impacts on directly regulated small entities, specifically addressing whether the impacts may be adverse or beneficial. The exact nature of the costs and benefits of each alternative is addressed in the impact analysis sections of the RIR and is not repeated in this section, unless the costs and benefits described elsewhere in the RIR differs between small and large entities.

Identification of Directly Regulated Entities

The two options under the action alternatives (Alternative 2) include:

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.

These options, as well as all of the additional concepts considered for action (see Section 2), would change the active participation requirements for receiving C share IFQ and retaining C share QS. In all proposed actions the directly regulated entities are C share holders.

Count of Small, Directly Regulated Entities

Under the RFA, businesses that are classified as primarily engaged in commercial fishing are considered small entities if they have combined annual gross receipts not in excess of \$11.0 million for all affiliated operations worldwide, regardless of the type of fishing operation (81 FR 4469; January 26, 2016). If an individual C share holder has a known affiliations – through a business ownership, vessel ownership or through a cooperative – these thresholds are measured against the small entity threshold based on the total gross revenues of all affiliated parties.

Although all C shares must be 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, data on gross revenue associated with C share holders and all affiliations is not available at this time. All individual entities that hold C shares are believed to be small entities.

Table 8 demonstrates the count of C share QS holders overtime. In 2023, this represented 162 individuals that are considered to be small entities.

Impacts to Small, Directly Regulated Entities

RFA is interested in new regulations that would create a disproportionate adverse impact on entities defined as “small”. In the proposed action, all 162 C share QS holders are considered to be small entities. However, the proposed regulatory changes are all intended to reduce the burden of achieving active participation in situations of closed fisheries, low TAC, and other unforeseen circumstances (e.g., the pandemic). Therefore, it is not expected that the proposed action would have a disproportionate adverse impact on small entities.

3.4.6. Alternatives with Respect to Net Benefit to the Nation

This section will be completed when the Council has identified a preliminary preferred alternative.

4 Magnuson-Stevens Act and FMP Considerations

4.1. Magnuson-Stevens Act National Standards

Below are the 10 National Standards as contained in the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). In recommending a preferred alternative at final action, the Council must consider how to balance the national standards.

A brief discussion of this action with respect to each National Standard will be prepared for final action.

National Standard 1 — Conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery for the United States fishing industry.

National Standard 2 — Conservation and management measures shall be based upon the best scientific information available.

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.

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 United States 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.

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.

National Standard 6 — Conservation and management measures shall take into account and allow for variations among, and contingencies in, fisheries, fishery resources, and catches.

National Standard 7 — Conservation and management measures shall, where practicable, minimize costs and avoid unnecessary duplication.

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 by utilizing economic and social data that meet the requirements of National Standard 2, 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.

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.

National Standard 10 — Conservation and management measures shall, to the extent practicable, promote the safety of human life at sea.

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

Section 303(a)(9) of the Magnuson-Stevens Act requires that a fishery impact statement be prepared for each FMP or FMP amendment. A fishery impact statement is required to assess, specify, and analyze the likely effects, if any, including the cumulative conservation, economic, and social impacts, of the conservation and management measures on, and possible mitigation measures for (a) participants in the

fisheries and fishing communities affected by the plan amendment; (b) participants in the fisheries conducted in adjacent areas under the authority of another Council; and (c) the safety of human life at sea, including whether and to what extent such measures may affect the safety of participants in the fishery.

The RIR prepared for this potential plan amendment constitutes the fishery impact statement. The likely effects of the proposed action are analyzed and described throughout the RIR. The effects on participants in the fisheries and fishing communities will be analyzed in Section 3.4. The effects of the proposed action on safety of human life at sea will be evaluated in Section 3.4 and above under National Standard 10, in Section 4.1. *Based on the information reported in this section, a determination will be made on whether to update the Fishery Impact Statement included in the FMP.*

4.3. Council's Ecosystem Vision Statement

In February 2014, the Council adopted, as Council policy, the following:

Ecosystem Approach for the North Pacific Fishery Management Council

Value Statement

The Gulf of Alaska, Bering Sea, and Aleutian Islands are some of the most biologically productive and unique marine ecosystems in the world, supporting globally significant populations of marine mammals, seabirds, fish, and shellfish. This region produces over half the nation's seafood and supports robust fishing communities, recreational fisheries, and a subsistence way of life. The Arctic ecosystem is a dynamic environment that is experiencing an unprecedented rate of loss of sea ice and other effects of climate change, resulting in elevated levels of risk and uncertainty. The North Pacific Fishery Management Council has an important stewardship responsibility for these resources, their productivity, and their sustainability for future generations.

Vision Statement

The Council envisions sustainable fisheries that provide benefits for harvesters, processors, recreational and subsistence users, and fishing communities, which (1) are maintained by healthy, productive, biodiverse, resilient marine ecosystems that support a range of services; (2) support robust populations of marine species at all trophic levels, including marine mammals and seabirds; and (3) are managed using a precautionary, transparent, and inclusive process that allows for analyses of tradeoffs, accounts for changing conditions, and mitigates threats.

Implementation Strategy

The Council intends that fishery management explicitly take into account environmental variability and uncertainty, changes and trends in climate and oceanographic conditions, fluctuations in productivity for managed species and associated ecosystem components, such as habitats and non-managed species, and relationships between marine species. Implementation will be responsive to changes in the ecosystem and our understanding of those dynamics, incorporate the best available science (including local and traditional knowledge), and engage scientists, managers, and the public.

The vision statement shall be given effect through all of the Council's work, including long-term planning initiatives, fishery management actions, and science planning to support ecosystem-based fishery management.

Upon selection of a preferred alternative, this section will include the Council's rationale for how any action recommended to the Secretary of Commerce is consistent with this ecosystem approach to policy, and highlight evidence presented for that rationale to the extent that it is available.

5 Preparers and Persons Consulted

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Appendix 1

E Crab Crew Share Clarifications Council Motion APRIL 10, 2023

For the upcoming June 2023 Crab C share recent participation req.: Initial Review; the Council requests staff to analyze ways to provide an exemption for C share QS holders who were unable to fish during the covid years and due to recent closed or low TAC crab fisheries, including closed and low TAC crab fisheries in the future, while maintaining the concept of active participation.

- The Council requests staff to develop options that would allow NMFS to reissue any CVC or CPC QS that NMFS has revoked based upon a failure to meet recent participation requirements in recent years until NMFS implements a final rule resulting from this action.
- The Council recognizes the complexities identified by staff and requests staff provide further information in the analysis on different ways to achieve the purpose and need for this action, including establishing thresholds under which exemptions from active participation may be warranted (for example Alt 2, Option 1 proposed by the AP), and not allowing C share QS that are associated with a closed fisheries to be revoked. In other words, CVC or CPC QS that are held in open and closed fisheries where the only open crab fishery is limited by low TAC.

To assist in the analysis staff would analyze the effectiveness of:

- Suspending the recent participation requirement after the pandemic and beginning in 2023/24 only count fishing years where at least 15, 20, 25, or 30 BSAI crab vessels fish. Also analyze not counting 2019/20, 2020/21, 2021/22, through 2023/2024 toward the recent participation requirement.
- Analyze giving the Regional Administrator the authority to suspend the CVC QS and CPC QS recent participation requirement in years of low BSAI crab quota where few vessels' fish or due to other unforeseen circumstances (e.g. a pandemic)
- Expand participation requirements for non-initial issues to match the requirements of initial issues. In other words, "within the previous three years, participate in a BSAI crab trip OR participate as crew in at least 30 days of fishing in a commercial fishery off Alaska" for all CVC QS and CPC QS
- Not revoking any CVC or CPC QS associated with a closed fishery.
- Reissue any CVC QS and CPC QS that were revoked between July 2023 and the effective date of the proposed action.
- The Council requests staff identify potential criteria that the Council could select to guide future decisions by the Regional Administrator to suspend the CVC QS and CPC QS recent participation requirement.
- The Council will review this information at the June meeting and may revise the P & N and alternatives and options at that time.