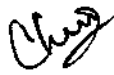


MEMORANDUM

TO: Council, SSC and AP Members
FROM: Chris Oliver 
Executive Director
DATE: November 30, 2004
SUBJECT: Crab Rationalization

ESTIMATED TIME
6 HOURS

ACTION REQUIRED

Council Comments on Proposed Rule

BACKGROUND

In June 2001, on the direction of Congress and at the request of industry, the Council identified for analysis elements, options, and alternatives to rationalize the Bering Sea and Aleutian Islands (BSAI) crab fisheries. Using analyses provided by staff, at its meetings in June 2002, October 2002, December 2002, February 2003, and April 2003, the Council identified its preliminary preferred alternative for rationalizing the BSAI crab fisheries, a "three-pie voluntary cooperative program". As a part of the Consolidated Appropriations Act of 2004, Congress directed the Secretary of Commerce to implement the Council's preliminary preferred alternative, a copy of which is attached (Item C-1(a)). In addition, the Council further amended its preferred alternative consistent with the Congressional directive at its June 2004 meeting. A consolidated copy of the motions identifying the Council's preferred rationalization alternative is attached (Item C-1(b)). In an effort to comply with the Congressional directive, on October 29, 2004 NOAA Fisheries released a proposed rule intended to implement Amendments 18 and 19 to the BSAI King and Tanner Crabs FMP to include the Council's preferred rationalization alternative. Comments on the proposed rule are requested to be submitted to NOAA Fisheries on or before December 13, 2004.

COUNCIL ACTION

The Council has elected to undertake a review of the proposed rule to comment on its consistency with the Council motion and the Council's intent. To aid the Council, staff has prepared draft comments (Item C-1(c)) noting possible inconsistencies between the proposed rule and the Council's preferred alternative, as well as general comments concerning ambiguities in the proposed rule. Some of the more important issues that the Council may wish to address include:

- 1) The rule allows either IFQ holders or IPQ holders to initiate binding arbitration. The motion intended to allow only IFQ holders to initiate arbitration. (§680.20(h)).

- 2) The rule assumes that "harvest cooperatives" under the Council motion are intended to be FCMA cooperatives. This interpretation led the agency to conclude that any processor affiliated QS holder could not join a cooperative. The motion intended cooperatives for the limited purpose of coordinating harvest activity to allow all holders of harvest shares to achieve efficiencies and should not require FCMA qualification. (§680.21)
- 3) The rule allows a person to join a single cooperative on an "all or nothing" basis. Persons would not be permitted to join different cooperatives for different fisheries. This could limit the ability of some harvesters to achieve efficiencies in some fisheries. (§680.21(b)(4) and (5)).
- 4) The rule provides that C shares are converted to standard IFQ, if the holder joins a cooperative, effectively removing any owner on board requirement relative to C shares. The motion intended the C share pool to benefit persons actively on board vessels in the fisheries. (§680.21(d)(4)) and (§680.42(d)(5)).
- 5) The rule allows cooperatives to freely engage in intercooperative transfers without regard to individual use caps. The motion intended intercooperative transfers to be conducted through members to allow the application of use caps. (§680.21(g)).
- 6) The rule provides that persons with 10 percent common ownership with a processor share holder would receive all A shares (and no B shares). The motion intended that the exclusively A share allocation be limited to the amount of IFQ controlled by the IPQ holder, with the remainder allocated as Class A and Class B shares. (§680.40(h)(4)).
- 7) The rule revised the rules of the right of first refusal. The motion clearly identifies the terms of the right of first refusal. (§680.40(m) and (§680.41(c) and (d)).
- 8) The rule waives all use caps with respect to harvest shares. The motion establishes use caps. (§680.41(l)(2) and (4)).
- 9) The rule could limit the benefits from the license buyback to persons that purchased licenses after June 10, 2002 that were put over the use caps by the buyback. (§680.42(b)(1)(i)).
- 10) The rule does not apply a control date (June 10, 2002) to the acquisition of history in excess of the use caps for CDQ groups and vertical integration. The motion intended to apply this control date to all use caps. (§680.42(b)(3) and (4)).
- 11) The rule exempts all PQS holders from the individual IFQ caps and applies a higher use cap to those persons. The motion intended a very limited exemption that would not apply to individuals. (§680.42(b)(4)).

H.R.2673

1. Consolidated Appropriations Act, 2004 (Enrolled as Agreed to or Passed by Both House and Senate)

DEPARTMENT OF COMMERCE AND RELATED AGENCIES

DEPARTMENT OF COMMERCE

International Trade Administration

OPERATIONS AND ADMINISTRATION

(RESCISSION)

Of the appropriations made available for travel and tourism by section 210 of Public Law 108-7, \$40,000,000 are rescinded.

National Oceanic and Atmospheric Administration

COASTAL AND OCEAN ACTIVITIES

(RESCISSION)

Of the appropriations made available for coastal and ocean activities by Public Law 106-553, \$2,500,000 are rescinded.

TITLE VIII--ALASKAN FISHERIES

SEC. 801. BERING SEA AND ALEUTIAN ISLANDS CRAB RATIONALIZATION. Section 313 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.), as amended, is further amended by adding at the end thereof the following:

(j) BERING SEA AND ALEUTIAN ISLANDS CRAB RATIONALIZATION-

(1) By not later than January 1, 2005, the Secretary shall approve and hereafter implement by regulation the Voluntary Three-Pie Cooperative Program for crab fisheries of the Bering Sea and Aleutian Islands approved by the North Pacific Fishery Management Council between June 2002 and April 2003, and all trailing amendments including those reported to Congress on May 6, 2003. This section shall not preclude the Secretary from approving by January 1, 2005, and implementing any subsequent program amendments approved by the Council.

(2) Notwithstanding any other provision of this Act, in carrying out paragraph (1) the Secretary shall approve all parts of the Program referred to in such paragraph. Further, no part of such Program may be implemented if, as approved by the North Pacific Fishery Management Council, individual fishing quotas, processing quotas, community development quota allocation, voluntary cooperatives, binding arbitration, regional landing and processing requirements, community protections, economic data collection, or the loan program for crab fishing vessel captains and crew members, is invalidated subject to a judicial determination not subject to judicial appeal. 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.

'(3) Subsequent to implementation pursuant to paragraph (1), the Council may submit and the Secretary may implement changes to or repeal of conservation and management measures, including measures authorized in this section, for crab fisheries of the Bering Sea and Aleutian Islands in accordance with applicable law, including this Act as amended by this subsection, to achieve on a continuing basis the purposes identified by the Council.

'(4) The loan program referred to in paragraph (2) shall be carried out pursuant to the authority of sections 1111 and 1112 of title XI of the Merchant Marine Act, 1936 (46 U.S.C. App. 1279f, 1279g).

'(5) For purposes of implementing this section \$1,000,000 shall be made available each year until fully implemented from funds otherwise made available to the National Marine Fisheries Service for Alaska fisheries activities.

'(6) Nothing in this Act shall constitute a waiver, either express or implied, of the antitrust laws of the United States. The Secretary, in consultation with the Department of Justice and the Federal Trade Commission, shall develop and implement a mandatory information collection and review process to provide any and all information necessary for the Department of Justice and the Federal Trade Commission to determine whether any illegal acts of anti-competition, anti-trust, or price collusion have occurred among persons receiving individual processing quotas under the Program. The Secretary may revoke any individual processing quota held by any person found to have violated a provision of the antitrust laws of the United States.

'(7) An individual processing quota issued under the Program shall be considered a permit for the purposes of sections 307, 308, and 309, and may be revoked or limited at any time in accordance with this Act. Issuance of an individual processing quota under the program shall not confer any right of compensation to the holder of such individual processing quota if it is revoked or limited and shall not create, or be construed to create, any right, title, or interest in or to any fish before the fish is purchased from an individual fishing quota holder.

'(8) The restriction on the collection of economic data in section 303 shall not apply with respect to any fish processor who is eligible for, or who has received, individual processing quota under the Program. The restriction on the disclosure of information in section 402(b)(1) shall not apply when the information is used to determine eligibility for or compliance with an individual processing quota program.

'(9) The provisions of sections 308, 310, and 311 shall apply to the processing facilities and fish products of any person holding individual processing quota, and the provisions of subparagraphs (D), (E), and (L) of section 307(1) shall apply to any facility owned or controlled by a person holding individual processing quota.'

SEC. 802. GULF OF ALASKA ROCKFISH DEMONSTRATION PROGRAM. The Secretary of Commerce, in consultation with the North Pacific Fishery Management Council, shall establish a pilot program that recognizes the historic participation of fishing vessels (1996 to 2002, best 5 of 7 years) and historic participation of fish processors (1996 to 2000, best 4 of 5 years) for pacific ocean perch, northern rockfish, and pelagic shelf rockfish harvested in Central Gulf of Alaska. Such a pilot program shall: (1) provide for a set-aside of up to 5 percent for the total allowable catch of such

DRAFT Council Motion for BSAI Crab Rationalization
June 10, 2002 as updated through the June 9, 2004

The following incorporates the preferred Bering Sea Crab Rationalization Program Alternatives – established at the Council's June 2002, October 2002, December 2003, January/February 2003, April 2003, February 2004, and June 2004 meetings. Unless otherwise noted, the provisions were adopted at the June 2003 meeting. This motion advances a VOLUNTARY THREE PIE COOPERATIVE, designed to recognize the prior economic interests and importance of the partnership between harvesters, processors and communities.

BSAI Crab Rationalization Problem Statement

Vessel owners, processors and coastal communities have all made investments in the crab fisheries, and capacity in these fisheries far exceeds available fishery resources. The BSAI crab stocks have also been highly variable and have suffered significant declines. Although three of these stocks are presently under rebuilding plans, the continuing race for fish frustrates conservation efforts. Additionally, the ability of crab harvesters and processors to diversify into other fisheries is severely limited and the economic viability of the crab industry is in jeopardy. Harvesting and processing capacity has expanded to accommodate highly abbreviated seasons, and presently, significant portions of that capacity operate in an economically inefficient manner or are idle between seasons. Many of the concerns identified by the NPFMC at the beginning of the comprehensive rationalization process in 1992 still exist for the BSAI crab fisheries. Problems facing the fishery include:

Resource conservation, utilization and management problems;
Bycatch and its' associated mortalities, and potential landing deadloss;
Excess harvesting and processing capacity, as well as low economic returns;
Lack of economic stability for harvesters, processors and coastal communities; and
High levels of occupational loss of life and injury.

The problem facing the Council, in the continuing process of comprehensive rationalization, is to develop a management program which slows the race for fish, reduces bycatch and its associated mortalities, provides for conservation to increase the efficacy of crab rebuilding strategies, addresses the social and economic concerns of communities, maintains healthy harvesting and processing sectors and promotes efficiency and safety in the harvesting sector. Any such system should seek to achieve equity between the harvesting and processing sectors, including healthy, stable and competitive markets.

Elements of the Crab Rationalization Program

Harvesting Sector Elements

Harvester shares shall be considered a privilege and not a property right.

1.1 Crab fisheries included in the program are the following fisheries subject to the Federal FMP for BSAI crab:

Bristol Bay red king crab
Brown king (AI Golden king) crab
Adak (WAI) red king crab – West of 179° W
Pribilof Islands blue and red king crab
St. Matthew blue king crab
Opilio (EBS snow) crab
Bairdi (EBS Tanner) crab

3. Exclude the EAI Tanner, WAI Tanner, Dutch Harbor (EAI) red king crab, and Adak (WAI) red king crab east of 179° West longitude.
- 1.2 Persons eligible to receive an initial allocation of QS must be:
 - Option 1. Any person that holds a valid, permanent, fully transferable LLP license.
- 1.3 Categories of QS/IFQs
 - 1.3.1 Crab Fishery Categories - QS/IFQs will be assigned to each of the crab fisheries included in the program as identified in paragraph 1.1 except Dutch Harbor red king, EAI Tanner, and WAI Tanner and WAI red king crab east of 179° West longitude.
 - 1.3.1.1 Brown king crab (AI golden king crab) option.
 - Option 1. Split into two categories: Dutch Harbor (EAI) brown king crab (east of 174° W long.) and Western Aleutian Islands brown king crab (west of 174° W long.).
 - 1.3.2 Harvesting sector categories - QS/IFQs will be assigned to one of the following harvesting sector categories:
 - a. catcher vessel (CV), or
 - b. catcher/processor (CP)

QS-IFQ for the Catcher/Processor sector is calculated from the crab that were both harvested and processed onboard the vessel. This shall confer the right to harvest and process crab aboard a catcher processor in accordance with section 1.7.2.
 - 1.3.3 Processor delivery categories - QS/IFQs for the CV sector shall be assigned to the following two processor delivery categories (the percentage split between class A/B shares is defined under the Processing Sector Elements, 2.4):
 - (a) Class A – allow deliveries only to processors with unused PQs
 - (b) Class B – allow deliveries to any processor, except catcher processors
 - 1.3.4 Regional Categories - QS/IFQs for the CV sector is assigned to regional categories. The two regions are defined as follows (see Regionalization Elements for a more detailed description of the regions):

North Region - All areas on the Bering Sea north of 56° 20' N. Latitude.

South Region - All areas not included in the North Region.
- 1.4 Initial allocation of QS
 - 1.4.1 Calculation of initial QS distribution will be based on legal landings excluding deadloss.
 - (a) Calculation of QS distribution. The calculation is to be done, on a vessel-by-vessel basis, as a percent of the total catch, year-by-year during the qualifying period. Then the sum of the yearly percentages, on a fishery-by-fishery basis, is to be divided by the number of qualifying years included in the qualifying period on a fishery-by-fishery basis to derive a vessel's QS.

For each of the fisheries for which such a vessel holds valid endorsement for any years between the sinking of the vessel and the entry of the Amendment 10 replacement vessel to the fishery and was active as of June 10, 2002, allocate QS according to 50% of the vessel's average history for the qualifying years unaffected by the sinking.

Additional Sunken Vessel Provision (from December 2002 motion)

The following provision would apply to persons whose eligibility to replace their vessel was initially denied under PL 106-554. The sunken vessel must have been replaced with a newly constructed vessel and have been under construction by June 10, 2002, and participated in a Bering Sea crab fishery by October 31, 2002 for a person to receive a benefit under this provision.

For each of the fisheries for which such a vessel holds a valid endorsement , for all seasons between the sinking of the vessel and the entry of the replacement vessel to the fishery within the IRS replacement period (as extended by the IRS, if applicable) allocate QS according to 50 percent of the vessel's average history for the qualifying years unaffected by the sinking. Construction means the keel has been laid.

(b) Basis for QS distribution.

Option 1. For eligibility criteria in paragraph 1.2, the distribution of QS to the LLP license holder shall be based on the catch history of the vessel on which the LLP license is based and shall be on a fishery-by-fishery basis. The underlying principle of this program is one history per vessel.

(Option 1) Persons who have purchased an LLP, with GQP, EQP and RPP qualifications to remain in a fishery may obtain a distribution of QS on the history of either the vessel on which the LLP is based or on which the LLP is used, NOT both. License transfers for purposes of combining LLPs must have occurred by January 1, 2002.

(Old Option 3) In cases where the fishing privileges (i.e. moratorium qualification or LLP license) of an LLP qualifying (i.e. GQP, EQP, RPP and Amendment 10 combination) vessel have been transferred, the distribution of QS to the LLP shall be based on the aggregate catch histories of (1) the vessel on which LLP license was based up to the date of transfer, and (2) the vessel owned or controlled by the LLP license holder and identified by the license holder as having been operated under the fishing privileges of the LLP qualifying vessel after the date of transfer. Only one catch history per LLP license. The only catch histories that may be credited by transfer under this suboption are the individual catch histories of vessels that generate a valid permanent fully transferable LLP license.

1.4.2. Qualifying Periods for Determination of the QS Distribution:

1.4.2.1 Opilio (EBS snow crab)

Option 4. 1996 - 2000 (5 seasons)
a. Best 4 seasons

1.4.2.2 Bristol Bay red king crab

Option 3. 1996 - 2000 (5 seasons)
a. Best 4 seasons

1.4.2.3 Bairdi (EBS Tanner crab)

Option 2. 91/92 - 1996 (best 4 of 6 seasons)

1.4.2.4 and 1.4.2.5 Pribilof red and blue king crab

Option 2. 1994 - 1998
b. Drop one season

1.4.2.6 St. Matthew blue king crab

Option 2. 1994 - 1998
b. Drop one season

1.4.2.7 Brown king crab (based on biological seasons)
(Options apply to both Dutch Harbor (EAI) and Adak western Aleutian Island brown king crab)

Option 4. 96/97 2000/01 (all 5 seasons)

Suboption: Award each initial recipient QS based on:
b. historical participation in each region.

1.4.2.8 Adak (WAI) red king crab - west of 179° west long.

Option 1. 1992/1993 – 1995/1996 (4 seasons)
d. Best 3 seasons

1.5 Annual allocation of IFQs:

1.5.1 Basis for calculating IFQs:

Option 2. Convert GHL to a TAC and use the TAC as the basis.

1.6 Transferability and Restrictions on Ownership of QS/IFQs:

1.6.1 Persons eligible to receive QS/IFQs by transfer:

Option 2. US citizens who have had at least:
(b). 150 days of sea time

Option 3. Entities that have a U. S. citizen with 20% or more ownership and at least:
(b). 150 days of sea time

Suboption: Initial recipients of harvesting quota share grandfathered
*Definition of sea time

Option 1. Sea time in any of the U.S. commercial fisheries in a harvesting capacity.

Option 4. Allow a CDQ organization to be exempted from the restriction for the 150 days of sea time requirement under 1.6 Transferability and Restrictions on Ownership of QS/IFQs.

1.6.2 Leasing of QS (leasing is equivalent to the sale of IFQs without the accompanying QS.)
Leasing is defined as the use of IFQ on vessel which QS owner holds less than 10% ownership of vessel or on a vessel on which the owner of the underlying QS is present:

Option 1. Leasing QS is allowed with no restrictions during the first five years after program implementation.

1.6.3 Separate and distinct QS Ownership Caps - apply to all harvesting QS categories pertaining to a given crab fishery with the following provisions:

- a. Initial issues that exceed the ownership cap are grandfathered at their current level as of June 10, 2002; including transfers by contract entered into as of that date.
- b. Apply individually and collectively to all QS holders in each crab fishery;
- c. Percentage-cap options for the Bristol Bay red king crab, Opilio, Bairdi, Pribilof red and blue king crab and St. Matthew blue king crab fisheries (a different percentage cap may be chosen for each fishery):

Option 4. 1.0% of the total QS pool for Bristol Bay red king crab.

- Option 5. 1.0% of the total QS pool for Opilio crab.
- Option 6. 1.0% of the total QS pool for Bairdi crab.
- Option 7. 2.0% of the total QS pool for Pribilof red and blue king crab.
- Option 8. 2.0% of the total QS pool for St. Matthew blue king crab.

- d. A percentage-cap of 10% is adopted for the Dutch Harbor (EAI) brown king crab, and a 10% cap for western Aleutian Island (Adak) brown king crab.
- e. A percentage-cap of 10% is adopted for WAI (Adak) red king crab west of 179° West longitude.

Harvest Share Ownership Caps for CDQ Groups (from the February 2003)

The following ownership caps shall apply to CDQ ownership of crab QS

Bristol Bay red king crab	5%
Bering Sea opilio crab	5%
Bering Sea bairdi crab	5%
Pribilof red and blue king crab	10%
St. Matthew blue king crab	10%
EAI brown king crab	20%
WAI red king crab	20%
WAI brown king crab	20%

In addition, the Council shall apply the individual and collective rule for calculation of the CDQ ownership caps, under which the holder of an interest in an entity will be credited with holdings in proportion to its interest in the entity.

1.6.4 Controls on vertical integration (ownership of harvester QS by processors):

Option 2: A cap of 5% with grandfathering of initial allocations as of June 10, 2002, including transfers by contract entered into as of that date.

Option 3: Vertical integration ownership caps on processors shall be implemented using both the individual and collective rule using 10% minimum ownership standards for inclusion in calculating the cap. PQS ownership caps are at the company level.

Processor Holdings of Harvest Shares (A/B Share Issue) (from the April 2003 motion)

Crab harvester QS held by IPQ processors and persons affiliated with IPQ processors will only generate class A annual IFQ, so long as such QS is held by the IPQ processor or processor affiliate.

IPQ processors and affiliates will receive class A IFQ at the full poundage appropriate to their harvesters QS percentage.

Independent (non-affiliated) harvesters will receive class B IFQ pro rata, such that the full class B QS percentage is allocated to them in the aggregate.

“Affiliation” will be determined based on an annual affidavit submitted by each QS holder. A person will be considered affiliated, if an IPQ processor controls delivery of a QS holder’s IFQ.

1.7.2.1.1 Catcher/Processors shall be granted CP-QS in the same manner as catcher vessels.

1.7.2.3 Allowance for Catcher/Processors:

Option 2. Catcher/Processors are allowed to purchase additional PQS from shore based processors as well as PQS from other Catcher/Processors as long as the crab is processed within 3 miles of shore in the designated region.

Option 4. Catcher/Processors may sell unprocessed crab to any processor

Option 5. Only catcher processors that both caught and processed crab onboard their qualifying vessels in any BSAI crab fishery during 1998 or 1999 will be eligible for any CP QS in any IFQ or Coop program.

Option 6. CP-QS initially issued to a catcher/processor shall not be regionally or community designated.

Option 8. The CP sector is capped at the aggregate level of initial sector-wide allocation.

1.7.2.4 Transfers to shore-based processors:

c. Catcher/Processors shall be allowed to sell CP/QS as separate Catcher Vessel QS and PQS. The shares shall be regionally designated when sold (both shares to same region).

Other Harvester Options

1.7.3 Catch accounting under IFQs - All landings including deadloss will be counted against IFQs. Options for treatment of incidental catch are as follows:

Option 4. Discards of incidentally caught crab will be allowed

Option 5. Request ADF&G & BOF & BOF/NPFMC Joint Protocol Committee to address concerns of discard, highgrading, incidental catch and need for bycatch reduction and improved retention in season with monitoring to coincide with implementation of a crab rationalization program.

1.7.4 Use caps on IFQs harvested on any given vessel are provided for those vessels not participating in a voluntary cooperative described under section 6.1.:

Option 1.

c. Two times the ownership cap:

2.0% for BS Opilio crab

2.0% BB red king crab

2.0% BS bairdi crab

4.0% for Pribilof red and blue king crab

4.0% for St. Matthew blue king crab

20% for EAI (Dutch Harbor) brown king crab

20% for Adak (WAI) brown king crab

20% for Adak (WAI) red king crab west of 179° West longitude

1.8.1 Options for captain and crews members (from December 2002 motion):

1.8.1.2 Percentage to Captain:

1. Initial allocation of 3% shall be awarded to qualified captains as C shares.

a. Allocation from QS pool

1.8.1.3 Species specific:

1. As with vessels.

1.8.1.4 Eligibility:

Option 1

1. A qualified captain is determined on a fishery by fishery basis by

- 1) having at least one landing in 3 of the qualifying years used by the vessels and
- 2) having recent participation in the fishery as defined by at least one landing per season in the fishery in two of the last three seasons prior to June 10, 2002.

Suboption: For recency in the Adak red king, Pribilof, St. Matthew, and bairdi fisheries a qualified captain must have at least one landing per season in the opilio, BBRKC, or AI brown crab fisheries in two of the last three seasons prior to June 10, 2002 (operators of vessels under 60 feet are exempt from this requirement for the Pribilof red and blue king crab fishery).

2. A captain is defined as the individual named on the Commercial Fishery Entry Permit.

For captains who died from fishing related incidents, recency requirements shall be waived and the allocation shall be made to the estate of that captain. All ownership, use, and transfer requirements would apply to C shares awarded to the estate.

1.8.1.5 Qualification period:

1. As with vessels.

1.8.1.6 Distribution per captain:

1. C QS based on landings (personal catch history based on ADF&G fish tickets) using harvest share calculation rule.

Regionalization and Class A/B Designation

Option 2: C shares shall be a separate class of shares not subject to the Class A share delivery requirements during the first three years. But, at the end of three years, C shares shall be subject to A/B designations with regionalization unless the Council determines (after review) not to impose these designation.

Initial Allocation Regionalization

If C shares are regionalized, at the initial allocation regional designations shall be made based on the captain's history, with an adjustment to the allocation to match the PQS regional ratio made based on the same scheme used for regional adjustment of harvest shares.

1.8.1.7 Transferability criteria:

1. Purchase of C QS.
 - a. C QS may be purchased only by persons who are
 - Option 1. US citizens who have had at least 150 days of sea time in any of the US commercial fisheries in a harvesting capacity and
 - Option 2. active participants

An "active participant" is defined by participation as captain or crew in at least one delivery in a crab fishery included in the rationalization program in the last 365 days as evidenced by ADF&G fish ticket, affidavit from the vessel owner, or evidence from other verifiable sources.

2. C share leasing

- a. C QS are leasable for the first three seasons a fishery is prosecuted after program implementation.
- b. In cases of hardship (injury, medical incapacity, loss of vessel, etc.) a holder of C shares may lease C QS, upon documentation and approval, (similar to CFEC medical transfers) for the term of the hardship/disability for a maximum of 2 years over a 10 year period.

1.8.1.8 Loan program for crab QS

A low-interest rate loan program consistent with MSA provisions, for skipper and crew purchases of QS, shall be established for QS purchases by captains and crew members using 25% of the Crab IFQ fee program funds collected. These funds can be used to purchase A, B, or C shares.

Loan funds shall be accessible by active participants only.

Any A or B shares purchased under the loan program shall be subject to any use and leasing restrictions applicable to C shares (during the period of the loan).

National Marine Fisheries Service (NOAA Fisheries) is directed to explore options for obtaining seed money for the program in the amount of \$250,000 to be available at commencement of the program to leverage additional loan funds.

1.8.1.9 Captain/Crew on Board requirements

- 1) Holders of captain QS or qualified lease recipients are required to be onboard vessel when harvesting IFQ.
- 2) C QS ownership caps for each species are
Option 2. the same as the vessel use caps for each species

C share ownership caps are calculated based on the C QS pool (i.e. section 1.7.4). Initial allocations shall be grandfathered.

- 3) Use caps on IFQs harvested on any given vessel shall not include C shares in the calculation.

1.8.1.10 C/P Captains

Captains with C/P history shall receive C/P C QS at initial issuance. C/P C shares shall carry a harvest and processing privilege.

Option 3. C/P C shares may be harvested and processed on C/Ps or harvested on catcher vessels and delivered to shore based processors.

1.8.1.11 Cooperatives

C share holders shall be eligible to join cooperatives.

C shares shall be included in the IFQ fee program.

1.8.2 Overage Provisions for the Harvesting Sector:
Allowances for overages during last trip:

Option 2. Overages up to 3% will be forfeited. Overages above 3% results in a violation and forfeiture of all overage.

1.8.3 AFA Vessel Option. Eliminate harvester sideboard caps.

1.8.5 Sideboards (from December 2002 motion as revised in the June 2004 motion).

Option 1 (a): Non-AFA vessels that qualify for QS in the rationalized opilio crab fisheries would be limited to their GOA groundfish catch history excluding sablefish. The sideboards would be based on the history of vessels subject to the caps, applied in aggregate, on an area specific basis, and apply jointly to both the vessel and the license.

Combine options 2 and 3: Vessels with less than 100,000lbs total opilio history during the qualifying years and more than 500MT of total cod history during the qualifying years would be exempt from the sideboard cap.

Option 4: Vessels with less than 50MT total groundfish landings in the qualifying period would be prohibited from participating in the GOA cod fishery.

Sideboards will expire on rationalization of the Gulf of Alaska.

2. Processing Sector Elements

Processor shares shall be considered a privilege and not a property right.

2.1 Eligible Processors - processors (including catcher-processors) eligible to receive an initial allocation of processing quota shares (PQs) are defined as follows:

(a.) U.S. corporation or partnership (not individual facilities) that processed crab during 1998 or 1999, for any crab fishery included in the IFQ program.

Hardship provisions for processors that did not process crab in 1998 or 1999 but meet the following provisions:

- A processor (not Catcher/Processor) that processed opilio crab in each season between 1988 and 1997 and
- Invested significant capital in the processing platform after 1995, will be determined to be a qualified processor.
- Significant capital is defined as a direct investment in processing equipment and processing vessel improvements in excess of \$1 million.

2.2 Categories of Processing Quota Shares

2.2.1 Crab fishery categories - processing quota shares shall be issued for the same crab species identified in Section 1.1

2.2.2 Regional categories - processing quota shares will be categorized into two regions (see Regionalization Elements for description of regions):

Northern Region - All areas on the Bering Sea north of 56° 20' N. latitude

Southern Region - All areas not in the Northern region

2.3 Initial allocation of processing quota shares

Option 1. Processing quota shares shall be initially issued to Eligible Processors based on three-year average processing history¹ for each fishery, determined by the buyer of record listed on ADF&G fish tickets, as follows:

- (a) 1997 - 1999 for Bristol Bay red king crab
- (b) 1996 - 1998 for Pribilof red and blue king crab,
- (c) 1996 - 1998 for St. Matthew blue crab
- (d) 1997 - 1999 for opilio crab
- (e) EBS bairdi crab based on 50/50 combination of processing history for BBRKC and opilio
- (f) 1996/97 - 1999/00 seasons for brown king crab
- (g) The qualifying years for issuance of IPQ in the Adak (WAI) red king crab fishery west of 179° West longitude will be:

Option B. Based on Western Aleutian Islands brown king crab IPQ

Option 4. If the buyer can be determined, by NMFS using the State of Alaska Commercial Operators Annual Report, fish tax records, or evidence of direct payment to fishermen, to be an entity other than the entity on the fish ticket, then the IPQ shall be issued to that buyer.

2.4 Percentage of season's GHJ or TAC for which IPQs are distributed:

2.4.1 IPQs will be issued for a portion of the season's GHJ or TAC for each species to provide open delivery processing as a means to enhance price competition:

Option 3. 90% of GHJ (or TAC) would be issued as IPQs - the remaining 10% would be considered open delivery.

2.5 Implementation of the open delivery-processing portion of the fishery:

Catcher vessel QS/IPQs are categorized into Class A and Class B shares. Purchases of crab caught with Class A shares would count against IPQs while purchases of crab caught with Class B shares would not. Crab caught with Class B shares may be purchased by any processor on an open delivery basis.

- 2.6 Transferability of processing shares - provisions for transferability include the following:
- a. Processing quota shares and IPQs would be freely transferable, including leasing
 - b. IPQs may be used by any facility of the eligible processor (without transferring or leasing)
 - c. Processing quota shares and IPQs categorized for one region cannot be transferred to a processor for use in a different region.
 - d. New processors may enter the fishery by purchasing IPQ or by purchasing Class B Share crab or by processing CDQ crab.

2.7 Ownership and use caps -

2.7.1 Ownership caps

Option 4. No ownership to exceed 30% of the total PQS pool on a fishery by fishery basis with initial issues grandfathered.

PQS ownership caps should be applied using the individual and collective rule using 10% minimum ownership standards for inclusion in calculating the cap. PQS ownership caps are at the company level.

2.7.2 Use Caps.

Option 3. In the Northern Region annual use caps will be at 60% for the opilio crab fishery.

¹The three-year average shall be the three-year aggregate pounds purchased by each Eligible Processor in a fishery divided by the three-year aggregate pounds purchased by all Eligible Processors in that fishery.

2.8 Other Optional Provisions:

The crab processing caps enacted by Section 211(c)(2)(A) of the AFA would be terminated

Binding Arbitration System (from February 2003 motion, revised by the June 2004 motion)

The Council adopts the following elements for a system of binding arbitration to resolve failed price negotiations.

1. The Standard for Arbitration

The primary role of the arbitrator shall be to establish a price that preserves the historical division of revenues in the fisheries while considering relevant factors including the following:

- a. Current ex vessel prices (including prices for Class A, Class B, and Class C shares recognizing the different nature of the different share classes)
- b. Consumer and wholesale product prices for the processing sector and the participants in the arbitration (recognizing the impact of sales to affiliates on wholesale pricing)
- c. Innovations and developments of the different sectors and the participants in the arbitration (including new product forms)
- d. Efficiency and productivity of the different sectors (recognizing the limitations on efficiency and productivity arising out of the management program structure)
- e. Quality (including quality standards of markets served by the fishery and recognizing the influence of harvest strategies on the quality of landings)
- f. The interest of maintaining financially healthy and stable harvesting and processing sectors
- g. Safety
- h. Timing and location of deliveries
- i. Reasonable underages to avoid penalties for overharvesting quota and reasonable deadloss

2. Market Report

An independent market analyst selected by the mutual agreement of the sectors will present to both sectors and all designated arbitrators an analysis of the market for products of that fishery.

3. Selection of the Arbitrator(s) and Market Analyst

The market analyst and arbitrator(s) will be selected by mutual agreement of the PQS holders and the QS holders. PQS holders collectively must agree and QS holders collectively must agree. Processors may participate collectively in the selection process. The details of the selection will be decided at a later time.

4. Shares subject to binding arbitration

This binding arbitration system shall address price disputes between holders of delivery restricted IFQ (including Class A IFQ and Class C IFQ when subject to delivery restrictions) and holders of IPQ. Binding arbitration does not apply to the negotiation of price for deliveries under the class B IFQ and Class C IFQ when not subject to delivery restrictions. C share holders, however, may elect to participate in the arbitration process prior to delivery restrictions taking effect.

5. Shares of processor affiliates

Participation of processor affiliates in binding arbitration as IFQ holders will be determined by any applicable rules governing anti-trust. Any parties eligible for collective bargaining under the Fishermen's Cooperative Marketing Act of 1934 (FCMA) will be eligible to participate collectively as a member of that FCMA co-op in binding arbitration. No antitrust exemption should be made to enable processor affiliated IFQ holders to participate in arbitration.

6. Payment of the arbitration and market analysis

The payment for the market analysis and the arbitrators will be shared by the two sectors. Cost shall be shared by all participants in all fisheries.

For shared costs, the payment of those costs shall be advanced by IPQ holders. The IPQ holders will collect the IFQ holders' portion of the shared costs by adding a pro rated surcharge to all deliveries of Class A crab.

7. Quality dispute resolution

In cases where the fisherman and the processor cannot come to agreement on quality and thus price for crab, two mechanisms are suggested for resolving the price dispute-after the processor has processed the crab (to avoid waste from dumping the load at sea): (1) In cases where fishermen and processors have agreed to a formula based price, the two parties would take their normal shares of the price, after the disputed load is sold. (2) This type of dispute would most likely apply in cases where fishermen desire to stay with fixed dockside prices and there is disagreement on quality and therefore price. These cases could be referred to an independent quality specialist firm. The two parties in dispute would decide which firm to hire.

8. Data used in arbitration

Under any arbitration structure, the arbitrator must have access to comprehensive product information from the fishery (including first wholesale prices and any information necessary to verify those prices).

Subject to limitations of antitrust laws and the need for proprietary confidentiality, all parties to an arbitration shall have access only to information provided to the arbitrator(s) or panel for that arbitration directly by the parties to that arbitration. Access to information by a harvester participating in an arbitration will be limited to information submitted by itself and the processor. All participants to an arbitration shall sign a confidentiality agreement stating they will not disclose any information received from the arbitrator.

Data collected in the data collection program may be used to verify the accuracy of data provided to the arbitrator(s) in an arbitration proceeding. Any data verification will be undertaken only if the confidentiality protections of the data collection program will not be compromised.

9. Enforcement of the Arbitration Decision

The decision of the arbitrator will be enforced by civil damages

10. Oversight and administration of the Binding Arbitration system.

Oversight and administration of the binding arbitration should be conducted in a manner similar to the AFA cooperative administration and oversight. System reporting requirements and administrative rules should be developed in conjunction with the Council and NOAA Fisheries after selection of the preferred program.

The structure for the system of Binding Arbitration system shall be as described below:

LAST BEST OFFER BINDING ARBITRATION

GENERAL

The Last Best Offer Model provides a mechanism to resolve failed price and delivery negotiations efficiently in a short period before the opening of the season. The Model includes the following specific characteristics:

1. Processor-by-processor. Processors will participate individually and not collectively, except in the choice of the market analyst and the arbitrator/arbitration panel.
2. Processor-affiliated shares. Participation of processor-affiliated shares will be limited by the current rules governing antitrust matters.
3. Arbitration standard. The standard for the arbitrator is the historic division of revenues between harvesters and processors in the aggregate (across the entire sectors), based on arm's-length first wholesale prices and ex-vessel prices (Option 4 under "Standard for Arbitration" in the staff analysis). The arbitrator shall consider several factors including those specified in the staff analysis, such as current ex vessel prices for both A, B and C Shares, innovations, efficiency, safety, delivery location and timing, etc.
4. Opt-in. An IFQ holder may opt in to any contract resulting from a completed arbitration for an IPQ holder with available IPQ by giving notice to the IPQ holder of the intent to opt in, specifying the amount of IFQ shares involved, and acceptance of all terms of the contract. Once exercised, an Opt-in is binding on both the IPQ holder and the IFQ holder.
5. Performance Disputes. Performance and enforcement disputes (e.g. quality, delivery time, etc.) initially will be settled through normal commercial contract dispute remedies. If those procedures are unsuccessful, the dispute will be submitted for arbitration before the arbitrator(s). If those procedures are unsuccessful and in cases where time is of the essence, the dispute will be submitted for arbitration before the arbitrator(s). The costs of arbitration shall be paid from the fees collected, although the arbitrator(s) will have the right to assign fees to any party for frivolous or strategic complaints.
6. Lengthy Season Approach. For a lengthy season, an IPQ holder and an IFQ holder (or group of IFQ holders) may agree to revise the entire time schedule below and could agree to arbitration(s) during the season. That approach may also be arbitrated pre-season if the holders cannot agree.

PROCESS

1. Negotiations and Voluntary Share Matching.

At any time prior to the season opening date, any IFQ holders may negotiate with any IPQ holder on price and delivery terms for that season (price/price formula; time of delivery; place of delivery, etc.). If agreement is reached, a binding contract will result for those IFQ and IPQ shares. IPQ holders will always act individually and never collectively, except in the choice of the market analyst (which may occur at any time pre-season) and the arbitrator/arbitration panel for which all IFQ and IPQ holders will consult and agree.

2. Required Share-Matching and Arbitration.

Beginning at the 25-day pre-season point, IFQ holders may match up IFQ shares not already subject to contracts with any IPQ shares not under contract, either as collectively as part of an FCMA cooperative or as individual IFQ holders (the offered IFQ Shares must be a substantial amount of the IFQ Holder(s)' uncontracted shares). The IPQ holder must accept all proposed matches up to its non-contracted IPQ share amount. All IFQ holders "matched" with an IPQ holder will jointly choose an arbitrator with that IPQ holder. The matched share holders are committed to the arbitration once the arbitrator is chosen (if the parties wish, the arbitrator may initially act as a mediator to reach an agreement quickly). Arbitration must begin no later than 15 days before the season opening date.

3. Data.

The Arbitrator will gather relevant data independently and from the parties to determine the historical distribution of first wholesale crab product revenues (at FOB point of production in Alaska) between harvesters and processors in the aggregate (across the entire sectors). For a vertically integrated IPQ holder (and in other situations in which a back-calculation is needed), the arbitrator will work with that

IPQ holder and the IFQ holders to determine a method for back-calculating an accurate first wholesale price for that processor. The Arbitrator will receive a pre-season market report from the market analyst, and may gather additional data on the market and on completed arbitrations. The Arbitrator will also receive and consider all data submitted by the IFQ holders and the IPQ holder. The Arbitrator will not have subpoena power.

4. Arbitration Decisions.

Arbitration will be based on a "last best offer" system, with the Arbitrator choosing one of the last best offers made by the parties. The Arbitrator will work with the IPQ and IFQ holders to determine the matters that must be included in the offer (e.g. price, delivery time & place, etc.) and will set the date on which "last best offers" must be submitted. The last best offers may also include a price over a specified time period, a method for smoothing prices over a season, and an advance price paid at the time of delivery.

If several groups or individual IFQ Holders have "matched" with that IPQ Holder, each of them may make a last best offer. Prior to submission of the last-best offers, the Arbitrator may meet with parties, schedule joint meetings, or take any actions aimed at reaching agreement. The Arbitrator will notify the IPQ holder and the IFQ holders of the Arbitration Decision no later than 10 days before the season opening date. The Arbitration Decision may be on a formula or ex-vessel price basis. The Arbitration Decision will result in a contract for the IPQ holder and the IFQ holders who participated in arbitration with that IPQ holder.

5. Post-Arbitration Opt-In.

Any IFQ holder with shares not under contract may opt in to any contract resulting from an Arbitration Decision for an IPQ holder with IPQ that is not under contract, on all of the same contract conditions (price, time of delivery, etc.). If there is a dispute regarding whether the "opt in" offer is consistent with the contract, that dispute may be decided by the arbitrator who will decide only whether the Opt-in is consistent with the contract.

6. (deleted)

7. Non-Binding Price Arbitration (from the April 2003 motion)

There will be a single annual fleet-wide arbitration to establish a non-binding formula under which a fraction of the weighted average first wholesale prices for the crab products from each fishery may be used to set an ex-vessel price. The formula is to be based on the historical distribution of first wholesale revenues between fishermen and processors, taking into consideration the size of the harvest in each year. The formula shall also include identification of various factors such as product form, delivery time and delivery location. The non-binding arbitration shall be based upon the Standard for Arbitration set out in the February 2003 Council motion, Item 1 including a. through i. As a part of this process, the arbitrator will review all of the arbitration decisions for the previous season and select the highest arbitrated prices for a minimum of at least 7% of the market share of the PQS. This provision allows for the aggregation of up to 3 arbitration findings that collectively equal a minimum of 7 percent of the PQS, to be considered for the highest price for purposes of this provision. If arbitration findings are aggregated with two or more entities, then the lesser of the arbitrated prices of the aggregated entities included to attain the 7 percent minimum market share of PQS shall be considered for purposes of developing the benchmark price. The arbitrator in the non-binding arbitration shall not be an arbitrator in the last best offer binding arbitration(s). This formula shall inform price negotiations between the parties, as well as the Last Best Offer arbitration in the event of failed price negotiations.

8. Public Disclosure of Arbitration Results

The result of each arbitration will be announced as it occurs to the processors and harvesters in that arbitration and non-vertically integrated harvesters that have not committed to a processor.

3. Regionalization Elements

3.1 Two regions are proposed:

a. Northern Region - All areas on the Bering Sea north of 56° 20' N. latitude. (This region includes the Pribilof islands and all other Bering Sea Islands lying to the north. The region also includes all communities on Bristol Bay including Port Heiden but excludes Port Moller and all communities lying westward of Port Moller.)

b. Southern Region - All areas not in the Northern Region.

Suboption: Regional categories for deliveries of Aleutian Islands brown king crab are split into a "Western" (west of 174° West longitude) and "Eastern" (east of 174° West longitude) area. 50% of the WAI IPQ brown king crab QS shall be processed in the W AI region.

3.2 Regional categorization of processing and/or harvesting quota shares

3.2.1 Categorization will be based on all historical landings. Periods used to determine regional percentages are the same as in Section 3.2.5.

There shall be no regional designation of the bairdi fishery shares. When there is a harvestable surplus of bairdi, an open season, and the vessel has bairdi quota, bairdi will be retained and delivered as incidental catch in the red /blue king crab and opilio fisheries.

3.2.2 Options for the harvesting sector:

Option 2. Only Class A CV quota shares are categorized by region (applies to point of delivery and not point of harvest).

3.2.3 Options for the processor sector:

Option 1. Processing quota shares and IPQs are categorized by region

3.2.4 Once assigned to a region, processing and/or harvesting quota shares cannot be reassigned to a different region.

3.2.5 Options for addressing any remaining mismatch of harvesting and processing shares within the region.

1. The base years for determining processing shares and the base period for determining the share assigned to each region shall be the same.

2. If the cumulative harvester quota associated with each region differs from the total regional share, by species, the harvester share, by species, shall be adjusted, up or down, in the following manner:

a. The adjustment shall apply only to harvesters with share in both regions.

b. The adjustment shall be made on a pro rata basis to each harvester, so that the total share among those harvesters, by region, equals the total share assigned to each region.

3. The adjustment shall only be on shares that carry a regional designation; Class B quota would be excluded from the adjustment.

3.3 Delivery and processing restrictions - the following provisions apply to the delivery and processing of crab with IFQs or IPQs that are categorized by region:

a. Crab harvested with catcher vessel IFQs categorized for a region must be delivered for processing within the designated region

b. Crab purchased with IPQs categorized for a region must be processed within the designated region.

3.4 Alternative Regionalization/Community Protection Option

IPQ Caps (from the February 2003 meeting)

The amount of IPQ in any year shall not exceed the percentage of the TAC for crab as follows:

For opilio, IPQ percentage times a TAC (after CDQ allocations) of 175 million pounds.

For Bristol Bay red king crab, IPQ percentage times a TAC (after CDQ allocations) of 20 million pounds.

IFQ (that would have been A shares but for the cap) issued in excess of IPQ limit shall be subject to regional landing requirements.

Cool Down Period (from the December 2002 motion and February 2003 motion)

A cooling off period of 2 years shall be established during which processing quota earned in a community may not be used outside that community. (from December 2002 motion)

During the Cool Down Period the following elements will apply (from the February 2003 motion):

1. The method to determine the shares associated with a community will be the same method used for allocating processing quota as established by the Council.
2. Community shall be defined as the boundaries of the Borough or, if no Borough exists, the first class or second class city, as defined by applicable state statute. A community must have at least 3 percent of the initial PQS allocation in any fishery based on history in the community to require continued use of the IPQs in the community during the cool down period.
3. 10% of the IPQs, on a fishery by fishery basis, may leave a community on annual basis, or up to 500,000 pounds, whichever is less. The amount that can leave will be implemented on a pro rata basis to all PQS holders in a community.
4. Exempt the Bairdi, Adak red crab and Western Aleutian Islands brown crab fishery from the cool down provision.
5. There should be an exemption from the requirement to process in the community if an act of God prevents crab processing in the community. This provision will not exempt a processor from any regional processing requirements, if there is processing capacity in the region.

Regionalization of the Bairdi Fishery (from the February 2003 motion)

If biological information indicates that the bairdi fishery is likely to become a directed fishery, the Council would consider the following management, along with other alternatives for management of that fishery:

If the bairdi fishery becomes a directed fishery, it shall be allocated according to the original distribution of the BBRKC and shall not be subject to the regionalization provisions of the Council Crab Rationalization program.

Community Purchase and Right of First Refusal Options (from April 2003 motion)

I. General Right of First Refusal

For communities with at least three percent of the initial PQS allocation in any BSAI crab fishery based on history in the community except for those communities that receive a direct allocation of any crab species (currently only Adak), allow CDQ groups or community groups representing qualified communities a first right of refusal to purchase processing shares that are based on history from the community which are being proposed to be sold for processing outside the boundaries of the community of original processing history in accordance with the provisions below.

Entity Granted the Right of First Refusal

The right of refusal shall be established by a contract entered into prior to the initial allocation of PQS which will contain all of the terms specified in paragraphs A through I below. The contract will be between the recipient of the initial allocation of the PQS and:

- 1) the CDQ group in CDQ communities
- 2) the entity identified by the community in non-CDQ communities.

In non-CDQ communities, the community must designate the entity that will represent the community at least 90 days prior to the deadline for submission of applications for initial allocations of PQS.

Contract Terms

- A. The right of first refusal will apply to sales of the following processing shares:
1. PQS and
 2. IPQs, if more than 20 percent of a PQS holder's community based IPQs (on a fishery by fishery basis) has been processed outside the community of origin by another company in 3 of the preceding 5 years.
- B. Any right of first refusal must be on the same terms and conditions of the underlying agreement and will include all processing shares and other goods included in that agreement.
- C. Intra-company transfers within a region are exempt from this provision. To be exempt from the first right of refusal, IPQs must be used by the same company. In the event that a company uses IPQs outside of the community of origin for a period of 3 consecutive years the right of first refusal on those processing shares (the IPQs and the underlying PQS) shall lapse. With respect to those processing shares, the right of first refusal will not exist in any community thereafter.
- D. Any sale of PQS for continued use in the community of origin will be exempt from the right of first refusal. A sale will be considered to be for use in the community of origin if the purchaser contracts with the community to:
1. use at least 80 percent of the annual IPQ allocation in the community for 2 of the following 5 years (on a fishery by fishery basis), and
 2. grant the community a right of first refusal on the PQS subject to the same terms and conditions required of the processor receiving the initial allocation of the PQS.
- E. All terms of any right of first refusal and contract entered into related to the right of first refusal will be enforced through civil contract law.
- F. A community group or CDQ group can waive any right of first refusal.
- G. The right of first refusal will be exercised by the CDQ group or community group by providing the seller within 60 days of receipt of a copy of the contract for sale of the processing shares:
1. notice of the intent to exercise and
 2. earnest money in the amount of 10 percent of the contract amount or \$500,000 whichever is less.

The CDQ group or community group must perform all of the terms of the contract of sale within the longer of:

1. 120 days of receipt of the contract or
2. in the time specified in the contract.

H. The right of first refusal applies only to the community within which the processing history was earned. If the community of origin chooses not to exercise the right of first refusal on the sale of PQS that is not exempt under paragraph D, that PQS will no longer be subject to a right of first refusal.

I. Any due diligence review conducted related to the exercise of a right of first refusal will be undertaken by a third party bound by a confidentiality agreement that protects any proprietary information from being released or made public.

2. GOA First Right of Refusal

For communities with at least three percent of the initial PQS allocation of any BSAI crab fishery based on history in the community that are in the area on the Gulf of Alaska north of 56°20'N latitude, groups representing qualified communities will have a first right of refusal to purchase processing quota shares which are being proposed to be transferred from unqualified communities in the identified Gulf of Alaska area.

The entity granted the right of first refusal and terms and method of establishing the right of first refusal will be the same as specified in the general right of first refusal.

3. Community Purchase Option

Allow for a community organization in those communities that have at least 3 percent of the initial PQS allocation of any BSAI crab fishery based on history in the community to be exempted from the restriction for the 150 days of sea time requirement under 1.6 Transferability and Restrictions on Ownership of QS.

4. Identification of Community Groups and Oversight

For CDQ communities, CDQ groups would be the entity eligible to exercise any right of first refusal or purchase shares on behalf of the community. Ownership and management of harvest and processing shares by CDQ groups will be subject to CDQ regulations.

For non-CDQ communities, the entity eligible to exercise the right of first refusal or purchase shares on behalf of a community will be identified by the qualified city or borough, except if a qualified city is in a borough, in which case the qualified city and borough must agree on the entity. Ownership and management of harvest and processing shares by community entities in non-CDQ communities will be subject to rules established by the halibut and sablefish community purchase program.

5. Right of First Refusal is Non-assignable.

The community right of first refusal is not assignable by the community group granted the right.

6. Fisheries Exempt from the Community Right of First Refusal.

The bairdi, Western Aleutian brown king crab and Adak red king crab fisheries are exempt from the right of first refusal.

4. Community Development Allocation (based on existing CDQ program):

Option 2. Expand existing program to all crab fisheries approved under the rationalization program with the exception of the Western AI brown king crab.

Option 3. Increase for all species of crab to 10%. A minimum of 25% of the total CDQ allocation must be delivered on shore.

Option 5. For the WAI brown king crab fishery, the percentage of resource not utilized (difference between the actual catch and GHL) during the base period is allocated to the community of Adak. In any year, that sufficient processing exists at that location, the percentage of the difference between the GHL and actual catch, that was not harvested in these 4 years is not to exceed 10%.

Additional Provisions Concerning the Adak Allocation (from December 2002 motion)

Criteria for Selection of Community Entity to Receive Shares: A non-profit entity representing the community of Adak, with a board of directors elected by the community (residents of Adak) in a manner similar to the CDQ program. As a suboption, the shares given to this entity may be held in trust in the interim by the Aleut Enterprise Corporation and administered by it.

A set of use procedures, investment policies and procedures, auditing procedures, and a city or state oversight mechanism will be developed. Funds collected under the allocation will be placed in a separate trust until the above procedures and a plan for utilizing the funds for fisheries related purposes are fully developed. Funds will be held in trust for a maximum of 2 years, after which the Council will reassess the allocation for further action.

Performance standards for management of the allocation to facilitate oversight of the allocation and assess whether it achieves the goals. Use CDQ type management and oversight to provide assurance that the Council's goals are met. Continued receipt of the allocation will be contingent upon an implementation review conducted by the State of Alaska to ensure that the benefits derived from the allocation accrue to the community and achieve the goals of the fisheries development plan.

5. Program Elements

RAM Division in conjunction with State of Alaska will produce annual reports regarding data being gathered with a preliminary review of the program at 3 years.

Option 2. Formal program review at the first Council Meeting in the 5th year after implementation to objectively measure the success of the program, including benefits and impacts to harvesters (including vessel owners, skippers and crew), processors and communities by addressing concerns, goals and objectives identified in the Crab Rationalization problem statement and the Magnuson Stevens Act standards. This review shall include analysis of post-rationalization impacts to coastal communities, harvesters and processors in terms of economic impacts and options for mitigating those impacts. Subsequent reviews are required every 5 years.

Option 5. A proportional share of fees charged to the harvesting sectors and processing sectors for management and enforcement of the IFQ/IPQ program shall be forwarded to the State of Alaska for use in management and observer programs for BSAI crab fisheries.

(from the February 2004 and June 2004 motions)

The Council directs staff to prepare an analysis for delivery to the Council 18 months after fishing begins under the program. The analysis is to examine the effects of the 90/10 A share/B share split and the binding arbitration program on the distribution of benefits between harvesters and processors. After receiving the analysis, the Council will consider whether the A share/B share split and the arbitration program are having their intended effects and, if not, whether some other A share/B share split is appropriate. In addition, staff shall prepare an analysis of captain and crew share (C share) landings for consideration by the Council 18 months after fishing begins under the program. The analysis is to examine landings patterns of C shares to determine whether the distribution of landings among processors and communities of C shares differs from the distribution of landings of the general harvest share pool. After receiving the analysis, the Council

will consider whether to remove the 90/10 Class A/Class B split from C shares, which is scheduled to take effect three years after the beginning of fishing under the program.

6. Cooperative model options:

6.1 Coop model with the following elements and options:

- 1) Individual harvesting and processing histories are issued to both catcher and processors. (Harvesters under Section 1.3.2 a) which meet program qualifications. Processors under Section 2.1, 2.3, and 2.4 (Options 1-4) which meet qualifications of the program).
- 2) Cooperatives may be formed through contractual agreements among fishermen who wish to join into a cooperative associated with one or more processors holding processor history for one or more species of crab. Fleet consolidation within this cooperative may occur either by internal history leasing and vessel retirement or by history trading within the original cooperative or to a different cooperative. A coop agreement would be filed annually with the Secretary of Commerce, after review by the Council, before a coop's catch history would be set aside for their exclusive use.
- 3.) Suboption only : There must be at least 4 or more unique harvester quota share holders engaged in one or more crab fisheries to form a coop associated with a processor. Vessels are not restricted to deliver to a particular plant or processing company.
4. New processors may enter the fishery by purchasing IPQ or by purchase of crab caught with B share landings or by processing CDQ crab. New processors entering the fishery may associate with cooperatives.
5. Custom processing would continue to be allowed within this rationalization proposal.
7. Regional Categories: As adopted earlier
8. Duration of coop agreements.

Option 4. A harvester quota shareholder may exit the cooperative at any time after one season. One season shall mean the season established by the Alaska Board of Fisheries for the fishery associated with the quota shares held by the harvester.
10. Observer requirements: Defer observer requirements to the Alaska Board of Fisheries.
11. Length of program: Same as earlier in Section 5.
12. Option for skipper and crew members: Same as developed earlier.
13. Catch Accounting - All landings including deadloss will be counted against a vessel's quota. Options for treatment of incidental catch are as follows: Same as developed earlier.
14. The North Pacific Fishery Management Council and the National Marine Fisheries Service shall have the authority to implement a mandatory data collection program of cost, revenue, ownership and employment data upon members of the BSAI crab fishing industry harvesting or processing fish under the Council's authority. Data collected under this authority will be maintained in a confidential manner and may not be released to any party other than staffs of federal and state agencies directly involved in the management of the fisheries under the Council's authority and their contractors.

A mandatory data collection program shall be developed and implemented as part of the crab rationalization program and continued through the life of the program. Cost, revenue, ownership and employment data will be collected on a periodic basis (based on scientific requirements) to provide the information necessary to study the impacts of the crab rationalization program as well as collecting data that could be used to analyze the economic and social impacts of future FMP amendments on industry,

regions, and localities. This data collection effort is also required to fulfill the Council problem statement requiring a crab rationalization program that would achieve "equity between the harvesting and processing sectors" and to monitor the "...economic stability for harvesters, processors and coastal communities". Both statutory and regulatory language shall be developed to ensure the confidentiality of these data.

Any mandatory data collection program shall include:

A comprehensive discussion of the enforcement of such a program, including enforcement actions that would be taken if inaccuracies in the data are found. The intent of this action would be to ensure that accurate data are collected without being overly burdensome on industry for unintended errors.

The mandatory data collection program shall have the following elements (from the February 2003 motion):

- A. Purpose. The purpose of the data program is as set out in the June 2002 motion. The Council will require the production of data needed to assess the efficacy of the crab rationalization program and to determine its relative impact on fishery participants and communities.
- B. Type of data to be collected. The data collected shall be that needed to achieve the Council's purpose, with the following general guidelines:
 1. The information will be specific to the crab fisheries included in the crab rationalization plan.
 2. The data shall include information on costs of fishing and processing, revenues for harvesters and processors, and employment data
 3. The general guide for information requirements will be as set out in the draft surveys prepared by National Marine Fisheries Service dated 9/18/02, except
 - a) Non-variable costs shall be collected only as needed to explain and analyze variable cost data.
 - b) Collect a unique identifier for harvesting and processing crew members to explain changes in participation patterns as requested by the AP
 4. Historical information will be required as recommended by the Data Collection Committee.
- C. Method of Collection. Data shall be submitted to an independent third party agent such as the Pacific States Marine Fisheries Commission.
- D. Use of data. Data will be used following these general guidelines:
 1. Data shall be supplied to Agency users in a blind and unaggregated form.
 2. The agencies will develop a protocol for the use of data, including controls on access to the data, rules for aggregation of data for release to the public, penalties for release of confidential data, and penalties for unauthorized use.
 3. The agencies will revise the current Memorandum of Understanding governing the sharing of data between the State of Alaska and National Marine Fisheries Service, and will address in this MOU the role of the third party data collection agent.
 4. The Agency and Council will promote development of additional legislative and regulatory protection for these data as needed.
- E. Verification of Data. The third party collection agent shall verify the data in a manner that assures accuracy of the information supplied by private parties.
- F. Enforcement of the data requirements. The Council endorses the approach to enforcing the data requirements developed by the staff and the Data Collection Committee, as set out on page 3.17-20 in the February, 2003 document entitled "BSAI Crab Rationalization Program, Trailing Amendments", which provides:

Anticipated Enforcement of the Data Collection Program The analysts anticipate that enforcement of the data collection program will be different from enforcement programs used to ensure that accurate landings are reported. It is critical that landings data are reported in an accurate and timely manner, especially under an IFQ system, to properly monitor catch and remaining quota. However, because it is unlikely that the economic data will be used for in-season management, it is anticipated that persons submitting the data will have an opportunity to correct omissions and errors³⁷ before any enforcement action would be taken. Giving the person submitting data a chance to correct problems is considered important because of the complexities associated with generating these data. Only if the agency and the person submitting the data cannot reach a solution would the enforcement agency³⁸ be contacted. The intent of this program is to ensure that accurate data are collected without being overly burdensome on industry for unintended errors.

A discussion of four scenarios will be presented to reflect the analysts understanding of how the enforcement program would function. The four scenarios are 1) a case where no information is provided on a survey; 2) a case where partial information is provided; 3) a case where the agency has questions regarding the accuracy of the data that has been submitted; and 4) a case where a random "audit" to verify the data does not agree with data submitted in the survey.

In the first case, the person required to fill out the survey does not do so. In the second case, the person fills out some of the requested information, but the survey is incomplete. Under either case that person would be contacted by the agency collecting the data and asked to fulfill their obligation to provide the required information. If the problem is resolved and the requested data are provided, no other action would be taken. If that person does not comply with the request, the collecting agency would notify enforcement that the person is not complying with the requirement to provide the data. Enforcement would then use their discretion regarding the best method to achieve compliance. Those methods would likely include fines or loss of quota and could include criminal prosecution.

In the third case the person fills out all of the requested information, but the agency collecting the data, or the analysts using the data, have questions regarding some of the information provided. For example, this may occur when information provided by one company is much different than that provided by similar companies. These data would only be called into question when obvious differences are encountered. Should these cases arise, the agency collecting the data would request that the person providing the data double check the information. Any reporting errors could be corrected at that time. If the person submitting the data indicates that the data are accurate and the agency still has questions regarding the data, that firm's data could be "audited". It is anticipated that the review of data would be conducted by an accounting firm selected jointly by the agency and members of industry. Only when that firm refuses to comply with the collecting agencies attempts to verify the accuracy of the data would enforcement be contacted. Once contacted, enforcement would once again use their discretion on how to achieve compliance.

The fourth case would result when the "audit"³⁹ reports different information than the survey. The "audit" procedure being contemplated is a verification protocol similar to that which was envisioned for use in the pollock data collection program developed by NMFS and PSMFC. During the design of this process, input from certified public accountants was solicited in order to develop a verification process that is less costly and cumbersome than a typical "audit" procedure. That protocol involves using an accounting firm, agreed upon by the agency and industry, to conduct a random review of certain elements of the data provided⁴⁰.

³⁷The intent of the program is to have enforcement actions triggered by the willful and intentional submission of incorrect data or noncompliance with the requirements to submit data.

³⁸The term enforcement agency in this case may or may not include the RAM Division and the Office of Administrative Appeals (in addition to NMFS Enforcement). Those details are still under discussion within NOAA.

³⁹This "audit" could be the result of either the random review process that is contemplated or an "audit" triggered under scenario three.

⁴⁰However, in cases of non-compliance in which enforcement has to be notified, the data verification process is likely be more comprehensive.

Since some of the information requested in the surveys may not be maintained by companies and must be calculated, it is possible that differences between the "audited" data from financial statements and survey data may arise. In that case the person filling out the survey would be asked to show how their numbers were derived⁴¹. If their explanation resolves the problem, there would be no further action needed. If questions remained, the agency would continue to work with the providers of the data. Only when an impasse is reached would enforcement be called upon to resolve the issue. It is hoped that this system would help to prevent abuse of the verification and enforcement authority.

In summary, members of the crab industry will be contacted and given the opportunity to explain and/or correct any problems with the data, that are not willful and intentional attempts to mislead, before enforcement actions are taken. Agency staff does not view enforcement of this program as they would a quota monitoring program. Because these data are not being collected in "real" time, there is the opportunity to resolve occasional problems as part of the data collection system. Development of a program that collects the best information possible to conduct analyses of the crab rationalization program, minimizes the burden on industry, and minimizes the need for enforcement actions are the goals of the data collection initiative.

Clarifications and Expressions of Council Intent

At its October 2002 meeting the Council clarified several issues in the June 10, 2002 motion identifying a preferred alternative for rationalizing the Bering Sea/Aleutian Islands crab fisheries. Since the Council motion of June was not a final action, the Chairman suspended the rule which would require a super majority to alter the motion. Decisions were by a simple majority of the Council. In addition, Hazel Nelson, who joined the Council since the June meeting, was permitted to participate in all votes. The following clarifications of the June motion were made:

1. A cutoff date of June 10, 2002 was established for the processor shares ownership cap grandfather provision - The ownership cap on processing shares to prevent persons from acquiring shares in excess of specific caps would be applied as of June 10, 2002. This cutoff date would prevent persons from acquiring interests in processing history in excess of the specified cap after the cutoff date.
2. Ownership/use cap distinction - The current council motion contains several provisions that limit ownership and use of the harvest and processing shares. These provisions include the following:
 - 1.6.3 contains provisions limiting the ownership of QS
 - 1.6.4 contains provisions limiting processor ownership of QS
 - 1.7.4 contains provisions limiting a vessels use of IFQs
 - 2.7.1 contains provisions limiting ownership of the PQS pool
 - 2.7.2 contains a use cap of 60 percent for the Northern region opilio crab fishery

The Council confirmed that the ownership caps limit ownership of the QS and PQS, which carry a long-term privilege, and IFQs and IPQs, which are annual allocations. Application of the caps to both types of shares is consistent with interpretation of caps in the halibut and sablefish IFQ program, in which use caps are interpreted as limiting IFQ use and the ownership of both QS and IFQs. This broad interpretation has two primary effects. First, this interpretation prevents individuals from accumulating shares in excess of the cap through leasing arrangements. Long term leasing, unlimited under a narrow interpretation of the caps, could allow a person to effectively control shares well in excess of cap. Second, under the broad interpretation the caps operate as a individual use cap since IFQ and IPQ holdings determine use. The IPQ use cap in the

⁴¹Any time a number must be derived, the survey will provide direction on how to calculate the information requested. This direction should help minimize differences. However, when discrepancies do arise, the firm will be given an opportunity to show how they derived their figures, and correct the information if necessary.

North region *C. opilio* fishery also operates as both a cap on ownership of PQS and IPQs in that region and as a use cap on IPQs in that region. The vessel use caps would limit the use of shares on a vessel but would not impose any limit on share ownership.

Although custom processing is permitted by the Council motion, the Council established that limits on ownership and use would count any crab custom processed by a plant toward the cap of the plant owner. The application of the cap to custom processing is intended to prevent consolidation, which could occur if custom processing is not considered.

3. Norton Sound red king crab fishery CDQ allocation - The Council clarified that the increase of CDQ allocations does not apply to the Norton Sound red king crab fishery. The Norton Sound fishery was excluded from the CDQ allocation increase because its currently regulated under a super exclusive permit program that prohibits its participants from participating in any of the other BSAI crab fisheries. The Norton Sound permit rules are for the benefit local, small vessel participants in that fishery.
4. Adak allocation in the WAI(Adak) golden king crab fishery - The Council motion provides for the allocation of unused resource (up to 10 percent) in the WAI (Adak) golden king crab fishery to the community of Adak. The Council asked for additional information for determining the entity to receive this allocation (see Additional Issues, below).
5. Regionalization of the initial allocation in the WAI (Adak) golden king crab fishery - In the Council's motion, the WAI golden king crab fishery is regionalized by designation of 50 percent of A shares (and corresponding processor shares) as west shares and by the remaining 50 percent of A shares (and corresponding processor shares) being undesignated. The Council clarified that individual processing share allocations would be made with the 50 percent west shares to participants with processing facilities in the west. If the allocations of processors with facilities in the west does not equal 50 percent, the remaining west allocation could be allocated on a pro rated basis to participants without facilities in the west. These remaining west shares could be pro rated so that each shareholder with west facilities would get the same portion of its initial allocation as west shares.

For harvesters, individual harvesters share allocations would made with each harvester with west history allocated west shares. If the allocations of vessels with west history exceed 50 percent of the fishery, share allocations would be pro rated so that each shareholder with west history receives the same portion of its allocation as west shares.

6. Catcher/processor definition for purposes of processing crab harvested with Class B harvest shares² - A catcher/processor must be defined for purposes of applying the restriction on deliveries of B shares to catcher/processors (Section 1.3.3(b)). In a share based program, definition of this sector can be problematic because vessels used as catcher/processors are also used as floating processors. The Council clarified that for purposes of implementing this provision, a vessel that takes deliveries of crab harvested with Class B shares would be considered a floating processor for the duration of the season and would be prohibited from operating as a catcher/processor during that season. Likewise, a vessel that operates as a catcher/processor during a season would be prohibited from taking delivery of crab harvested with Class B shares during that season.
7. Sector cap on catcher/processors - Catcher/processors are permitted to purchase PQS from shore based facilities for use within 3 miles of shore (Section 1.7.2.3, Option 2). The "catcher/processor sector" also is capped at "the aggregate level of the initial sector-wide allocation" (Section 1.7.2.3, Option 8). The Council clarified the following effects of these provisions:
 - A) The catcher/processor sector-wide cap applies only to catcher/processor shares and not to the use or ownership of processing shares by catcher/processors.

² This clarification pertains only to processing of crab harvested with Class B harvest shares and does not pertain to processing of crab harvested with Class A IFQs or the harvesting of crab.

- B) Catcher/processor shares cannot be created by combining the processing privilege of PQS or IPQs with the harvest privilege of Class A QS or IFQs.
 - C) The catcher/processor sector-wide cap applies only to catcher/processor shares and not to the use or ownership of catcher vessel harvest shares by catcher/processors.
8. Regionalization of PQS allocations to catcher/processors - Processing shares allocated to catcher/processors would be regionally designated based on the historic area of processing. State records of processing activity should be adequate for determining the location of processing activity.
9. Definition of a lease - the word "not" was inadvertently omitted from the definition of a lease. The definition was revised to read:
- Leasing is defined as the use of IFQs on a vessel that the QS owner holds less than 10% ownership of vessel or on a vessel on which the owner of the underlying QS is not present (Section 1.6.2).
10. Grandfathering vessel use allocations in excess of the cap - The Council clarified that a vessel the activity of which is the basis for an allocation in excess of the vessel use cap would be grandfathered with respect to that allocation.
11. Cost recovery definition - The Council clarified that cost recovery funds would be collected in accordance with the current cost recovery program, which allows for the collection of actual costs up to 3 percent of ex vessel gross revenues. The Council provided that costs would be paid in equal shares by the harvesting and processing sectors (on all landings including landings of crab harvested with Class B IFQs). Catcher/processors would pay the entire 3 percent since catcher/processors participate in both sectors. A loan program for share purchases would be established with 25 percent of the fees collected. The motion authorized the collection of 133 percent of actual costs of management under the new program, which would provide for 100 percent of management costs after allocation of 25 percent of the cost recovery to the loan program.
12. Regionalization of the WAI (Adak) red king crab fishery - The processor share allocation in the WAI (Adak) red king crab fishery would be based on the historical landings in the WAI (Adak) golden king crab fishery. No landings in the golden king crab fishery were in the North during the qualifying years. The Adak red king crab fishery would therefore be entirely South. The South designation will be made despite the landing of a portion of the harvests in the Adak red king crab fishery in the North region during the qualifying years for vessels.
13. Rules governing cooperatives - The Council clarified the following rules for governing cooperatives:
- A) Exemption from use caps - Cooperative members would not be subject to either the individual or vessel use caps, which would apply to IFQ holders that are not cooperative members.
 - B) Application of ownership caps - To effectively limit ownership, the number of shares (IFQs and QS) that each cooperative member could bring to a cooperative would be subject to the ownership caps (with initial allocations grandfathered).
 - C) IFQ allocations to cooperatives - The annual allocations of IFQs of cooperative members would be made to the cooperative, with use of those shares governed by the cooperative agreement.
 - D) Leasing - Leasing among cooperative members would be unlimited. For IFQ holders that are not cooperative members, leasing would be allowed for the first 5 years of the program.

- E) Inter-cooperative transfers - Transfers between cooperatives would be undertaken by the members individually, subject to ownership caps. Requiring the inter-cooperative transfers to occur through members is necessary for the application of the ownership caps.
- F) Four entities are required for a cooperative - The requirement for four owners to create a cooperative would require four unique entities to form a cooperative. Independent entities must be less than 10 percent common ownership without common control (similar to the AFA common ownership standard used to implement ownership caps).
- G) Monitoring and enforcement at the cooperative level - The monitoring and enforcement of harvest allocations would be at the cooperative level (rather than the individual level). Cooperative members would be jointly and severally liable for the actions of the cooperative.

Vertical Integration Caps (from the February 2003 motion)

The Council clarified that the 5 percent cap on QS holdings by processors shall exempt only the primary corporate processing entity from more restrictive generally applicable caps on QS holdings. All individuals and subsidiaries will be subject to the general caps on QS holdings.

A/B Share Linkage (from the April 2003 meeting)

At its April 2003 meeting:

The Council clarified that the A/B share component of QS will be linked for purposes of transfers.

**Draft Comments of North Pacific Fishery Management Council to Proposed Rule
Allocating Bering Sea and Aleutian Islands King and Tanner Crab Fishery Resources
Crab Rationalization RIN 0648-AS47
December 2004**

Regulation Section	Issue/Comment	Council motion provisions	Suggested solution
§680.1	The rationale for having both ECCOs and ECC entities is not clear. The ECCO seems to be the entity that holds shares for a community, while the ECC entity has the right of first refusal. The Council motion contemplates a single entity to serve both of these purposes. In addition, it is unclear that one entity would have the ability to exercise a ROFR, but not be able to take possession of shares on the exercise of that right. In addition, given the administrative burden of the program, it is unclear why the agency would like to oversee additional entities/organizations.	p.18, 4. Identification of the Community Groups and Oversight	Establish a single entity to hold the right of first refusal and any community shares.
§680.6(c)(2), (e)(2), and (g)(2)	The time for providing the completed submission of historic data is limited to 60 days after final rule becomes effective. Given the historic nature of these data and the complexity of consolidating information into reports, substantially greater time should be permitted for providing these data.		Extend time for submission of historic data.
§680.6(c)(3), (e)(3), and (g)(3)	The rule provides for the submission of information concerning the 2004 fishery, which might be used as a baseline for estimating the economic impacts of the rationalization program on the fishery. The Council motion suggests that regulation follow the committee recommendation that data not less than 2 years prior to the rationalization program be used for estimating rationalization impacts.	p. 21, paragraph B. 4., and committee minutes from June 25, 2002 and September 5, 2002.	Remove provision requiring submission of data from 2004 fisheries.
§680.6(i)	The verification of data provisions require the data provider to provide a broad range of data on request within 15 days of receipt of the request from the data collector. Given the breadth of data that may be requested for verification of reports, the 15 day response time is not sufficient.		Extend period to respond to request for additional data for verification purposes.
§680.20(a)(1)	CVC QS holders should not be required to be in arbitration organizations in the first three years of the program. Arbitration is optional for these share holders until July 1, 2008. They could elect to join the arbitration process by joining an arbitration organization, but should not be required to join.	p.11, Binding Arbitration System, 4. Shares subject to binding arbitration	Make membership in arbitration organizations optional for CVC QS holders prior to July 1, 2008

Regulation Section	Issue/Comment	Council motion provisions	Suggested solution
§680.20(a)(2)	The regulation should not limit negotiations to the preseason period. Although the process for arbitration states that negotiations should be conducted in the preseason (see, p.13 of the Council motion, Last Best Offer Binding Arbitration, Process, 1 Negotiations and voluntary share matching), the purpose of that language is to define the matching of shares for purposes of the arbitration procedure. The regulation suggests that IFQ and IPQ cannot be used if parties do not reach a preseason negotiation. Nothing is lost in the arbitration process from allowing voluntary negotiations between holders of uncommitted shares to occur after the season is begun.	p.13, Last Best Offer Binding Arbitration, Process, 1 Negotiations and voluntary share matching	"Prior" should be deleted from the second line.
§680.20(a)(3)	The word "uncommitted" has been omitted front of IPQ in a few places. Only uncommitted shareholders can negotiate deliveries with holders of uncommitted IFQ.	Last Best Offer Arbitration	Review section for omission of the term "uncommitted".
§680.20(d)(1)	The reference to paragraph (b)(1) should be clear that CVC QS holders may (not must) join Arbitration Organizations prior to July 1, 2008.	p.11, Binding Arbitration System, 4. Shares subject to binding arbitration	Revise provision to exclude CVC QS holders from mandatory membership until July 1, 2008
§680.20(d)(1)(iv)	This provision permits a person to be a member of only one arbitration organization. If a person is only permitted to be a member of a single organization, holders of both IFQ and IPQ cannot meet the requirements of the regulation to be members of separate organizations for IFQ and IPQ.		Revise to allow membership in one IFQ arbitration organization and one IPQ arbitration organization.
§680.20(e)(2)(ii)	This provision requires the use of the "Share Matching Approach," the "Lengthy Season Approach," and "Binding Arbitration". None of these should be required of all participants since arbitration is intended to be voluntary. The regulation requires arbitration organization membership and contracts that define the terms that govern arbitration participation. This provision is overbroad.	Last Best Offer Arbitration	Revise to state that participants shall engage in arbitration subject to the rules and to the extent specified in the contracts.
§680.20(e)(2)(v)	This provision is overbroad. All information generated pursuant to section 620.20 would require each arbitration organization to obtain documents that it and its members have no access to.		This provision should be deleted.

Regulation Section	Issue/Comment	Council motion provisions	Suggested solution
§680.20(e)(2)(v)(B)(1) and (2)	<p>The provisions require the arbitration organizations to deliver notices to uncommitted Arbitration IFQ holders. IPQ arbitration organizations, however, have no way of knowing who holds uncommitted IFQ.</p> <p><u>General comment:</u> As drafted, the arbitration requires the arbitration organizations to deliver several different notices and pieces of information to members that meet certain criteria. The regulation also places strict limitation on the persons that may receive this information (i.e., only holders of uncommitted IFQ are permitted to receive the terms of the arbitration finding or the identities of the holders of uncommitted IPQ that are parties to an arbitration proceeding). The provisions create a paradox under which the persons (or organizations) required to deliver the notices are unlikely to be able to deliver the notices, because no person would be in a position to receive the information that needs to be disseminated or know the identities of the persons that need to receive the information. The regulation could overcome this problem by providing arbitration organizations with the ability to hire a third party for the delivery of notices. That third party should be required to be independent of any associations with any IFQ holders or IPQ holders (except for the management of arbitration organization notices) and be bound to hold all information received confidential.</p>		<p>The provisions should be revised so that persons required to deliver notices 1) have access to the names of those required to receive the notice, 2) have access to the information required to be delivered, and 3) are required to maintain confidentiality.</p>
§680.20(f)(4)	<p>This timeline may not be appropriate for the first year delivery of the arbitration formula.</p>		<p>Allow the same time as permitted in (e)(6) for the Market Report.</p>
§680.20(h)(2)(ii)(B)	<p>This provision permits IPQ holders to initiate arbitration. Only IFQ holders are permitted to initiate arbitration under the Council's arbitration program.</p>	<p>Last Best Offer Arbitration, EIS 2-48 and 4-162.</p>	<p>Limit arbitration initiation to IFQ holders.</p>
§680.20(h)(3)(ii)	<p>This section generally sets out the process by which arbitration is initiated. Although the commitment of shares is defined in the definitions section of the regulation (section 680.1, Committed IFQ and Committed IPQ), the regulation could be clarified, if the process for negotiated commitments were included here.</p>		<p>Include description of commitment definition in this process description of in (h)(3)(ii).</p>

Regulation Section	Issue/Comment	Council motion provisions	Suggested solution
§680.20(h)(3)(ii)	This section limits negotiations to "prior to the date of the first crab fishing season". Negotiation should be permitted at any time, including after the season opens, as long as participants are not committed to another share holder.	See comment concerning §680.20(a)(2) above.	Delete "prior to the date of the first crab fishing season" from this provision.
§680.20(h)(3)(iii)	The provisions concerning the "Lengthy Season Approach" should specify that the adoption of this negotiation/arbitration approach is available only to persons that have committed shares.	Last Best Offer Arbitration	Require share commitments for participants to use the lengthy season approach.
§680.20(h)(3)(iii)	The inclusion of the provisions concerning the "Lengthy Season approach" at this point in the regulations adds confusion to the arbitration process. This paragraph primarily concerns the commitment of shares and the process that share holders undertake preceding, and possibly leading up to, Binding Arbitration. The lengthy season approach is an alternative to that standard procedure.		The provisions concerning the lengthy season approach should be included in the contract for the Contract Arbitrators, but as a separate provision outside the process description here.
§680.20(h)(3)(iii)	The process for arbitration of the lengthy season approach is not well defined in the Council motion. The regulation should not attempt to specifically define that process.	p.13, Last Best Offer Binding Arbitration General, 6. Lengthy Season Approach	The regulation should state that industry should define the procedure for arbitration of the lengthy season approach, including the timing of the proceeding and the ability of any IFQ holders to join the proceeding or opt-in to the outcome of the proceeding.
§680.20(h)(3)(iii)(C)	IPQ holders are not permitted to initiate arbitration under the Council motion - the reference to "IPQ holders" initiating the process should be removed.	Last Best Offer Arbitration, EIS 2-48 and 4-162.	Remove the reference to IPQ holders here.

Regulation Section	Issue/Comment	Council motion provisions	Suggested solution
§680.20(h)(3)(iv)(B)	<p>This provision requires an arbitration IFQ holder to commit at least 50 percent of the IFQ held to an IPQ holder to make a unilateral commitment. The provision should provide for the commitment of the lesser of 50 percent of the IFQ held and an amount of IFQ that results in the commitment of all of the processor's IPQ. In the absence of this provision, a harvester may be unable to commit any IFQ to a processor under the provision because the processor does not hold sufficient IPQ to take most of the harvester's IFQ.</p> <p>In addition, the regulation should consider a lower level than 50 percent for a cooperative to make a unilateral commitment, since a cooperative represents several share holders. A more appropriate threshold might be 50 percent of the average share holding in the cooperative or the average share holding in the fishery.</p>		<p>Revise the provision concerning the minimum commitment.</p> <p>Consider a lower threshold than 50 percent of share holdings for a cooperative unilateral commitment.</p>
§680.20(h)(3)(iv)	<p>The time period to initiate arbitration must be limited on both sides, since only one arbitration proceeding is allowed for each processor. The share matching limit of 25 days before the start of the season is intended to also operate as a limit on the ability to initiate arbitration. In the absence of a limit, a harvester could initiate an arbitration proceeding several months prior to the season, which is unreasonable for all parties including other harvesters that may wish to deliver to that processor.</p>	<p>Last Best Offer Binding Arbitration, Process, 2. Required Share-Matching and Arbitration</p>	<p>Limit IFQ holders from initiating binding arbitration more than 25 days prior to the season opening.</p>
§680.20(h)(3)(iv)(D)	<p>This provision states that the "IPQ holder and IFQ holder may decide to enter Binding Arbitration". Only IFQ holders can initiate the Binding Arbitration and it can be initiated unilaterally by IFQ holders.</p>	<p>Last Best Offer Arbitration, EIS 2-48 and 4-162.</p>	<p>Revise to provide that IFQ holders can unilaterally initiate arbitration and that IPQ holders cannot initiate binding arbitration.</p>
§680.20(h)(3)(v)	<p>IPQ holders are not permitted to initiate arbitration under the Council motion.</p>	<p>Last Best Offer Arbitration, EIS 2-48 and 4-162.</p>	<p>All references to "IPQ holders" initiating the process should be removed.</p>
§680.20(h)(3)(v)	<p>This provision needs to limit arbitration to holders of shares that are committed to one another.</p>	<p>Last Best Offer Arbitration, Negotiation and voluntary share matching and Required Share-matching and arbitration</p>	<p>Revise provision so that an IFQ holder may initiate arbitration with an IPQ holder to which the IFQ holder has committed shares.</p>

Regulation Section	Issue/Comment	Council motion provisions	Suggested solution
§680.20(h)(3)(v)(A), (B), (C), and (D)	The provisions referencing the use of Open Negotiations, the Lengthy Season Approach, Share Matching, and Performance Disputes do not work here because of the timing of these actions and the timing for initiating arbitration. For example, performance disputes will not arise until during the season, while this arbitration referred to here is limited to preseason. These references should be removed, as the preceding language defining the terms of arbitration are clear. The procedures for the lengthy season approach and performance disputes should be defined in the contract, but not specifically defined in the regulation.		Remove the references in (A), (B), (C), and (D) to the open negotiations, lengthy season approach, share matching, and performance disputes.
§680.20(h)(3)(vi)	There needs to be a limit on the time during which a person can join an arbitration proceeding in order to prevent parties joining during the proceeding to disrupt the proceeding.		Require the contract with the Contract Arbitrator to specify the terms and timing of joining the proceedings.
§680.20(h)(3)(vi)	The ability to join should be contingent on the IPQ holder having uncommitted shares and the harvester making a commitment of IFQ		Limit joining by requiring a commitment under §680.20(h)(3)(iv).
§680.20(h)(3)(vii) and (viii)	The rationale for requiring separation of the schedule meeting and the meeting defining terms of last best offers is not clear. It may be that antitrust concerns dictate that IFQ holders that are not part of an FCMA cooperative should not participate in a joint meeting. If that is the case, a provision should be added to that effect.		
§680.20(h)(3)(viii), (ix), and (x)	These provisions should make clear that the arbitration will apply to all committed IFQ of the IFQ holder and the corresponding committed IPQ of the IPQ holder. The arbitration outcome should decide the delivery terms of all shares that the parties have committed to one another.		Revise to make arbitration apply to and fully binding on all deliveries of committed shares of the parties.
§680.20(h)(5)	Under this provision, information flow in binding arbitration is limit to the information submitted by parties and market report and formula. The broad availability of data to IFQ holders under notice requirements and FCMA cooperatives could be argued to create an imbalance in the proceedings.		
§680.20(h)(8)	This provision makes reference to (h)(6)(v), which does not exist.		

Regulation Section	Issue/Comment	Council motion provisions	Suggested solution
§680.20(h)(11)(ii)	Using the same procedure for performance disputes as for other arbitration is not possible because of the timing of arbitration and the timing of performance disputes. The specific process should be defined by industry in the contract with the contract arbitrator.		The contract with the Contract Arbitrator should define the process for resolution of performance disputes through arbitration.
§680.20(h)(11)(iii)	It is unclear how arbitration can be "unsuccessful".		The reference to "unsuccessful" arbitration should be removed or explained.
§680.21	<p>This provision in the rule should not require that harvest cooperatives be FCMA cooperatives. The Council motion establishes a "harvesting cooperative" that is intended to coordinate harvests of its members' IFQ to achieve efficiencies in the fisheries. The terms that govern these harvesting cooperatives are delineated in section 6 of the Council motion (p. 20), with further clarification in item 13 of the Clarifications (pp.25-6). The motion and clarification describe a system of coordination of harvests that would be used to pursue fleet consolidation. Similarly, the clarification describes systems of leasing and use of allocations. No mention of marketing or negotiation activities is made in either the motion or clarifications.</p> <p>In the arbitration section of the motion FCMA cooperatives are distinguished as the only cooperatives that may negotiate on behalf of their members. The current regulation disregards this critical distinction, treating all cooperatives as FCMA cooperatives and thereby limiting the ability of processors and their affiliates to realize the benefits of coordination of harvest activity that could be achieved through the harvest cooperative structure the Council has developed.</p> <p>The language of the Council distinguishes and requires FCMA cooperatives in the arbitration program, the only portion of the motion in which a cooperative would engage in negotiation. In addition, the motion specifically identifies the role of its harvest cooperatives. Given the limited scope of harvest cooperatives actions and the distinction of FCMA cooperatives in the arbitration provisions of the motion, harvest cooperatives should not be required to be FCMA cooperatives.</p>	p. 20, 6. Cooperative model options and pp.25-6, 13 Rules governing cooperatives, see also, Binding Arbitration requiring FCMA cooperatives for purposes of negotiations.	Remove requirement that harvest cooperatives be FMCA cooperatives.

Regulation Section	Issue/Comment	Council motion provisions	Suggested solution
§680.21(a)(3)	The provision prohibits PQS and IPQ holders and their affiliates to join harvest cooperatives. This limits the ability of vertically integrated harvesters to achieve harvest coordination efficiencies. (see comment related to §680.21 above)	p. 20, 6. Cooperative model options and pp.25-6, 13 Rules governing cooperatives	Remove this provision.
§680.21(b)(4) and (5)	<p>Limiting a person to a single cooperative and "all or nothing" participation is inconsistent with Council intent. Doing so, will also limit ability of participants to achieve efficiencies. Any hoped for simplification in management is likely to be lost either through individuals choosing not to join cooperatives (forcing the agency to manage substantially greater numbers of individual holdings) or the use of corporate structures to subvert the intention but not the letter of rules (i.e., the establishment of different unaffiliated share holding companies for different cooperatives). Strict administration of a single cooperative rule, which would be necessary to achieve any saving in management of share transactions, is likely to be ineffective and costly. In addition, a single cooperative requirement is likely to result in substantially greater intercooperative trades, each of which would need to be processed and administered by the agency.</p> <p>An alternative would be to allow a single cooperative per fishery or per fishery and region. This approach would reasonably balance the agency's desire to reduce administrative burdens while still allowing participants to realize efficiency benefits of cooperative coordination of harvests. This approach is also consistent with the EIS description of the program.</p>	EIS 4-34, 4-161, see also Cooperative model options p.20 Council motion and 13. Rules governing cooperatives pp.25-6 Council motion.	Either remove the rule altogether or replace with a rule that permits a person to enter one cooperative per fishery or one cooperative per fishery and region.

Regulation Section	Issue/Comment	Council motion provisions	Suggested solution
§680.21(d)(4)	<p>Conversion of CVC and CPC IFQ to CVO and CPO IFQ, respectively, on allocation to a cooperative effectively removes any owner on board requirement for C shares. The primary purpose of C shares is to provide active fishermen with shares that can be used for leverage in negotiating the terms of their employment. By removing owner-on-board requirements, C shares could be held by persons that do not fish in the fisheries. Even with owner-on-board requirements, C share holders can gain greatly by being cooperative members, since cooperatives will coordinate the harvest of all of the cooperative's shares. Participation in the discussions during which that fishing activity is scheduled will be important to C share holders regardless of whether the C share holders are required to be on board the vessels fishing their shares.</p> <p>This provision also raises the question of whether the converted CVC IFQ would be subject to the Class A/Class B split in the first three years of the program. The regulation should be clear that the split should not apply in the first three years.</p>	1.8.1.9 and EIS 2-44	<p>Require owner on board for CVC and CPC IFQ. Do not convert these shares to CVO and CPO when held by a cooperative.</p> <p>The regulation should clarify that converted CVC IFQ are not subject to the Class A/Class B split during the first three years of the program.</p>
§680.21(f)(4)	Prohibition on cooperative members holding or transferring PQS and IPQ is likely to limit the achievement of efficiencies in the fisheries for a substantial number of vertically integrated share holders. This provision is unnecessary, if cooperatives are not required to be FCMA cooperatives.	See comment on §680.21 above.	Remove the prohibition on cooperative members holding or acquiring IPQ and PQS.
§680.21(g)	In order to have effective use caps, the Council motion specifies that transfers outside a cooperative (i.e., intercooperative transfers) are to be made through individual members. Once IFQ are inside a cooperative any individual or vessel caps do not apply to the movement of those IFQ within the cooperative. In the absence of a requirement that intercooperative transfers be accounted for by individuals in a cooperative for purposes of applying use caps, the program is without any effective use caps. For example, four persons all holding QS at the cap could form a cooperative and acquire additional IFQ through intercooperative transfer in excess of the use caps.	pp.25-6, 13. Rules governing cooperatives.	Require cooperatives to conduct intercooperative transfers through members, as described in the Council motion.
§680.40(b)(2)(i)(B)(2)	This provision suggests that regional designations apply to CVC QS "prior to July 1, 2008."	1.8.1.6	The provision should read, "on and after July 1, 2008."

Regulation Section	Issue/Comment	Council motion provisions	Suggested solution
§680.40(c) and (d)	Some participants would like an option that would allow individuals to receive initial allocations of corporations and partnerships pro rated based on their interests in the corporation or partnership.		
§680.40 (c)(1)(vii)	This provision permits a person that purchased a license to remain in a fishery to use the history of the vessel on which the license was used or on which the license was based. The requirement that the vessel using the license have an interim license could limit the application of this provision to situations where multiple license transfers were required to comply with vessel length limits on licenses.	1.4.1, Option 1	
§680.40(e)(1)(i) and (e)(ii)(D)	This provision refers to the TPD for each year. When taken together with the reference to the "average percentage of the TPD for a person" in (e)(ii)(D), the provisions suggest that the "average annual percentage" approach to determining allocations will be used for processors, which is not correct.	2.3, Option 1, footnote 1 on p. 10 of the Council motion	Clarify method of allocation of processor individual allocations is total individual qualified history divided by all qualified history.
§680.40(f)(3) and (7)	The requirement of a ROFR contract at the time of application is inconsistent with the Council motion. PQS applicants need to enter the contract only if the ECC entity is designated by a time certain.	p. 17 of the Council motion	An alternative is to require a PQS applicant to submit a contract signed by the applicant, but not (not signed by the ECC). If the EEC entity is formed, it can sign the contract. A contract will be formed only if the EEC entity is formed and the ECC entity signs the contract prior to the end of the application period. If the ECCO is not formed by the time of the allocation, the ROFR is waived, as intended by the motion.
§680.40(f)	This section makes interchangeable use of the terms "QS and PQS Application" and "QS or PQS Application" suggesting that QS is subject to a ROFR, which is not the case.	Community purchase and right of first refusal options, p. 16-8 of Council motion	Clarify application of ROFR to only PQS and IPQ.

Regulation Section	Issue/Comment	Council motion provisions	Suggested solution
§680.40(h)(4)	<p>This provision uses processor affiliation for determining whether a QS holder receives Class B IFQ. Eligibility to receive an allocation of B shares in the Council motion relies on whether the processor "controls" delivery of the IFQ. Use of a "control" standard for determining whether B shares will be allocated has two effects:</p> <p>First, if the processor holds a limited amount of IPQ, the A share only allocation should be limited to an amount of IFQ that offset the IPQ holding, with the remainder of the allocation subject to the Class A/Class B split. (See EIS 2-41, which states holders of PQS and their affiliates that hold QS would be allocated Class A IFQ in the amount of their IPQ holdings with the remainder issued as Class A IFQ and Class B IFQ at the same ratio as those allocated to independent harvesters.) Using this approach, a person receives a Class A only IFQ allocation for only those IFQ that are controlled by the processor, with the remainder of the allocation (which is beyond the control of the processor) as a Class A/Class B allocation.</p> <p>Second, if the processor does not control deliveries (regardless of the number of IPQ held), the B share allocation will be necessary for negotiating strength of the person controlling deliveries in their negotiations with processors generally.</p> <p>Issue: If a "control" affidavit is used for determining who will receive B shares, the term "control" must be well-defined, so that the signatory to the affidavit knows what the attestation means.</p>	1.6.4, EIS 2-41	<p>Allocation of "only Class A IFQ" should be limited to the amount of controlled IFQ. The remainder of the allocation should be subject to the Class A/Class B division of fully independent harvesters.</p> <p>The definition of control should be revised to reflect the nature of control at issue (i.e., does the IPQ holder control the delivery of the IFQ). This definition may rely to some extent on "affiliation," but control of deliveries should be paramount.</p>
§680.40(h)(1) through (7)	These provisions appear to make no IFQ allocations for CVC QS holders prior to July 1, 2008. The CVC IFQ should not be subject to region or processor landing restrictions during this time period.	1.8.1.6	The provision should make clear that CVC QS holders receive an allocation prior to July 1, 2008.
§680.40(h)(5)(ii)	The term "IFQ TAC" used in the calculation of the Class A IFQ allocation and the IPQ allocation is not defined. Care should be taken in defining the term to show that prior to July 1, 2008, CVC QS yield IFQ that are not subject to the A share landing requirements and that IPQ should be issued for 90 percent of the CVO IFQ allocation. After July 1, 2008, CVC share holders will receive A shares and IPQ will be issued for 90 percent of the CVO and CVC IFQ allocation.	1.8.1.6 and EIS 2-44.	Clarify definition and calculation of IPQ and Class A IFQ allocations.

Regulation Section	Issue/Comment	Council motion provisions	Suggested solution
§680.40(h) and (i)	These sections should contain the IPQ cap in 680.42 (c)(4), which limits the IPQ allocation in the Bristol Bay red king crab and Bering Sea snow crab fisheries. Inclusion of the caps in the section on use limitations (680.42 (c)(4)) seems incorrect since the allocation is limited, not the use of the allocation.	IPQ caps at p. 16 of the Council motion	Include allocation limitation in this section.
680.40(l)	The legislation authorizing the program provides in section 801(j)(7) provides that IPQ should not create a right, title, or interest in any crab, until that crab is purchased from a fisherman. No similar language appears in the regulation.		Inclusion of language from the legislation in the regulation.
§680.40(m)	The contract terms for ROFR are not those in the Council motion. A cleaner approach would be to just copy the Council motion, rather than reinterpret it.	Contract terms at p. 17 of the Council motion.	Use the language from the motion.
§680.40(m)	For purposes of implementing the ROFR, "movement of shares from a first or second class city, if one exists, and borough, if a first or second class city does not exist," constitutes "movement of shares from the community". Note that this differs from the cooling off period.	General right of first refusal at pp.16-8 of the Council motion	Clarify provisions that apply to movement of shares from the community.
§680.40(m)(2)	The provision states that "any sale must be provided on the same terms" to the EEC entity. This wording is not a complete description of the right of first refusal, since the ability to exercise the right applies for a limited period and is exercised by performing the terms, not receiving an offer.	Contract terms at p. 17 of the Council motion.	Use the language from the motion.
§680.40(m)(6)	Since ROFR applies to IPQ, this provision should be broadened to include waivers with respect to IPQ.	Contract terms at p. 17 of the Council motion.	Broaden the provision so that waivers to apply to IPQ.
§680.40(m)(7)	Since ROFR applies to IPQ, this provision should be broadened to include ROFR with respect to IPQ.	Contract terms at p. 17 of the Council motion.	Broaden the provision so that ROFR applies to IPQ, under the terms of the motion.

Regulation Section	Issue/Comment	Council motion provisions	Suggested solution
§680.41(c)(1)(i)	Table is incorrect concerning CVC or CPC in lines (E) and (F). In line (E), the initial recipient of QS is not relevant (no provision authorizing recipients of an initial allocation to receive shares is included for the acquisition of CVC and CPC shares). The only standard for eligibility to receive CVC or CPC shares is that the person acquiring the shares must be an individual that is a US citizen and an "active participant". Similarly, in line (F), a cooperative cannot receive shares since it doesn't meet those criteria. The line concerning cooperative acquisition could be deleted. Alternatively, a cooperative could be permitted to receive shares through an individual that meets the requirements, if the agency would like to assume the added administrative burden of tracking those transactions and performance of owner on board requirements.	1.8.1.7	Limit eligibility to receive CVC and CPC shares to individuals who are U.S. citizens and "active participants".
§680.41(c)(2)(ii)(B)(3)	Applications to receive CVC and CPC QS by transfer must be by individuals.	1.8.1.7	Limit eligibility to receive CVC and CPC shares to individuals who are U.S. citizens and "active participants".
§680.41(c)(2)(ii)(D)(2)(i) and (ii)	This section does not adequately parallel the Council motion. For corporations and other entities, one "owner" (not "member") must meet the sea time requirement. In addition, that same owner must hold at least a 20 percent ownership interest in the entity. The section does not exactly parallel these requirements.	1.6	Use language from the Council motion.
§680.41(c)(3)(i) and (ii)	It is unclear whether the ECCO can hold and transfer PQS. The ECCO should be able to hold and transfer both QS and PQS.	p. 18, Identification of community groups and oversight	Clarify that ECCOs can hold PQS.
§680.41(c)(3)(i) and (ii)	The provision states that each ECC <u>must</u> designate an ECCO. The rationale for this absolute requirement is unclear. Communities have the option of designating an ECC entity, but would waive the ROFR and not be permitted to use the community purchase privilege, if they chose not to.	pp. 16-8, Community purchase and right of first refusal options	"Must" should be changed to "may".

Regulation Section	Issue/Comment	Council motion provisions	Suggested solution
§680.41(d)(2)(i)(C)	<p>This provision requires a statement from an authorized representative of a community that the ROFR has been offered on sale of shares outside a community. Several aspects should be clarified here. First, a signature from an authorized representative is too strict of a requirement. A provision that requires a PQS/IPQ holder that is subject to ROFR to provide notice to ECC entity (and the agency) of the sale is all that should be included here. Otherwise, reluctance to sign the authorization could lead to a delay in the transaction despite proper notice of the sale.</p> <p>Second, the notice is only required if the sale meets the requirements for the ROFR (i.e., some transfers do not trigger the ROFR). Intra-company transfers, transfers for use in the community, and some transfers of IPQ are not subject to the ROFR. This is not clear from the way the provision is drafted.</p> <p>Third, somewhere in the regulation the process of completing a sale on which the ROFR is exercised should be stated. Under the Council motion, the ECC entity should notify the PQS/IPQ holder (and agency) of its intent to exercise (and evidence of its earnest money payment). Then need some confirmation of performance for the agency to finish the transaction.</p>	pp. 16-8, Community purchase and right of first refusal options	<p>Require notice of the transaction only to the holder of the ROFR only.</p> <p>Require notice only if sale is subject to the ROFR.</p> <p>Develop regulation defining process for exercise of the right.</p>
§680.41(h)	This provision should require designation of the members of the cooperative that are engaged in the transaction for purposes of applying use caps to the shares a person may bring to a cooperative. In the absence of this limitation, persons could join a cooperative and acquire shares in excess of the cap, making individual use caps ineffective.	pp.25-6, 13. Rules governing cooperatives	Adopt requirement consistent with the Council motion.
§680.41(j)(1)(ii)	The community of Adak does not receive the ROFR. It should be expressly excluded here.	General right of first refusal, p. 16 of the Council motion	Exclude Adak from the ROFR.
§680.41(j)(2)(ii)	The community does not need to designate an ECC entity. If they do not the ROFR is waived.	pp. 16-8, Community purchase and right of first refusal options	Change "must" to "may".

Regulation Section	Issue/Comment	Council motion provisions	Suggested solution
§680.41(j)(3)	<p>Requiring the ECC entity to be a signatory to the transfer is inappropriate. A ROFR only requires notice and the opportunity to exercise the right.</p> <p>It may be useful to have PQS holders submit an annual report identifying the amount of IPQ that it used in a community during the year and if used outside a community, who used the IPQ (which would be used to determine whether the ROFR would apply to a future transaction).</p>	pp. 16-8, Community purchase and right of first refusal options	Remove requirement for signature of community authorized representative. Require that the transferor provide evidence of notice to the ECC entity.
§680.41(j)(4)	This provision seems to confuse the process of passing on the ROFR to a successor. If the transfer is within the ECC, the recipient of the PQS would need to sign a contract granting the ROFR to the ECC organization (not "exercising the right") and agree to terms concerning the use of the shares in the community in future years. In addition, the ECC entity need not have signed the contract on application. The submission of the contract signed by the recipient of the shares will allow the agency to delivery the contract to the ECC entity for signature. If the ECC entity does not sign the contract the ROFR would be waived.	pp. 17-18, Contract terms	Revise process for intra-community transfers consistent with the Council motion.
§680.41(j)(5)	The provisions defining the ROFR in the North Gulf need to limit the ROFR to the same terms generally as the general ROFR. This means that the ROFR applies only to the first transfer from the community of origin. These terms are not clear in the current regulation.	pp. 16-18, Community purchase and right of first refusal options and GOA first right of refusal	Revise regulation consistent with the Council motion.
§680.41(l)(2) and (4)	These provisions concern the transfer of CVO QS and CVC QS, respectively. They specifically provide, "Notwithstanding QS use limitations under section 680.42, CVO (CVC) QS may be transferred to any person eligible to receive CVO or CPO (CVC or CPC) QS as defined under paragraph (c) of this section." These provisions appear to override any use caps contained in 680.42 (the only section of the regulation defining use caps). They should be deleted in their entirety.	1.6.3 and 1.8.1.9	Delete these provisions in their entirety.
§680.42(b)(1)(i)	This provision grandfather's from the use caps any initial allocation receive based on licenses owned prior to June 10, 2002. Some purchasers of licenses since that date may have been pushed over the use caps by the license buyback. If a person bought a license after June 10, 2002 and would have been under the limit, but the buyback put the person over the limit, they would not receive an allocation over the cap.		

Regulation Section	Issue/Comment	Council motion provisions	Suggested solution
§680.42(b)(1)(iii)	The provision creates ambiguity concerning non-individuals holding CVC IFQ and QS. CVC IFQ and QS may be held only by individuals.	1.8.1.7	Limit to CVC and CPC share holdings to individuals.
§680.42(b)(2)	This lead in creates an ambiguity concerning individuals holding PQS and IPQ being exempt from the cap. Only corporations and other non-individuals that directly hold PQS and IPQ are exempt from this cap. In addition, the exemption should be limited under cap described in (b)(4), not generally.	1.6.4 of the Council motion and Clarification 13 on p.26	The lead in should read, "Except for corporations and other non-individuals as provided in (b)(4) and CDQ groups as provided for in (b)(3)."
§680.42(b)(3) and (4)	The rule limiting the acquisition of licenses (and history) in excess of the cap after June 10, 2002 should apply to (b)(3) (CDQ caps) and (b)(4) (vertical integration caps), as well as the general caps.	1.6.3 and 1.6.4	Add in control date.
§680.42(b)(3)	For CDQ groups, the individual and collective rule is used to determine holdings for applying the caps.	1.6.3	Add in "individual and collective" application.
§680.42(b)(4)	For PQS holders, the AFA-style 10 percent limited threshold rule is used for determining compliance with the vertical integration cap on IFQ holdings. Under this approach all QS and IFQ holdings of the holder of the PQS and all of its affiliates are counted toward the cap. The application of this rule is not clear from the regulation. A second issue arises in this provision of the regulation because this is an <u>additional</u> cap to the cap in (b)(2)(i). This cap supersedes the cap in (b)(2)(i) only for a corporation or other non-individual directly holding the PQS. In other words, all individuals will still be subject to the individual caps in (b)(2)(i).	1.6.4 and Clarification 13 on page 26 of the motion and EIS 2-43	Clarify the method of calculating holdings. Clarify the application of the cap and the limited exemption.
§680.42(c)(1)	Caps on PQS and IPQ use should the AFA-style 10 percent limited threshold rule, not the individual and collective rule. Under this approach all PQS and IPQ holdings of the holder of the PQS and all of its affiliates are counted toward the cap. The application of this rule is not clear from the regulation.	2.7.1 and EIS 2-46	Clarify the method of calculating holdings.

Regulation Section	Issue/Comment	Council motion provisions	Suggested solution
§680.42(c)(4)	The provision prevents the issuance of IPQ in excess of the "IPQ cap" in the Bristol Bay red king crab fishery and the Bering Sea snow crab fishery. It is very confusing to have this provision in the section on "use limitations" since it is not a use limit, but an allocation limit. The provision should likely be moved to 680.40(h) and/or (i), which concern the allocation of Class A IFQ and IPQ. The provision at a minimum must be referenced in that section.	p. 16, IPQ caps	Move allocation cap to section on allocations (§680.40(h)(5)).
§680.42(c)(5)	This cooling off provision allows IPQ to be used inside the borough, if one exists, and inside the first or second class city, if a borough does not exist. This provision appears to limit use of shares outside of the first or second class city in all cases.	p.16, Cooling down period	Revise provision to define boundaries based on Council criteria.
§680.42(c)(7)	This provision should also state that all CVC IFQ may be delivered to any RCR prior to July 1, 2008. (The section refers only to Class B CVC IFQ. Prior to July 1, 2008, CVC IFQ is not subject to Class A/Class B division.)	1.8.1.6, Option 2	Include CVC IFQ prior to July 1, 2008.
§680.42(c)	For purposes of applying processing caps, crab custom processed at a plant is to be counted toward the cap of the owner of the plant. This requirement appears to be missing.	p.24, clarification 2	Revise to add in custom processing crediting toward the processor cap.
§680.42(d)(5)	Exemption from owner-on-board for CVC and CPO IFQ, if a member of a cooperative is incorrect. Although the Council motion provides for CVC holders to join cooperatives, the Council motion makes no mention of exemptions from owner-on-board requirements. Owner on board requirements are fundamental to the Council's goal of having these shares support active fishermen.	1.8.1.11, EIS 2-44	Remove exemption to owner on board for cooperative members.
Table 7	The table mixes the concepts of eligibility and qualification. Eligibility defines the persons eligible to receive an allocation. For CVO and CPO, holders of permanent LLP licenses are eligible for an initial allocation. For CVC and CVP, persons meeting the historical participation requirement (i.e., landings in 3 of the qualifying years for vessels) and recency requirements (i.e., landings in 2 of the 3 most recent years) are considered eligible. Once persons are found eligible, their allocations are based on the qualifying years shown in Column B. The same subset of years would apply to all participants (CVO, CPO, CVC, and CPC). Column E is incorrect. In addition, Columns C and D define CVC and CVP eligibility, not qualification.	1.8.1.4	Revise table to reflect difference between eligibility and qualification.

Regulation Section	Issue/Comment	Council motion provisions	Suggested solution
Table 7	The table leaves out the season beginning in 1991 for Bering Sea Tanner crab. The seasons shown in (2) and (3) are one season, not two.	1.4.2	Revise dates in the table to include the 1991 BS Tanner season.
Table 7	The table defines seasons with an opening and closing date. Often the last landing of the season is made after the closing date. The regulation should be clear that legal landings made after the closing date will be counted for allocations.		Clarify that these landings will count for determining allocations.
General comment	The Council motion provides that deadloss would be counted against quota. This provision appears to be missing from the regulation.	p.20 paragraph 13 and 1.7.3	Include provision providing for deadloss accounting.
General comment	The Council motion provides for the forfeiture of any overage from the last trip from a fishery and for penalties for any overage in excess of 3 percent of the unused quota on the last trip. These provisions appear to be missing from the regulation.	1.8.2	Clarify that all overages are forfeited and that overages in excess of 3 percent are a violation.
General comment	The Council motion provides that AFA crab sideboards would be removed on implementation of the program. The regulation does not appear to contain a provision concerning the removal of AFA sideboards.	1.8.3 and 2.8	
General comment	The Council motion outlines the terms that should govern the management of the Adak allocation of WAI brown king crab. No provision is made in the regulation for management of that allocation.	p.19, Additional provisions concerning the Adak allocation.	

DRAFT

November 29, 2004

PNCIAC MOTION ON NMFS DRAFT REGULATIONS FOR AMENDMENT 18 AND 19 TO THE BERING SEA AND ALEUTIAN ISLANDS KING AND TANNER CRAB FMP:

PNCIAC supports the following:

1. Allowance for the formation of both FCMA cooperatives for non-affiliated vessels and non-FCMA operating cooperatives to provide affiliated vessels the benefits of rationalization, recognizing non-FCMA cooperatives cannot participate in price formation negotiations.
2. For purposes of cooperative formation, C Quota Share holders should be recognized as unique entities; recognizing the ten per cent rule still applies.
3. The definition of "affiliation" should be amended to include a broader range of considerations including control of deliveries and underlying operating agreements; further, the definition of affiliation should not be restricted to the ten per cent rule.
4. Concerning fishing overages, PNCIAC recommends any overage of three per cent, or less of the "last trip" be forfeited, with the proceeds to be dedicated to the observer program; that additional sanctions for overages above three per cent may be necessary. Further PNCIAC requests development of a post-delivery harvester QS transfer process to accommodate in-season overages.
5. Concerning C Quota Shares, PNCIAC recommends that the definition of "active participation" be included as a criterion for anyone holding C Quota Shares

MOTION ADOPTED UNANIMOUS

Alaska Marketing Association

To: The North Pacific Fisheries Management Council, Ms. Stephanie Madsen, Chair, and NOAA staff.

From: The Alaska Marketing Association
Jake Jacobsen, Manager

Re: Proposed Rules for amending the crab FMP - Please include in Council Notebook.

To Whom It May Concern:

The Alaska Marketing Association has operated as a collective bargaining cooperative (under the Fisherman's Collective Marketing Act of 1934) since 1980 for the purpose of negotiating prices for Bering Sea crab fishermen. Following are the comments of the association manager, Mr. Jake Jacobsen, regarding the proposed rules for implementation of the crab rationalization program. Mr. Jacobsen has managed the association since 1994 and served as a co-chairman of the committee appointed by the NPFMC to form alternatives for an arbitration program.

Comments of Mr. Jacobsen:

My comments deal exclusively with the aspects of the proposed rules regarding price formation. Although I was not in favor of the NPFMC's preferred alternative for arbitration, I think the author(s) of the "proposed rules" have done a good job of constructing a fair and workable program, upholding the intent of the council and providing fairness to both harvesters and processors. Implementation of the program will require cooperation between harvesters and processors and it is our intent to work in good faith with processors to establish an effective program.

My comments include corrections and clarifications I consider necessary in the final rules. I have set my comments within brackets in bold large type following the section of text to which the comment is pertinent. I have taken liberties with the formatting of the text to make it easier for me to find, read and organize. Several sections have been deleted for the sake of brevity.

Thank you for your consideration of my comments below. Please feel free to contact me at 206 784-8948.

Fisheries of the Exclusive Economic Zone Off Alaska; Allocating Bering
Sea and Aleutian Islands King and Tanner Crab Fishery Resources;
Proposed Rules

Sec. 680.2 Definitions.

In addition to the definitions in the Magnuson-Stevens Act, in 50 CFR part 600, and Sec. 679.2 of this chapter, the terms used in this part have the following meanings:

Adak community entity means the non-profit entity incorporated under the laws of the state of Alaska that represents the community of Adak and has a board of directors elected by the residents of Adak.

Affiliation means a relationship between two or more entities in which one directly or indirectly owns or controls a 10-percent or greater interest in, or otherwise controls another, or a third entity directly or indirectly owns or controls a 10-percent or greater interest in, or otherwise controls both. For the purpose of this definition, the following terms are further defined:

(1) **Entity.** An entity may be an individual, corporation, association, partnership, joint-stock company, trust, or any other type of legal entity, any receiver, trustee in bankruptcy or similar official or liquidating agent, or any organized group of

Alaska Marketing Association

persons whether incorporated or not, that holds direct or indirect interest in:

- (i) QS, PQS, IFQ, or IPQ; or,
 - (ii) For purposes of the EDR, a vessel or processing plant operating in CR fisheries.
- (2) Indirect interest. An indirect interest is one that passes through one or more intermediate entities. An entity's percentage of indirect interest in a second entity is equal to the entity's percentage of direct interest in an intermediate entity multiplied by the intermediate entity's direct or indirect interest in the second entity.
- (3) Controls a 10-percent or greater interest. An entity controls a 10-percent or greater interest in a second entity if the first entity:
- (i) Controls a 10-percent ownership share of the second entity, or
 - (ii) Controls 10-percent or more of the voting stock of the second entity.
- (4) Otherwise controls. An entity otherwise controls another when the first entity has the power through any other means whatsoever to exercise a controlling influence over the management or policies of the other entity, unless such power is solely the result of an official position with such entity.

Arbitration IFQ means:

- (1) Class A CVO IFQ held by a person who is not a holder of PQS or IPQ and who is not affiliated with any holder of PQS or IPQ,
 - (2) Prior to July 1, 2008, CVC IFQ held by a person who is not a holder of PQS or IPQ and who is not affiliated with any holder of PQS or IPQ that the holder has elected to submit to the Arbitration System, and
 - (3) After July 1, 2008, Class A CVC IFQ held by a person who is not a holder of PQS or IPQ and is not affiliated with any holder of PQS or IPQ.
- (4) IFQ held by a crab harvesting cooperative so long as no member of that crab harvesting cooperative:
- (i) Holds PQS or IPQ; or
 - (ii) Is affiliated with a person who holds PQS or IPQ.

Arbitration QS means:

- (1) CVO QS held by a person who is not a holder of PQS or IPQ and is not affiliated with any holder of PQS or IPQ,
- (2) Prior to July 1, 2008, CVC QS held by a person who is not a holder of PQS or IPQ and is not affiliated with any holder of PQS or IPQ and that the holder has elected to submit to the arbitration process,
- (3) After July 1, 2008, CVC QS held by a person who is not a holder of PQS or IPQ and is not affiliated with any holder of PQS or IPQ.

Arbitration System means the system established by the contracts required by Sec. 680.20 including the process by which the Market Report and Non-Binding Price Formula are produced and the Binding Arbitration process.

Committed IFQ means:

- (1) Any Arbitration IFQ for which the holder of such IFQ has agreed or committed to delivery of crab harvested with the IFQ to the holder of previously uncommitted IPQ and for which the holder of the IPQ has agreed to accept delivery of that crab, regardless of whether such agreement specifies the price or other terms for delivery or
- (2) Any Arbitration IFQ for which, on or after the date which is 25 days prior to the opening of the first crab fishing season in the QS crab fishery for such IFQ, the holder of the IFQ has unilaterally committed to delivery of crab harvested with the IFQ to the holder of previously uncommitted IPQ, regardless of whether the IFQ and IPQ holders have reached an agreement that specifies the price or other terms for delivery.

Committed IPQ means any IPQ for which the holder of such IPQ has received a commitment of delivery from a holder of Arbitration IFQ such that the Arbitration IFQ is committed IPQ, regardless of whether the Arbitration IFQ and IPQ holders have reached an agreement that specifies the price or other terms for delivery.

Crab cooperative IFQ means the annual catch limit of IFQ crab that may be harvested by a crab harvesting cooperative that is lawfully allocated a harvest privilege for a specific portion of the TAC of a CR fishery.

Crew means:

- (1) Any individual, other than the captain or fisheries observers, working on a vessel that is engaged in fishing.
- (2) For the purposes of the EDR, each employee on a vessel, excluding the captain, that participated in any CR fishery.

Lease of QS/IFQ or PQS/IPQ means a temporary, annual transfer of crab IFQ or IPQ without the underlying QS or PQS.

Mutual Agreement for purposes of the Arbitration System means the consent and agreement of Arbitration Organizations that represent an amount of Arbitration QS equal to more than 50 percent of all the Arbitration QS in a fishery, and an amount of PQS equal to more than 50 percent of all the PQS in a fishery based upon the Annual Arbitration Organization Reports.

Alaska Marketing Association

Processing, or to process means the preparation of, or to prepare, crab to render it suitable for human consumption or storage. This includes, but is not limited to, cooking, canning, butchering, sectioning, freezing or icing. [I think it would be a good idea to specifically state that deliveries for the purpose of live shipping are allowed. Crab delivered for the purpose of live shipment are not suitable for consumption of storage. In addition, live shipping is not considered "processing" as defined by ADIC or USCG. I think the intent here is to continue to allow all typical pre-rationalization product forms.]

Uncommitted IFQ means any Arbitration IFQ that is not Committed IFQ.

Uncommitted IPQ means any IPQ that is not Committed IPQ.

Sec. 680.3 Relation to other laws. Deleted

Sec. 680.4 Permits.

Section Deleted

Sec. 680.8 Facilitation of enforcement. Deleted -

Sec Sec. 600.730 of this chapter. Deleted -

Sec. 680.9 Penalties. Deleted -

Subpart B—Management Measures

Sec. 680.20 Arbitration System.

Applicability—

[The following text should be inserted: "Types of cooperatives governed under this section: The regulations in this section apply only to crab harvesting cooperatives that have formed for the purpose of applying for and of fishing under a crab cooperative IFQ fishing permit issued by NMFS". Inclusion of this language is consistent with Sec. 680.21 and would help to preserve activities permitted under the FCMA for collective bargaining cooperatives.]

(1) Arbitration System. All CVO and CVC QS, PQS, Arbitration IPQ, Class A IFQ holders, and IPQ holders must enter the contracts as prescribed in this section that establish the Arbitration System. Certain parts of the Arbitration System are voluntary for some parties, as specified in this section. All contract provisions will be enforced by parties to those contracts.

(a) Open negotiation. At any time prior to the first crab fishing season for that crab fishing year for that crab QS fishery, any holder of uncommitted IPQ may negotiate with any holder of uncommitted IPQ, the price and delivery terms for that season or for future seasons for any uncommitted IFQ and IPQ. QS holders, uncommitted IFQ holders and PQS or IPQ holders may freely contact each other and initiate open negotiations.

(b) Eligibility for Arbitration System—(1) Arbitration Organization. The following persons are the only persons eligible to join an Arbitration Organization:

- (i) Holders of CVO and CVC QS,
- (ii) Holders of PQS,
- (iii) Holders of Arbitration IFQ,
- (iv) Holders of Class A IFQ affiliated with a PQS or IPQ holder, and
- (v) Holders of IPQ.

(2) Persons Eligible to Use Negotiation and Binding Arbitration Procedures. The following persons are the only persons eligible to enter contracts with a Contract Arbitrator to use the negotiation and Binding Arbitration procedures described in paragraph (h) of this section to resolve price and delivery disputes or negotiate remaining contract terms not previously agreed to by IFQ and IPQ holders under other negotiation approaches:

- (i) Holders of Arbitration IFQ; and
- (ii) Holders of IPQ.

(3) Persons Ineligible to Use Negotiation and Binding Arbitration Procedures. Holders of IFQ or QS that are affiliated with holders of PQS or IPQ are ineligible to enter contracts with a Contract Arbitrator to use the negotiation and Binding Arbitration procedures described in paragraph (h) of this section to resolve price and delivery disputes or negotiate remaining contract terms not previously agreed to by IFQ and IPQ holders under other negotiation approaches.

Alaska Marketing Association

(c) Preseason requirements for joining an Arbitration Organization. All holders of CVO and CVC QS, PQS, Arbitration IFQ, Class A IFQ, and IPQ must join and maintain a membership in an Arbitration Organization as specified in paragraph (d) of this section. All holders of QS, PQS, CVO or CVC IFQ, or IPQ must join an Arbitration Organization at the following times:

- (1) For QS holders and PQS holders except as provided for in paragraph (c)(3) of this section, not later than May 1 of each year for the crab fishing year that begins on July 1 of that year.
- (2) For IFQ holders and IPQ holders, not later than 15 days after the issuance of IFQ and IPQ for that crab QS fishery.
- (3) During 2005, QS and PQS holders must join an Arbitration Organization as described in paragraph (d) of this section not later than July 1, 2005.

(d) Formation process for an Arbitration Organization.

(1) Arbitration Organizations must be formed to select and contract a Market Analyst, Formula Arbitrator, Contract Arbitrator(s), and establish the Arbitration System, including the payment of costs of arbitration, described in this section for each crab QS fishery. All persons defined in paragraph (b)(1) of this section must join an Arbitration Organization.

(i) Arbitration QS/IFQ Arbitration Organization. Holders of Arbitration QS and Arbitration IFQ must join an Arbitration QS/IFQ Arbitration Organization. This Arbitration Organization may not have members who are not holders of Arbitration QS or Arbitration IFQ. Arbitration QS holders and Arbitration IFQ holders may join separate Arbitration QS/IFQ Arbitration Organizations. The mechanism for forming an Arbitration Organization is determined by the members of the organization.

(ii) PQS/IPQ Arbitration Organization. Holders of PQS or IPQ must join a PQS/IPQ Arbitration Organization. This Arbitration Organization may not have members who are not holders of PQS or IPQ. PQS holders and IPQ holders may join separate PQS/IPQ Arbitration Organizations. The mechanism for forming an Arbitration Organization is determined by the members of the organization.

(iii) Affiliated QS/IFQ Arbitration Organization. Holders of CVO QS or Class A IFQ affiliated with a PQS or IPQ holder must join an Affiliated QS/IFQ Arbitration Organization. This Arbitration Organization may not have members who are not holders of QS or IFQ affiliated with a PQS or IPQ holder. CVO QS holders and Class A IFQ holders may join separate Affiliated QS/IFQ Arbitration Organizations.

The mechanism for forming an Arbitration Organization is determined by the members of the organization.

(iv) No person may be a member of more than one Arbitration Organization for a crab QS fishery during a crab fishing year.

(2) Each Arbitration Organization must submit a complete Annual Arbitration Organization report to NMFS. A complete report must include:

- (i) A copy of the business license of the Arbitration Organization;
- (ii) A statement identifying the members of the organization and the amount of Arbitration QS and Arbitration IFQ, Non-Arbitration QS and Non-Arbitration IFQ, or PQS and IPQ held by each member and represented by that Arbitration Organization;
- (iii) QS, PQS, IFQ, and IPQ ownership information on the members of the organization;
- (iv) Management organization information, including:
 - (A) The bylaws of the Arbitration Organization;
 - (B) A list of key personnel of the management organization including, but not limited to, the board of directors, officers, representatives, and any managers.
- (v) The name of the Arbitration Organization, permanent business mailing addresses, name of contact persons and additional contact information of the managing personnel for the Arbitration Organization, resumes of management personnel; and
- (vi) A copy of all minutes of any meeting held by the Arbitration Organization or any members of the Arbitration Organization.

(3) An Arbitration Organization, with members who are QS or PQS holders, must submit a complete Annual Arbitration Organization Report to NMFS by electronic mail to the Regional Administrator, National Marine Fisheries Service, or by mail addressed to the Regional Administrator, National Marine Fisheries Service, Post Office Box 21668, Juneau, Alaska 99802 by:

- (i) June 15, 2005 for the crab fishing year beginning on July 1, 2005.

Alaska Marketing Association

- (ii) May 1 of each subsequent year for the crab fishing year beginning on July 1 of that year.
- (4) An Arbitration Organization, with members who are IFQ or IPQ holders, must submit a complete Annual Arbitration Organization Report to NMFS by electronic mail to the Regional Administrator, National Marine Fisheries Service, or by mail addressed to the Regional Administrator, National Marine Fisheries Service, Post Office Box 21668, Juneau, Alaska 99802 by not later than 15 days after the issuance of IFQ and IPQ for that crab QS fishery.
- (e) Role of Arbitration Organization(s) and annual requirements.
- (1) The members of each Arbitration Organization must enter into a contract that specifies the terms and conditions of participation in the organization.
- (i) The contract with members of an Arbitration QS/IPQ Arbitration Organization, or a PQS/IPQ Arbitration Organization shall include the terms, conditions, and provisions specified in paragraph (e)(2) of this section.
- (ii) The contract with members of an Affiliated QS/IPQ Arbitration Organization shall include the terms, conditions, and provisions in paragraph (e)(3) of this section.
- (2) Provisions for Arbitration QS/IPQ Arbitration Organizations, and PQS/IPQ Arbitration Organizations—(i) Selection of Market Analyst, Formula Arbitrator, and Contract Arbitrator(s). A provision authorizing the Arbitration Organization to act on behalf of its members in the selection of and contracting with the Market Analyst, Formula Arbitrator, and Contract Arbitrator(s) under paragraph (e)(4) of this section.
- (ii) Agreement to participate in the arbitration process. A provision authorizing the Arbitration Organization to require its members to use the Lengthy Season Approach, Share Matching Approach, and Binding Arbitration defined under paragraph (h) of this section.
- (iii) Confidentiality of information. A provision that a member that is a party to a Binding Arbitration proceeding shall sign a confidentiality agreement with the party with whom it is arbitrating stating they will not disclose at any time to any person any information received from the Contract Arbitrator or any other party in the course of the arbitration. That confidentiality agreement shall specify the potential sanctions for violating the agreement.
- (iv) Provision of information to members. A provision requiring the Arbitration Organization to provide to its members:
- (A) A copy of the contracts for the Market Analyst, Formula Arbitrator, and Contract Arbitrator for each fishery in which the member participates;
- (B) A provision that requires the Arbitration Organization to deliver the Market Report and the Non-Binding Price Formula for each fishery in which the member participates within 5 days of its release.
- (v) Information release.
- (A) A provision requiring that the Arbitration Organization deliver to NMFS any data, information, and documents generated pursuant to this section.
- (B) In the case of a PQS/IPQ Arbitration Organization(s),
- (1) A provision that requires the Arbitration Organization to provide for the delivery of the names of and contact information for its members who hold uncommitted IPQ, and to identify the regional designations and amounts of such uncommitted IPQ, to any persons that hold uncommitted Arbitration IFQ and prohibits the disclosure of any information received under this provision to any person except those holders of uncommitted Arbitration IFQ. The provision will require that information concerning uncommitted IPQ be updated within 24 hours of a change of any such information, including any commitment of IPQ, and that information be provided to those persons that hold uncommitted Arbitration IFQ. This provision may include a mechanism to provide information to uncommitted Arbitration IFQ holders through a secure website, or through other electronic means;
- (2) A provision that requires the Arbitration Organization to arrange for the delivery to all holders of uncommitted Arbitration IFQ the terms of a decision of a Contract Arbitrator in a Binding Arbitration proceeding involving a member that holds uncommitted IPQ within 24 hours of notice of that decision. This provision may include a mechanism to provide information to uncommitted Arbitration IFQ holders through a secure website, or through other electronic means; and
- (3) A provision that requires the holders of uncommitted IPQ to provide information concerning such uncommitted IPQ as necessary for the Arbitration Organization to comply with this paragraph and prohibits the disclosure of any such information by a member to any person, except as directed therein.

Alaska Marketing Association

(vi) Costs. A provision that authorizes the Arbitration Organization to enter into a contract with all other arbitration organizations for the payment of the costs of arbitration as specified under this section.

(A) Payment of costs for arbitration. (1) The arbitration organizations must establish a contract that requires the payment of all costs of the Market Analyst, Formula Arbitrator, and Contract Arbitrator(s), dissemination of information concerning uncommitted IPQ to holders of uncommitted Arbitration IFQ, and the costs of such persons associated with lengthy season approach, share matching approach, Binding Arbitration, quality and performance disputes, to be shared equally by all IPQ holders and Arbitration IFQ holders and Class A IFQ holders.

(2) These costs shall be shared based on the amount of IPQ or IFQ held by each person.

(3) These costs shall be divided so that the IPQ holders pay 50 percent of the costs and the Arbitration IFQ and Class A IFQ holders pay 50 percent of the costs.

(4) PQS holders shall advance all costs and shall collect the contribution of Class A IFQ holders at landing subject to terms mutually agreed by the arbitration organizations.

[Arbitration organizations will incur some cost, perhaps substantial cost, preparing for and executing an arbitration proceeding. The rule provides payment for analysts and arbitrators but does not provide for the sharing of the expenses of the arbitration organization initiating the action. Non-member IFQ holders may opt-in to an arbitration result without sharing the full cost of the arbitration.

The result is a negative incentive for IFQ holders to support a professional, informed and useful arbitration organization. The burden of maintaining such an organization will fall to responsible IFQ holders while freeloaders wait for the smoke to clear and opt-in to the result.

One solution to this problem would be that the opt-in provision would only apply to IFQ holders who belong to the arbitration association directly involved in an arbitration proceeding. IPQ holders can notify other arbitration organizations of a proceeding and those organizations can do their own work and bring their own information and price ideas to the table at that time. Their members can then opt-in if they want to.

Another alternative would be to allow an opt-in fee set by the arbitrator for IFQ holders who are not members of participant arbitration organizations.]

(vii) Negotiation methods. A provision that prohibits the Arbitration Organization from engaging in any contract negotiations on behalf of its members, except for those necessary to hire the Market Analyst, Formula Arbitrator, and Contract Arbitrator(s).

[I understand why this provision is important to avoid anti-trust violations for Processors but I am not sure why this provision should extend to harvester Arbitration Organizations organized as FCMA collective bargaining associations. It is my understanding that individual IFQ entities may form an Arbitration Organization with one member. Is that member then prohibited from forming a contract on his own behalf?]

(viii) Transfer of QS, PQS, IFQ, or IPQ. A provision under which members of the Arbitration Organization agree that any transfer of QS, PQS, IFQ or IPQ shall be conditioned on the purchaser of such Arbitration QS, PQS, Arbitration IFQ,

Alaska Marketing Association

or Non-Arbitration Class A IFQ, or IPQ being a member of an Arbitration Organization that satisfies all of the applicable requirements of this section and such purchase being subject to all of provisions of the Arbitration System that apply to the holder of the transferred QS, PQS, IFQ, or IPQ.

(ix) Enforcement of the contract. Violations of the contract shall be enforced under civil law.

(3) Provisions applying to Affiliated QS/IFQ Arbitration Organizations. The provisions that allow for the provision of information to members, payment of costs, limits on the transfer of QS, PQS, IFQ, and IPQ, and enforcement of the contract as described under paragraphs (e)(iv), (v), (viii), and (ix) will apply to the contract among members of an Affiliated QS/IFQ Arbitration Organization(s).

(4) Process for selecting of Market Analyst, Formula Arbitrator, and Contract Arbitrator(s).

(i) For each crab fishing year, QS holders who are members of Arbitration QS/IFQ Arbitration Organization(s) and PQS holders who are members of PQS/IPQ Arbitration Organization(s), by mutual agreement, will select one Market Analyst, one Formula Arbitrator, and Contract Arbitrator(s) for each crab QS fishery.

[Can Affiliated QS arbitration organizations also select "one Market Analyst, one Formula Arbitrator, and Contract Arbitrator(s) for each crab QS fishery" or are they lumped with either harvesters or processors?]

The number of Contract Arbitrators selected for each fishery will be subject to the mutual agreement of those arbitration organizations. The selection of the Market Analyst and the Formula Arbitrator must occur in time to ensure the Market Report and non-binding price formula are produced within the time line established in paragraph (e)(4)(ii).

(ii) The arbitration organizations representing Arbitration QS holders or PQS holders in a crab fishery shall establish by mutual agreement the contractual obligations of the Market Analyst, Formula Arbitrator, and Contract Arbitrator(s) for each fishery, which shall provide that the Market Report and Non-Binding Price Formula are produced not later than 50 days prior to the first crab fishing season for that crab QS fishery in that crab fishing year except as provided in paragraph (e)(6) of this section. The contractual obligations of the Market Analyst, the Formula Arbitrator and Contract Arbitrators will be enforced by the parties to the contract.

(iii) The same person may be chosen for the positions of Market Analyst and Formula Arbitrator for a fishery.

(iv) A person selected to be a Contract Arbitrator may not be the Market Analyst or Formula Arbitrator, and shall not be in the employ or otherwise associated with the Market Analyst or Formula Arbitrator, for that fishery.

(5) Notification to NMFS. Not later than June 1 for that crab fishing year, except as provided in paragraph (e)(6) of this section, the arbitration organizations representing the holders of Arbitration QS and PQS in each fishery shall notify NMFS of the persons selected as the Market Analyst, Formula Arbitrator, and Contract Arbitrator(s) for the fishery by electronic mail addressed to the Regional Administrator, National Marine Fisheries Service, or by mail addressed to the Regional Administrator, National Marine Fisheries Service, Post Office Box 21668, Juneau, Alaska 99802. The arbitration organizations shall include a list of arbitration organizations that mutually agreed to the selection of the Market Analyst, Formula Arbitrator, and Contract Arbitrator(s) and signatures of representatives of those arbitration organizations and a copy of the contract with Market Analyst, the Formula Arbitrator, and each Contract Arbitrator. The notification must include a curriculum vitae and other relevant biographical material for each of these individuals.

(6) First-year implementation. During 2005:

(i) Selection of and establishment of the contractual obligations of the Market Analyst, Formula Arbitrator, and Contract Arbitrator(s) as required under this section shall occur not later than July 30, 2005; and

(ii) The Market Report and Non-Binding Price Formula shall be produced not later than 25 days prior to the first crab fishing season for that crab QS fishery in that crab fishing year as required under this section.

(f) Roles and standards for the Market Analyst and process for producing the Market Report.

(1) For each crab QS fishery, the Arbitration QS/IFQ Arbitration Organizations and the PQS/IPQ Arbitration Organizations shall establish a contract with the Market Analyst to produce a Market Report for the fishery. The terms of this contract must specify that the Market Analyst must produce a Market Report that shall provide an analysis of the market for products of that fishery.

Alaska Marketing Association

- (2) The contract with the Market Analyst must specify that:
- (i) The Market Analyst shall base the Market Report:
 - (A) On a survey of the market for crab products produced by the fishery.
 - (B) Information provided by the IPQ and IFQ holders regarding market conditions and expectations.
 - (iii) To the extent IPQ and IFQ holders provide information requested by the Market Analyst, they must provide such information directly to the Market Analyst and not to any other IPQ holder or IFQ holder, except that IFQ holders that are members of any single crab harvesting cooperative may share such information with other members of the same crab harvesting cooperative who are authorized to participate in the arbitration system.
 - (iv) The Market Analyst:
 - (A) May meet with IFQ holders who are members of any single crab harvesting cooperative collectively;
 - (B) Shall meet with IPQ holders individually
 - (C) Shall meet with distinct crab harvesting cooperatives individually;
 - (D) Shall meet with IFQ holders who are not members of the same crab harvesting cooperatives individually.
 - (v) The information provided to the Market Analyst by IPQ and IFQ holders must be historical information based on activities occurring more than three months prior to the generation of the Market Report.
 - (vi) The Market Analyst shall keep confidential the identity of the source of any particular information contained in the report. The Market Analyst may note generally the sources from which it gathered information. The report shall:
 - (A) Include only data that is based on information regarding activities occurring more than three months prior to the generation of the Market Report;
 - (B) Include only statistics for which there are at least five providers reporting data upon which each statistic is based and for which no single provider's data represents more than 25 percent of a weighted basis of that statistic; and
 - (C) Sufficiently aggregate any information disseminated in the report such that it would not identify specific price information by an individual provider of information.
 - (vii) The Market Report shall consider the following factors:
 - (A) Current ex-vessel prices, including ex-vessel prices received for crab harvested under Class A, Class B, and CVC IFQ permits;
 - (B) Consumer and wholesale product prices for the processing sector and the participants in the arbitration (recognizing the impact of sales to affiliates on wholesale pricing);
 - (C) Innovations and developments of the harvesting and processing sectors and the participants in the arbitration (including new product forms);
 - (D) Efficiency and productivity of the harvesting and processing sectors (recognizing the limitations on efficiency and productivity arising out of the management program structure);
 - (E) Quality (including quality standards of markets served by the fishery and recognizing the influence of harvest strategies on the quality of landings);
 - (F) The interest of maintaining financially healthy and stable harvesting and processing sectors;
 - (G) Safety and expenditures for ensuring adequate safety;
 - (H) Timing and location of deliveries; and
 - (I) The cost of harvesting and processing less than the full IFQ or IPQ allocation (underages) to avoid penalties for over-harvesting IFQ and a mechanism for reasonably accounting for deadloss.
 - (viii) There shall only be one annual Market Report for each fishery.
 - (ix) The Market Analyst shall not issue interim or supplemental reports for each fishery.
- (3) The Market Analyst shall not disclose any information to any person not required under this section.
- (4) The contract with the Market Analyst must specify that the Market Analyst will provide the Market Report not later than 50 days prior to the first crab fishing season for that crab QS fishery in that crab fishing year to:
- (i) Each Arbitration Organization in that fishery;
 - (ii) NMFS by electronic mail to the Regional Administrator,

Alaska Marketing Association

National Marine Fisheries Service, or addressed to the Regional Administrator, National Marine Fisheries Service, Post Office Box 21668, Juneau, Alaska 99802.

(iii) The Formula Arbitrator and any Contract Arbitrator(s) for the fishery.

(g) Roles and standards for the Formula Arbitrator.

(1) For each crab QS fishery, the Arbitration QS/IFQ Arbitration Organizations and the PQS/IPQ Arbitration Organizations shall establish a contract with the Formula Arbitrator to develop a Non-Binding Price Formula.

(2) The contract with the Formula Arbitrator must specify that:

(i) The Formula Arbitrator will conduct a single annual fleet-wide analysis of arbitrations to establish a Non-Binding Price Formula under which a fraction of the weighted average first wholesale prices for crab products from the fishery may be used to set an ex-vessel price.

(ii) The Non-Binding Price Formula shall:

(A) Be based on the historical distribution of first wholesale revenues between fishermen and processors in the aggregate based on arm's length first wholesale prices and ex-vessel prices, taking into consideration the size of the harvest in each year; and

(B) Establish a price that preserves the historical division of revenues in the fishery while considering the following:

(1) Current ex-vessel prices, including ex-vessel prices received for crab harvested under Class A, Class B, and CVC IFQ permits;

(2) Consumer and wholesale product prices for the processing sector and the participants in arbitrations (recognizing the impact of sales to affiliates on wholesale pricing);

(3) Innovations and developments of the harvesting and processing sectors and the participants in arbitrations (including new product forms);

(4) Efficiency and productivity of the harvesting and processing sectors (recognizing the limitations on efficiency and productivity arising out of the management program structure);

(5) Quality (including quality standards of markets served by the fishery and recognizing the influence of harvest strategies on the quality of landings);

(6) The interest of maintaining financially healthy and stable harvesting and processing sectors;

(7) Safety and expenditures for ensuring adequate safety;

(8) Timing and location of deliveries; and

(9) The cost of harvesting and processing less than the full IFQ or IPQ allocation (underages) to avoid penalties for overharvesting IFQ and a mechanism for reasonably accounting for deadloss.

(C) Include identification of various relevant factors such as product form, delivery time, and delivery location.

(D) Consider the "highest arbitrated price" for the fishery from the previous crab fishing season, where the "highest arbitrated price" means the highest arbitrated price for arbitrations of IPQ and Arbitration IFQ which represent a minimum of at least 7 percent of the IPQ resulting from the PQS in that fishery. For purposes of this process, the Formula Arbitrator may aggregate up to three arbitration findings to collectively equal a minimum of 7 percent of the IPQ. When arbitration findings are aggregated with 2 or more entities, the lesser of the arbitrated prices of the arbitrated entities included to attain the 7 percent minimum be considered for the highest arbitrated price.

(iii) The Non-Binding Price Formula may rely on any relevant information available to the Formula Arbitrator, including, but not limited to,

(A) Information provided by the QS, PQS, IPQ and IFQ holders in the fishery, and

(B) The Market Report for the fishery.

(iv) The Formula Arbitrator:

(A) May meet with IFQ holders who are members of any single crab harvesting cooperative collectively; (B) Shall meet with IPQ holders individually

(C) Shall meet with distinct crab harvesting cooperatives individually;

(D) Shall meet with IFQ holders who are not members of the same crab harvesting cooperatives individually.

Alaska Marketing Association

[Because an FCMA collective bargaining association is not a "harvesting" entity or an IFQ holder, and QS/IFQ holders are allowed to belong to both a harvesting and non-harvesting coop (as I understand), the arbitrator should be allowed to meet with representatives (employees and professional advisors) of the collective bargaining association co-op or with members of that association.]

(v) The Formula Arbitrator may request any relevant information from QS, PQS, IPQ, and IFQ holders in the fishery, but the Formula Arbitrator shall not have subpoena power.

(vi) May obtain information from persons other than QS, PQS, IPQ, and IFQ holders in the fishery, if those persons agree to provide such data. Any information that is provided must be based on activities occurring more than three months prior to the date of submission to the Formula Arbitrator;

(vii) Shall keep confidential the information that is not publicly available and not disclose the identity of the persons providing specific information; and

(viii) The contract with the Formula Arbitrator must specify that the Formula Arbitrator will provide the non-binding price formula not later than 50 days prior to the first crab fishing season for that crab QS fishery in that crab fishing year to:

(A) Each Arbitration Organization in that fishery;

(B) NMFS by electronic mail to the Regional Administrator, National Marine Fisheries Service, or addressed to the Regional Administrator, National Marine Fisheries Service, Post Office Box 21668, Juneau, Alaska 99802.

(C) The Market Analyst and all Contract Arbitrators in the fishery.

(ix) The Formula Arbitrator shall not disclose any information to any person not required under this section, except as permitted by paragraph (j) of this section.

(h) Roles and standards for the Contract Arbitrator(s).

(1) For each crab QS fishery, the Arbitration QS/IPQ Arbitration Organizations and PQS/IPQ Arbitration Organizations shall establish a contract with all Contract Arbitrators in that fishery that specifies that each Contract Arbitrator may be selected to resolve a dispute concerning the terms of delivery, price, or other factors in the fishery.

(2) Selection of Contract Arbitrators. The contract with the Contract Arbitrator shall specify the means by which the Contract Arbitrator will be selected to resolve specific disputes. This contract must specify that for any dispute for which the Contract Arbitrator is selected, that the Contract Arbitrator will comply with the last best offer arbitration method as set forth in this section.

(3) Negotiation and Binding Arbitration Procedure. The contract with the Contract Arbitrator(s) shall specify the following approaches for negotiation and Binding Arbitration among members of the Arbitration Organizations:

(i) Restrictions on collective negotiation. An IFQ and IPQ holder may negotiate individually. Groups of IFQ holders may negotiate collectively with an IPQ holder only under the following provisions:

(A) Members of a crab harvesting cooperative may participate collectively with other members of the same crab harvesting cooperative in Binding Arbitration except as otherwise provided under this section.

(B) Members of different crab harvesting cooperatives shall not participate collectively -

[unless they are also members of a non-IFQ holding FCMA collective bargaining association and their participation is on behalf of the association.]

(C) IPQ holders shall not participate collectively. Only one IPQ holder can enter into Binding Arbitration with any IFQ holder or IFQ holder(s).

(D) An Arbitration Organization cannot negotiate on behalf of a member. This shall not prohibit the members of an Arbitration IFQ Arbitration Organization from negotiation as a crab harvesting cooperative under the FCMA.

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(i) Open negotiations. At any time prior to the date of the first crab fishing season of a crab fishing year for that crab QS fishery, any holder of Arbitration QS or uncommitted IFQ may negotiate with any holder of PQS or uncommitted IPQ, the price and delivery terms for that season for any uncommitted IFQ and IPQ.

(A) Arbitration QS or Arbitration IFQ holders and PQS or IPQ holders may freely contact each other and initiate open negotiations;

(B) If Arbitration QS or Arbitration IFQ holders and PQS or IPQ holders do not reach an agreement on price, delivery terms, or other terms, a party to the contract may initiate Binding Arbitration in accordance with the procedures specified in this section in order to resolve disputes in those price, delivery terms, or other terms.

(ii) Lengthy season approach.

(A) Prior to the date of the first crab fishing season for that crab QS fishery in that crab fishing year an IPQ holder and one or more holders of Arbitration IFQ may choose to adopt a Lengthy Season approach.

(B) A Lengthy Season approach allows an IPQ holder and an Arbitration IFQ holder to agree to postpone negotiation of specific contract terms until a time during the crab fishing year as agreed upon by the Arbitration IFQ holder and IPQ holder participating in the negotiation. The Lengthy Season approach allows the Arbitration IFQ holders and IPQ holder involved in the negotiation to postpone Binding Arbitration, if necessary, until a time during the crab fishing year. If the parties reach a final agreement on the contract terms, Binding Arbitration is not necessary.

(C) If an IPQ holder and one or more Arbitration IFQ holder(s) are unable to reach an agreement on whether to adopt a Lengthy Season approach, they may agree to request a Binding Arbitration or mediation to assist the parties in determining whether to adopt a Lengthy Season approach. The parties may request a Contract Arbitrator to act as a mediator. If the mediation proves unsuccessful, the parties enter Binding Arbitration to determine whether to adopt a lengthy season approach.

(1) Binding Arbitration may begin immediately with the same Contract Arbitrator.

(2) If the Contract Arbitrator serves as a mediator in an unsuccessful mediation, either party may request another Contract Arbitrator for the Binding Arbitration.

(iv) Share Matching.

(A) At any time after the issuance of IFQ and IPQ for a crab QS fishery but not earlier than 25 days prior to the first crab fishing season for a crab QS fishery in the crab fishing year, holders of uncommitted Arbitration IFQ may choose to commit the delivery of harvests of crab to be made with that uncommitted Arbitration IFQ to a holder of uncommitted IPQ.

(B) To commit Arbitration IFQ, the holder of uncommitted IFQ must offer an amount of Arbitration IFQ not less than 50 percent of the Arbitration IFQ holder's total uncommitted Arbitration IFQ.

[A distinction should be made between individual IFQ and cooperative IFQ commitment. I think the idea here is to disincentive frivolous share matching and arbitration, however this provision would restrict the inner machinations of coops whose members wish to harvest "their own" IFQ and to match their shares with traditional markets. It is a disincentive to co-op.]

(C) Any holder of uncommitted IPQ must accept all proposed Arbitration IFQ commitments, up to the amount of its uncommitted IPQ.

The commitment of IPQ will take place on receipt of notice from the holder of uncommitted Arbitration IFQ of the intention to commit that IFQ.

(D) After matching, an Arbitration IFQ holder and an IPQ holder may either decide to enter Binding Arbitration or, with the consent of both the Arbitration IFQ holder and IPQ holder, enter mediation to reach agreement on contract terms. The Arbitration IFQ holder and IPQ holder may request a Contract Arbitrator to act as a mediator to facilitate an agreement.

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(1) If the mediation proves unsuccessful, Binding Arbitration may begin immediately with the same Contract Arbitrator.

(2) If the Contract Arbitrator serves as a mediator in an unsuccessful mediation, either party may request another Contract Arbitrator for the Binding Arbitration.

[I am concerned about those very independent harvesters who fail to match shares and form a contract or initiate arbitration prior to the arbitration initiation deadline (15-days before the season). These would most likely be those entities who want to "cherry-pick" arbitration results for the highest price. However, if a processor has uncommitted IPQ but did not engage in an arbitration proceeding, this "last man" harvester is at the mercy of the processor and without recourse. This situation can be avoided by a share matching deadline or by eliminating the "15-day before the season" deadline for initiating arbitration.]

(v) Initiation of Binding Arbitration. Except for the Lengthy Season approach, at any point more than 15 days prior to the date of the first crab fishing season for a crab QS fishery an Arbitration IFQ holder or IPQ holder may initiate a Binding Arbitration. Binding Arbitration is initiated after the Arbitration IFQ holder notifies an IPQ holder and the Contract Arbitrator(s), or the IPQ holder has notified the Arbitration IFQ holder and the Contract Arbitrator(s). Binding Arbitration may be initiated to resolve price, terms of delivery, and other disputes arising from:

- (A) Open Negotiation among Arbitration IFQ holders and IPQ holders;
- (B) Lengthy Season Approach;
- (C) Share Matching; or
- (D) Performance Disputes.

[How does one initiate a performance dispute arbitration 15 days prior to the season if there hasn't yet been any performance to dispute. In addition, I would recommend a statute of limitations restricting performance dispute arbitrations to a reasonable time frame.]

(vi) Joining a Binding Arbitration Proceeding. Any Arbitration IFQ holder may join a Binding Arbitration proceeding as a party by providing notice to the IPQ holder and the Contract Arbitrator(s).

(vii) Arbitration Schedule Meeting. The Contract Arbitrator shall meet with all parties to a Binding Arbitration proceeding as soon as possible once a Binding Arbitration proceeding has been initiated for the sole purpose of establishing a schedule for the Binding Arbitration. This schedule shall include the date by which the IPQ holder and Arbitration IFQ holder(s) must submit their last best offer and any supporting materials, and any additional meetings or mediation if agreed to by all parties. This meeting will discuss the schedule of the Binding Arbitration proceedings and not address terms of last best offers.

(viii) Terms of Last Best Offers. The Contract Arbitrator will meet with the parties to the Binding Arbitration proceeding to determine the matters that must be included in the last best offer, which may include a fixed price or a price over a time period specified by the parties, a method for adjusting prices over a crab fishing year, or an advance price paid at the time of delivery.

(ix) Submission of Last Best Offers. The parties to a Binding Arbitration proceeding shall each submit to the Contract Arbitrator(s) a last best offer defining all the terms specified for inclusion in a last best offer by the Contract Arbitrator. An Arbitration IFQ holder that is a crab harvesting cooperative may submit a last best offer that defines terms for the delivery of crab harvested by members of that crab harvesting cooperative with IFQ held by the cooperative. An Arbitration IFQ holder that is not a crab harvesting cooperative may submit a last best offer that defines the term of delivery of crab harvested with IFQ held by that person. The IPQ holder that is a party to the proceeding shall submit a single offer that defines terms for delivery of crab harvested with all IFQ that are subject to the proceedings.

[Another problem with the opt-in provision is that a single arbitration proceeding may result in multiple arbitration results. The opt-ins will want to

Alaska Marketing Association

join in on the best result. Again, there is disincentive to participate in the process, as it would be beneficial to sit back and select the highest result. In addition, the processor may not be able to accommodate the delivery terms extended to all the opt-ins (for example the plant capacity may not be adequate to handle the amount of crab to be delivered between two specific dates).]

(x) Arbitration Decisions. The Contract Arbitrator(s) shall decide among each offer received from an Arbitration IFQ holder and the offer received from the IPQ holder. Each arbitration decision shall result in a binding contract between the IPQ holder and the Arbitration IFQ holder defined by the terms of the offer selected by Contract Arbitrator(s).

(xi) Announcement of Decisions.

(A) If last best offers are submitted at least 15 days before the first crab fishing season for that crab fishing year for that crab QS fishery, arbitration decisions shall be issued no later than 10 days before the first crab fishing season for that crab fishing year for that crab QS fishery. Otherwise, the Contract Arbitrator will notify the parties of the arbitration decision within 5 days of the parties submitting their last best offers.

(B) The Contract Arbitrator will notify the parties by providing each Arbitration IFQ holder and IPQ holder that is a party to the Binding Arbitration proceeding, a copy of any decision. The decision is binding on the parties to the Binding Arbitration proceeding.

(4) Basis for the Arbitration Decision. The contract with the Contract Arbitrator shall specify that the Contract Arbitrator will be subject to the following provisions when deciding which last best offer to select:

(i) The Contract Arbitrator's decision shall:

(A) Be based on the historical distribution of first wholesale revenues between fishermen and processors in the aggregate based on arm's length first wholesale prices and ex vessel prices, taking into consideration the size of the harvest in each year; and

(B) Establish a price that preserves the historical division of revenues in the fishery while considering the following:

(1) Current ex[hyphen]vessel prices, including ex[hyphen]vessel prices received for crab harvested under Class A, Class B, and CVC IFQ permits;

(2) Consumer and wholesale product prices for the processing sector and the participants in the arbitration (recognizing the impact of sales to affiliates on wholesale pricing);

(3) Innovations and developments of the harvesting and processing sectors and the participants in the arbitration (including new product forms);

(4) Efficiency and productivity of the harvesting and processing sectors (recognizing the limitations on efficiency and productivity arising out of the management program structure);

(5) Quality (including quality standards of markets served by the fishery and recognizing the influence of harvest strategies on the quality of landings);

(6) The interest of maintaining financially healthy and stable harvesting and processing sectors;

(7) Safety and expenditures for ensuring adequate safety;

(8) Timing and location of deliveries; and

(9) The cost of harvesting and processing less than the full IFQ or IPQ allocation (underages) to avoid penalties for over-harvesting IFQ and a mechanism for reasonably accounting for deadloss.

(C) Consider the Non[hyphen]Binding Price Formula established in the fishery by the Formula Arbitrator.

(ii) The Contract Arbitrator's decision may rely on any relevant information available to the Contract Arbitrator, including, but not limited to:

(A) Information provided by the QS, PQS, IPQ and IFQ holders in the fishery regarding the factors identified in paragraph (h)(4)(i) of this section; and

(B) The Market Report for the fishery.

Alaska Marketing Association

(iii) Each of the Arbitration IFQ holder and the IPQ holder that are party to the proceeding may provide the Contract Arbitrator with additional information to support its last best offer. The Contract Arbitrator must receive and consider all data submitted by the parties.

(iv) The Contract Arbitrator may request specific information from the Arbitration IPQ holder(s) and IPQ holder that would be useful in reaching a final decision. The Contract Arbitrator will not have subpoena power and it is in the sole discretion of the person from whom information is requested as to whether to provide the requested information.

(5) Limits on the Release of Data. The parties to a Binding Arbitration proceeding shall be precluded from full access to the information provided to the Contract Arbitrator.

(i) Arbitration IFQ holders that are party to an arbitration proceeding shall have access only to information provided directly by the IPQ holder to the Contract Arbitrator for that Binding Arbitration proceeding.

(ii) IPQ holders that are party to an arbitration proceeding shall have access only to information provided directly by an Arbitration IFQ holder to the Contract Arbitrator for that Binding Arbitration proceeding.

(iii) The Contract Arbitrator shall keep confidential the information provided by any QS, PQS, IFQ, or IPQ holders in the fishery and not disclose the identity of the persons providing specific information except as provided in paragraph (h)(6) of this section.

(6) Information Provided to NMFS. The contract with the Contract Arbitrator must specify that the Contract Arbitrator provide NMFS with:

(i) A copy of any minutes from any meeting attended by that Contract Arbitrator between or among any PQS or IPQ holders concerning any negotiations under this section.

(ii) Any last-best offers made during the Binding Arbitration process, including all contract details, the names of other participants in the arbitration, and whether the bid was accepted by the Contract Arbitrator; and

(iii) A copy of any information, data, or documents given by the Contract Arbitrator to any person who is not a party to the particular arbitration for which that information was provided. The Contract Arbitrator must identify the arbitration to which those information, data, or documents apply, and the person to whom those information, data, or documents were provided.

(iv) The Contract Arbitrator must provide any information, documents, or data required under this paragraph to NMFS via mail to the Administrator, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802-1668, or electronically not later than 30 days prior to the end of the crab fishing year for which the open negotiation or arbitration applied.

(7) Enforcement of Binding Arbitration decisions. The decision of the Contract Arbitrator for Binding Arbitration shall be enforced among the parties to that arbitration.

(8) Failure of Contract Arbitrator(s). Except as provided for in paragraph (h)(6)(v) of this section, the failure of a Contract Arbitrator to perform shall be enforced by the Arbitration Organizations.

(9) Availability of Terms and Conditions of an Arbitration Decision. Each party to an Arbitration must make the terms and conditions of an arbitration decision available to that party's Arbitration Organization in order for the Arbitration Organization to make such information available to uncommitted Arbitration IFQ holders that may wish to opt-in to those terms as described in paragraph (h)(10) of this section within 5 days of receiving the request for that information.

(10) Post Binding Arbitration opt-in.

(i) An Arbitration IFQ holder with uncommitted IFQ, may opt-in to any contract that results from a completed a Binding Arbitration procedure with any IPQ holder that has uncommitted IPQ.

(A) All the terms from the arbitrated contract will apply.

(B) Once exercised, the opt-in results in a contract that is binding on both the Arbitration IFQ and IPQ holder.

(ii) To initiate the opt-in process, the holder of uncommitted Arbitration IFQ will notify the holder of uncommitted IPQ in writing of its intent to opt-in.

(iii) Holders of uncommitted Arbitration IFQ may opt-in to a contract resulting from a completed Binding Arbitration procedure with a person that holds uncommitted IPQ for that fishery.

(iv) If the IPQ holder and the Arbitration IFQ holder are unable to resolve a dispute regarding whether the opt-in offer is consistent with the original contract from the completed Binding Arbitration procedure, the dispute may be decided by the Contract Arbitrator to the original arbitration that resulted

Alaska Marketing Association

in the contract to which the Arbitration IPQ holder is seeking to opt-in. The Contract Arbitrator will decide only whether the proposed opt-in terms are consistent with the original contract.

(11) Performance disputes. If an IPQ holder and an Arbitration IPQ holder are unable to resolve disputes regarding the obligations to perform specific contract provisions after substantial negotiations or when time is of the essence, the issues of that dispute shall be submitted for Binding Arbitration before a Contract Arbitrator for that fishery.

(i) Binding Arbitration resulting from a performance dispute can occur at any point during or after the crab fishing year. The dispute must be raised by the IPQ holder or the Arbitration IPQ holder. Arbitration of that performance dispute must be initiated prior to the date of the first crab fishing season for the following crab fishing year in that crab QS fishery.

(ii) Performance dispute arbitration shall follow the same procedures described for a Binding Arbitration in paragraph (h) of this section.

(iii) If the arbitration proves unsuccessful or a party fails to abide by the arbitration decision, a party may pursue available contract remedies.

(iv) The costs of arbitrating performance disputes shall be provided from the general fees collected by the arbitration organizations pursuant to paragraph (h) of this section.

(v) The Contract Arbitrator may assign fees to any party bringing frivolous complaints. Any such fees shall be paid by the party and not from the fees collected under paragraph (e)(2)(vi) of this section.

(12) Quality disputes. When disputes regarding the quality of the harvested crab arise within the context of an existing contract, the parties may settle the disputes within the context of the arbitration system according to the following:

(i) In cases where the IPQ holder and Arbitration IPQ holder(s) have agreed to a formula-based price for crab but where they cannot reach an agreement on the quality and price of the crab, the IPQ holder and Arbitration IPQ holder(s) will receive their share of the value of the amount of crab delivered based on the provisions of the contract.

(ii) In quality disputes where the Arbitration IPQ holders prefer to use actual ex-vessel price and not a formula-based price and a dispute arises regarding crab quality and price, the dispute should be referred to a mutually agreeable independent quality specialist firm. This independent quality specialist firm will determine the price to be paid to the IPQ holder and IPQ holder(s).

[The quality specialist should only determine the quality of the crab, not the price. The quality specialist may be eminently qualified to make judgments on the quality of crab and at the same time know nothing of crab prices.]

The IPQ holder and Arbitration IPQ holder(s) with this quality dispute shall share the cost of hiring the specialist firm and agree to abide by its findings according to the terms of their agreement

[This leaves a lot of questions unanswered, such as availability of specialists in remote locations, when will quality judgments be determined etc - all these should be in the contract.]

Public Testimony Sign Up Sheet

Agenda Item C-1 Crab Rationalization

	NAME (PLEASE PRINT)	AFFILIATION
1 ✓	BRUCE HENDRICKSON	CROW
3 2 ✓	Jake Jacobsen	Alaska Marketing Assn.
3 3 ✓	Mimi Tolva	boat owners
3 4 ✓	AGATON KRUCOFF	CITY OF ADAK
3 5 ✓	Rob Trumble	owner / operator
3 6 ✓	Tom Suman	SEA
7 ✓	Coleman Anderson	Deep Sea Fisherman Union
8 ✓	Steve Minnar	CBSFA
9 ✓	Darrey Olsen	DSFU
10 ✓	Frank Kelly	City of UNAIka
11 ✓	Bill Pratt, Eric Pedersen, Joe Sullivan	CRAB Group
3 12 ✓	Shirley Kozd	Patricia Lee, Inc
13 ✓	Eric Olson, Paul Burton	BBEC
14 ✓	Ann Thomson	ACC
3 15 ✓	Terry Leitell	Guide Seafoods
16 ✓	Gert Paine	UCB
17 ✓	Stewart, AKA	ANCIA
18 ✓	John Gunn	NORQUEST Seafoods
19 ✓	Bing Henkel	Erlean / Alaska Se
3 20 ✓	Frank D. Smith	the Alaska Sea
21	Howard Forster	Ouzinkie Native Corp.
22	Roy Warkoff Jr.	Ouzinkie Native Corp.
23	WALT MEZICH	VESSEL OPERATOR
3 24 ✓	dave Fraser	Muir Milach
25		

not present

Cancelled

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

AS

Comments of the Alaska Marketing Association on the Proposed Rule Allocating Bering Sea and Aleutian Islands King and Tanner Crab Fishery Resources.
December 2004

Regulation Section	Issue/Comment	Suggested Solution
680.20	Some of the regulations of this section may be seen as limiting the ability of a non-IFQ holding FCMA Coop to act in behalf of other IFQ holding cooperatives and individual harvesters. Clarification should be given so the legal rights of fishermen provided under the FCMA are not truncated by the regulations of this section.	<p>The following text should be inserted: “Types of cooperatives governed under this section: The regulations in this section pertaining to non-affiliated harvester cooperatives apply only to crab harvesting cooperatives that have formed for the purpose of applying for and of fishing under a crab cooperative IFQ fishing permit issued by NMFS”. Inclusion of this language is consistent with Sec. 680.21 and would help to clarify activities permitted under the FCMA for collective bargaining cooperatives.</p>
680.20 (2) (e) (vi) (A) (4)	<p>Arbitration organizations will incur some cost, perhaps substantial cost, preparing for and executing an arbitration proceeding. The rule provides payment for analysts and arbitrators but does not provide for the sharing of the expenses of the arbitration organization initiating the action. Non-member IFQ holders may opt-in to an arbitration result without sharing the full cost of the arbitration.</p> <p>The result is a negative incentive for IFQ holders to support a professional, informed and useful arbitration organization. The burden of maintaining such an organization will fall to responsible IFQ holders while freeloaders wait for the smoke to clear and opt-in to the result.</p>	<p>One solution to this problem would be that the opt-in provision would only apply to IFQ holders who belong to the arbitration association directly involved in an arbitration proceeding. IFQ holders can notify other arbitration organizations of a proceeding and those organizations can do their own work and bring their own information and price ideas to the table at that time. Their members can then opt-in if they want to.</p> <p>Another alternative would be to allow an opt-in fee set by the arbitrator for IFQ holders who are not members of participant arbitration organizations. This alternative may also include opt ins</p>

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 Jake Jacobson-Rub. Test. 432p

		by affiliated vessels.
680.20 (2) (e) (vii)	I understand why this provision is important to avoid anti-trust violations for Processors but I am not sure why this provision should extend to harvester Arbitration Organizations organized as FCMA collective bargaining associations. It is my understanding that individual IFQ entities may form an Arbitration Organization with one member. Is that member then prohibited from forming a contract on his own behalf?	Application to processor and affiliated arbitration organizations only.
680.20 (2) (e) (ix) (4)	Can Affiliated QS arbitration organizations also select “one Market Analyst, one Formula Arbitrator, and Contract Arbitrator(s) for each crab QS fishery” or are they lumped with either harvesters or processors? Since affiliated vessels cannot participate in arbitrations, should they have a voice in the matter?	Define role of affiliated vessels in selection of analysts and arbitrators.
680.20 (g) (2) (4)	Because an FCMA collective bargaining association may not be a “harvesting” entity or an IFQ holder, and QS/IFQ holders are allowed to belong to both a harvesting and non-harvesting coop (as I understand), the arbitrator should be allowed to meet with representatives (employees and professional advisors) of the collective bargaining association coop or with members of that association.	See comments under 680.20 (first item)
680.20 (3) (i) (b)	Members of different crab harvesting cooperatives shall not participate collectively unless they are also members of the same non-IFQ holding FCMA collective bargaining association.	See comments under 680.20 (first item)
680.20 (3) (iv)	A distinction should be made between individual IFQ and cooperative IFQ share matching commitment. I think the idea here is to disincentive frivolous share matching and “fishing expedition” arbitrations, however this provision would restrict the inner machinations of coops whose members wish to harvest “their own” IFQ and to match their shares with traditional markets. It is a disincentive to co-op.	Modify to exclude harvesting cooperatives.

680.20 (3) (iv) (d) (2)	<p>I am concerned about those very independent harvesters who fail to match shares and form a contract or initiate arbitration prior to the arbitration initiation deadline (15-days before the season). These would most likely be those entities who want to “cherry-pick” arbitration results for the highest price. However, if a processor has uncommitted IPQ but did not engage in an arbitration proceeding, this “last man” harvester is at the mercy of the processor and without recourse.</p>	<p>This situation can be avoided by a share matching deadline prior to an arbitration initiation deadline or by eliminating the “15-day before the season” deadline for initiating arbitration.</p>
680.20 (3) (v) (d)	<p>How does one initiate a performance dispute arbitration 15 days prior to the season if there hasn't yet been any performance to dispute?</p>	<p>Remove deadline for initiating arbitration. In addition, I would recommend a “statute of limitations” restricting performance dispute arbitrations to a reasonable time frame.</p>
680.20 (3) (ix)	<p>Another problem with the opt-in provision is that a single arbitration proceeding may result in multiple arbitration results. The opt-ins will want to join in on the best result. Again, there is disincentive to participate in the process, as it would be beneficial to sit back and select the highest result.</p> <p>In addition, the processor may not be able to accommodate the delivery terms extended to all the opt-ins (for example the plant capacity may not be adequate to handle the amount of crab required to be delivered between two specific dates).</p> <p>In addition, because affiliated vessels are left without recourse to arbitration, they should be allowed to opt in to an arbitration result provided an appropriate fee determined by the arbitrator goes to the harvester Arbitration Organization conducting the arbitration.</p>	<p>Restrict opt-in provision to non-affiliated IFQ holders in the same Arbitration Organization. Affiliated vessels may opt in with an appropriate fee to the harvester arbitration organization.</p> <p>Allow some flexibility for delivery and perhaps other terms as determined by the arbitrator.</p>
680.20 (12) (ii)	<p>The quality specialist should only determine the quality of the crab, not the price. The quality specialist may be eminently qualified to make judgments on the quality of crab and at the same time know nothing of crab prices.</p>	<p>Modify section appropriately.</p>

C-1 Public Test.
handout 12.8.04
Agafon Kruckoff
4:39 pm

February 4, 2004

TESTIMONY of
AGAFON KRUCKOFF, ADAK AK

WESTERN AI BROWN CRAB

Dear Chair, Mrs Madsen, Council members,

The Western Aleutian Islands brown king crab fishery is the only .
BSAI crab fishery in which implementation of the crab plan will
significantly upset the current vessel and processor participation.

The Adak processing operation began in 1999
and became a major brown crab processor immediately,
resulting in full utilization of the fishery for the first time in 1999/2000.
Prior to that season, utilization had been dropping for several years,
with only 1.69 million pounds taken of the 1998/1999 GHL of 2.7 million pounds.
When Adak came on line in 1999, it processed 830,000 pounds
and total landings exceeded 2.7 million pounds.

The fishery was closed for the first time EVER in that season.

The fishery has been fully utilized every year since Adak began processing,
never before.

In it's 1st full season of processing, 2000/2001, Adak passed one million lbs,
which is more than half of total onshore processed lbs for this particular quota.

Adak quickly, [REDACTED]
[REDACTED], established a position as by far being the biggest
processor of Western Aleutian Brown King Crab.

And this fall season, [REDACTED]

Adak has done of total of 1.8 mill lbs
which is more than 75% of the crab taken so far this season,
and above 90% of all shore based landings so far this season.

This is the most crab Adak ever did, including those years when icicle was involved.
In the four years in which the crab program was under consideration at the Council,
Adak became the dominant processor in the WAI brown crab fishery,
and several harvesters became dependent on making deliveries in Adak
instead of making the several day run to Dutch Harbor.

The fishery also became much more healthy
as the grounds spread out and heavily harvested areas further
east was left and got a chance to recover.

If the crab plan is implemented without change,
Adak will receive almost no PQS, probably less than 100,000 pounds,
about 6% of its average for the last four years
(processing history years are 1996/7 through 1999/2000).

The Magnuson-Stevens Act requires consideration of present participation
to ensure that the Council reviews current fishery activity.

In the other BSAI crab fisheries, the great majority of the participants,
both harvesters and processors, have been active for many years.

The most significant change in those fisheries has been low biomass of crab,
not dramatic shifts of participants-and those fisheries
have all been fully utilized, and overcapitalized.

In the WAI brown crab fishery, the biomass is stable,
full utilization occurred only recently, and full capitalization
of both the harvesting and processing sectors occurred in the past couple of years.

- Investments in both sectors will be undercut by the current plan. !

A shift of the processing history years to the recent years which characterize the current fishery

will solve the problem.

It is also a fact that the plan, unless modified, will result that Crab from as far west as Attu and the Russian border, today being delivered in Adak, will have to be taken more than 700 miles, past Adak, pasts Seguam and all the way to Dutch Harbor, this will not make life at sea safer but more dangerous, this will not rise the quality but will increase dead loss and lower utilization, it will further create a shift of a fishery which today has a almost perfect spread, from west to east, and it will create increased effort on grounds which traditionally was much more heavily harvested than the new grounds out west which now probably again will be left underutilized.

I do have a lot of faith and trust in the work which You do, and I am sure that some of this is new to you, one of the reasons is that Congress NEVER asked you to consider rationalization of the Aleutian Islands Crab Fishery. Congress specifically asked for you to consider rationalization of the Crab Fishery in the Bering Sea and the fishery for Rockfish in The Gulf of Alaska, this was also the reason why the Adak Processor and the community of Adak was never invited and never got an opportunity to join any of the various interest groups which was created between Processors and Harvesters.

We in Adak will ask you to educate yourself more and to do some more study with regards to the effect the implementation of the plan will have on Adak, and those who are harvesting the Western Aleutian Islands Brown Crab Fishery. It can be done quickly and in many ways, one way is to appoint a group of those most affected by your actions. At least you should make sure that this fishery, instead of being the first fishery implemented is being the last, this will give you some more time. ! There could be many solutions far better than what the present plan is describing, one of the most drastic could simply be to eliminate Processing Quotas in The Aleutian Islands, this will also give you an interesting opportunity to evaluate the plan in the years to come, who knows, may be the Western Brown would even be more valuable for the fishermen than the Bristol Bay Red, or may be less, who knows????, I can guarantee you would not find one processor or one harvester in the Western Aleutian who would not support such an idea

AGAFON KRUKOFF

~~OK - C P R J~~

on behalf of
MAYOR V. TULTIARKOFF
CITY OF ADAK

C-1 handout PubTest
Steve Minor
12-9-04 8am

Pacific Northwest Crab Industry Advisory Committee
P.O. Box 969
Edmonds, WA 98020
360 440 4737
steve@wafro.com

Pacific Northwest Crab Industry Advisory Committee Minutes

Meeting Date: November 29, 2004, Leif Erickson Hall, Seattle, Washington

Region and Fisheries: Bering Sea and Aleutian Islands King and Tanner Crab Fisheries

PNCIAC Members present: (10) Tom Suryan, Keith Colbern, Kevin Kaldestad, Gary Stewart, Rob Rogers, Clyde Sterling, Garry Loncon, Vic Scheibert, Phil Hanson, Steve Minor, Chair, Arni Thomson, Secretary (non voting). Members absent were: Lance Farr, and Gary Painter.

NMFS staff present: Glenn Merrill, making presentation on NMFS draft crab regulations for Amendments 18 and 19 to the Bering Sea and Aleutian Islands King and Tanner Crab FMP.

Industry present: (44) See attached attendance list.

The Chairman, Steve Minor, called the meeting to order at 10:20 a.m. and immediately introduced Glenn Merrill from the NMFS, Sustainable Fisheries, Juneau, Alaska to make a presentation and to address questions from the public about the draft regulations to implement the BSAI king and tanner crab rationalization program. Mr. Minor noted that this was the only agenda item the committee would be addressing at this meeting.

Summary of presentation and discussions:

- There was a broad range of participation from the industry represented at the meeting, independent and affiliated harvesters, the Alaska Marketing Association, Skippers for Equitable Access, North Pacific Crab Association, Alaska Crab Coalition, and Pacific Seafood Processors Association.
- Glenn Merrill's presentation took about an hour and this was followed by an hour of wide ranging questions and discussions from virtually all sectors of the industry, prior to the group taking a lunch break and reconvening at 2:15 p.m. There were more than 45 questions asked during the session and they were all answered in detail.
- The topics most frequently discussed were:
 1. Processor affiliation: How is affiliation defined and what are the impacts for "affiliated" QS holders?
 2. Cooperative formation, and in particular the narrow range of options available in the proposed rule.

3. North/South quota share issuance and in particular how the IFQ/IPQ matches will be made based on (a) the effects of the vessel buyback and (b) the results of the application period and related appeals. Mr. Merrill did a very good job explaining both the need for and process for QS adjustment.
4. C QS related issues including owner onboard/active participant definitions and how the loan program will be administered.
5. The problem of regulating "overages" on QS holders' landings and the need for some flexibility on this issue.
6. The need for harvester QS holders to have the flexibility to be in more than one cooperative per year and the complexity, cost and number of transactions that will transpire if harvester QS holders are restricted to being in only one cooperative.

- Following the question and answer session, the chairman recessed for a brief period while he formulated five options for the Committee to consider for recommendations.
- Following discussion and clarifications regarding the five options, PNCIAC adopted by a unanimous vote the following recommendations:

PNCIAC MOTION ON NMFS DRAFT REGULATIONS FOR AMENDMENT 18 AND 19 TO THE BSAI KING AND TANNER CRAB FMP:

PNCIAC supports the following:

1. Allowance for the formation of both FCMA cooperatives for non-affiliated vessels and non-FCMA operating cooperatives to provide affiliated vessels the benefits of rationalization, recognizing non-FCMA cooperatives cannot participate in price formation negotiations.
2. For purposes of cooperative formation, C Quota Share holders should be recognized as unique entities; recognizing the ten per cent rule still applies.
3. The definition of "affiliation" should be amended to include a broader range of considerations including control of deliveries and underlying operating agreements; further, the definition of affiliation should not be restricted to the ten per cent rule.
4. Concerning fishing overages, PNCIAC recommends any overage of three per cent, or less of the "last trip" be forfeited, with the proceeds to be dedicated to the observer program; that additional sanctions for overages above three per cent may be necessary. Further PNCIAC requests development of a post-delivery harvester QS transfer process to accommodate in-season overages.
5. Concerning C Quota Shares, PNCIAC recommends that the definition of "active participation" be included as a criterion for anyone holding C Quota Shares

The meeting adjourned at 4:10 p.m.

Respectfully submitted,

Steve Minor, Chair
Pacific Northwest Crab Industry Advisory Committee
December 3, 2004

Alaska Crab Coalition
3901 Leary Way N.W. Suite #6
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206 547 7560
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C-1 handout
Arni Thomson
public testimony
12-9-04 9am

December 8, 2004

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

Subject: Comment and Recommendations on the Proposed Rule to Implement Amendments 18 and 19 to the BSAI King and Tanner Crab FMP

I. Issue: "Affiliation"

A. Membership in Cooperatives

The Proposed Rule prohibits participation in crab fishery cooperatives by QS holders who also hold PQS or IPQ, are affiliated with holders of PQS or IPQ, process Class B shares, or are affiliated with an entity that processes such shares. Sections 680.21(b)(3). See discussion at 69 FR 63226-63227. The Proposed Rule defines "affiliation" broadly, to include, inter alia, a 10 percent or greater ownership or control of an entity. Section 680.2. See discussion at 69 FR 63219-63220.

Comment:

The preamble to the Proposed Rule notes that there is no explicit language in Amendment 18 as to whether holders of QS that also hold PQS or IPQ, or are affiliated with such holders, may be members of a cooperative. 69 FR 63227. The basis for the affiliation criteria and resulting restrictions on cooperatives in the Proposed Rule is an agency interpretation of the antitrust laws and the exception thereto provided by the Fishermen's Collective Marketing Act ("FCMA", 15 USC 521). See further discussion, below. At the same time, the preamble acknowledges some legal uncertainty with regard to these matters. The 10 percent criterion appears to derive from the American Fisheries Act program and from the Council's treatment of ownership and use caps. 69 FR 63219.

For the reasons set forth below, the application of a 10 percent criterion to cooperative membership is unreasonably restrictive, id., and as a result, the Proposed Rule runs counter to the key policy objectives of the rationalization program: improved conservation and safety, and increased economic efficiency. The North Pacific Fishery Management Council could not have intended this result, and there is a strong argument to be made that the antitrust laws do not require such restrictive criteria, and in fact, that

the 10 percent criterion, as applied in the manner provided in the Proposed Rule, would inhibit, not protect, competition.

This overly restrictive criterion for affiliation unduly limits the formation of cooperatives in the following ways:

- **The effect of the 10 percent criterion will be to prohibit harvesters from participation in cooperatives, if they enter into agreements to invest in PQS.**
- **Holders of class B shares who engage in custom processing of those shares with their own company, or are affiliated with an entity doing custom processing, including live crab sales, would be prohibited from participation in cooperatives.**
- **Holders of harvester QS who invest in any amount of PQS will be restricted to the issuance of only class A shares, and forego market leverage opportunities of class B shares.**
- **Under the 10 per cent criterion, processors will realistically only be able to transfer or sell PQS to other processors. This will encourage consolidation of PQS amongst the existing processors and eliminate opportunities for harvester investment in PQS.**

Recommendation:

The Proposed Rule should allow for affiliated QS holders to participate in non-FCMA "operational cooperatives" for purposes of economic efficiency, but affiliated QS holders should be prohibited from participation in price formation negotiations. (See further discussion, below.)

B. Issuance of Class B Shares

The Proposed Rule would also prohibit issuance of Class B shares to holders of PQS or IPQ or to entities affiliated with such holders. Section 680.40(h)(4)(ii). See discussion at 69 FR 63219-63220.

Comment:

An affidavit requirement is set forth in the Proposed Rule as a criterion for the issuance of B shares, as specified in the Council motion (at 1.6.4) and is an important element of accountability and enforceability of the system devised by the Council, and should be preserved.

Recommendation:

The proposed rule should provide for an affidavit process for accountability and enforceability of a system devised by the Council for the issuance of B shares.

ACC supports the Council motion on the issuance of B shares. ACC believes processor controlled IFQ holders should not be issued B shares.

C. Arbitration

An affiliated entity must, and may only, join an Affiliated QS/IFQ Arbitration Organization. Section 680.20(d)(1)(iii). See discussion at 69 FR 63231. PQS- or IPQ-affiliated QS or IFQ holders are ineligible to enter into contracts with a Contract Arbitrator to use the negotiation and Binding Arbitration procedures described in paragraph (h) of this section (roles and standards for the Contract Arbitrator(s)) to resolve price and delivery disputes or negotiate remaining contract terms not previously agreed to by IFQ and IPQ holders under other negotiation approaches. Section 680.20(b)(3). However, section 680.20(e)(3) states that, "the provisions that allow for the provision of information to members, payment of costs, limits on transfers of QS, PQS, IFQ, and IPQ, and enforcement of the contract as described under paragraphs (e)(iv), (vi), (viii), and (ix) will apply to the contract among members of an Affiliated QS/IFQ Arbitration Organization(s)."

Comment:

In the case of arbitration, where sensitive commercial information is necessarily disclosed and exchanged, the 10 percent criterion is arguably defensible.

Recommendation:

In the event that the definition of affiliation is changed to resolve related problems confronting cooperatives or Class B shares in the Proposed Rule, it would be advisable to preserve the current definition of affiliation for the purposes of arbitration.

See also, Conditions and Restrictions for Data Disclosure, below.

II. Issue: Restriction of Crab Harvesting Cooperative Permits to FCMA-Compliant Cooperatives

Section 680.21, Crab fishery cooperatives, preamble and paragraph (a), provide that the requirements thereof apply only to cooperatives formed under the FCMA, and that the rule applies only to cooperatives formed for the purposes of applying for and of fishing under a crab cooperative IFQ fishing permit. Section 680.21(c)(2) expressly provides that crab fishery cooperatives must be formed in accordance with the requirements of the FCMA. (Accordingly, section 680.21(d)(2)(iii) states that, if an application for a cooperative IFQ permit answers yes to the affiliation question, then the coop is not eligible to receive the permit.)

Section 680.4, preamble, states that persons participating in the rationalization program must possess the permits described in the proposed rule. Thus, to enjoy the benefits provided by coops, these organizations must be established in accordance with the FCMA and these regulations.

Comment:

It is by no means clear that the Council, or the Congress, intended that cooperatives for BSAI crab harvesting should be only those as provided for in the FCMA for joint marketing purposes. Other forms of cooperatives would appear to provide benefits intended by the program. Notably, the preamble to the Proposed Rule states, "The primary purpose of crab harvesting cooperatives is to allow crab fishermen to consolidate and collectively manage their QS holdings." 69 FR 63228.

Recommendation:

Cooperative permits should not be restricted to FCMA cooperatives, alone. The regulations should allow other forms of cooperatives, subject to review by the Justice Department.

III. Issue: Prohibition on Membership in More than One Cooperative

The Proposed Rule prohibits simultaneous membership by a QS holder in more than one crab harvesting cooperative. Section 680.21(b)(5).

Comment:

There is no evidence of intent on the part of the Council that a QS holder be prohibited from simultaneous membership in more than one cooperative. Restricting flexibility to transfers among coops would not be as efficient as also allowing QS holders to join more than one coop.

Recommendation:

The final regulations should allow QS holders to be members, simultaneously, of different coops in different fisheries or in the same fisheries, and of different kinds of coops (FCMA and non-FCMA), in order to maximize economic efficiency and achieve other benefits.

IV. Issue: Requirement for a Minimum of Four Unique Entities to Form a Cooperative

The Proposed Rule requires a minimum of four unique QS-holding entities for the formation of a cooperative. "A unique QS holding entity is a QS holder or group of affiliated QS holders that are not affiliated with any other QS holders or QS holding

entities in the cooperative.” As noted, above, affiliation is as defined at section 680.2. Section 680.21(b)(1). See discussion at 69 FR 63202.

Comment:

The operation of this requirement, due to the realities of vessel and company ownership, and to the restrictiveness of the affiliation criteria, could greatly impede the formation of cooperatives, thus reducing economic efficiency and other benefits.

Recommendation:

To encourage the formation of cooperatives, C share holders should be considered as “unique entities” for purposes of formation of cooperatives. Reference: Council motion 1.8.1.11, page 8: C share holders shall be eligible to join cooperatives; and in the Proposed Rule, at section 680.21(b) page 63286, and see discussion at FR 63227, Crab harvesting cooperatives, membership requirements, notes that persons holding C QS “would be considered QS holders for purposes of crab harvesting cooperative formation.”

V. Issue: Interim LLP License History Exemption

The Proposed Rule contemplates an Interim LLP License as a condition for a license history exemption contemplated by the Council. See section 680.40 at FR 63294, and see discussion at 69 FR 63211-63212.

Also, see related discussion on non-severability of catch history from an LLP for purposes of initial allocation of QS, at FR 680.40 at FR 63293 and discussion at FR 63205.

Comment:

By requiring such a license and prohibiting the severability of catch history from an LLP for initial allocation of QS, the Proposed Rule excludes a vessel for which there was not such license, but which otherwise would qualify for the exemption. The owners of two of the vessels in question were advised to obtain a complete LLP package or they would be denied a permanent LLP. They did so, without first being so denied, and thus, were not issued an Interim LLP License. The Council did not require an Interim LLP License as a qualification for the history exemption, and it was not the intent of the Council to exclude the vessels in question. See additional explanation in attached comments of November 16, 2004.

Recommendation:

The final regulations should allow the history exemption for the very limited number of vessels in question. The technical method by which that can be achieved is noted below:

PROPOSED LANGUAGE CHANGES:

I. Under 680.40, (vii) *Interim LLP license history exemption*, at FR page 63294, strike references to interim licenses in the following paragraphs and subparagraphs:

(vii) strike "Interim"

A. strike "interim" and add "fully transferable" before "LLP license", then add "or interim LLP license."

B. strike "following the invalidation of the interim LLP license";

D. strike "that gave rise to the interim crab LLP license"

Then add new paragraph F:

"If the history described in paragraph D, is being used by another person for an allocation in association with another license, then the allocation in this section (vii) will be based on the history described in paragraph E."

II. Under 680.40 (b) (4) (ii) (B) (E), at FR page 63293, add a new provision:

"Except as permitted under 680.40 (c)(2)(vii), landings as noted in (B) and (E) are non-severable from the crab LLP license until QS has been issued."

.....

VI. Issue: Conditions and Restrictions for Data Disclosure

The Proposed Rule provides elaborate provisions regarding data disclosure. These provisions have particular antitrust significance in the arbitration context.

Comment: The Proposed Rule provides a reasonable, if not optimal, approach to the disclosure of commercially sensitive data, having due regard to the antitrust laws, the relevant provisions of the enabling statute for the rationalization program, and the Council's intent.

Recommendation:

The Proposed Rule should not be altered to restrict disclosure of data beyond the extent necessary to comply with antitrust laws. Any changes to the Proposed Rule should be based on the objectives of maximum transparency of data to industry participants, consistent with antitrust law, the enabling statute for the program, and the Council's intent, and maximum availability of data to NMFS, the Council, the Department of Justice and Federal Trade Commission for the purposes of review, monitoring, and enforcement, as the case may be.

Arni Thomson, Executive Director
Alaska Crab Coalition

C-1 handout PT:
Bing Henkel
12-9-04 9:20 am

ALASKA SEA, INC.

A.O. Nordheim, President

December 6, 2004

Stephanie Madsen, Chair
North Pacific Fisheries Management Council
605 West 4th Avenue, Suite 306
Anchorage, Alaska 99501-2252

RE: COMMENTS ON THE PROPOSED RULE FOR CRAB RATIONALIZATION IN THE BERING SEA AND ALEUTIAN ISLANDS:
NMFS DRAFT RULE FAILS TO IMPLEMENT THE NPFMC LLP AND CATCH HISTORY TRANSFER PROVISION, Section 1.4, (Option 1):

Introduction:

Paragraphs D and E in the proposed rule (at FR 63294) apply to LLP transfers involving the Tiffany, the Alaska Sea and the Erla N. These vessels have common ownership. The transactions described below were planned as simultaneous LLP transfers to enable not only the Erla N, but also the Alaska Sea to continue to participate in the Aleutian Islands golden king crab fishery.

1. **Erla N:** The Erla N did not participate in the AGKC fishery during the 1992-95 qualifying years. In October 1999, NMFS/RAM denied the owners' application for an AGKC endorsement. The owners then established interim LLP status for the Erla N. NMSF/RAM advised the owners that they would have to purchase a fully transferable LLP with AGKC endorsement to be assured to remain in the fishery. At that time, the only reasonable LLP purchase available in the market was the Tiffany which the owners purchased. Due to vessel length limitations, the Tiffany LLP had to be transferred to the Alaska Sea and the Alaska Sea LLP to the Erla N. These transfers were completed prior to January 1, 2001. The Erla N also retained its own fully transferable LLP. Under the provisions of Section (vii), paragraph D, the Erla N is entitled to receive an initial QS allocation based upon the catch history of the Erla N operating under its interim LLP.

2. **Alaska Sea:** This vessel currently has only the Tiffany LLP. The Alaska Sea will also apply under paragraph D to receive a QS allocation based upon the catch history of the Alaska Sea. However, under the NMFS interpretation of the proposed rule, the Tiffany LLP cannot use the Alaska Sea's catch history and therefore the Alaska Sea will not be allowed an AGKC QS allocation. The Alaska Sea never operated under an interim LLP.

3. **Tiffany:** This vessel was retired from the BSAI king and tanner crab fisheries in 2001.

See the attached graph that illustrates the LLP transfers of the Tiffany and the Alaska Sea.

I. Background of the problem related to the Council motion:

Reference, NPFMC motion, 1.4, Initial allocation of QS, Page 3, lines 18-21:

“(Option 1) Persons who have purchased an LLP, with GQP, EQP and RPP qualifications to remain in a fishery may obtain a distribution of QS on the history of either the vessel on which the LLP is based or on which the LLP is used, NOT both. License transfers for purposes of combining LLPs must have occurred by January 1, 2002.”

INTENT: To allow a vessel owner, through purchase/transfer of a valid fully transferable LLP to maintain eligibility of a vessel to continue to participate in a fishery. A vessel owner must choose the catch history of the vessel on which the LLP is based, or on the vessel on which the LLP is used after the date of the transfer, only one catch history per LLP license.

- a. **The Council motion makes no reference to an eligibility requirement of an LLP holder having to at first file an appeal for a fishery endorsement, and then been denied one or more endorsements to participate in a fishery—thus holding an Interim LLP.**
- b. **and the Council motion makes no reference to disallowing severability of landings and history from an LLP, as specified in the above Council motion.**

II. Problem provisions with the NMFS proposed rule:

- a. **FR at 63211-12, and 680.40 (c) (2) (vii) at FR 63294, Interim LLP license required for history exemption;**
- b. **and related FR at 63205, and 680.40 (b)(4)(ii)(B)(E) at FR 63293, Quota Share Issuance, disallows severability of landings and history from LLP.**

The Proposed Rule proposes to require an Interim LLP License as a condition of eligibility for an LLP/catch history exemption contemplated by the Council; and also disallows severability of catch history from an LLP for initial allocation of QS.

PROBLEM: By requiring an interim license to qualify for (Option 1), the Proposed Rule excludes a vessel for which there was no Interim LLP license, but which otherwise would qualify for the exemption. **The owners of two of the vessels in question were advised to purchase a complete LLP package, to qualify for a fishery. They did so, but without first going through the appeal/denial process, and thus, were not issued an Interim LLP License** for one of their vessels. The proposed Council motion did not require an Interim LLP License as a qualification for the history exemption, and it was not the intent of the Council to exclude the vessels in question.

SOLUTION: The final regulations should allow the history exemption for a very limited number of vessels in question (must have conducted a transfer by January 1, 2002) by removing the requirement of an Interim LLP for eligibility under this provision and providing an exception from the proposed rule which disallows severability of landings and catch history from the LLP.

PROPOSED LANGUAGE CHANGES:

I. Under 680.40 (vii) *Interim LLP license history exemption*, at FR page 63294, strike references to interim licenses in the following paragraphs and subparagraphs:

(vii) strike "Interim"

A. strike "interim" and add "fully transferable" before "LLP license", then add "or interim LLP license."

B. strike "following the invalidation of the interim LLP license";

D. strike "that gave rise to the interim crab LLP license"

Then add new paragraph F:

"If the history described in paragraph D, is being used by another person for an allocation in association with another license, then the allocation in this section (vii) will be based on the history described in paragraph E."

II. Under 680.40 (b) (4) (ii) (B) (E), at FR page 63293, add a new provision:

"Except as permitted under 680.40 (c)(2)(vii), landings as noted in (B) and (E) are non-severable from the crab LLP license until QS has been issued"

.....

LLP Endorsements

Tiffany LLP MLOA 110

(Transferred to Alaska-Sea before 1-1-2002)
(Vessel removed from all fisheries)

1. BSAI C. Opilio and Tanner Crab
2. Bristol Bay Red King Crab

3. Aleutian Island Brown King Crab

Alaska Sea LLP MLOA 124

(Transferred to Erla-N before 1-1-2002)

1. BSAI C. Opilio and Tanner Crab
2. Bristol Bay Red King Crab
3. St. Mathews Blue King Crab

4. Aleutian Islands Brown King Crab

Erla- N LLP MLOA 124

(Original LLP)

1. BSAI C. Opilio and Tanner Crab
2. Bristol Bay Red King Crab
3. St. Mathew Blue King Crab
4. Pribilof Red and Blue King Crab
5. Aleutian Islands Brown King Crab (interim)

Qualified Vessels Catch History

F/V Tiffany Catch History LOA 92

1. BSAI C Opilio and Tanner Crab
2. Bristol Bay Red King Crab

3. Aleutian Island Brown Crab
(Will Not Be Used For QS)

F/V Alaska Sea Catch History LOA 110

1. BSAI C. Opilio and Tanner Crab
2. Bristol Bay Red King Crab
3. St. Mathew Blue King Crab

4. Aleutian Island Brown King Crab

F/V Erla-N Catch History LOA 117

1. BSAI C. Opilio and Tanner Crab
2. Bristol Bay Red King Crab
3. St. Mathew Blue King Crab
4. Pribilof Red and Blue Crab

5. Aleutian Island Brown King Crab

Use of Alaska-Sea catch history with Tiffany LLP **not permitted** in NMFS Proposed Rule **

Use of Erla-N catch History with Alaska Sea LLP Permitted in Proposed Rule**
Reference NPFMC Crab Rationalization Motion 1.4.1b *

** FR at 63211-12, and 680.40 (c) (2) (vii) at FR 63293, Interim LLP license required for history exemption; and related FR at 63205, and 680.40 (b) (4) (i) (B) (E) at FR 63293, Quota Share Issuance, disallows severability of landings and history from LLP.

* NPFMC Motion 1.4.1b(option 1) Persons who have purchased an LLP, with GQP, EQP and RPP qualifications to remain in a fishery may obtain a distribution of QS on the history of either the vessel on which the LLP is based or on which the LLP is used, NOT both. License transfers for purposes of combining LLPs must have occurred by January 1, 2002.

(J) The percentage calculated in paragraph (c)(2)(iv)(I) of this section may be adjusted according to the provisions at paragraphs (c)(3) and (c)(4) of this section.

(v) As shown in the formulas under this paragraph (c)(2)(v), the allocation of CVC and CPC QS for each crab QS fishery "F" based on each State of Alaska Interim Use Permit "i" held by each qualified person shall be calculated by the Regional Administrator as follows:

(A) Sum legal landings for each qualifying year as described in Column C of Table 7 to this part and divide that amount by the AHD for that year using the following equation:

$$\frac{\sum \text{Legal landings}_{if} / \text{AHD}_{if}}{\text{Percentage of the AHD}_{if}} \times 100 =$$

(B) In those fisheries where only a subset of the qualifying years are applied, the Regional Administrator will use the years that yield the highest percentages of the AHD as calculated in paragraph (c)(2)(v)(A) of this section.

(C) Sum the highest percentages of the AHDs for that license calculated under paragraph (c)(2)(v)(B) of this section and divide by the number in Column E of Table 7 to this part (Subset of Qualifying Years). This yields the Average Percentage as presented in the following equation:

$$\frac{\sum \text{Percentages of the THD}_{if} / \text{Subset of Qualifying Years}_{if}}{\text{Average Percentage}_{if}} =$$

(D) Divide the Average Percentage in paragraph (c)(2)(v)(C) of this section for a permit and fishery by the Sum of all Average Percentages for all permits for that fishery as presented in the following equation:

$$\frac{\text{Average Percentage}_{if}}{\sum \text{Average Percentages}_{if}} = \text{Percentage of the Total Percentages}_{if}$$

(E) Multiply the Percentage of the Total Percentages in paragraph (c)(2)(v)(D) of this section by the Initial QS Pool as described in Table 8 to this part. This yields the unadjusted number of QS units derived from a permit for a fishery.

(F) Multiply the unadjusted number of QS units in paragraph (c)(2)(v)(E) of this section by 3 percent. This yields the number of QS units to be allocated.

(G) Determine the percentage of legal landings in the subset of qualifying years associated with a permit that were processed on that vessel and multiply the amount calculated in paragraph (c)(2)(v)(F) of this section by this percentage. This yields the amount of CPC QS to be allocated.

(H) Determine the percentage of legal landings in the subset of qualifying years associated with a permit that were not processed on that vessel and multiply the amount calculated in

paragraph (c)(2)(v)(F) of this section by this percentage. This yields the amount of CVC QS to be allocated.

(I) Determine the percentage of legal landings associated with a permit in the subset of qualifying years that were delivered in each region as defined in paragraph (b)(2) of this section. The amount calculated in paragraph (c)(2)(v)(H) of this section is multiplied by the percentage for each region.

(J) The percentage calculated in paragraph (c)(2)(v)(I) of this section may be adjusted according to the provisions at paragraphs (c)(3) and (c)(4) of this section. The amount calculated in paragraph (c)(2)(v)(H) of this section is multiplied by the percentage for each region. These regional QS designations do not apply in the CVC QS sector until July 1, 2008.

(vi) *Sunken vessel provisions.* (A) If a person applies for CVO QS or CPO QS based, in whole or in part, on the activities of a vessel that sank, the Regional Administrator shall presume landings for that vessel for the crab fishing years between the time of vessel loss and the replacement of the vessel under § 679.40(k)(5)(v). These presumed landings shall be equivalent to 50 percent of the average legal landings for the qualifying years established in Column B of Table 7 to this part unaffected by the sinking. If the vessel sank during a qualifying year, the legal landings for that year will not be used as the basis for presumed landings;

(B) If a person applies for CVO QS or CPO QS based, in whole or in part, on the activities of a vessel that sank and:

(1) The person who owned the vessel that sank would have been denied eligibility to replace a sunken vessel under the provisions of Public Law 106-554; and

(2) The vessel that sank was replaced with a newly constructed vessel, with that vessel under construction no later than June 10, 2002. For purposes of this section a vessel is considered under construction once the keel for that vessel has been laid; and

(3) The newly constructed vessel participated in any Bering Sea crab fishery no later than October 31, 2002;

(4) Then the Regional Administrator shall presume landings for that vessel for the crab fishing years between the time of vessel loss and the replacement of the vessel. These presumed landings shall be equivalent to 50 percent of the average legal landings for the qualifying years established in Column B of Table 7 to this part unaffected by the sinking. If the vessel sank during a qualifying year, the legal landings for that year will not be used as the basis for presumed landings.

(vii) *Interim LLP license history exemption.* An applicant for CVO or CPO QS who:

(A) Deployed a vessel in a crab QS fishery under the authority of an interim LLP license;

(B) Transferred a permanent fully transferable LLP license for use in that crab QS fishery to insure that the vessel would remain authorized to participate in the fishery following the invalidation of the interim LLP license; and

(C) Received that permanent fully transferable LLP license by transfer before January 1, 2002, may choose to use as the legal landings which are the basis for QS allocation on his or her Application for Crab QS or PQS either:

(D) The legal landings made on that vessel that gave rise to the interim crab LLP license for that crab QS fishery prior to the transfer of the permanent fully transferable LLP license for use on that vessel; or

(E) The legal landings made on the vessel that gave rise to the permanent fully transferable LLP license and the legal landings made under the authority of that same LLP license in that crab QS fishery prior to January 1, 2002.

(3) *Adjustment of CVO and CVC QS allocation for North and South regional designation.* The Regional Administrator may adjust the regional designation of QS to ensure that it is initially allocated in the same proportion as the regional designation of PQS for that crab QS fishery. A person (p) who would receive QS based on the legal landings in only one region, will receive QS with only that regional designation. A person who would receive QS with more than one regional designation for that crab QS fishery would have his or her QS holdings regionally adjusted on a pro rata basis as follows:

(i) Determine the ratio of the Initial PQS pool in the North and South regions.

(ii) Multiply the Initial QS pool by the ratio of North and South PQS. This will yield the target North QS pool and the target South QS pool.

(iii) Sum the QS for all persons who are eligible to receive North QS. This is the unadjusted North QS pool.

(iv) Repeat the procedure in paragraph (c)(3)(iii) of this section for the South Region. This is the unadjusted South QS pool.

(v) To calculate the amount of North QS available to all persons holding both North and South region QS, subtract the amount of QS for persons receiving North QS only from the unadjusted North QS pool as presented in the following equation:

Comparison of Affiliated vs. Non-Affiliated Vessels in the Calculation of B Shares

	% Affiliated
BBRKC	12.50%
Opilio	12.20%
Bairdi	12.70%

Percents based on the Crab EIS Aug 2004 pg 4-32

	LBS
A	13,050,000
B	1,500,000
C	450,000
Net LBS After CDQ	15,000,000

	Total Affiliated LBS	Total Unaffiliated LBS	Total B LBS	Total C LBS	% C Shares	Unaffiliated % B Shares	Forgone B Shares	Avg Unaffiliated Gain	Avg Affiliated Loss
BBRKC	1,875,000	13,125,000	1,500,000	450,000	3.0%	11.43%	214,286	861	6,912
Opilio	1,830,000	13,170,000	1,500,000	450,000	3.0%	11.39%	208,428	817	8,337
Bairdi	1,905,000	13,095,000	1,500,000	450,000	3.0%	11.45%	218,213	883	6,613

C-1 handout PT:
Edward Paulsen
12-9-04 9:20 am

**Draft Comments of North Pacific Fishery Management Council to Proposed Rule
Allocating Bering Sea and Aleutian Islands King and Tanner Crab Fishery Resources
Crab Rationalization RIN 0648-AS47
December 2004**

Regulation Section	Issue/Comment	Council motion provisions	Suggested solution
§680.1	The rationale for having both ECCOs and ECC entities is not clear. The ECCO seems to be the entity that holds shares for a community, while the ECC entity has the right of first refusal. The Council motion contemplates a single entity to serve both of these purposes. In addition, it is unclear that one entity would have the ability to exercise a ROFR, but not be able to take possession of shares on the exercise of that right. In addition, given the administrative burden of the program, it is unclear why the agency would like to oversee additional entities/organizations.	p.18, 4. Identification of the Community Groups and Oversight	Establish a single entity to hold the right of first refusal and any community shares.
§680.6(c)(2), (e)(2), and (g)(2)	The time for providing the completed submission of historic data is limited to 60 days after final rule becomes effective. Given the historic nature of these data and the complexity of consolidating information into reports, substantially greater time should be permitted for providing these data.		Extend time for submission of historic data.
§680.6(c)(3), (e)(3), and (g)(3)	The rule provides for the submission of information concerning the 2004 fishery, which might be used as a baseline for estimating the economic impacts of the rationalization program on the fishery. The Council motion suggests that regulation follow the committee recommendation that data not less than 2 years prior to the rationalization program be used for estimating rationalization impacts.	p. 21, paragraph B. 4., and committee minutes from June 25, 2002 and September 5, 2002.	Remove provision requiring submission of data from 2004 fisheries.
§680.6(i)	The verification of data provisions require the data provider to provide a broad range of data on request within 15 days of receipt of the request from the data collector. Given the breadth of data that may be requested for verification of reports, the 15 day response time is not sufficient.		Extend period to respond to request for additional data for verification purposes.
§680.20(a)(1)	CVC QS holders should not be required to be in arbitration organizations in the first three years of the program. Arbitration is optional for these share holders until July 1, 2008. They could elect to join the arbitration process by joining an arbitration organization, but should not be required to join.	p.11, Binding Arbitration System, 4. Shares subject to binding arbitration	Make membership in arbitration organizations optional for CVC QS holders prior to July 1, 2008

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12.9.04 11:30am

Regulation Section	Issue/Comment	Council motion provisions	Suggested solution
§680.20(a)(2)	The regulation should not limit negotiations to the preseason period. Although the process for arbitration states that negotiations should be conducted in the preseason (see, p. 13 of the Council motion, Last Best Offer Binding Arbitration, Process, 1 Negotiations and voluntary share matching), the purpose of that language is to define the matching of shares for purposes of the arbitration procedure. The regulation suggests that IFQ and IPQ cannot be used if parties do not reach a preseason negotiation. Nothing is lost in the arbitration process from allowing voluntary negotiations between holders of uncommitted shares to occur after the season is begun.	p.13, Last Best Offer Binding Arbitration, Process, 1 Negotiations and voluntary share matching	"Prior" should be deleted from the second line.
§680.20(a)(3)	The word "uncommitted" has been omitted front of IPQ in a few places. Only uncommitted shareholders can negotiate deliveries with holders of uncommitted IFQ.	Last Best Offer Arbitration	Review section for omission of the term "uncommitted".
§680.20(d)(1)	The reference to paragraph (b)(1) should be clear that CVC QS holders may (not must) join Arbitration Organizations prior to July 1, 2008.	p. 11, Binding Arbitration System, 4. Shares subject to binding arbitration	Revise provision to exclude CVC QS holders from mandatory membership until July 1, 2008
§680.20(d)(1)(iv)	This provision permits a person to be a member of only one arbitration organization. If a person is only permitted to be a member of a single organization, holders of both IFQ and IPQ cannot meet the requirements of the regulation to be members of separate organizations for IFQ and IPQ.		Revise to allow membership in one IFQ arbitration organization and one IPQ arbitration organization.
§680.20(e)(2)(ii)	This provision requires the use of the "Share Matching Approach," the "Lengthy Season Approach," and "Binding Arbitration". None of these should be required of all participants since arbitration is intended to be voluntary. The regulation requires arbitration organization membership and contracts that define the terms that govern arbitration participation. This provision is overbroad.	Last Best Offer Arbitration	Revise to state that participants shall engage in arbitration subject to the rules and to the extent specified in the contracts.
§680.20(e)(2)(v)	This provision is overbroad. All information generated pursuant to section 620.20 would require each arbitration organization to obtain documents that it and its members have no access to.		This provision should be deleted.

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§680.20(e)(2)(v)(B)(1) and (2)	<p>The provisions require the arbitration organizations to deliver notices to uncommitted Arbitration IFQ holders. IPQ arbitration organizations, however, have no way of knowing who holds uncommitted IFQ.</p> <p><u>General comment:</u> As drafted, the arbitration requires the arbitration organizations to deliver several different notices and pieces of information to members that meet certain criteria. The regulation also places strict limitation on the persons that may receive this information (i.e., only holders of uncommitted IFQ are permitted to receive the terms of the arbitration finding or the identities of the holders of uncommitted IPQ that are parties to an arbitration proceeding). The provisions create a paradox under which the persons (or organizations) required to deliver the notices are unlikely to be able to deliver the notices, because no person would be in a position to receive the information that needs to be disseminated or know the identities of the persons that need to receive the information. The regulation could overcome this problem by providing arbitration organizations with the ability to hire a third party for the delivery of notices. That third party should be required to be independent of any associations with any IFQ holders or IPQ holders (except for the management of arbitration organization notices) and be bound to hold all information received confidential.</p>		<p>The provisions should be revised so that persons required to deliver notices 1) have access to the names of those required to receive the notice, 2) have access to the information required to be delivered, and 3) are required to maintain confidentiality.</p>
§680.20(f)(4)	<p>This timeline may not be appropriate for the first year delivery of the arbitration formula.</p>		<p>Allow the same time as permitted in (e)(6) for the Market Report.</p>
§680.20(h)(2)(ii)(B)	<p>This provision permits IPQ holders to initiate arbitration. Only IFQ holders are permitted to initiate arbitration under the Council's arbitration program.</p>	<p>Last Best Offer Arbitration, EIS 2-48 and 4-162.</p>	<p>Limit arbitration initiation to IFQ holders.</p>
§680.20(h)(3)	<p>This paragraph describes the arbitration procedure. The regulation should also provide that a single binding arbitration proceeding (excluding quality disputes, performance disputes, and the lengthy season approach) is permitted for each IPQ holder per fishery per year.</p>		<p>Include a provision that limits each IPQ holder to a single binding arbitration proceeding per fishery per year.</p>

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§680.20(h)(3)(ii)	This section generally sets out the process by which arbitration is initiated. Although the commitment of shares is defined in the definitions section of the regulation (section 680.1, Committed IFQ and Committed IPQ), the regulation could be clarified, if the process for negotiated commitments were included here.		Include description of commitment definition in this process description of in (h)(3)(ii).
§680.20(h)(3)(ii)	This section limits negotiations to "prior to the date of the first crab fishing season". Negotiation should be permitted at any time, including after the season opens, as long as participants are not committed to another share holder.	See comment concerning §680.20(a)(2) above.	Delete "prior to the date of the first crab fishing season" from this provision.
§680.20(h)(3)(iii)	The provisions concerning the "Lengthy Season Approach" should specify that the adoption of this negotiation/arbitration approach is available only to persons that have committed shares.	Last Best Offer Arbitration	Require share commitments for participants to use the lengthy season approach.
§680.20(h)(3)(iii)	The inclusion of the provisions concerning the "Lengthy Season approach" at this point in the regulations adds confusion to the arbitration process. This paragraph primarily concerns the commitment of shares and the process that share holders undertake preceding, and possibly leading up to, Binding Arbitration. The lengthy season approach is an alternative to that standard procedure.		The provisions concerning the lengthy season approach should be included in the contract for the Contract Arbitrators, but as a separate provision outside the process description here.
§680.20(h)(3)(iii)	The process for arbitration of the lengthy season approach is not well defined in the Council motion. The regulation should not attempt to specifically define that process.	p.13, Last Best Offer Binding Arbitration General, 6. Lengthy Season Approach	The regulation should state that industry should define the procedure for arbitration of the lengthy season approach, including the timing of the proceeding and the ability of any IFQ holders to join the proceeding or opt-in to the outcome of the proceeding.
§680.20(h)(3)(iii)(C)	IPQ holders are not permitted to initiate arbitration under the Council motion - the reference to "IPQ holders" initiating the process should be removed.	Last Best Offer Arbitration, EIS 2-48 and 4-162.	Remove the reference to IPQ holders here.

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§680.20(h)(3)(iv)(B)	<p>This provision requires an arbitration IFQ holder to commit at least 50 percent of the IFQ held to an IPQ holder to make a unilateral commitment. The provision should provide for the commitment of the lesser of 50 percent of the IFQ held and an amount of IFQ that results in the commitment of all of the processor's IPQ. In the absence of this provision, a harvester may be unable to commit any IFQ to a processor under the provision because the processor does not hold sufficient IPQ to take most of the harvester's IFQ.</p> <p>In addition, the regulation should consider a lower level than 50 percent for a cooperative to make a unilateral commitment, since a cooperative represents several share holders. A more appropriate threshold might be 50 percent of the average share holding in the cooperative.</p>		<p>Revise the provision concerning the minimum commitment.</p> <p>For a cooperative unilateral commitment, a more appropriate threshold might be 50 percent of the average CVO share holding in the cooperative.</p>
§680.20(h)(3)(iv)	<p>The time period to initiate arbitration must be limited on both sides, since only one arbitration proceeding is allowed for each processor. The share matching limit of 25 days before the start of the season is intended to also operate as a limit on the ability to initiate arbitration. In the absence of a limit, a harvester could initiate an arbitration proceeding several months prior to the season, which is unreasonable for all parties including other harvesters that may wish to deliver to that processor.</p>	Last Best Offer Binding Arbitration, Process, 2. Required Share-Matching and Arbitration	Limit IFQ holders from initiating binding arbitration more than 25 days prior to the season opening.
§680.20(h)(3)(iv)(D)	<p>This provision states that the "IPQ holder and IFQ holder may decide to enter Binding Arbitration". Only IFQ holders can initiate the Binding Arbitration and it can be initiated unilaterally by IFQ holders.</p>	Last Best Offer Arbitration, EIS 2-48 and 4-162.	Revise to provide that IFQ holders can unilaterally initiate arbitration and that IPQ holders cannot initiate binding arbitration.
§680.20(h)(3)(v)	<p>IPQ holders are not permitted to initiate arbitration under the Council motion.</p>	Last Best Offer Arbitration, EIS 2-48 and 4-162.	All references to "IPQ holders" initiating the process should be removed.
§680.20(h)(3)(v)	<p>This provision needs to limit arbitration to holders of shares that are committed to one another.</p>	Last Best Offer Arbitration, Negotiation and voluntary share matching and Required Share-matching and arbitration	Revise provision so that an IFQ holder may initiate arbitration with an IPQ holder to which the IFQ holder has committed shares.

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§680.20(h)(3)(v)(A), (B), (C), and (D)	The provisions referencing the use of Open Negotiations, the Lengthy Season Approach, Share Matching, and Performance Disputes do not work here because of the timing of these actions and the timing for initiating arbitration. For example, performance disputes will not arise until during the season, while this arbitration referred to here is limited to preseason. These references should be removed, as the preceding language defining the terms of arbitration are clear. The procedures for the lengthy season approach and performance disputes should be defined in the contract, but not specifically defined in the regulation.		Remove the references in (A), (B), (C), and (D) to the open negotiations, lengthy season approach, share matching, and performance disputes.
§680.20(h)(3)(vi)	There needs to be a limit on the time during which a person can join an arbitration proceeding in order to prevent parties joining during the proceeding to disrupt the proceeding.		Require the contract with the Contract Arbitrator to specify the terms and timing of joining the proceedings.
§680.20(h)(3)(vi)	The ability to join should be contingent on the IPQ holder having uncommitted shares and the harvester making a commitment of IFQ		Limit joining by requiring a commitment under §680.20(h)(3)(iv).
§680.20(h)(3)(vii) and (viii)	The rationale for requiring separation of the schedule meeting and the meeting defining terms of last best offers is not clear. It may be that antitrust concerns dictate that IFQ holders that are not part of an FCMA cooperative should not participate in a joint meeting. If that is the case, a provision should be added to that effect.		
§680.20(h)(3)(viii), (ix), and (x)	These provisions should make clear that the arbitration will apply to all committed IFQ of the IFQ holder and the corresponding committed IPQ of the IPQ holder. The arbitration outcome should decide the delivery terms of all shares that the parties have committed to one another.		Revise to make arbitration apply to and fully binding on all deliveries of committed shares of the parties.
§680.20(h)(5)	Under this provision, information flow in binding arbitration is limit to the information submitted by parties and market report and formula. The broad availability of data to IFQ holders under notice requirements and FCMA cooperatives could be argued to create an imbalance in the proceedings.		
§680.20(h)(8)	This provision makes reference to (h)(6)(v), which does not exist.		

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§680.20(h)(11)(ii)	Using the same procedure for performance disputes as for other arbitration is not possible because of the timing of arbitration and the timing of performance disputes. The specific process should be defined by industry in the contract with the contract arbitrator.		The contract with the Contract Arbitrator should define the process for resolution of performance disputes through arbitration.
§680.20(h)(11)(iii)	It is unclear how arbitration can be "unsuccessful".		The reference to "unsuccessful" arbitration should be removed or explained.
§680.21	<p>This provision in the rule should not require that harvest cooperatives be FCMA cooperatives. The Council motion establishes a "harvesting cooperative" that is intended to coordinate harvests of its members' IFQ to achieve efficiencies in the fisheries. The terms that govern these harvesting cooperatives are delineated in section 6 of the Council motion (p. 20), with further clarification in item 13 of the Clarifications (pp.25-6). The motion and clarification describe a system of coordination of harvests that would be used to pursue fleet consolidation. Similarly, the clarification describes systems of leasing and use of allocations. No mention of marketing or negotiation activities is made in either the motion or clarifications.</p> <p>In the arbitration section of the motion FCMA cooperatives are distinguished as the only cooperatives that may negotiate on behalf of their members. The current regulation disregards this critical distinction, treating all cooperatives as FCMA cooperatives and thereby limiting the ability of processors and their affiliates to realize the benefits of coordination of harvest activity that could be achieved through the harvest cooperative structure the Council has developed.</p> <p>The language of the Council distinguishes and requires FCMA cooperatives in the arbitration program, the only portion of the motion in which a cooperative would engage in negotiation. In addition, the motion specifically identifies the role of its harvest cooperatives. Given the limited scope of harvest cooperatives actions and the distinction of FCMA cooperatives in the arbitration provisions of the motion, harvest cooperatives should not be required to be FCMA cooperatives.</p>	p. 20, 6. Cooperative model options and pp.25-6, 13 Rules governing cooperatives, see also, Binding Arbitration requiring FCMA cooperatives for purposes of negotiations.	Remove requirement that harvest cooperatives be FCMA cooperatives.

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§680.21(a)(3)	The provision prohibits PQS and IPQ holders and their affiliates to join harvest cooperatives. This limits the ability of vertically integrated harvesters to achieve harvest coordination efficiencies. (see comment related to §680.21 above)	p. 20, 6. Cooperative model options and pp.25-6, 13 Rules governing cooperatives	Remove this provision.
§680.21(b)(1)	The rule should provide that any individual share holder is a unique person for purposes of determining whether the threshold minimum number of persons for cooperative formation is met. Each share holding person should be unique, whether or not that person holds some interest in a commonly held corporation. The corporation may not be a unique.	6.1, 3)	Clarify that any individual share holder is a unique person for purposes of establishing the threshold number of persons for cooperative formation.
§680.21(b)(4) and (5)	<p>Limiting a person to a single cooperative and "all or nothing" participation is inconsistent with Council intent. Doing so, will also limit ability of participants to achieve efficiencies. Any hoped for simplification in management is likely to be lost either through individuals choosing not to join cooperatives (forcing the agency to manage substantially greater numbers of individual holdings) or the use of corporate structures to subvert the intention but not the letter of rules (i.e., the establishment of different unaffiliated share holding companies for different cooperatives). Strict administration of a single cooperative rule, which would be necessary to achieve any saving in management of share transactions, is likely to be ineffective and costly. In addition, a single cooperative requirement is likely to result in substantially greater intercooperative trades, each of which would need to be processed and administered by the agency.</p> <p>An alternative would be to allow a single cooperative per fishery or per fishery and region. This approach would reasonably balance the agency's desire to reduce administrative burdens while still allowing participants to realize efficiency benefits of cooperative coordination of harvests. This approach is also consistent with the EIS description of the program.</p>	EIS 4-34, 4-161, see also Cooperative model options p.20 Council motion and 13. Rules governing cooperatives pp.25-6 Council motion.	Replace with a rule that permits a person to enter one cooperative per fishery or one cooperative per fishery and region.

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§680.21(d)(4)	<p>Conversion of CVC and CPC IFQ to CVO and CPO IFQ, respectively, on allocation to a cooperative effectively removes any owner on board requirement for C shares. The primary purpose of C shares is to provide active fishermen with shares that can be used for leverage in negotiating the terms of their employment. By removing owner-on-board requirements, C shares could be held by persons that do not fish in the fisheries. Even with owner-on-board requirements, C share holders can gain greatly by being cooperative members, since cooperatives will coordinate the harvest of all of the cooperative's shares. Participation in the discussions during which that fishing activity is scheduled will be important to C share holders regardless of whether the C share holders are required to be on board the vessels fishing their shares.</p> <p>This provision also raises the question of whether the converted CVC IFQ would be subject to the Class A/Class B split in the first three years of the program. The regulation should be clear that the split should not apply in the first three years.</p>	1.8.1.9 and EIS 2-44	<p>Require owner on board for CVC and CPC IFQ. Do not convert these shares to CVO and CPO when held by a cooperative.</p> <p>The regulation should clarify that converted CVC IFQ are not subject to the Class A/Class B split during the first three years of the program.</p>
§680.21(f)(4)	Prohibition on cooperative members holding or transferring PQS and IPQ is likely to limit the achievement of efficiencies in the fisheries for a substantial number of vertically integrated share holders. This provision is unnecessary, if cooperatives are not required to be FCMA cooperatives.	See comment on §680.21 above.	Remove the prohibition on cooperative members holding or acquiring IPQ and PQS.
§680.21(g)	In order to have effective use caps, the Council motion specifies that transfers outside a cooperative (i.e., intercooperative transfers) are to be made through individual members. Once IFQ are inside a cooperative any individual or vessel caps do not apply to the movement of those IFQ within the cooperative. In the absence of a requirement that intercooperative transfers be accounted for by individuals in a cooperative for purposes of applying use caps, the program is without any effective use caps. For example, four persons all holding QS at the cap could form a cooperative and acquire additional IFQ through intercooperative transfer in excess of the use caps.	pp.25-6, 13. Rules governing cooperatives.	Require cooperatives to conduct intercooperative transfers through members, as described in the Council motion.
§680.40(b)(2)(i)(B)(2)	This provision suggests that regional designations apply to CVC QS "prior to July 1, 2008."	1.8.1.6	The provision should read, "on and after July 1, 2008."

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§680.40(b)(4)(ii)(B) and (E)	These provisions prevent the separation of a license from its history. The provision should allow separation in the case of a person acquiring a license to remain in a fishery (§680.40 (c)(1)(vii)).	1.4.1, Option 1	Insert a provision that permits the separation of a license from its history to the extent necessary to achieve the purpose of §680.40 (c)(1)(vii).
§680.40 (c)(1)(vii)	This provision permits a person that purchased a license to remain in a fishery to use the history of the vessel on which the license was used or on which the license was based. The requirement that the vessel using the license have an interim license could limit the application of this provision to situations where multiple license transfers were required to comply with vessel length limits on licenses.	1.4.1, Option 1	Remove the limitation that the license be an "interim" license. The rule should be clear that no history may be credited toward two different allocations and that only one history may be credited to a license.
§680.40(e)(1)(i) and (e)(ii)(D)	This provision refers to the TPD for each year. When taken together with the reference to the "average percentage of the TPD for a person" in (e)(ii)(D), the provisions suggest that the "average annual percentage" approach to determining allocations will be used for processors, which is not correct.	2.3, Option 1, footnote 1 on p. 10 of the Council motion	Clarify method of allocation of processor individual allocations is total individual qualified history divided by all qualified history.

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§680.40(f)(3) and (7)	The requirement of a ROFR contract at the time of application is inconsistent with the Council motion. PQS applicants need to enter the contract only if the ECC entity is designated by a time certain.	p. 17 of the Council motion	Provide notice to an eligible community on the application for PQS that could be subject to a ROFR. If the community notifies the agency and the PQS applicant that it has formed an entity (and provides contact information for the entity) the PQS allocation would be made only on completion of the contract establishing the terms of with the requirements for ROFR. If the contract is not executed, the parties could seek remedies in civil court to the extent necessary.
§680.40(f)	This section makes interchangeable use of the terms "QS and PQS Application" and "QS or PQS Application" suggesting that QS is subject to a ROFR, which is not the case.	Community purchase and right of first refusal options, p. 16-8 of Council motion	Clarify application of ROFR to only PQS and IPQ.

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§680.40(h)(4)	<p>This provision uses processor affiliation for determining whether a QS holder receives Class B IFQ. Eligibility to receive an allocation of B shares in the Council motion relies on whether the processor "controls" delivery of the IFQ. Use of a "control" standard for determining whether B shares will be allocated has two effects:</p> <p>First, if the processor holds a limited amount of IPQ, the A share only allocation should be limited to an amount of IFQ that offset the IPQ holding, with the remainder of the allocation subject to the Class A/Class B split. (See EIS 2-41, which states holders of PQS and their affiliates that hold QS would be allocated Class A IFQ in the amount of their IPQ holdings with the remainder issued as Class A IFQ and Class B IFQ at the same ratio as those allocated to independent harvesters.) Using this approach, a person receives a Class A only IFQ allocation for only those IFQ that are controlled by the processor, with the remainder of the allocation (which is beyond the control of the processor) as a Class A/Class B allocation.</p> <p>Second, if the processor does not control deliveries (regardless of the number of IPQ held), the B share allocation will be necessary for negotiating strength of the person controlling deliveries in their negotiations with processors generally.</p> <p>Issue: If a "control" affidavit is used for determining who will receive B shares, the term "control" must be well-defined, so that the signatory to the affidavit knows what the attestation means.</p>	1.6.4, EIS 2-41	<p>Allocation of "only Class A IFQ" should be limited to the amount of controlled IFQ. The remainder of the allocation should be subject to the Class A/Class B division of fully independent harvesters.</p> <p>The definition of control should be revised to reflect the nature of control at issue (i.e., does the IPQ holder control the delivery of the IFQ). This definition may rely to some extent on "affiliation," but control of deliveries should be paramount.</p>
§680.40(h)(1) through (7)	These provisions appear to make no IFQ allocations for CVC QS holders prior to July 1, 2008. The CVC IFQ should not be subject to region or processor landing restrictions during this time period.	1.8.1.6	The provision should make clear that CVC QS holders receive an allocation prior to July 1, 2008.
§680.40(h)(5)(ii)	The term "IFQ TAC" used in the calculation of the Class A IFQ allocation and the IPQ allocation is not defined. Care should be taken in defining the term to show that prior to July 1, 2008, CVC QS yield IFQ that are not subject to the A share landing requirements and that IPQ should be issued for 90 percent of the CVO IFQ allocation. After July 1, 2008, CVC share holders will receive A shares and IPQ will be issued for 90 percent of the CVO and CVC IFQ allocation.	1.8.1.6 and EIS 2-44.	Clarify definition and calculation of IPQ and Class A IFQ allocations.

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§680.40(h) and (i)	These sections should contain the IPQ cap in 680.42 (c)(4), which limits the IPQ allocation in the Bristol Bay red king crab and Bering Sea snow crab fisheries. Inclusion of the caps in the section on use limitations (680.42 (c)(4)) seems incorrect since the allocation is limited, not the use of the allocation.	IPQ caps at p. 16 of the Council motion	Include allocation limitation in this section.
680.40(l)	The legislation authorizing the program provides in section 801(j)(7) provides that IPQ should not create a right, title, or interest in any crab, until that crab is purchased from a fisherman. No similar language appears in the regulation.		Inclusion of language from the legislation in the regulation.
§680.40(m)	The contract terms for ROFR are not those in the Council motion. A cleaner approach would be to just copy the Council motion, rather than reinterpret it.	Contract terms at p. 17 of the Council motion.	Use the language from the motion.
§680.40(m)	For purposes of implementing the ROFR, "movement of shares from a first or second class city, if one exists, and borough, if a first or second class city does not exist," constitutes "movement of shares from the community". Note that this differs from the cooling off period.	General right of first refusal at pp.16-8 of the Council motion	Clarify provisions that apply to movement of shares from the community.
§680.40(m)(2)	The provision states that "any sale must be provided on the same terms" to the EEC entity. This wording is not a complete description of the right of first refusal, since the ability to exercise the right applies for a limited period and is exercised by performing the terms, not receiving an offer.	Contract terms at p. 17 of the Council motion.	Use the language from the motion.
§680.40(m)(6)	Since ROFR applies to IPQ, this provision should be broadened to include waivers with respect to IPQ.	Contract terms at p. 17 of the Council motion.	Broaden the provision so that waivers to apply to IPQ.
§680.40(m)(7)	Since ROFR applies to IPQ, this provision should be broadened to include ROFR with respect to IPQ.	Contract terms at p. 17 of the Council motion.	Broaden the provision so that ROFR applies to IPQ, under the terms of the motion.

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§680.41(c)(1)(i)	Table is incorrect concerning CVC or CPC in lines (E) and (F). In line (E), the initial recipient of QS is not relevant (no provision authorizing recipients of an initial allocation to receive shares is included for the acquisition of CVC and CPC shares). The only standard for eligibility to receive CVC or CPC shares is that the person acquiring the shares must be an individual that is a US citizen and an "active participant". Similarly, in line (F), a cooperative cannot receive shares since it doesn't meet those criteria. The line concerning cooperative acquisition could be deleted. Alternatively, a cooperative could be permitted to receive shares through an individual that meets the requirements, if the agency would like to assume the added administrative burden of tracking those transactions and performance of owner on board requirements.	1.8.1.7	Limit eligibility to receive CVC and CPC shares to individuals who are U.S. citizens and "active participants".
§680.41(c)(2)(ii)(B)(3)	Applications to receive CVC and CPC QS by transfer must be by individuals.	1.8.1.7	Limit eligibility to receive CVC and CPC shares to individuals who are U.S. citizens and "active participants".
§680.41(c)(2)(ii)(D)(2)(i) and (ii)	This section does not adequately parallel the Council motion. For corporations and other entities, one "owner" (not "member") must meet the sea time requirement. In addition, that same owner must hold at least a 20 percent ownership interest in the entity. The section does not exactly parallel these requirements.	1.6	Use language from the Council motion.
§680.41(c)(3)(i) and (ii)	It is unclear whether the ECCO can hold and transfer PQS. The ECCO should be able to hold and transfer both QS and PQS.	p. 18, Identification of community groups and oversight	Clarify that ECCOs can hold PQS.
§680.41(c)(3)(i) and (ii)	The provision states that each ECC <u>must</u> designate an ECCO. The rationale for this absolute requirement is unclear. Communities have the option of designating an ECC entity, but would waive the ROFR and not be permitted to use the community purchase privilege, if they chose not to.	pp. 16-8, Community purchase and right of first refusal options	"Must" should be changed to "may".

Regulation Section	Issue/Comment	Council motion provisions	Suggested solution
§680.41(d)(2)(i)(C)	<p>This provision requires a statement from an authorized representative of a community that the ROFR has been offered on sale of shares outside a community. Several aspects should be clarified here. First, a signature from an authorized representative is too strict of a requirement. A provision that requires a PQS/IPQ holder that is subject to ROFR to provide notice to ECC entity (and the agency) of the sale is all that should be included here. Otherwise, reluctance to sign the authorization could lead to a delay in the transaction despite proper notice of the sale.</p> <p>Second, the notice is only required if the sale meets the requirements for the ROFR (i.e., some transfers do not trigger the ROFR). Intra-company transfers, transfers for use in the community, and some transfers of IPQ are not subject to the ROFR. This is not clear from the way the provision is drafted.</p> <p>Third, somewhere in the regulation the process of completing a sale on which the ROFR is exercised should be stated. Under the Council motion, the ECC entity should notify the PQS/IPQ holder (and agency) of its intent to exercise (and evidence of its earnest money payment). Then need some confirmation of performance for the agency to finish the transaction.</p>	pp. 16-8, Community purchase and right of first refusal options	<p>Require notice of the transaction only to the holder of the ROFR only.</p> <p>Require notice only if sale is subject to the ROFR.</p> <p>Develop regulation defining process for exercise of the right.</p>
§680.41(h)	This provision should require designation of the members of the cooperative that are engaged in the transaction for purposes of applying use caps to the shares a person may bring to a cooperative. In the absence of this limitation, persons could join a cooperative and acquire shares in excess of the cap, making individual use caps ineffective.	pp.25-6, 13. Rules governing cooperatives	Adopt requirement consistent with the Council motion.
§680.41(j)(1)(ii)	The community of Adak does not receive the ROFR. It should be expressly excluded here.	General right of first refusal, p. 16 of the Council motion	Exclude Adak from the ROFR.
§680.41(j)(2)(ii)	The community does not need to designate an ECC entity. If they do not the ROFR is waived.	pp. 16-8, Community purchase and right of first refusal options	Change "must" to "may".

Regulation Section	Issue/Comment	Council motion provisions	Suggested solution
§680.41(j)(3)	<p>Requiring the ECC entity to be a signatory to the transfer is inappropriate. A ROFR only requires notice and the opportunity to exercise the right.</p> <p>It may be useful to have PQS holders submit an annual report identifying the amount of IPQ that it used in a community during the year and if used outside a community, who used the IPQ (which would be used to determine whether the ROFR would apply to a future transaction).</p>	pp. 16-8, Community purchase and right of first refusal options	Remove requirement for signature of community authorized representative. Require that the transferor provide evidence of notice to the ECC entity.
§680.41(j)(4)	<p>This provision seems to confuse the process of passing on the ROFR to a successor. If the transfer is within the ECC, the recipient of the PQS would need to sign a contract granting the ROFR to the ECC organization (not "exercising the right") and agree to terms concerning the use of the shares in the community in future years. In addition, the ECC entity need not have signed the contract on application. The submission of the contract signed by the recipient of the shares will allow the agency to delivery the contract to the ECC entity for signature. If the ECC entity does not sign the contract the ROFR would be waived.</p>	pp. 17-18, Contract terms	Revise process for intra-community transfers consistent with the Council motion.
§680.41(j)(5)	<p>The provisions defining the ROFR in the North Gulf need to limit the ROFR to the same terms generally as the general ROFR. This means that the ROFR applies only to the first transfer from the community of origin. These terms are not clear in the current regulation.</p>	pp. 16-18, Community purchase and right of first refusal options and GOA first right of refusal	Revise regulation consistent with the Council motion.
§680.41(l)(2) and (4)	<p>These provisions concern the transfer of CVO QS and CVC QS, respectively. They specifically provide, "Notwithstanding QS use limitations under section 680.42, CVO (CVC) QS may be transferred to any person eligible to receive CVO or CPO (CVC or CPC) QS as defined under paragraph (c) of this section." These provisions appear to override any use caps contained in 680.42 (the only section of the regulation defining use caps). They should be deleted in their entirety.</p>	1.6.3 and 1.8.1.9	Delete these provisions in their entirety.

Regulation Section	Issue/Comment	Council motion provisions	Suggested solution
§680.42(b)(1)(i)	This provision grandfather's from the use caps any initial allocation receive based on licenses owned prior to June 10, 2002. Some purchasers of licenses since that date may have been pushed over the use caps by the license buyback. If a person bought a license after June 10, 2002 and would have been under the limit, but the buyback put the person over the limit, they would not receive an allocation over the cap.		Include a provision that would grandfather any initial allocation in excess of the use caps received from licenses acquired after June 10, 2002 and prior to the referendum on the buyback, to the extent that the allocation would not have been in excess of the cap, but for the buyback.
§680.42(b)(1)(iii)	The provision creates ambiguity concerning non-individuals holding CVC IFQ and QS. CVC IFQ and QS may be held only by individuals.	1.8.1.7	Limit to CVC and CPC share holdings to individuals.
§680.42(b)(2)	This lead in creates an ambiguity concerning individuals holding PQS and IPQ being exempt from the cap. Only corporations and other non-individuals that directly hold PQS and IPQ are exempt from this cap. In addition, the exemption should be limited under cap described in (b)(4), not generally.	1.6.4 of the Council motion and Clarification 13 on p.26	The lead in should read, "Except for corporations and other non-individuals as provided in (b)(4) and CDQ groups as provided for in (b)(3)."
§680.42(b)(2)(i)	The table specifies the use caps for CVC and CPC shares. Under the Council motion, these caps are to be equivalent to the CVO and CPO vessel use caps. As written, they are equivalent to the individual CVO and CPO use caps (in most cases one-half of the correct cap).	1.8.1.9, 2) Option 2	Revise individual use caps for CVC and CPC shares to equal the vessel use caps.
§680.42(b)(3) and (4)	The rule limiting the acquisition of licenses (and history) in excess of the cap after June 10, 2002 should apply to (b)(3) (CDQ caps) and (b)(4) (vertical integration caps), as well as the general caps.	1.6.3 and 1.6.4	Add in control date.
§680.42(b)(3)	For CDQ groups, the individual and collective rule is used to determine holdings for applying the caps.	1.6.3	Add in "individual and collective" application.

Regulation Section	Issue/Comment	Council motion provisions	Suggested solution
§680.42(b)(4)	<p>For PQS holders, the AFA-style 10 percent limited threshold rule is used for determining compliance with the vertical integration cap on IFQ holdings. Under this approach all QS and IFQ holdings of the holder of the PQS and all of its affiliates are counted toward the cap. The application of this rule is not clear from the regulation.</p> <p>A second issue arises in this provision of the regulation because this is an <u>additional</u> cap to the cap in (b)(2)(i). This cap supersedes the cap in (b)(2)(i) only for a corporation or other non-individual directly holding the PQS. In other words, all individuals will still be subject to the individual caps in (b)(2)(i).</p>	1.6.4 and Clarification 13 on page 26 of the motion and EIS 2-43	<p>Clarify the method of calculating holdings.</p> <p>Clarify the application of the cap and the limited exemption.</p>
§680.42(c)(1)	Caps on PQS and IPQ use should be the AFA-style 10 percent limited threshold rule, not the individual and collective rule. Under this approach all PQS and IPQ holdings of the holder of the PQS and all of its affiliates are counted toward the cap. The application of this rule is not clear from the regulation.	2.7.1 and EIS 2-46	Clarify the method of calculating holdings.
§680.42(c)(4)	The provision prevents the issuance of IPQ in excess of the "IPQ cap" in the Bristol Bay red king crab fishery and the Bering Sea snow crab fishery. It is very confusing to have this provision in the section on "use limitations" since it is not a use limit, but an allocation limit. The provision should likely be moved to 680.40(h) and/or (i), which concern the allocation of Class A IFQ and IPQ. The provision at a minimum must be referenced in that section.	p. 16, IPQ caps	Move allocation cap to section on allocations (§680.40(h)(5)).
§680.42(c)(5)	This cooling off provision allows IPQ to be used inside the borough, if one exists, and inside the first or second class city, if a borough does not exist. This provision appears to limit use of shares outside of the first or second class city in all cases.	p.16, Cooling down period	Revise provision to define boundaries based on Council criteria.
§680.42(c)(7)	This provision should also state that all CVC IFQ may be delivered to any RCR prior to July 1, 2008. (The section refers only to Class B CVC IFQ. Prior to July 1, 2008, CVC IFQ is not subject to Class A/Class B division.)	1.8.1.6, Option 2	Include CVC IFQ prior to July 1, 2008.
§680.42(c)	For purposes of applying processing caps, crab custom processed at a plant is to be counted toward the cap of the owner of the plant. This requirement appears to be missing.	p.24, clarification 2	Revise to add in custom processing crediting toward the processor cap.

Regulation Section	Issue/Comment	Council motion provisions	Suggested solution
§680.42(d)(5)	Exemption from owner-on-board for CVC and CPC IFQ, if a member of a cooperative is incorrect. Although the Council motion provides for CVC holders to join cooperatives, the Council motion makes no mention of exemptions from owner-on-board requirements. Owner on board requirements are fundamental to the Council's goal of having these shares support active fishermen.	1.8.1.11, EIS 2-44	Remove exemption to owner on board for cooperative members.
Table 7	The table mixes the concepts of eligibility and qualification. Eligibility defines the persons eligible to receive an allocation. For CVO and CPO, holders of permanent LLP licenses are eligible for an initial allocation. For CVC and CPO, persons meeting the historical participation requirement (i.e., landings in 3 of the qualifying years for vessels) and recency requirements (i.e., landings in 2 of the 3 most recent years) are considered eligible. Once persons are found eligible, their allocations are based on the qualifying years shown in Column B. The same subset of years would apply to all participants (CVO, CPO, CVC, and CPC). Column E is incorrect. In addition, Columns C and D define CVC and CVP eligibility, not qualification.	1.8.1.4	Revise table to reflect difference between eligibility and qualification.
Table 7	The table leaves out the season beginning in 1991 for Bering Sea Tanner crab. The seasons shown in (2) and (3) are one season, not two.	1.4.2	Revise dates in the table to include the 1991 BS Tanner season.
Table 7	The table defines seasons with an opening and closing date. Often the last landing of the season is made after the closing date. The regulation should be clear that legal landings made after the closing date will be counted for allocations.		Clarify that these landings will count for determining allocations.
General comment	The Council motion provides that deadloss would be counted against quota. This provision appears to be missing from the regulation.	p.20 paragraph 13 and 1.7.3	Include provision providing for deadloss accounting.
General comment	The Council motion provides for the forfeiture of any overage from the last trip from a fishery and for penalties for any overage in excess of 3 percent of the unused quota on the last trip. These provisions appear to be missing from the regulation.	1.8.2	Clarify that all overages are forfeited and that overages in excess of 3 percent are a violation.
General comment	The Council motion provides that AFA crab harvesting and processing sideboards would be removed on implementation of the program. The regulation does not appear to contain a provision concerning the removal of AFA sideboards.	1.8.3 and 2.8	Include provisions removing the AFA crab harvesting and processing sideboards.

Regulation Section	Issue/Comment	Council motion provisions	Suggested solution
General comment	The Council motion outlines the terms that should govern the management of the Adak allocation of WAI brown king crab. No provision is made in the regulation for management of that allocation.	p.19, Additional provisions concerning the Adak allocation.	
General comment	The regulations make no provision for the loan program that is intended to be support purchase of shares by captains and crew. The loan program, including its initial funding, is an important element intended to support captain and crew interests and should be implemented simultaneously with all other aspects of the program.	1.8.1.8	Include the regulation for the loan program with the primary regulations in the program and implement the loan program simultaneously with the implementation of all other aspects of the program. Explore options for seed money to fund on implementation.
General comment	Management of observers in the crab fisheries is the purview of the State of Alaska under the FMP. The regulation should not contain provisions concerning the observer program in the fisheries.		Remove provisions concerning observers from the rule.

C-1 handout
NMFS Staff Rpt
Dec. 8 2004
1:45p



Submitting Proposed Rule Comments

Deadline: Comments on the proposed rule for crab rationalization in the Bering Sea and Aleutian Islands must be received by

December 13, 2004

Hard Mail: Sue Salveson, Assistant Regional Administrator
Alaska Region, NMFS
P.O. Box 21668
Juneau, AK 99802
Attn: Lori Durall

Fax: (907) 586-7557

Hand Deliver: Federal Building
709 West 9th Street, Room 420A
Juneau, AK

E-Mail: KTC18-PR-0648-AS47@noaa.gov
Include this identifier in subject line:
Crab Rationalization RIN 0648-AS47
Limited to 5 megabytes

Webform: Federal e-Rulemaking Portal:
www.regulations.gov
Follow instructions at the site for submitting
comments.

Acronyms



- BSAI – Bering Sea/Aleutian Islands**
- CDQ – Community Development Quota**
- CMP – Catch Monitoring Plan**
- CPC – Catcher Processor Crew**
- CPO – Catcher Processor Owner**
- CR – Crab Rationalization, Crab Rationalized**
- CVC – Catcher Vessel Crew**
- CVO – Catcher Vessel Owner**
- DCA – Data Collection Agent**
- DFL – Daily Fishing Logbook**
- EDR – Economic Data Report**
- ECC – Eligible Crab Community**
- ECCO – Eligible Crab Community Organization**
- FCVP – Federal Crab Vessel Permit**
- IFQ – Individual Fishing Quota**
- IPQ – Individual Processing Quota**
- LLP – License Limitation Program**
- OR – Official Crab Rationalization Record**
- PSMFC – Pacific States Marine Fisheries Commission**
- PQS – Processor Quota Share**
- PTR – Product Transfer Report**
- QS – Quota Share**
- RCR – Registered Crab Receiver**
- ROFR – Right of First Refusal**
- SMAA – Seafood Marketing Association Assessment**
- SFCP – Stationary Floating Crab Processor**
- TAC – Total Allowable Catch**
- VAR – Vessel Activity Report**
- VMS – Vessel Monitoring System**



National Marine Fisheries Service BSAI Crab Rationalization



Program Overview

The Crab Rationalization Program would allocate Bering Sea and Aleutian Islands (BSAI) king and Tanner crab fisheries resources to participants.

- Harvesters, including crew, would receive an allocation of crab to harvest as quota share (QS) and individual fishing quota (IFQ).
- Processors would receive an allocation of crab to process as processor quota share (PQS) and individual processing quota (IPQ).
- Communities would receive an increase in community development quota (CDQ), regional landing and processing requirements, and other protection measures.

This synopsis provides a general overview as a public service. For exact proposed regulatory language, please refer to www.fakr.noaa.gov. Please call the Alaska Region of NOAA Fisheries with any questions: (907) 586-7228.



National Marine Fisheries Service BSAI Crab Rationalization



Program Approval

On November 19, 2005:

- **NMFS approved the Crab Rationalization Program as Amendments 18 and 19 to the FMP for BSAI King and Tanner Crabs.**
- **NMFS issued the Record of Decision for the BSAI Crab Fisheries EIS.**

These documents are available on the NMFS Alaska Region web page at www.fakr.noaa.gov.



**National Marine Fisheries Service
BSAI Crab Rationalization**



Proposed Rule

NMFS has published a Proposed Rule to implement the Crab Rationalization Program.

- We encourage public comments on any aspect of the Proposed Rule.**
- We are requesting public comments until *December 13, 2004.***
- Please refer to the Alaska Region web page or the proposed rule for instructions on how to submit comments.**

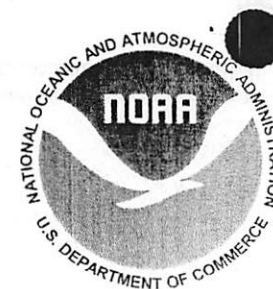
National Marine Fisheries Service BSAI Crab Rationalization



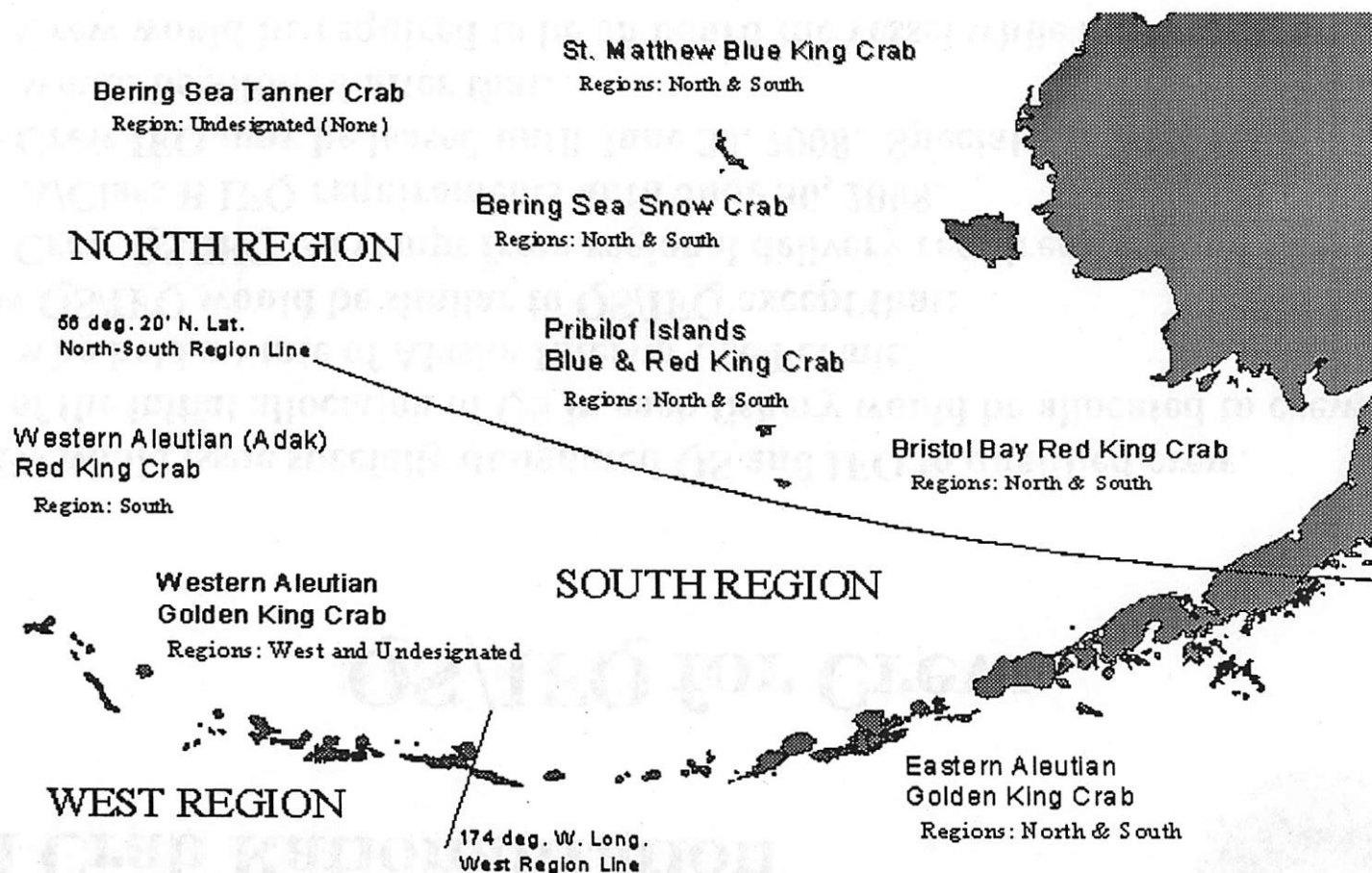
QS/IFQ for LLP Holders

- NMFS would allocate QS to crab LLP license holders based on historic and recent participation.
- QS is an allocation to harvest a percentage of the TAC.
- NMFS would annually issue IFQ based on the amount of QS a person held.
- IFQ is the allocation of pounds of crab to QS holders.
- QS and IFQ would have regional landing requirements – in most cases.
- IFQ would be designated as Class A and Class B IFQ.
 - Class A IFQ must be delivered to a processor with IPQ.
 - Class B IFQ can be delivered to any processor.
 - IFQ holders that are affiliated with a PQS or IPQ holder would be issued Class A IFQ only.
- QS and IFQ would be transferable – with some restrictions.
- Ownership caps on QS and IFQ would prevent excessive shares.
- Vessel use caps on IFQ would limit consolidation.

National Marine Fisheries Service BSAI Crab Rationalization



QS/IFQ Fisheries & Regions



This synopsis provides a general overview as a public service. For exact proposed regulatory language, please refer to www.fakr.noaa.gov. Please call the Alaska Region of NOAA Fisheries with any questions: (907) 586-7228.

National Marine Fisheries Service BSAI Crab Rationalization



QS/IFQ for Crew

- NMFS would issue specially designated QS and IFQ to qualified crew.
- 3 % of the initial allocation of QS in each fishery would be allocated to crew who held a State of Alaska Interim Use Permit.
- Crew QS/IFQ would be similar to QS/IFQ except that:
 - Crew QS/IFQ is exempt from regional delivery requirements and Class A/Class B IFQ requirements until June 30, 2008.
 - Crew IFQ may be leased until June 30, 2008. Special hardship leases would be allowed after that.
 - Crew would be required to be on board the vessel while harvesting crew IFQ, unless they joined a cooperative.
- NMFS would set up a loan program to assist in purchasing QS.

National Marine Fisheries Service BSAI Crab Rationalization



Crab Harvesting Cooperatives

- A cooperative may be formed by 4 or more QS holders who are unaffiliated with a PQS or IPQ holder, or anyone who processes Class B IFQ.
- Cooperatives are formed through contractual agreements among fishermen.
- NMFS would issue the cooperative IFQ for the total amount of QS held by its members.
- Cooperatives may transfer IFQ to other cooperatives.
- Cooperatives may deliver Class A IFQ crab to any processor with IPQ.
- Cooperatives may deliver Class B IFQ crab to any processor.
- Vessel use caps would not apply to vessels that harvest Cooperative IFQ.

This synopsis provides a general overview as a public service. For exact proposed regulatory language, please refer to www.fakr.noaa.gov. Please call the Alaska Region of NOAA Fisheries with any questions: (907) 586-7228.

National Marine Fisheries Service BSAI Crab Rationalization



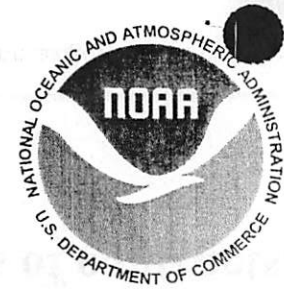
PQS/IPQ for Processors

- NMFS would issue PQS to crab processors based on historic and recent participation.
- PQS is an allocation to process a percentage of the crab harvested with Class A IFQ.
- NMFS would annually issue IPQ based on the amount of PQS a person held.
- IPQ is the allocation of pounds of crab to PQS holders.
- PQS/IPQ would have regional processing requirements based on historic activity – in most cases.
- Processors would be guaranteed delivery of Class A IFQ and would compete for delivery of Class B IFQ.
- New entrants to the processing sector may purchase PQS, purchase crab harvested with Class B IFQ or purchase CDQ crab.
- PQS and IPQ would be transferable – with some restrictions.
- Ownership caps on PQS and use caps on IPQ would prevent excessive shares.

This synopsis provides a general overview as a public service. For exact proposed regulatory language, please refer to www.fakr.noaa.gov. Please call the Alaska Region of NOAA Fisheries with any questions: (907) 586-7228.



National Marine Fisheries Service BSAI Crab Rationalization



Community Elements

Community Development Quota:

- CDQ program is expanded to include Western Aleutian Islands red king crab and Eastern Aleutian Islands golden king crab.
- CDQ percentage is increases from 7.5 % to 10 %.

Adak Allocations of Western Aleutian Islands golden king crab

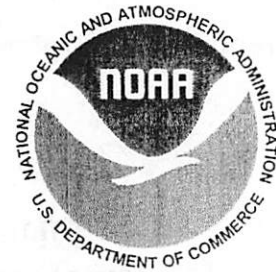
- NMFS would allocate 10 % of the QS to Adak.
- 50 % of the PSQ would be required to be processed in Adak.

Measures to maintain processing in communities:

- Regional delivery requirements for crab processed with IPQ.
- Right of First Refusal on PQS/IPQ leaving a community.
- “Cooling Off” period for sale of PQS and IPQ out of specific communities.

Communities would be able to purchase QS and lease the IFQ to community residents. Sideboard measures would protect participants in other State and Federal fisheries.

National Marine Fisheries Service BSAI Crab Rationalization



Arbitration System

- **The Arbitration System would ensure equitable price negotiations between harvesters and processors.**
- **The Arbitration System would allow IFQ and IPQ holders to match shares, and engage in mediation or a 'last best offer' binding arbitration to determine price.**
- **QS, PQS, IFQ, and IPQ holders would be required to join an Arbitration Organization and pay fees for this process.**
- **The Arbitration System would be enforced through a series of contracts.**



National Marine Fisheries Service BSAI Crab Rationalization



Additional Program Elements

Economic Data Collection

- Fishery Participants would be required to complete Economic Data Reports on costs, revenues, ownership, and employment.
- All information would be aggregated to protect confidentiality.
- Annual reports from the economic data collection program would be produced.

Program Review

- The Council and NMFS would review the program periodically to objectively measure the success of the Program in achieving the goals and objectives.
- The reviews would examine the impacts of the Program on fishery participants.

Cost Recovery Fee Collection

- Fees would be up to 3 % of the ex-vessel value in a crab fishery.
- Fees would be paid by harvesting and processing sectors.
- Fees cover the actual costs of managing and enforcing the Program and would fund the loan program.

National Marine Fisheries Service BSAI Crab Rationalization



Monitoring & Enforcement Recordkeeping & Reporting

Monitoring & Enforcement

- NMFS would implement monitoring requirements for crab fishery participants, including:
 - VMS for vessels,
 - Internet portals for processors, and,
 - Scales for catcher processors.
- Monitoring measures would include landed catch weight and species composition, bycatch, and deadloss to estimate total fishery removals.

Recordkeeping and Reporting

- Any crab harvested that is retained, landed, received, or processed, and crab that cannot be processed, must be reported and recorded.
- Vessel owners and operators, IFQ and IPQ holders, and are responsible for recordkeeping and reporting.

National Marine Fisheries Service BSAI Crab Rationalization



Applications

NMFS would require participants to submit application forms to receive QS, IFQ, PQS, IPQ, and all other permits.

All application forms will be available on the Alaska Region web page.

Application Forms:

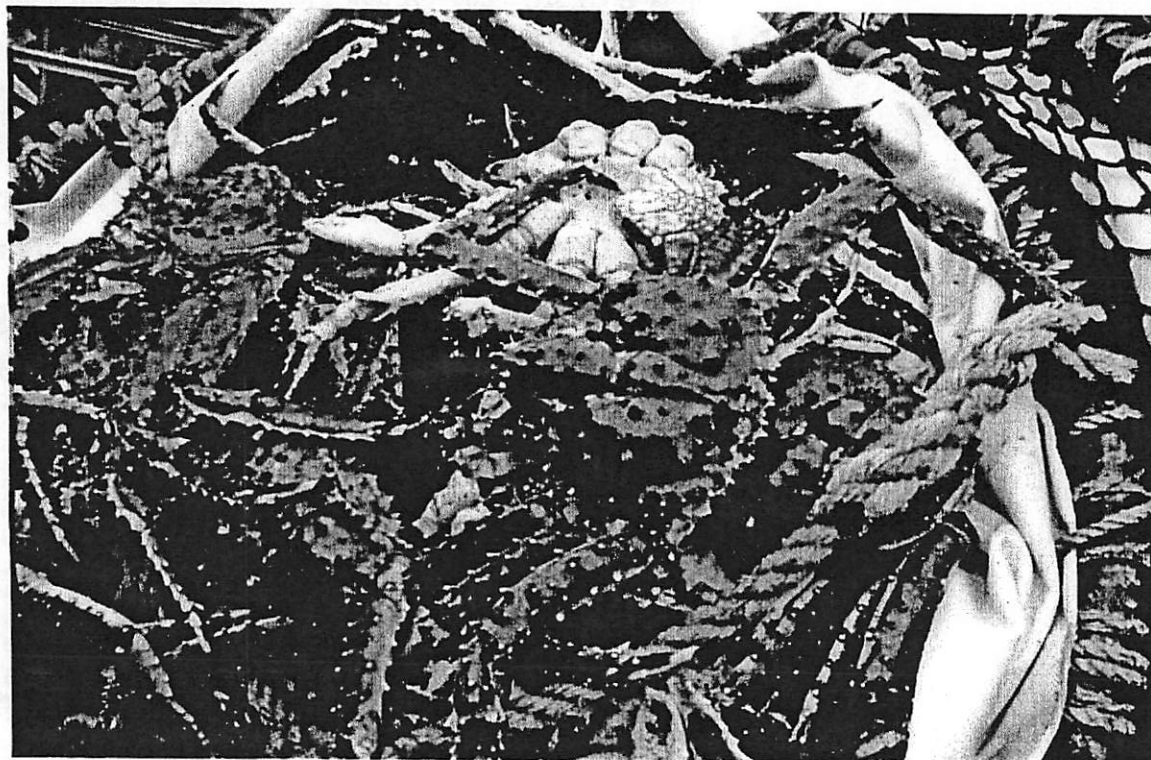
- Application for Crab Quota Share (QS) or Processor Quota Share (PQS)
- Annual Application for Crab IFQ/IPQ Permit
- Application for an Annual Crab Harvesting Cooperative IFQ Permit
- Application for Registered Crab Receiver (RCR) Permit
- Application for Crab IFQ Hired Master Permit
- Application for Federal Crab Vessel Permit
- Application to Become an Eligible Crab Community Organization (ECCO)
- Application for Eligibility to Receive Crab QS/IFQ or PQS/IPQ by Transfer
- Application for Transfer of Crab QS/IFQ or PQS/IPQ
- Application for Transfer of Crab QS/IFQ To or From an ECCO
- Application for Inter-cooperative Transfer
- File an Appeal to NMFS Decisions [no form]

National Marine Fisheries Service BSAI Crab Rationalization



Thank you

Please submit comments on any aspect of the Proposed Rule by December 13, 2004. Please refer to the Alaska Region web page or the proposed rule for instructions on how to submit comments.



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National Marine Fisheries Service BSAI Crab Rationalization



QS/IFQ for LLP Holders

What is QS?

QS is a long-term privilege to harvest a percentage of the crab fishery. LLP based QS is 97% of all the QS in a fishery. Each year QS yields IFQ.

What is IFQ?

IFQ is the pounds of crab that QS yields each year. It is determined by the total allowable catch (TAC). IFQ can be fished by the QS holder, a hired master, or leased until June 30, 2010.

Who can receive QS?

LLP holders with catch history in the Qualifying Years (See Map for years used).

- Catch delivered onshore is issued as:
Catcher Vessel Owner (CVO) QS.
 - Catch processed at sea using an LLP with a catcher/processor endorsement, is issued as:
Catcher Processor Owner (CPO) QS.
- Catch history can't be traded separate from the LLP.

How do I get QS?

Hold a valid crab LLP, and submit an application **BEFORE** the application deadline.

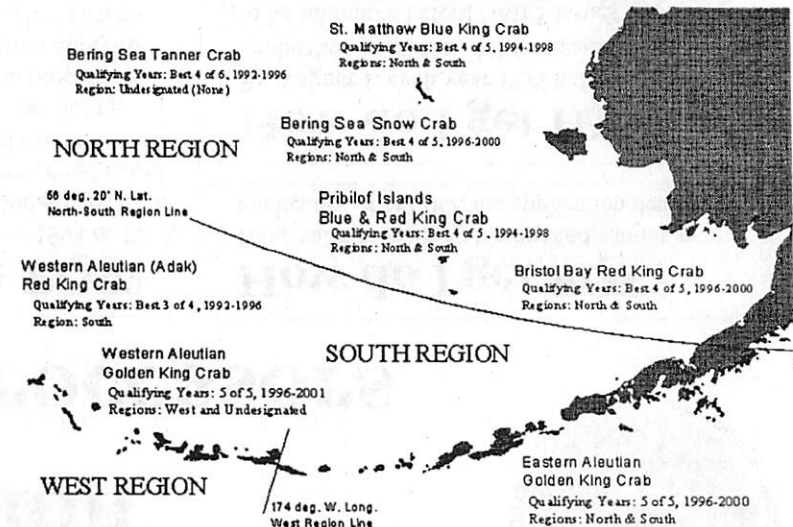
How do I get IFQ?

By August 1, each year a QS holder must submit an application to NMFS. If you are using a hired master, you have to fill out an application. All fees and data reports have to be submitted before NMFS issues IFQ. IFQ is issued once the TAC is set, typically in mid-August.

What's the difference between CVO and CPO QS/IFQ?

	CVO QS/IFQ	CPO QS/IFQ
What can I do with it?	Deliver catch onshore	Deliver catch onshore or process catch onboard
Do I have to deliver my crab in a specific region?	CVO QS produces two types of IFQ: 90% is Class A IFQ with regional delivery restrictions. 10% is Class B IFQ. It has no regional delivery restrictions.	NO, CPO QS produces CPO IFQ that can be used to catch and process crab at-sea or to catch crab and deliver it onshore without delivery restrictions.
Do I have to "match up" with a processor?	Class A IFQ must be delivered to a processor with IPQ. Class B IFQ can be delivered to any processor.	NO
Can I transfer the QS and IFQ?	Yes, QS and IFQ can be transferred to initial QS recipients, to U.S. Citizens, or to U.S. corporations, that meet sea time requirements. IFQ can be transferred separately from the QS until June 30, 2010. All transfers must be approved by NMFS.	
What happens if I also have PQS/IPQ or I'm affiliated with a PQS/IPQ holder?	You would only receive Class A IFQ for all your QS. No Class B IFQ would be issued.	N/A
Is there a limit on how much QS or IFQ I can have?	Yes, there are specific QS and IFQ limits for each fishery. There are different caps for CDQ groups and persons who hold QS/IFQ and PQS/IPQ. There are also limits on how much QS/IFQ can be used onboard one vessel. (See handout).	

Crab Fisheries – QS Qualifying Years



This synopsis provides a general overview as a public service. For exact proposed regulatory language, please refer to the proposed rule at www.fakr.noaa.gov. Please call the Alaska Region of NMFS with any questions: (907) 586-7228.

National Marine Fisheries Service BSAI Crab Rationalization



PQS/IPQ for Processors

What is PQS?

PQS is a long-term privilege to process a percentage of the crab harvest. PQS yields IPQ.

What is IPQ?

IPQ is the pounds of crab that PQS yields each year. IPQ is needed to process any amount of Class A IFQ. The amount of IPQ issued every year is equal to the pounds issued as Class A IFQ.

Who can receive PQS?

U.S. citizens with processing history in 1998 or 1999, and in the qualifying years. This includes persons to whom processing history has been transferred based on a clear contract. There is a special exemption that allows persons who processed snow crab during 1988-1997 and invested \$1,000,000 in processing operations to qualify. Special provisions apply for allocating crab that were harvested under "custom processing" agreements.

How do I get PQS?

Have valid processing history and submit an application **BEFORE** the application deadline.

How do I get IPQ?

By **August 1**, each year PQS holders must submit an application to NMFS. All fees and data reports have to be submitted before NMFS issues IPQ. IPQ is issued once the TAC is set, typically in mid-August.

What Can I Do with PQS and IPQ?

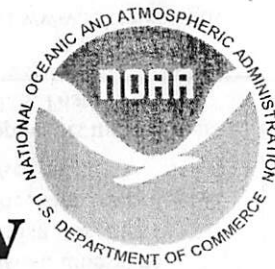
	PQS/IPQ
What can I do with it?	Process any crab harvested under a Class A IFQ permit.
Do I have to process my crab in a specific region?	YES, PQS and IPQ must be used in a specific region.
Can I transfer the PQS and IPQ?	YES, PQS and IPQ can be transferred to anyone. IPQ can be transferred separately from the PQS. All transfers must be approved by NMFS. Some restrictions on transfers of PQS and IPQ apply in specific communities. "Right of first refusal contracts" must be signed with representatives of specific communities before any PQS is issued. The restrictions are tighter during the first two years of the program – the "cooling off" period.
Do I have to have IPQ to process crab?	NO, you need IPQ only to process crab harvested with Class A IFQ. Crab harvested with Class B IFQ or with CVC IFQ until July 1, 2008, does not need to be delivered to a processor with IPQ.
Is there are limit on how much PQS or IPQ I can have?	YES, no one may hold or use more than 30 % of the PQS or IPQ in a fishery. Also, no person can use more than 60 % of the snow crab IPQ in the North Region only.

Crab Fisheries - PQS Qualifying Years



This synopsis provides a general overview as a public service. For exact proposed regulatory language, please refer to the proposed rule at www.fakr.noaa.gov. Please call the Alaska Region of NMFS with any questions: (907) 586-7228.

National Marine Fisheries Service BSAI Crab Rationalization QS/IFQ for Skippers and Crew



What is Crew QS?

Crew QS is a long-term privilege to harvest a percentage of the crab fishery. Crew QS is 3% of the total QS in a fishery. Crew QS is issued to individuals, not corporations. QS yields IFQ.

What is Crew IFQ?

IFQ is the pounds of crab that QS yields each year. It is determined by the TAC. IFQ must be fished by the QS holder unless used in a cooperative or leased. It can be leased until June 30, 2008, and after only under a hardship exemption.

Who receives QS?

Crew with catch history in the qualifying years and recent participation in 2 of the last 3 crab fishing seasons (See map for details).

- Catch delivered onshore is issued as:
Catcher Vessel Crew (CVC) QS.
- Catch processed at sea using is issued as:
Catcher Processor Crew (CPC) QS.

How do I get Crew QS?

Hold a State of Alaska Interim Use Permit with qualifying landings and submit an application **BEFORE** the application deadline.

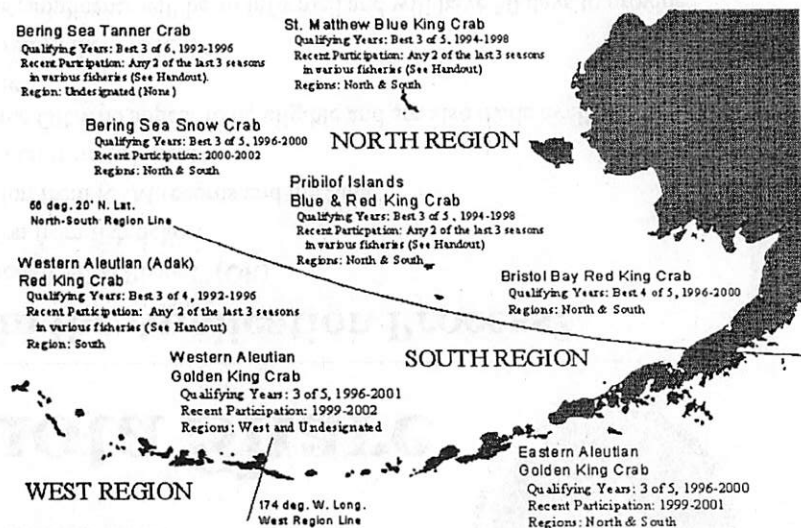
How do I get Crew IFQ?

By August 1, each year QS holders must submit an application to NMFS. All fees and data reports have to be submitted before NMFS issues IFQ. IFQ is issued once the TAC is set, typically in mid-August.

What's the difference between CVC and CPC QS/IFQ?

	CVC QS/IFQ	CPC QS/IFQ
What can I do with it?	Deliver catch onshore	Deliver catch onshore, or process catch onboard
Do I have to deliver my crab in a specific region?	Until June 30, 2008, CVC has no delivery restrictions. After that, CVC is issued as Class A & B IFQ: 90% is Class A IFQ with regional delivery restrictions. 10% is Class B IFQ without regional delivery restrictions.	NO, CPC QS produces CPC IFQ that can be used to catch and process crab at-sea or to catch crab and deliver it onshore without delivery restrictions.
Do I have to "match up" with a processor?	Not before July 1, 2008. After that: CVC Class A IFQ must be delivered to a processor with IPQ. CVC Class B IFQ can be delivered to any processor.	NO
Can I transfer the QS and IFQ?	YES, QS and IFQ can be transferred to initial QS recipients or to individual U.S. citizens that meet recent participation and sea time requirements. IFQ can be transferred separately from the QS until June 30, 2008. All transfers must be approved by NMFS.	
What happens if I also have PQS/IPQ, or I'm affiliated with a PQS/IPQ holder?	Before June 30, 2008, nothing. After that, you would only receive Class A IFQ for that QS. No Class B IFQ would be issued.	N/A
Is there a limit on how much QS or IFQ I can have?	YES, there are specific QS and IFQ limits for each fishery. There are different caps for CDQ groups and persons who hold QS/IFQ and PQS/IPQ. CVC and CPC IFQ is not counted against the vessel use caps that apply to CVO and CPO IFQ.	

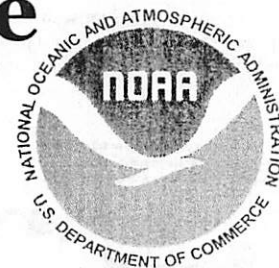
Crab Fisheries – Crew Qualifying Years



This synopsis provides a general overview as a public service. For exact proposed regulatory language, please refer to the proposed rule at www.fakr.noaa.gov. Please call the Alaska Region of NMFS with any questions: (907) 586-7228.

National Marine Fisheries Service BSAI Crab Rationalization

Applying for Quota Share



Who can apply?

Applications will be accepted from three qualifying sectors, including:

- ❖ LLP License Holders
- ❖ Processors
- ❖ Crew (i.e., individuals who held Alaska State interim-use permits and made landings during the qualifying years)

When can I apply?

Applications will be available from NMFS (RAM) on the effective date of the Final Rule (estimated April 2005)

- The application period will last 60 days.
- Late applications will be denied as untimely



What are the steps in the Application Process?

- RAM prepares the "Official Crab Rationalization Record" (OR)
 - * Landings information from fish tickets
 - * Licensing information from RAM records and the State
 - * Processing information from fish tickets
- Applications are mailed to persons in the OR who appear to be eligible and are also made available to the general public on the internet or by request
- Applicants complete applications and return them to RAM
- If claims on application differ from OR, applicants will be so informed and will have 30 days to provide supporting documentation
- RAM then prepares a determination; if favorable, application successful and quota awarded; if not, the claim is denied and applicant is allowed to appeal
- No disputed quota is issued until all claims are resolved and Final Agency Action is taken

What forms might I need?*

- Application for Crab Quota Share (QS) or Processor Quota Share (PQS)
- Annual Application for Crab IFQ/IPQ Permit
- Application for an Annual Crab Harvesting Cooperative IFQ Permit
- Application for Registered Crab Receiver (RCR) Permit
- Application for Crab IFQ Hired Master Permit
- Application for Federal Crab Vessel Permit
- Application to Become an Eligible Crab Community Organization (ECCO)
- Application for Eligibility to Receive Crab QS/IFQ or PQS/IPQ by Transfer
- Application for Transfer of Crab QS/IFQ or PQS/IPQ
- Application for Transfer of Crab QS/IFQ To or From an ECCO
- Application for Inter-cooperative Transfer
- File an Appeal to NMFS Decisions [no form]

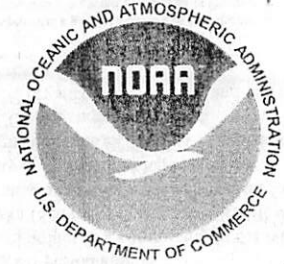
*Forms will be available at www.fakr.noaa.gov following publication of the Final Rule.

How do I appeal?

- Appeals are filed with the Office of Administrative Appeals, a separate NMFS office staffed by independent appeals officers
- An appeal may lead to a formal hearing with witnesses, etc.
- When the record on appeal is fully developed, the appeals officer prepares a decision; unless the Regional Administrator rules otherwise, the decision becomes the Final Agency Action
- Aggrieved applicants may further appeal to the U. S. District Court

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National Marine Fisheries Service BSAI Crab Rationalization Arbitration System



What is the Arbitration System?

The Arbitration System (System) is a series of steps that harvesters and processors must use to negotiate delivery and price contracts. Most of the System is regulated through private contracts among QS/IFQ holders and PQS/IPQ holders. The System is designed to minimize antitrust risks for crab harvesters and processors.

The System has two main portions:

- (1) Each year **three groups of experts** are hired: one to produce an annual Market Report, one to determine a Non-Binding Price Formula for negotiations, and one or more experts to assist in mediation and contract negotiations.
- (2) Once these experts are selected, some IFQ and IPQ holders can use a series of **negotiation approaches** established in the System to resolve delivery and price conflicts. The negotiation approaches are limited to IFQ holders who don't also hold PQS/IPQ or who aren't affiliated with PQS/IPQ holder. These are **Arbitration IFQ holders**. They can negotiate with a single IPQ holder. The contracts with the experts must limit the sharing of information to other IFQ and IPQ holders.

Do I have to participate in the Arbitration System?

Yes, all QS/IFQ and PQS/IPQ holders must participate by joining an Arbitration Organization by **May 1** of each year (except 2005). A person can join only one organization. Arbitration Organizations will establish contracts with the three groups of experts, give copies of the reports to its members, and collect fees for the program.

Can we bargain collectively?

Only IFQ holders who are in a cooperative may bargain collectively. IPQ holders may not.

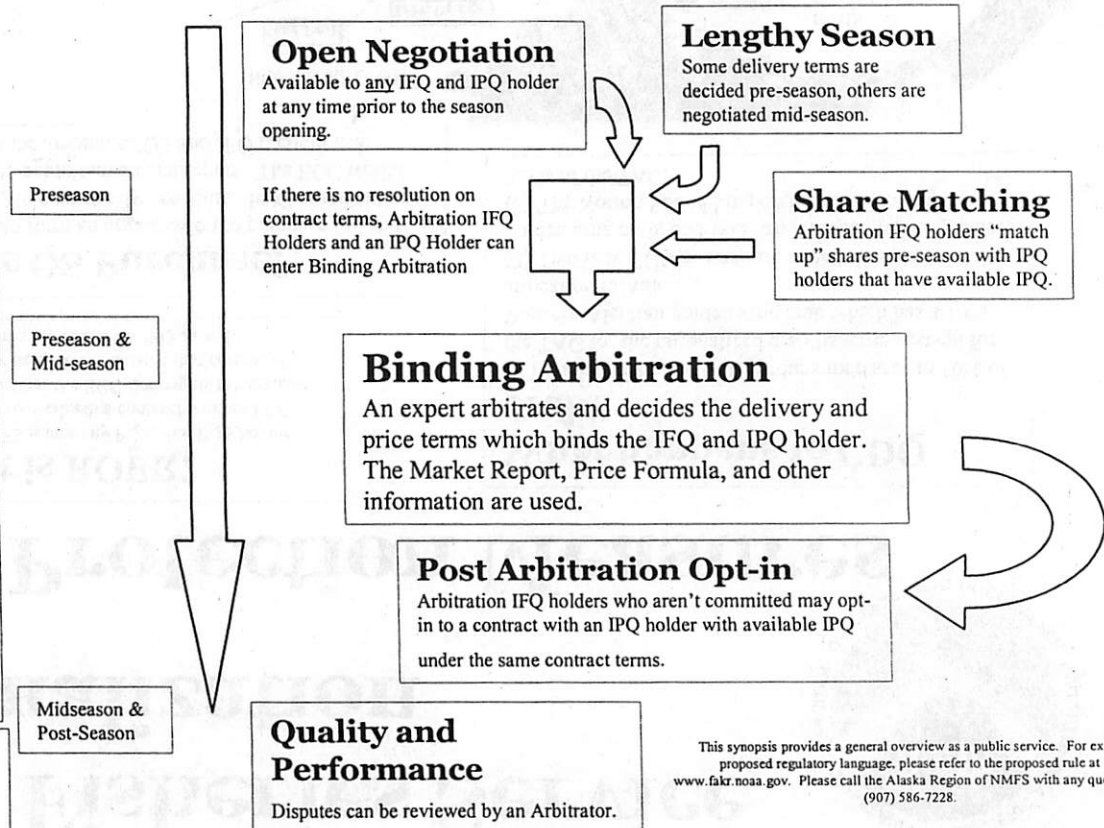
What is the Market Report?

An analysis of market conditions and historic price agreements among harvesters and processors.

What is the Non-Binding Price Formula?

An estimate of prices in a crab fishery. It may be used during negotiations.

What are the Negotiation Approaches?



National Marine Fisheries Service BSAI Crab Rationalization



Community Protection Measures

What are Community Protection Measures?

Primarily limits on the amount of PQS and IPQ that can be used outside of communities where more than 3% of a crab fishery was processed during the qualifying years. There are nine such **Eligible Crab Communities (ECC)** communities (See Map). The three main protections are:

- “Cooling off” Period
- Right of First Refusal (ROFR), and
- QS Purchase.

What is ROFR?

Before NMFS issues any PQS, that PQS holder would need to establish a contract with an ECC which guarantees the ECC first rights to purchase any PQS for sale for use outside that community. Some requirements exist for IPQ as well.

What’s QS Purchase?

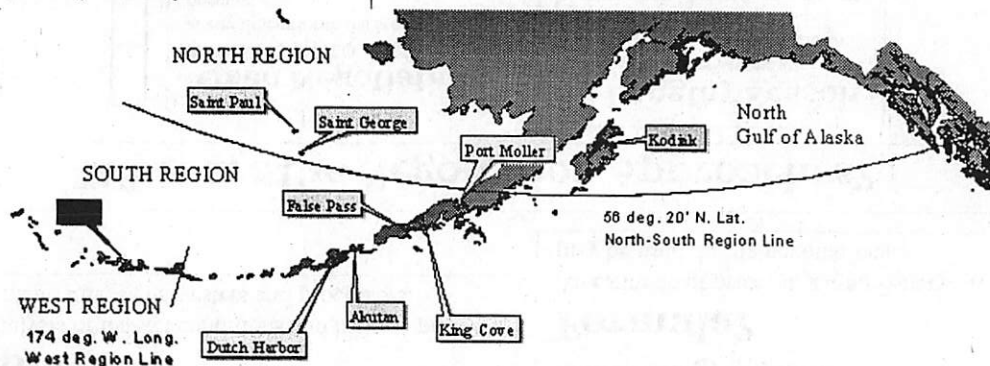
Each ECC can form an organization to purchase QS and lease the IFQ to community residents. ECC organizations would need to submit an annual report. The ECC would be limited in the amount of QS and IFQ it could use.

What happens to CDQ crab?

- (1) The allocation to CDQ groups increases to 10% of the TAC for the rationalized crab fisheries, except for Western Aleutian golden king crab which has a 10% allocation to Adak.
- (2) Two new CDQ species are added: Eastern Aleutian golden king crab; and Western Aleutian red king crab.
- (3) The Norton Sound king crab allocation remains 7.5% of the TAC.

What is the “Cooling Off” Period?

Until July 1, 2007, PQS and IPQ based on processing history from the ECCs could not be transferred from those communities. The use of IPQ outside the community during this period would be limited to 20% of the IPQ by fishery each year with specific hardships provisions. Three crab fisheries would be exempt from the cooling off provision: Tanner crab, Western Aleutian Islands red king crab, and Western Aleutian Islands golden king crab.



Measures for Specific Communities

Adak

- (1) Cooling off period applies.
- (2) No ROFR
- (3) Special allocation of 10% of the Western Aleutian golden king crab TAC.
- (4) This allocation goes to an entity formed by the residents of Adak, or the Aleut Corporation if an entity doesn't form for the first 2 years only. This allocation must be used for fishery development in Adak.
- (5) The Adak entity can hold QS and lease IFQ to residents.

Non-CDQ ECC

Dutch Harbor, King Cove, Port Moller

- (1) Cooling off period applies.
- (2) ROFR contract with PQS application.
- (3) The governing body for each community must select the ECC entity/organization to represent it for purposes of ROFR and QS purchase. They are:
Dutch Harbor: City of Dutch Harbor
King Cove: City of King Cove & Aleutians East Borough
Port Moller: Aleutians East Borough
- (4) The ECC entity signs the ROFR.
- (5) The ECC organization holds QS and leases IFQ to residents.

CDQ ECC

Akutan, False Pass, St. Paul, St. George

- (1) Cooling off period applies.
- (2) ROFR contract with PQS application.
- (3) The ECC entity/organization represents the ECC for purposes of ROFR and QS purchase. The CDQ group selects the ECC for that community:
Akutan, False Pass, St. George: APICDA
St. Paul: CBSFA
- (4) The ECC entity signs the ROFR.
- (5) The ECC organization holds QS and leases IFQ to residents.

Kodiak

- (1) Cooling off period applies
- (2) Any PQS holder in a community in the North Gulf of Alaska (See map) must have a ROFR with the ECC entity of Kodiak in its application for PQS.
- (3) The City of Kodiak and Kodiak Island Borough select the ECC entity/organization.
- (3) The ECC entity signs the ROFR.
- (5) The ECC organization holds QS and leases IFQ to residents.

National Marine Fisheries Service BSAI Crab Rationalization



Cooperatives

What is a Crab Harvesting Cooperative?

A group of four or more distinct QS holders who voluntarily agree to combine their IFQ for use by the cooperative. NMFS would reissue IFQ to a cooperative each year. Cooperatives do not hold QS, they hold and use only the IFQ of the cooperative members. Cooperatives are formed under the requirements of the Fishermen's Collective Marketing Act of 1934, which provides certain anti-trust exemptions.

Can I join more than one Cooperative?

No, a QS holder can only join one cooperative each year. All of a QS holder's IFQ for all crab fisheries must go to one cooperative at the start of the crab fishing year.

Who fishes the cooperative IFQ?

Either a member of a cooperative or a permitted hired master. Hired masters can be used only if a cooperative member has at least a 10% ownership in the vessel.

When do I join?

If you decide to join a cooperative, an application is due to NMFS by **June 30** each year.

Can cooperatives process crab?

Yes, but they cannot process Class B IFQ, or hold IPQ.

Who can join a cooperative?

Only QS holders who don't:

- (1) also hold PQS/IPQ;
- (2) affiliate with PQS/IPQ holders;
- (3) processes Class B IFQ; or
- (4) affiliate with a Class B IFQ processor.

Affiliation is based on a processor having more than 10% ownership interest in the QS holder, or other wise having control over that QS holder.

What happens if I get more QS or IFQ later in the year?

A cooperative member that gets more IFQ after the cooperative application has been filed may transfer IFQ to the cooperative or it can be used independently by the cooperative member.

Are there limits on how much IFQ a cooperative can fish?

NO, a cooperative can fish as much of the IFQ as results from the QS held by its members. If a boat is fishing only cooperative IFQ then IFQ vessel use caps do not apply on that boat

Can cooperatives trade IFQ?

YES, but just among other cooperatives. These trades have to be approved by NMFS.

Gulf of Alaska Groundfish Sideboards

What are sideboards?

Sideboards limit the amount of Gulf of Alaska (GOA) groundfish that crab vessels can harvest. They are intended to limit the ability of crab boats to enter the GOA groundfish fishery and exacerbate the "race for fish."

Who is limited by sideboards?

Sideboards apply to non-AFA crab vessels that fished snow crab from 1996-2000.

Vessels that fished less than 50 mt of Pacific cod in the Gulf of Alaska during 1996-2000 are prohibited from fishing Pacific cod in the Gulf.

Vessels that harvested less than 100,000 pounds of snow crab and more than 500 mt of Pacific cod during 1996-2000 are exempted from sideboards.

How do sideboards apply?

The sideboard is calculated for each vessel based on its historic percentage of the various groundfish species. NMFS will establish an annual harvest limit for each vessel, but NMFS may open or close fisheries based on the combined sideboard limit.

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National Marine Fisheries Service BSAI Crab Rationalization Economic Data Collection



What is the Economic Data Collection Program?

Crab Rationalization includes a comprehensive economic data collection program to aid the Council and NMFS in assessing the success of the Program and developing amendments necessary to mitigate any unintended consequences. The data would be used to study the economic impacts of the Program on harvesters, processors, and communities.

Who must participate in the Economic Data Collection Program?

- Participation in the economic data collection program would be mandatory for all participants in the fisheries.
- Participants in the crab fishing industry harvesting or processing fish under Magnuson-Stevens Act authority after January 23, 2004, must submit an EDR.
- Owners and lessees of fishing vessels and processing operations would be responsible for submission of the EDR.

What type of information is being collected?

Cost, revenue, production, and ownership data would be submitted in an EDR. Relevant state and local fish taxes would also be reported.

Who will collect and control this information?

Pacific States Marine Fisheries Commission would serve as the Data Collection Agent (DCA) providing for integrity, confidentiality, and dissemination of data.

Who will have access to this information?

- Pacific States may furnish data to NMFS economists, Council staff, or other authorized users accessing the data for crab management analysis or report purposes, but must eliminate or remove the identifiers for the submitter.
- If NMFS Enforcement, NOAA GC, RAM, Department of Justice, or the Federal Trade Commission requests data, and the purpose is connected to law enforcement or qualification for QS, PQS, IFQ, IPQ, and other Federal permits, Pacific States would provide the data and the identity of the submitter.

Basic Submission Requirements by Sector and Type

Catcher Vessel EDR

Historical

- **Who:** The DCA would conduct a sample based selection of owners of vessels for submission of any 3 years selected between 1998 through 2004
- **When:** Within 60 days of publication of a *Federal Register* notice identifying vessels that must submit historic data to the DCA.

Annual

- **Who:** Any owner or leaseholder of a catcher vessel that landed crab from a CR fishery.
- **When:** Each year on or before May 1, encompassing the previous calendar year.

Shoreside Processor EDR

Historical

- **Who:** Any owner or leaseholder of a shoreside processor that processed CR fisheries crab in the calendar years 1998, 2001, or 2004.
- **When:** No later than 60 days after the effective date of the final rule.

Annual

- **Who:** Any owner or leaseholder that processed crab from a CR fishery.
- **When:** Each year on or before May 1, encompassing the previous calendar year.

Stationary Floating Crab Processor EDR

Historical

- **Who:** Any owner or leaseholder of an SFCP that processed CR fisheries crab in the calendar years 1998, 2001, or 2004.
- **When:** No later than 60 days after the effective date of the final rule.

Annual

- **Who:** Any owner or leaseholder of an SFCP that processed crab from a CR fishery.
- **When:** Each year on or before May 1, encompassing the previous calendar year.

Catcher/Processor EDR

Historical

- **Who:** Any owner or leaseholder of a CP that harvested or processed BSAI crab in the calendar years 1998, 2001, or 2004 would be required to submit an historical EDR.
- **When:** No later than 60 days after the effective date of the final rule.

Annual

- **Who:** Any owner or leaseholder of a catcher/processor that landed or processed crab from a CR fishery.
- **When:** Each year on or before May 1, encompassing the previous calendar year.

Where do I submit an EDR?

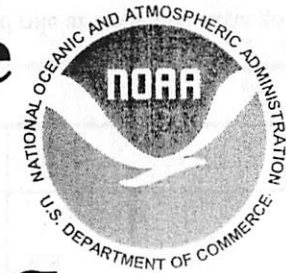
All forms must be submitted to Pacific States Marine Fisheries Commission at the address provided on each form.

Other required forms:

Request for verification of EDR data by DCA

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National Marine Fisheries Service BSAI Crab Rationalization



Recordkeeping & Reporting

General

- Any CR crab harvested that is retained, landed, received, or processed, and crab that cannot be processed, must be reported and recorded. Required forms vary for each sector.
- Applications and Permits are addressed separately.

Who is responsible for Recordkeeping and Reporting?

- The owner and operator of any vessel used to harvest or process CR crab.
- A crab IFQ permit holder or crab IFQ hired master.
- A crab IPQ permit holder or the manager of a crab IPQ permit holder.
- An RCR, including an RCR that receives CR crab for custom processing, and an RCR that is the operator of a catcher vessel.



Potential Reporting Forms by Type of Submitter

Catcher/Processor

- RCR Fee Submission Form
- Interagency Electronic Reporting System (IERS) Application for User ID [electronic]
- CR Crab Landing Report [electronic]
- Catcher/processor Offload Report
- Catcher/processor historical Economic Data Report (EDR)
- Catcher/processor annual EDR
- Request for verification of EDR data by DCA
- Product Transfer Report (PTR)
- U.S. Vessel Activity Report (VAR)
- Catcher/processor Longline and Pot Gear Daily Cumulative Production Logbook (DCPL)
- At-sea inspection request
- Record of daily scale tests
- Printed output of scale weights [no form]
- At-sea scale approval report/sticker [no form]
- Prior notice to Observers of scale tests [no form]
- VMS Check-in Report
- IFQ Departure Report [telephone request]
- Transshipment Authorization [telephone request]
- Administrative Waiver [telephone request]
- Appeal to NMFS Decisions [no form]

Arbitration Organization

- Annual Arbitration Organization Report [no form]
- Arbitration Organization miscellaneous reporting [no form]
- Market Report [no form]
- Non-binding Price Formula Report [no form]
- Establish price for arbitration negotiations [no form]

Community

- ECCO Annual Report for an ECC [no form]

Registered Crab Receiver (RCR)

- RCR Fee Submission Form
- Interagency Electronic Reporting System (IERS) Application for User ID [electronic]
- CR Crab Landing Report
- Request for verification of EDR data by DCA
- Product Transfer Report (PTR)
- Printed output of scale weights [no form]
- Crab monitoring plan (CMP) [no form]
- Shoreside crab processor historical EDR
- Shoreside crab processor annual EDR
- Stationary floating crab processor annual EDR
- Stationary floating crab processor historical EDR
- Administrative Waiver [telephone request]
- Appeal to NMFS Decisions [no form]



Harvester

- RCR Fee Submission Form
- CR Crab Landing Report [electronic]
- U.S. Vessel Activity Report (VAR)
- Catcher Vessel Longline and Pot Gear Daily Fishing Logbook (DFL)
- Catcher vessel historical EDR
- Catcher vessel annual EDR
- Request for verification of EDR data by DCA
- VMS Check-in Report
- IFQ Departure Report [telephone request]
- Transshipment Authorization [telephone request]
- Administrative Waiver [telephone request]
- Appeal to NMFS Decisions [no form]

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National Marine Fisheries Service BSAI Crab Rationalization



Monitoring & Enforcement



General

- All persons who receive CR crab must possess a Registered Crab Receiver (RCR) Permit.
- At their own expense, all RCRs must obtain hardware, software, and internet connectivity to support internet submissions of the CR crab landing report on the Interagency Electronic Reporting System.
- All vessels that harvest CR crab would be required to have an operating NMFS-approved VMS any time the vessel has crab gear on board.

Basic Requirements by Sector

Catcher/Processors

- Would be required to weigh all harvested crab IFQ at sea prior to processing.
- Would be required to offload all product shoreside at a designated port and weigh that product on a scale approved by the State in which the offload takes place.
- Would be required to provide minimum work areas and facilities for observers.

RCRs

- Would be required to develop a Catch Monitoring Plan (CMP)
- Would be required to implement catch weighing requirements under a cooperative state and federal model provided in the regulations.

Harvesters

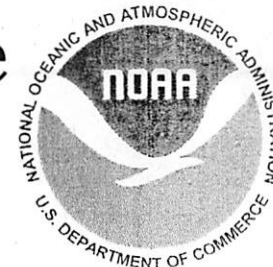
- All offloads must be to an RCR
- Vessel may not leave RCR until reporting of offload is complete.

Summary of Monitoring Requirements for Crab Fishery Participants

Requirement	RCR Taking Deliveries of Crab	Catcher Vessel Harvesting Crab	Catcher Processor Harvesting or Processing Crab
Weigh all retained crab by quota category prior to processing.	YES. On a scale approved by the State in which the RCR is located.	NO	YES. On a scale approved by NMFS.
Scale testing requirements.	YES. On demand.	N/A	YES. Scale must be tested daily when use is required.
Printed record of scale weights.	YES	N/A	YES
Operate under an approved catch monitoring plan (CMP).	YES	NO	NO
Offload requirements.	NO	YES. All offloads must be to an RCR. Vessel may not leave RCR until reporting of offload is completed.	YES. All product must be offloaded on shore.
Product weighing requirements.	NO	N/A	YES. All product must be weighed on a scale approved by the State in which product offload takes place.
Vessel Monitoring System (VMS) requirements.	N/A	YES	YES
Provide Observer work station.	NO	NO	YES

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National Marine Fisheries Service BSAI Crab Rationalization



Cost Recovery

What is Cost Recovery?

The Magnuson-Stevens Act requires NMFS to establish a cost recovery fee system to recover actual costs directly related to the management and enforcement of any individual fishing quota program or community development quota program. The Crab Rationalization fee system collects fees based on a percentage of the ex-vessel value of crab caught under this program.

When are fees due?

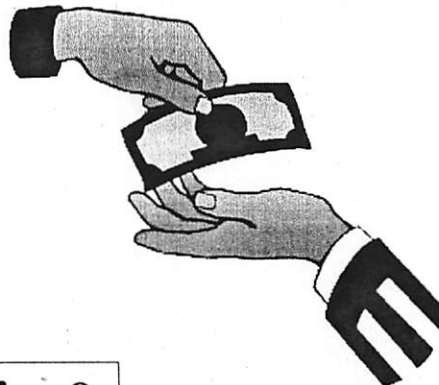
- Fees would be paid annually to NMFS based on a "crab fishing year" running from July 1 to June 30.
- All fees must be paid to NMFS by July 31 for the preceding crab fishing year.

What happens if I don't pay my fees?

- NMFS may withhold issuance of any new IFQ, IPQ, or RCR permit.
- NMFS may also disapprove transfer of any IFQ, IPQ, QS or PQS to or from an RCR permit holder.

Who must pay fees?

- Any person who receives CR crab, including non-IPQ holders, would be required to possess a Registered Crab Receiver (RCR) Permit.
- All CR allocation holders and RCR permit holders would be subject to a fee liability for any CR crab debited from a CR allocation, including CDQ and the Adak allocation.



Required forms:

RCR Fee Submission Form

Non-RCR Harvesters

- Would pay half the fee percentage for CR crab received by an RCR.
- Fees will be deducted from the price paid by the RCR receiving the CR crab.
- Harvesters would be absolved of Cost Recovery responsibilities after transferring their product and paying their fee share to the RCR.

Registered Crab Receivers

- Would pay half the fee percentage for CR crab received from a harvester.
- Would use the price paid at the time of purchase by the RCR as ex-vessel value
- Would calculate the fee liability for the harvester and themselves by multiplying the appropriate ex-vessel value and fee percentage.
- Would collect, document, and submit all fees to NMFS.

Catcher/Processors

- Would pay the full fee percentage for all CR crab debited from an allocation.
- Would use the CP standard price as ex-vessel value. CP standard prices would be based on a weighted average of previous years' shoreside ex-vessel values.
- Would calculate fee liability by multiplying the appropriate ex-vessel value and fee percentage.
- Would collect, document, and submit all fees to NMFS.

Frequently Asked Questions (FAQ's)



What is Crab Rationalization?

The Program would allocate BSAI crab resources among harvesters, processors, and coastal communities. The Council developed the Program over a 6-year period to accommodate the specific dynamics and needs of the BSAI crab fisheries. The Program builds on the Council's experiences with the halibut and sablefish Individual Fishing Quota (IFQ) program and the American Fisheries Act (AFA) cooperative program for Bering Sea pollock. The Program is a limited access system that balances the interests of several groups who depend on these fisheries. The Program would address conservation and management issues associated with the current derby fishery and would reduce bycatch and associated discard mortality. The Program also would increase the safety of crab fishermen by ending the race for fish.

Share allocations to harvesters and processors, together with incentives to participate in fishery cooperatives, would increase efficiencies, provide economic stability, and facilitate compensated reduction of excess capacities in the harvesting and processing sectors. Community interests would be protected by Community Development Quota (CDQ) allocations and regional landing and processing requirements, as well as by several community protection measures.

Program components: quota share allocation, processor quota share allocation, IFQ and individual processing quota (IPQ) issuance, quota transfers, use caps, crab harvesting cooperatives, protections for Gulf of Alaska groundfish fisheries, arbitration system, monitoring, economic data collection, and cost recovery fee collection. The following Frequently Asked Questions (FAQs) give answers to some questions. This proposed rule is complex and not all of the specific details are provided.

Quota Share (QS) and Individual Fishing Quota (IFQ)

What is QS?

QS is a long-term privilege to harvest a percentage of the crab fishery. QS is issued either to: (1) holders of permanent LLP Licenses with landings in the qualifying years; or (2) crew members who had a State of Alaska Interim Use Permit and made landings in the qualifying years with that permit. LLP based QS is 97% of all the QS in a fishery. Crew based QS is 3% of all the QS in a fishery. Each year QS yields IFQ.

What is IFQ?

IFQ is the pounds of crab that QS yields each year. It is determined by the annual crab total allowable catch amount (TAC). IFQ can be fished by the QS holder, or a hired master. IFQ that is based on QS issued to LLP License holders can be leased until June 30, 2010. IFQ that is based on QS issued to crew can be leased until June 30, 2008, and after under special exemptions (see § 680.41(m) at 69 FR 63306).

How do I get QS?

Hold either a permanent LLP License or a State of Alaska Interim Use Permit, and submit an application **BEFORE** the application deadline. The application deadline would be published with the Final Rule.

Who can receive QS?

(1) LLP License holders with catch history in the qualifying years.

- Catch delivered onshore is issued as: Catcher Vessel Owner (CVO) QS.
- Catch processed at sea using an LLP License with a catcher/processor endorsement, is issued as: Catcher Processor Owner (CPO) QS.
- Catch history can't be traded separate from the LLP License.

(2) Crew with catch history in the qualifying years and recent participation in 2 of the last 3 crab fishing seasons.

- Catch delivered onshore is issued as: Catcher Vessel Crew (CVC) QS.
- Catch processed at sea using is issued as: Catcher Processor Crew (CPC) QS.
- Crew QS is issued to individuals only.

What are the qualifying years and recent participations seasons?

Those are detailed in Table 7 of the proposed rule.

How do I get IFQ?

By August 1 each year a QS holder must submit an application to NMFS. If you are using a hired master, you still have to fill out an application. All fees and data reports you are required to comply with must be submitted before NMFS issues you IFQ.

Are there restrictions on where I can use my Class A IFQ?

For each of the eight crab QS fisheries there are specific regions where Class A IFQ must be delivered. Each of the regions for each of the fisheries are shown in the table below.

Crab Fishery	North Region, North of 56°20' N. lat.	South Region, South of 56°20' N. lat.	West Region, West of 174° W. long.	Undesignated
EAG - Eastern Aleutian golden king crab	X	X		
WAG - Western Aleutian golden king crab			X	X
BST - Bering Sea Tanner crab				X
BSS - Bering Sea snow crab	X	X		
BBR - Bristol Bay red king crab	X	X		
PIK - Pribilof Islands red and blue king crab	X	X		
SMB - St. Matthew blue king crab	X	X		
WAI - Western Aleutian Islands red king crab		X		

What is affiliation?

Affiliation is a type of linkage between a harvester and processor – in this program, typically between a QS/IFQ holder and a PQS/IPQ holder. Affiliation exists if a person either directly or indirectly has a 10 % or greater ownership interest in another, or otherwise controls or directs that person (e.g., through lease arrangements or other factors).

What's the difference between CVO and CPO QS/IFQ?

	CVO QS/IFQ	CPO QS/IFQ
What can I do with it?	Deliver catch onshore	Deliver catch onshore, or process catch onboard
Do I have to deliver my crab in a specific region?	CVO QS produces two types of IFQ. 90% is Class A IFQ with regional delivery restrictions. 10% is Class B IFQ. It has <u>no</u> regional delivery restrictions.	NO, CPO QS produces CPO IFQ that can be used to catch and process crab at-sea, or to catch crab and deliver it onshore without delivery restrictions.
Do I have to "match up IFQ with a processor with IPQ?	Class A IFQ must be delivered to a processor with IPQ. Class B IFQ can be delivered to any processor.	NO – IFQ can be delivered to any processor.
Can I transfer the QS and IFQ?	YES, QS and IFQ can be transferred to initial QS recipients, or to U.S. Citizens, or U.S. corporations, that meet sea time requirements. IFQ can be annually transferred separately from the QS until June 30, 2010. All transfers must be approved by NMFS.	
What happens if I also have PQS or IPQ, or I'm affiliated with a PQS or IPQ holder?	You would only receive Class A IFQ for that QS. You would not be issued any Class B IFQ.	N/A
Is there a limit on how much QS or IFQ I can have?	YES, there are specific QS and IFQ limits for each fishery. There are different caps for CDQ groups, and persons who hold both QS/IFQ and PQS/IPQ. There are also limits on how much IFQ can be used onboard one vessel. The specific use caps and vessel use caps are detailed in the proposed rule under Section 680.42.	

What's the difference between CVC and CPC QS/IFQ

	CVC QS/IFQ	CPC QS/IFQ
What can I do with it?	Deliver catch onshore	Deliver catch onshore, or process catch onboard
Do I have to deliver my crab in a specific region?	Until June 30, 2008, CVC IFQ has <u>no</u> delivery restrictions. After that, it is issued as Class A & B IFQ. 90% is Class A IFQ with regional delivery restrictions. 10% is Class B IFQ. It is <u>without</u> regional delivery restrictions.	NO, CPC QS produces CPC IFQ that can be used to catch and process crab at-sea, or to catch crab and deliver it onshore without delivery restrictions.
Do I have to "match up" IFQ with a processor with IPQ?	Not before July 1, 2008. After that CVC Class A IFQ must be delivered to a processor with IPQ. CVC Class B IFQ can be delivered to any processor.	NO
Can I transfer the QS and IFQ?	YES, QS and IFQ can be transferred to initial QS recipients, or to individual U.S. Citizens that meet recent participation and sea time requirements. IFQ can be annually transferred separately from the QS until June 30, 2008. All transfers must be approved by NMFS.	
What happens if I also have PQS/IPQ, or I'm affiliated with a PQS/IPQ holder?	Before June 30, 2008, nothing. After that, you would only receive Class A IFQ for that QS. No Class B IFQ would be issued.	N/A
Is there a limit on how much QS or IFQ I can have?	YES, there are specific QS and IFQ limits for each fishery. There are different caps for CDQ groups, and persons who hold QS/IFQ and PQS/IPQ. There are no limits on how much CVC or CPC IFQ can be used onboard one vessel. The specific use caps are detailed in the proposed rule under Section 680.42.	

Processors

What is PQS?

PQS is a long-term privilege to receive a percentage of the crab harvest in a fishery. PQS yields IPQ.

What is IPQ?

IPQ is the pounds of crab that PQS yields each year. IPQ is needed to receive any amount of Class A IFQ. The amount of IPQ issued every year is equal to the pounds issued as Class A IFQ.

Do I need IPQ to process crab?

No, you can process Class B IFQ, CPO IFQ, CPC IFQ, and CVC IFQ (before July 1, 2008) without IPQ. You must have IPQ to process Class A IFQ. Anyone who is processing crab, must have a registered crab receiver (RCR) permit. That permit is necessary for data collection and fee assessment. That permit is available through NMFS.

Who can receive PQS?

U.S. citizens are eligible to receive PQS initially. Specifically, either persons with processing history in 1998 or 1999, and in the qualifying years, or persons to whom processing history has been transferred based on a clear contract. There is also a special exemption that allows persons who processed snow crab during 1988-1997 and invested \$1,000,000 in processing operations to qualify. Special provisions apply for allocating crab that were harvested under "custom processing" agreements.

What are the qualifying years and recent participations seasons?

Those are detailed in Table 9 of the proposed rule.

How do I get IPQ?

By August 1 each year a PQS holder must submit an application to NMFS. All fees and data reports you are required to comply with must be submitted before NMFS issues you IPQ.

What can I do with PQS and IPQ?

What can I do with it?	Receive any crab harvested under a Class A IFQ permit.
Do I have to process my crab in a specific region?	YES, PQS and IPQ must be used in the specific region for which it is designated. The regions are the same for PQS/IPQ as QS/IFQ.
Can I transfer the PQS and IPQ?	YES, PQS and IPQ can be transferred to anyone. IPQ can be transferred separately from the PQS. All transfers must be approved by NMFS. Some restrictions on transfers of PQS and IPQ apply in specific communities. "Right of first refusal contracts" must be signed with representatives of the communities before any PQS, and in some cases IPQ is issued. The restrictions are tighter during the first two years of the program – the "cooling off" period.
Do I have to have IPQ to process crab?	NO, you need IPQ only to receive crab harvested with Class A IFQ. Crab harvested with Class B IFQ, or under CVC IFQ until July 1, 2008 do not need to be delivered to a processor with IPQ.
Is there a limit on how much PQS or IPQ I can have?	YES, no one may hold or use more than 30 % of the PQS or IPQ in a fishery. Also, no person can use more than 60 % of the snow crab IPQ in the North Region only.

Applications

Who can submit applications for quota share?

Applications will be accepted from three qualifying sectors including LLP License Holders, Processors, and crew. Crew would include individuals who held CFEC interim use permits and made landings during the qualifying years.

What information is used to determine my eligibility for quota share?

NMFS Restricted Access Management Division (RAM) will prepare the "Official Crab Rationalization Record." The Official Crab Rationalization Record will include landings information from fish tickets, licensing information from RAM records and the State of Alaska, and processing information from fish tickets.

When will I be able to submit an application?

Applications will be accepted by RAM upon the effective date of the Final Rule (tentatively April 2005). RAM will mail applications to persons in the Official Crab Rationalization Record who appear to be eligible and will also make applications available to the general public. The application period will last for 60 days (until the end of May 2005).

What happens if my application is late?

Late applications will be denied as untimely.

What if information on the application I submit differs from the Official Crab Rationalization Record?

If claims on an application differ from the Official Crab Rationalization Record, applicants will be so informed and will have 30 days to provide supporting documentation. RAM will subsequently prepare a determination. If RAM's determination is favorable, the application will be considered successful and quota share will be awarded. If RAM's determination is not favorable, the claim will be denied and the applicant will be given the opportunity to appeal. No disputed quota share is issued until all claims are resolved and final agency action is taken.

Cooperatives

What is a Crab Harvesting Cooperative?

A group of four or more distinct QS holders (not affiliated with the other cooperative members) who voluntarily agree to combine their IFQ for use by the cooperative. IFQ must be reissued to a cooperative each year. Cooperatives do not hold QS, they hold and use only the IFQ of the cooperative members. Cooperatives are formed under the requirements of the Fishermen's Cooperative Act of 1934, which provides certain anti-trust exemptions.

Can I join more than one Cooperative?

NO, a QS holder can only join one cooperative each year. All of a QS holder's IFQ for all crab fisheries must go to one cooperative.

What happens if I get more QS or IFQ later in the year?

A cooperative member that gets more IFQ after the cooperative application has been filed can transfer that IFQ to the cooperative, or can use that IFQ independently outside the cooperative.

Who can join a cooperative?

Only QS holders who don't also hold PQS/IPQ, or who aren't affiliated with PQS/IPQ holders or Class B IFQ processors.

Who fishes the cooperative IFQ?

Either a member of a cooperative or a hired master. Hired masters can only be used if a cooperative member has at least a 10% ownership in the vessel.

When do I join?

If you decide to join a cooperative, an application is due to MNFS by **June 30** each year.

Are there limits on how much IFQ a cooperative can fish?

NO, a cooperative can fish as much of the IFQ as results from the QS held by its members. If a boat is fishing only cooperative IFQ, then IFQ vessel use caps do not apply on that boat

Can cooperatives trade IFQ?

YES, but just among other cooperatives. These trades have to be approved by NMFS.

Gulf of Alaska Sideboards

What are sideboards?

Sideboards limit the amount of Gulf of Alaska (GOA) groundfish that crab vessels can harvest. They are intended to limit the ability of crab boats to enter the GOA groundfish fishery and create more of a "race for fish."

Who do they apply to?

Sideboards apply to non-AFA crab vessels that fished snow crab from 1996-2000.

Vessels that fished less than 50 mt of Pacific cod in the GOA during 1996-2000 are prohibited from fishing Pacific cod in the GOA.

Vessels that harvested less than 100,000 pounds of snow crab and more than 500 mt of Pacific cod during 1996-2000 are exempted from sideboards.

How is the sideboard applied?

The sideboard is calculated for each vessel based on their historic percentage of the various groundfish species. NMFS will establish an annual harvest limit for each vessel.

Community Protection Measures

What are Community Protection Measures?

Primarily limits on the amount of PQS and IPQ that can be used outside of communities with historic dependence on the crab fisheries, which means that more than 3% of a crab species was harvested there. There are nine such Eligible Crab Communities (ECC). They are: Adak, Akutan, Dutch Harbor, False Pass, King Cove, Kodiak, Port Moller, Saint George, and Saint Paul. There are three main protections:

“Cooling off” Period

**Right of First Refusal (ROFR), and
QS Purchase.**

What is the “Cooling Off” Period?

Until July 1, 2007, PQS and IPQ based on processing history from the ECCs could not be transferred from those communities. The use of IPQ outside the community during this period would be limited to 20 % of the IPQ each year with specific hardships provisions. Three crab fisheries would be exempt from the cooling off provision: Tanner crab, Western Aleutian Islands red king crab, and Western Aleutian Islands golden king crab.

What is ROFR?

Before NMFS issues any PQS, that PQS holder would need to establish a contract with specified ECC's which guarantees the ECC first rights to purchase any PQS for sale for use outside that community. Some requirements exist for IPQ as well.

What's QS Purchase?

Each ECC can purchase QS and lease the IFQ to community residents. Communities would need to submit an annual report. The ECC would be limited in the amount of QS and IFQ it could use

What happens to CDQ crab?

The allocation to CDQ groups increases to 10% of the TAC for the rationalized crab fisheries, except for Western Aleutian golden king crab which has a 10% allocation to Adak. This adds two new CDQ species, Eastern Aleutian golden king crab and Western Aleutian red king crab. The Norton Sound king crab allocation remains 7.5% of the TAC.

What specific measures apply to Adak?

- (1) Cooling off period applies.
- (2) No ROFR
- (3) Special allocation of 10% of the Western Aleutian golden king crab TAC.
- (4) This allocation goes to an entity formed by the residents of Adak, or the Aleut Corporation if an entity doesn't form for the first 2 years only. This allocation must be used for fishery development in Adak.
- (5) QS can be held and IFQ leased to residents.

What specific measures apply in Non-CDQ ECCs?

- (1) Cooling off period applies.
- (2) ROFR contract with PQS application.
- (3) The ECC entity signs the ROFR.
- (4) The governing body for each non-CDQ community must select the ECC entity to represent it for purposes of ROFR. The governing body is
 - Dutch Harbor: City of Dutch Harbor
 - King Cove: City of King Cove & Aleutians East Borough
 - Port Moller: Aleutians East Borough
- (5) QS can be held and IFQ leased to residents.

What specific measures apply to CDQ ECCs?

- (1) Cooling off period applies.
- (2) ROFR contract with PQS application.
- (3) The ECC entity signs the ROFR.
- (4) The governing body for each ECC is the CDQ group for that community:
 - Akutan, False Pass, St. George: APICDA
 - St. Paul: CBSFA
- (5) QS can be held and IFQ leased to residents

What specific measures apply to Kodiak?

- (1) Cooling off period applies
- (2) Any PQS holder in any community in the North Gulf of Alaska (See map) must have a ROFR with the ECC entity of Kodiak in its application for PQS.
- (3) The ECC entity signs the ROFR.
- (4) The City of Kodiak and Kodiak Island Borough select the ECC entity.
- (5) QS can be held and IFQ leased to residents.

Binding Arbitration

What is the Arbitration System?

The Arbitration System (System) is a series of steps that harvesters and processors can use to negotiate delivery and price contracts. Most of the System is regulated through private contracts among QS/IFQ holders and PQS/IPQ holders. The System is designed to minimize antitrust risks for crab harvesters and processors.

The System has two main portions:

(1) Each year **three groups of experts** are hired: one to produce an annual Market Report, one to determine a Non-Binding Price Formula for negotiations, and one or more experts to assist in mediation and contract negotiations.

(2) Once these experts are selected, some IFQ and IPQ holders can use a series of **negotiation approaches** established in the System to resolve delivery and price conflicts. The negotiation approaches are limited to IFQ holders who don't also hold PQS/IPQ, or who aren't affiliated with PQS/IPQ holder. These are **Arbitration IFQ holders**. They can negotiate with a single IPQ holder. The contracts with the experts must limit the sharing of information.

Do I have to participate in the Arbitration System?

Yes, all QS/IFQ and PQS/IPQ holders must participate by joining an Arbitration Organization by May 1 of each year (except 2005). This Organization will establish contracts with the three groups of experts, give copies of the reports to its members, and collect fees for the program.

Can we bargain collectively?

Only IFQ holders who are in a cooperative can bargain collectively. IPQ holders cannot.

What is the Market Report?

It is an analysis of market conditions and historic price agreements among harvesters and processors.

What is the Non-Binding Price Formula?

It is an estimate of prices in a crab fishery. It can be used in the negotiation approaches.

What are the negotiation approaches?

There are three basic approaches. At any point prior to the season, any IFQ holder (including affiliated IFQ holders) and any IPQ holder can engage in **Open Negotiations**. Other approaches that may be used by Arbitration IFQ holders and IPQ holders include a **Lengthy Season** approach, in which some delivery terms are decided pre-season others are negotiated mid-season. **Share Matching** is another preseason approach in which Arbitration IFQ holders "match up" shares pre-season with IPQ holders that have available IPQ. There are some limits on when these approaches can be used.

Once the season begins, if there is not resolution on specific issues, IFQ and IPQ holders can enter into **Binding Arbitration** in which an arbitrator uses the Market Report, Non-Binding Price Formula and other information to establish binding contract terms. This system uses the last-best offer approach.

During the season, the System allows for **Post Arbitration Opt-in**. Arbitration IFQ holders who aren't committed can opt-in to a contract with an IPQ holder with available IPQ under the same contract. The system also allows for **Quality and Performance Disputes** to be addressed with the assistance of an arbitrator.

Monitoring and Enforcement

Who will be allowed to take deliveries of Crab Rationalization crab?

Only an RCR would be able to take deliveries of CR crab. If crab is retained and it comes off the boat, it would have to come off the boat at an RCR. The proposed rule makes no exceptions. If a vessel owner or crew wishes to conduct dockside sales, they must be an RCR. If a vessel owner or crew wishes to retain CR crab for homepack, it would first have to be reported through an RCR. If a vessel owner wishes to tender crab to a processor, there would have to be an RCR on board.

What are the monitoring requirements for an RCR?

An RCR would have to ensure that all CR crab are weighed on a scale that meets NMFS specifications and that all offloading of crab is conducted in accordance with a Catch Monitoring Plan that the RCR has prepared and had approved by NMFS.

What are the NMFS requirements for an RCR's scales?

The scale would have to be approved by the State where the landing takes place. In addition to the requirements for state approval, scales will have to produce a printed record of each delivery; meet accuracy requirements; be accompanied by sufficient test weights so that the scale may be tested on demand; and the scale and scale display must be visible simultaneously. Most crab are currently weighed in a brailer bag on a hanging scale. As far as NMFS is aware, none of these scales are equipped with printers and they would not meet these requirements.

What is a Catch Monitoring Plan (CMP)?

A CMP is a description of how crab are offloaded and weighed. The proposed rule requires that each RCR prepare a CMP and that it be approved by NMFS annually. In addition to other requirements, the CMP must show how all CR crab will be sorted and weighed; and how a single individual can monitor that sorting and weighing. The CMP must also list all scales that will be used to weigh CR crab and how they can be tested.

How do the requirements differ for an RCR that is a catcher/processor?

Catcher/processors would be required to weigh all catch on scales approved by NMFS rather than the state and they would be required to test the scale daily when it is in use. Catcher/Processors would not be required to prepare a CMP but will need to provide observer work areas onboard the vessel. Finally, catcher/processors will be required to offload all product on shore and ensure that the product is weighed on a state-approved scale.

Economic Data Collection

Why are economic data collection reports required for the BSAI crab fisheries?

The Council recommended that a mandatory economic data collection program be developed to assess the economic effects of the Crab Rationalization Program, and Congress required that the mandatory program be implemented. The BSAI Crab Rationalization Program is comprised of a number of novel aspects, and the Council is interested in ensuring that it will be able to adequately assess the impact of the Program on affected parties. Existing data collection programs do not provide the information required to understand the economic performance of crab fishermen, let alone to determine how this performance has changed after rationalization or what aspects of these changes are specifically attributable to crab rationalization. This data collection program will substantially reduce the analytical difficulties that were encountered when attempting to examine the effects of the halibut/sablefish IFQ program and the American Fisheries Act.

Why do the data collection forms ask for such detailed information?

Existing data collection programs fail to collect the employment, cost and sales data necessary to adequately examine how plants and vessels will be affected by crab rationalization. The Council

has expressed a desire to monitor, among other things, how the economic returns of various stakeholders in BSAI crab fisheries are affected by rationalization. This requires the collection of historic data as well as annual data to not only better understand the economic performance of crab fishery participants, but to isolate the effects attributable to the Program. The crab economic data reports (EDR) were specifically developed to fill this knowledge gap and only ask questions about harvesters' and processors' crab operations.

How much time will I have to compile the information for the report?

NMFS will require an annual EDR each year on or before May 1, encompassing the previous calendar year. The EDRs for processor historical data must be submitted no later than 60 days after the effective date of the final rule. The EDRs for catcher vessel historic data must be submitted within 60 days of publication of a Federal Register notice identifying vessels for which historic data must be submitted to PSMFC.

What are the penalties for failing to turn in forms, or for turning them in late?

Should a submitter fail to submit the economic data forms for a prior year by the due dates referenced above, NMFS is authorized to withhold issuance or transfer of IPQ, PQS, IFQ, or QS. Persons submitting the data will have an opportunity to correct errors before enforcement action would be taken. Giving the person submitting data a chance to correct problems is considered important to ensure that accurate data are provided. Only if the agency and the person submitting the data cannot reach a solution would the enforcement agency be contacted.

What are you doing to protect confidentiality, and how are you going to ensure that it does not get to my competitor?

Economic data will not be collected and held by NMFS or the State of Alaska, but instead by a third party (the Pacific States Marine Fisheries Commission, PSMFC). PSMFC will abide by all statutory and regulatory data confidentiality requirements, and will only release the data to NMFS, Council staff, and any other authorized users in a "blind" format. Specifically, all identifiers associated with data submitters will be eliminated and replaced with fictitious vessel and processor identifiers for purposes of analyses. However, in cases where the data are requested by NMFS Enforcement, NOAA General Counsel, Restricted Access Management, the Department of Justice, or the Federal Trade Commission for a purpose connected to law enforcement or qualification for quota and other Federal permits, PSMFC will provide the data and the identity of the submitter.

How will the data be used?

The data will be used to examine how effort, operating revenues and costs for all parties that have participated in the BSAI crab fisheries have been affected by crab rationalization. Specifically, it will be used in meeting the Council's objectives of examining changes in resource utilization, excess harvesting and processing capacity, economic returns, variable costs and revenues, economic efficiency, and the stability of harvesters, processors, and coastal communities.

Who can I contact in case I have questions while filling out the forms?

During the public comment period, you may call the Alaska Fisheries Science Center at 877-604-6794 if you have questions about the data forms; however, public comments should be sent

to NMFS at the locations provided with the proposed rule. If the Secretary of Commerce approves the final rule, you will be able to address questions to the Pacific States Marine Fisheries Commission at a location that will be provided on the data forms.

Cost recovery

How are fees calculated?

By statute, fees must be split between the harvesting and processing sectors. For non-catcher/processor RCRs, fee liability would be calculated by multiplying the applicable fee percentage by the ex-vessel value of the CR crab received by the RCR at the time of receipt. For instance, suppose a an RCR received 1 pound of crab from a harvester and the ex-vessel value of that crab was \$1 per pound. Using the maximum allowable fee percentage of 3%, each sector would owe half the fee percentage, which is 1.5% or, in this case \$0.015. Therefore, the RCR would pay the harvester \$0.985 for that pound of crab and would self-collect an additional \$0.015. The total fee payment made to NMFS for that pound of crab by the RCR would be 3% or \$0.03. Because catcher/processors must also be RCR's and participate in both the harvesting and processing sectors, they would be responsible for paying the full fee percentage for that same crab, which would be 3% or \$0.03.

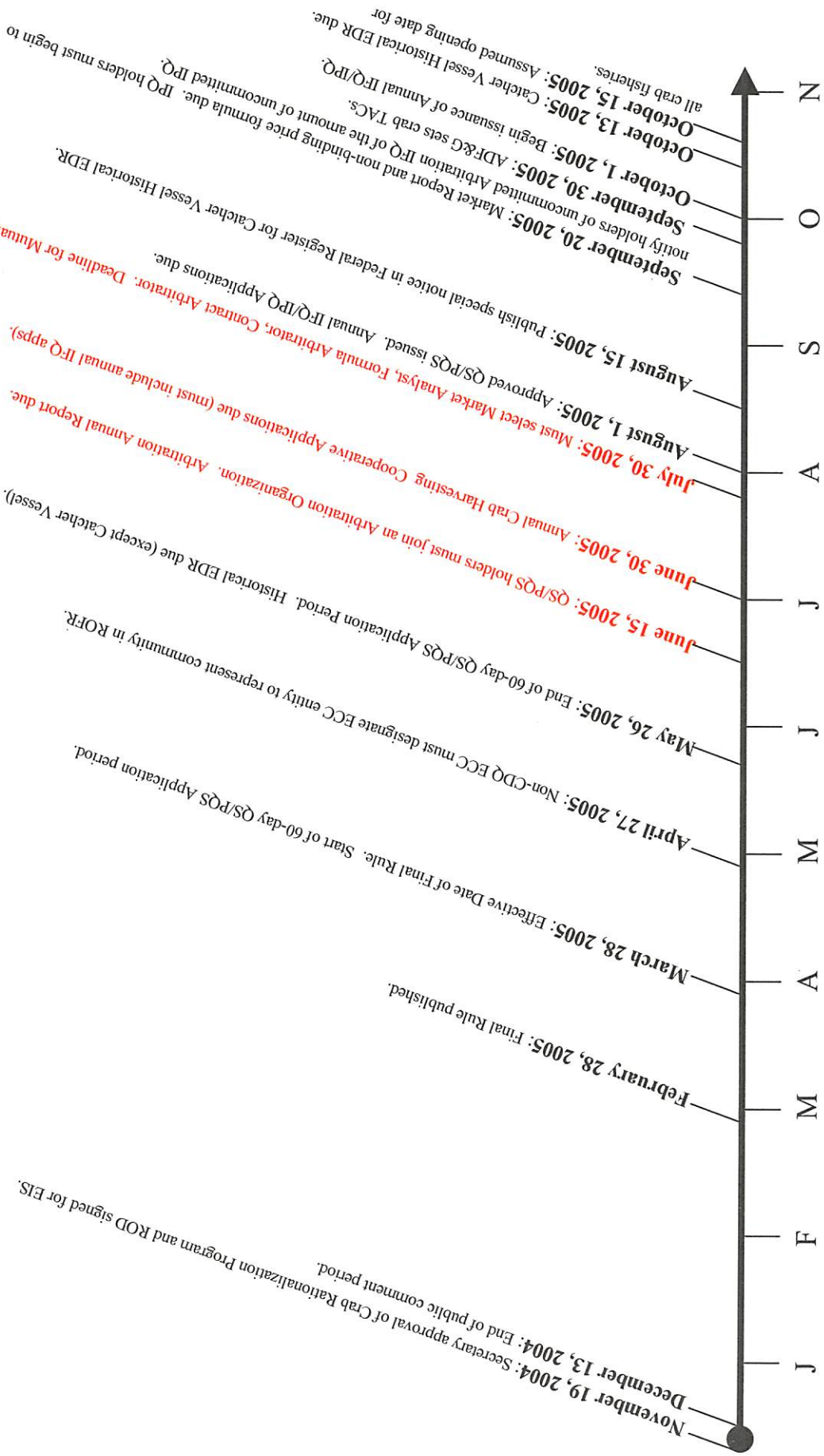
When are my fees due?

RCRs would deduct harvester fees at the time of receipt and payment for CR crab. Therefore, harvesters fees would be due each time they deliver crab to an RCR. The RCR would collect, document, and submit fees for all CR crab received from harvesters. The RCR would also collect, document, and submit their portion of fees for all CR crab received from harvesters. All RCRs, including catcher/processors, are responsible for submitting the cost recovery payment for all CR crab received during a crab fishing year by July 31st of the following crab fishing year.

What happens if I don't pay my fees?

If an RCR owes fees and fails to submit full payment for the previous crab fishing year by July 31, the Regional Administrator may disapprove any transfer of IFQ, IPQ, QS, or PQS to or from the RCR and may withhold issuance of any new IFQ, IPQ, or RCR permit for any subsequent crab fishing years. If payment is not received by the 30th day after final agency action, the matter will be referred to the appropriate authorities for collection.

Other potential requirements:
 Federal Crab Vessel Permit (FCVP) required before fishing for BSAI crab.
 Registered Crab Receiver (RCR) Permit required before receiving any CR crab.



2005 Crab Rationalization

Estimated Implementation Timeline



Federal Register

Friday,
October 29, 2004

Part II

Department of Commerce

National Oceanic and Atmospheric
Administration

50 CFR Parts 679 and 680
Fisheries of the Exclusive Economic Zone
Off Alaska; Allocating Bering Sea and
Aleutian Islands King and Tanner Crab
Fishery Resources; Proposed Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 679 and 680

[Docket No. 040831251-4251-01; I.D. 100804A]

RIN 0648-AS47

Fisheries of the Exclusive Economic Zone Off Alaska; Allocating Bering Sea and Aleutian Islands King and Tanner Crab Fishery Resources

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations implementing Amendments 18 and 19 to the Fishery Management Plan for Bering Sea/Aleutian Islands (BSAI) King and Tanner Crabs (FMP). Amendments 18 and 19 amend the FMP to include the Voluntary Three-Pie Cooperative Program (hereinafter referred to as the Crab Rationalization Program (Program)). Congress amended the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) to require the Secretary of Commerce to approve the Program. The proposed action is necessary to increase resource conservation, improve economic efficiency, and improve safety. This action is intended to promote the goals and objectives of the Magnuson-Stevens Act, the FMP, and other applicable law.

DATES: Comments must be received no later than December 13, 2004.

ADDRESSES: Send comments to Sue Salvesson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Lori Durall. Comments may be submitted by:

• Mail: P.O. Box 21668, Juneau, AK 99802.

• Hand Delivery to the Federal Building: 709 West 9th Street, Room 420A, Juneau, AK.

• Facsimile: 907-586-7557.

• E-mail: KTC18-PR-0648-AS47@noaa.gov. Include in the subject line of the e-mail the following document identifier: Crab

Rationalization RIN 0648-AS47. E-mail comments, with or without attachments, are limited to 5 megabytes.

• Webform at the Federal eRulemaking Portal: www.regulations.gov. Follow the instructions at that site for submitting comments.

Send comments on collection-of-information requirements to the same NMFS address and also to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attn: NOAA Desk Officer). Also, send comments to David Rostker, OMB, by e-mail at DRostker@omb.eop.gov or by facsimile to 202-395-7285.

Copies of Amendments 18 and 19 and the Environmental Impact Statement (EIS) for this action may be obtained from the NMFS Alaska Region at the address above or from the Alaska Region website at <http://www.fakr.noaa.gov/sustainablefisheries/crab/eis/default.htm>. The EIS contains as appendices the Regulatory Impact Review (RIR), Initial Regulatory Flexibility Analysis (IRFA), and Social Impact Assessment (SIA) prepared for this action.

FOR FURTHER INFORMATION CONTACT: Susan Salvesson, 907-586-7228 or sue.salvesson@noaa.gov.

SUPPLEMENTARY INFORMATION: In January 2004, Congress amended section 313 of the Magnuson-Stevens Act through the Consolidated Appropriations Act of 2004 (Pub. L. 108-199, section 801), by adding paragraph (j). As amended, section 313(j)(1) requires the Secretary to approve by January 1, 2005, and implement thereafter, the Program as it was adopted by the North Pacific Fishery Management Council (Council). Amendments 18 and 19 amend the FMP to include the Program.

This proposed rule implements Amendments 18 and 19 to the FMP. The Notice of Availability for these amendments was published in the *Federal Register* on September 1, 2004 (69 FR 53397). NMFS solicited public comments on the proposed amendments through November 1, 2004. NMFS published the amendments in September so that the decision date for approval of the amendments will be before the statutory deadline of January 1, 2005.

The Program would allocate BSAI crab resources among harvesters, processors, and coastal communities. The Council developed the Program over a 6-year period to accommodate the specific dynamics and needs of the BSAI crab fisheries. The Program builds on the Council's experiences with the halibut and sablefish Individual Fishing Quota (IFQ) program and the American Fisheries Act (AFA) cooperative program for Bering Sea pollock. The Program is a limited access system that balances the interests of several groups who depend on these fisheries. The Program would address conservation

and management issues associated with the current derby fishery and would reduce bycatch and associated discard mortality. The Program also would increase the safety of crab fishermen by ending the race for fish. Share allocations to harvesters and processors, together with incentives to participate in fishery cooperatives, would increase efficiencies, provide economic stability, and facilitate compensated reduction of excess capacities in the harvesting and processing sectors. Community interests would be protected by Community Development Quota (CDQ) allocations and regional landing and processing requirements, as well as by several community protection measures.

This preamble first provides a Crab Rationalization Program overview that presents a general description of all of the Program components. Subsequent sections focus on the specifics of the following Program components: quota share allocation, processor quota share allocation, IFQ and individual processing quota (IPQ) issuance, quota transfers, use caps, crab harvesting cooperatives, protections for Gulf of Alaska groundfish fisheries, binding arbitration, monitoring, economic data collection, and cost recovery fee collection.

Crab Rationalization Program Overview

The Program would apply to the following BSAI crab fisheries: Bristol Bay red king crab (*Paralithodes camtschaticus*), Western Aleutian Islands (Adak) golden king crab (*Lithodes aequispinus*) - West of 174° W., Eastern Aleutian Islands (Dutch Harbor) golden king crab - East of 174° W., Western Aleutian Islands (Adak) red king crab - West of 179° W., Pribilof Islands blue king crab (*P. platypus*) and red king crab, St. Matthew Island blue king crab, Bering Sea snow crab (*Chionoecetes opilio*), and Bering Sea Tanner crab (*C. boirdi*). Golden king crab is also known as brown king crab. In this document, the phrases "crab fishery" and "crab fisheries" refer to these fisheries, unless otherwise specified.

Several crab fisheries under the FMP would be excluded from the Program, including the Norton Sound red king crab fishery, which is operated under a "superexclusive" permit program intended to protect the interests of local, small-vessel participants. Also excluded from this Program are the Aleutian Islands Tanner crab fishery, Aleutian Islands red king crab fishery east of 179° W. long., and the Bering Sea golden king crab, scarlet king crab (*L. couesi*), triangle Tanner crab (*C. angulatus*), and

grooved Tanner crab (*C. tanneri*) fisheries.

Harvest Sector

Qualified harvesters would be allocated quota share (QS) in each crab fishery. To receive a QS allocation, a harvester must hold a permanent, fully transferable license limitation program (LLP) license endorsed for that crab fishery. Quota share represents an exclusive but revocable privilege that provides the QS holder with an annual allocation to harvest a specific percentage of the total allowable catch (TAC) from a fishery. IFQs are the annual allocations of pounds of crab for harvest that represent a QS holder's percentage of the TAC. Using LLP licenses for defining eligibility in the Program would maintain current fishery participation. A harvester's allocation of QS for a fishery would be based on the landings made by his or her vessel in that fishery. Specifically, each allocation would be the harvester's average annual portion of the total qualified catch during a specific qualifying period. Qualifying periods were selected to balance historical and recent participation. Different periods were selected for different fisheries to accommodate closures and other circumstances in the fisheries in recent years.

Quota share would be designated as either catcher vessel (CV) shares or catcher/processor (CP) shares, depending on the nature of the LLP license and whether the vessel processed the qualifying harvests on board. Catcher vessel IFQ would be issued in two classes, Class A IFQ and Class B IFQ. Crabs harvested with Class A IFQ would require delivery to a processor holding unused processing quota. Class A IFQ landings also would be subject to a regional delivery requirement. Under this regional requirement, landings would be delivered either in a North or in a South region (in most fisheries). Crabs harvested with Class B IFQ could be delivered to any processor and would not be regionally designated. Landings in excess of IFQ would be forfeited in all cases. Class B IFQs are intended to provide ex-vessel price negotiating leverage to harvesters. For each region of each fishery, the allocation of Class B IFQ would be 10 percent of the total allocation of IFQ to the CV sector.

Transfer of QS and IFQ, either by sale or lease, would be allowed, subject to limits including caps on the amount of shares a person may hold or use. To be eligible to receive transferred QS or IFQ, a person would have to meet specific eligibility criteria. Initial recipients of

QS, CDQ groups, and eligible crab community entities would be exempt from the transfer eligibility criteria.

Separate caps would be imposed to limit the amount of QS and IFQ a person could hold and to limit the use of IFQ on board a vessel. These caps are intended to prevent negative impacts from what can be described as excessive consolidation of shares. Excessive share holdings are prohibited by the Magnuson-Stevens Act. Different caps were chosen for the different fisheries because fleet characteristics and dependence differ across fisheries. Separate caps on QS holdings would be established for CDQ groups, which represent rural western Alaska communities. Processor holdings of QS would also be limited by caps on vertical integration. Quota share holders could retain and use initial allocations of QS above the caps.

Crew Sector

To protect their interests in the fisheries, qualifying crew would be allocated 3 percent of the initial QS pool. These shares are intended to provide long term benefits to captains and crew. The Council originally intended this provision to apply only to vessel captains. However, NMFS has determined that documentation necessary to allocate Crew QS, called C shares by the Council, would require that these shares be initially issued to individuals who hold a State of Alaska Interim Use Permit. Most likely, this individual would be the captain; however, the State does not require that the holder of the Interim Use Permit be the vessel captain. The allocation to crew would be based on the same qualifying years and computational method used for QS allocations to LLP license holders. Crew (C) QS would be issued as CVC QS and CPC QS, depending on the activity in the qualifying years. To ensure that Crew QS and IFQ benefit at-sea participants in the fisheries, Crew IFQ could be used only when the IFQ holder is on board the vessel, except when a Crew QS holder joins a cooperative.

To be eligible to receive an allocation, an individual would be required to have historic and recent participation. Historic participation would be demonstrated by at least one landing in each of three of the qualifying years. Recent participation would be demonstrated by at least one landing in two of the three most recent seasons, with some specific exceptions.

CV Crew IFQ would be required to be delivered to shore-based or floating processors for processing. CV Crew IFQ would not be subject to specific delivery

requirements until July 1, 2008. After July 1, 2008, CV Crew IFQ would be subject to the Class A IFQ/Class B IFQ distinction with commensurate regional delivery requirements unless the Council determines, after review, not to apply those designations. Before July 1, 2007, the Council would review CV Crew IFQ landing patterns to determine whether the distribution of landings among processors and communities of CV Crew IFQ differs from the distribution of IFQ landings.

CP crew would be allocated CPC QS and IFQ that include a harvesting and on-board processing privilege. Harvests with CPC IFQ also could be delivered to shore-based or floating processors.

Crew QS and IFQ could be transferred to eligible individuals. Leasing of Crew IFQ would be permitted before July 1, 2008. After July 1, 2008, leasing would be permitted only in the case of a documented hardship (such as a medical hardship or loss of vessel) for the term of the hardship, subject to a maximum of 2 years over a 10-year period. Individual Crew QS holdings would be capped.

Processing Sector

A processing privilege, analogous to the harvesting privilege allocated to harvesters, would be allocated to processors. Qualified processors would be allocated processor quota share (PQS) in each crab fishery. PQS represents an exclusive but revocable privilege to receive deliveries of a specific portion of the annual TAC from a fishery. An annual allocation of pounds of crab based on the PQS is IPQ. IPQs would be issued for 90 percent of the IFQ allocated harvesters, equaling the amount of IFQ allocated as Class A IFQ. Processor privileges would not apply to the remaining TAC allocated as Class B IFQ, or for Crew IFQ until July 1, 2008. IPQs would be regionally designated for processing (corresponding to the regional designation of the Class A IFQ).

PQS allocations would be based on processing history during a specified qualifying period for each fishery. A processor's initial allocation of PQS in a fishery would equal its share of all qualified pounds of crab processed in the qualifying period. Processor shares would be transferable, including the leasing of IPQs and the sale of PQS, subject to caps and to community protection measures. IPQs could be used without transfer at any facility or plant operated by a processor. New processors could enter the fishery by purchasing PQS or IPQ or by purchasing crab harvested with Class B IFQ or crab harvested by CDQ groups or the Adak community entity.

A PQS holder would be limited to holding 30 percent of the PQS issued for a fishery, except that initial allocations of shares above this limit could be retained and used. In addition, in the snow crab fishery, no processor would be permitted to use or hold in excess of 60 percent of the IPQs issued for the Northern region.

Catcher/Processor Sector

CPs have a unique position in the Program because they participate in both the harvesting and processing sectors. To be eligible for CP QS, a person would be required to hold a permanent, fully transferable LLP license designated for CP use. In addition, a person must have processed crab on board the CP, whose history gave rise to the LLP license, in either 1998 or 1999. Persons meeting these qualification requirements would be allocated CP QS in accordance with the allocation rules for QS for all qualified catch that was processed on board. These shares would represent a harvest privilege and an on-board processing privilege. Catcher/Processor QS would not have regional designations.

Regionalization

The regional delivery requirements for QS are intended to preserve the historic geographic distribution of landings in the fisheries. Communities in the Pribilof Islands are the prime beneficiaries of this regionalization provision. Two regional designations would be created in most fisheries. The North region would be all areas in the Bering Sea north of 56°20' N. latitude. The South region would be all other areas. Catcher vessel QS, Class A IFQ, PQS, and IPQ would be regionally designated. Crab harvested with regionally designated IFQ would be required to be delivered to a processor in the designated region. Likewise, a processor with regionally designated IPQ would be required to accept delivery of and process crab in the designated region. Legal landings in a region in the qualifying years would result in QS and PQS designated for that region.

The Program has two exceptions to the North/South regional designations. In the Western Aleutian Islands golden king crab fishery, 50 percent of the Class A IFQ and IPQ would be designated as west shares to be delivered west of 174° W. longitude. The remaining 50 percent of the Class A IFQ and IPQ would have no regional designation and would not be subject to a regional delivery requirement. The west designation would be applied to all Class A IFQ and IPQ regardless of the historic location of

landings in the fishery. A second exception is the Bering Sea Tanner crab fishery, which would have no regional designation. This fishery is anticipated to be conducted primarily as a concurrent fishery with the regionalized Bristol Bay red king crab and Bering Sea snow crab fisheries, making the regional designation of Tanner crab landings unnecessary.

Cooperatives

Harvesters may form voluntary cooperatives in order to collectively manage their IFQ holdings. A minimum membership of four unique QS holders would be required for cooperative formation. Quota share holders who also (1) hold PQS or IPQ, (2) are affiliated with a person who holds PQS or IPQ, (3) process Class B IFQ, or (4) are affiliated with a person that processes Class B IFQ, would be prohibited from joining a crab harvesting cooperative. A cooperative would be required to apply for a cooperative IFQ permit. The cooperative IFQ permit would display the aggregate amount of IFQ in each crab fishery that would be yielded by the collective QS holdings of the members. IFQ could be transferred between cooperatives, subject to NMFS' approval. Cooperative members would be allowed to leave a cooperative or change cooperatives on an annual basis prior to the July 1 deadline for the annual cooperative IFQ permit application. Vessels that are used exclusively to harvest cooperative IFQ would not be subject to use caps. Cooperatives are free to associate with one or more processors to the extent allowed by antitrust law.

Community Protection Measures

The Program includes several provisions intended to protect communities from adverse impacts that could result from the Program. Communities eligible for the community protection measures would be those with 3 percent or more of the qualified landings in any crab fishery included in the Program. Based on these criteria, NMFS has preliminarily determined that the following crab communities meet this criteria: Adak, Akutan, Dutch Harbor, Kodiak, King Cove, False Pass, St. George, St. Paul, and Port Moller. All of these communities are identified as eligible crab communities (ECCs) for purposes of community protection measures.

"Cooling off" provision. Until July 1, 2007, PQS and IPQ based on processing history from the ECCs could not be transferred from those communities. The use of IPQ outside the community during this period would be limited to

20 percent of the IPQ and for specific hardships. PQS and IPQ from three crab fisheries would be exempt from the cooling off provision: Tanner crab, Western Aleutian Islands red king crab, and Western Aleutian Islands golden king crab.

Individual processing quota caps. IPQ caps would be established to limit the annual issuance of IPQs in seasons when the Bristol Bay red king crab or snow crab TAC exceeds a threshold amount. Under these circumstances, Class A IFQ issued in excess of these thresholds would not be subject to the IPQ landing requirements but would be subject to the regional delivery requirements.

Sea time waiver. Sea time eligibility requirements for the purchase of QS would be waived for CDQ groups and community entities in ECCs, allowing those communities to build and maintain local interests in harvesting. CDQ groups and ECCs would be eligible to purchase PQS but would not be permitted to purchase Crew QS.

Right of first refusal (ROFR). ECCs, except for Adak, would have a ROFR on the transfer of PQS and IPQ originating from processing history in the community if the transfer would result in relocation of the shares outside the community. Adak would not be eligible for the ROFR provision because Adak would receive a direct allocation of Western Aleutian Islands golden king crab. In addition, the City of Kodiak and the Kodiak Island Borough in the Gulf of Alaska (GOA) would have a ROFR on the transfer of PQS and IPQ from communities in the GOA north of 56°20' N. latitude.

Community Development Quota Program and Community Allocations

Community Development Quota Program. The CDQ Program would be expanded to include the Eastern Aleutian Islands golden king crab fishery and the Western Aleutian Islands red king crab fishery. In addition, the CDQ allocations in all crab fisheries covered by the Program would be increased from 7.5 to 10 percent of the TAC. The increase would not apply to the CDQ allocation of Norton Sound red king crab because this fishery is excluded from the Program. The crab CDQ fisheries would be managed as separate commercial fisheries by the State under authority deferred to it under the FMP. The State would establish observer coverage requirements, State permitting requirements, and transfer provisions among the CDQ groups. It also would monitor catch to determine when quotas had been reached, enforce any penalties

associated with quota overages, and monitor compliance with the requirement that CDQ groups must deliver at least 25 percent of their allocation to shore-based processors.

Crab harvested under the CDQ allocations (except Norton Sound red king crab) would be subject to some of the Federal requirements that apply to all crab fisheries under the Program including permitting, recordkeeping and reporting, a vessel monitoring system, and the cost recovery fees. The specifics of these requirements are discussed in more detail in later sections.

The CDQ groups could participate in the crab fisheries as holders of both QS and PQS. Some CDQ groups would be initial recipients of QS because they hold LLP licenses and the appropriate catch history. In addition, the CDQ groups would be exempt from the transfer eligibility requirement related to sea time so they would be eligible to obtain QS by transfer, subject to QS use caps for CDQ groups. The CDQ groups also would be able to obtain PQS by transfer because there are no transfer restrictions on PQS. While harvesting crab with IFQ, the CDQ groups would be subject to the same regulations as apply to other IFQ holders. The purchase and holding of QS and PQS by the CDQ groups would be subject to the administrative regulations for the CDQ Program at 50 CFR part 679. These regulations include information, reporting, prior approval, and use requirements for all CDQ investments, which include QS and PQS.

Adak allocation. An allocation of 10 percent of the TAC of Western Aleutian Islands golden king crab would be made to the community of Adak. The allocation to Adak would be made to a nonprofit entity representing the community, with a board of directors elected by the community. As an alternative and in the interim, the allocation and funds derived from it could be held in trust by the Aleut Enterprise Corporation for a period not to exceed 2 years, if the Adak community non-profit entity is not formed prior to implementation of the Program. Oversight of the use of the allocation for "fisheries related purposes" would be deferred to the State under the FMP. NMFS would have no direct role in oversight of the use of this allocation. The State would provide an implementation review to the Council to ensure that the benefits derived from the allocation accrue to the community and achieve the goals of the fisheries development plan. The Adak allocation would be managed as a separate commercial fishery by the State in a manner similar to management of

the crab CDQ fisheries. As with the CDQ allocations, crab harvested under the Adak allocation would be subject to several requirements that apply to all crab fisheries under the Program including permitting, recordkeeping and reporting, a vessel monitoring system, and the cost recovery fees.

Community purchase. Any non-CDQ community in which 3 percent or more of any crab fishery was processed could form a non-profit entity to receive QS, IFQ, PQ and IPQ transfers on behalf of the community. The non-profit entity would be called an eligible crab community organization (ECCO).

Protections for Participants in Other Fisheries

The Program would greatly increase the flexibility for crab fishermen to choose when and where to fish for their IFQ, and this increased flexibility would provide crab fishermen with increased opportunity to participate in other fisheries. Restrictions on the participants in other fisheries, also called sideboards, would restrict a vessel's harvests to its historical landings in all GOA groundfish fisheries (except the sablefish fishery). Vessels with less than 100,000 pounds (45,359 kg) of total snow crab landings and more than 500 metric tons (mt) (1,102,311 lb) of total Pacific cod landings in the GOA during the qualifying years would be exempt from the restrictions. In addition, vessels with less than 50 mt (110,231 lb) of total groundfish landings in the GOA during the qualifying period would be prohibited from harvesting Pacific cod from the GOA. Restrictions would be applied to vessels but would also restrict landings made using a groundfish LLP license derived from the history of a vessel so restricted, even if that LLP license is used on another vessel. Groundfish sideboards in the GOA would be managed by NMFS through fleet-wide sideboard directed fishing closures in Federal waters and for the parallel fishery in state waters.

Arbitration System

BSAI crab fisheries have a history of contentious price negotiations. Harvesters have often acted collectively to negotiate an ex-vessel price with processors, which at times delayed fishing. The Arbitration System was developed to compensate for complications arising from the creation of QS/IFQ and PQS/IPQ. The complications include price negotiations that could continue indefinitely and result in costly delays and the "last person standing" problem where the last Class A IFQ holder to contract deliveries would have a single

IPQ holder to contract with, effectively limiting any ability to use other processor markets for negotiating leverage. To ensure fair price negotiations, the Arbitration System includes a provision for open negotiations among IPQ and IFQ holders as well as various negotiation approaches, including: (a) a share matching approach where IPQ holders make known to unaffiliated IFQ holders that have uncommitted IFQ available the amount of uncommitted IPQ they have available so the IFQ holder can match up its uncommitted IFQ by indicating an intent to deliver its catch to that IPQ holder; (b) a lengthy season approach that allows parties to postpone binding arbitration until sometime during the season; and (c) a binding arbitration procedure to resolve price disputes between an IPQ holder and eligible IFQ holders.

The arbitration process would begin pre-season with a market report for each fishery prepared by an independent market analyst selected by the PQS and QS holders and the establishment of a non-binding fleet wide benchmark price by an arbitrator who has consulted with fleet representatives and processors. Information provided by the sectors would be historical in nature and at least 3 months old. This non-binding price would guide the above described negotiations. Information sharing among IPQ and IFQ holders, collective negotiations, and release of arbitration results would be limited to minimize the antitrust risks of participants in the Program.

The binding arbitration procedure in a last best (or final) offer format. The IPQ holder, each IFQ holder, and each crab harvesting cooperative could submit an offer. For each IFQ holder or cooperative, the arbitrator would select between the IFQ holder's (or cooperative's) offer and the IPQ holder's offer. After an arbitration decision is rendered, an eligible IFQ holder with uncommitted IFQ could opt-in to the completed contract by accepting all terms of the arbitration decision as long as the IPQ holder held sufficient uncommitted IPQ.

Monitoring and Enforcement

NMFS and the State of Alaska would coordinate monitoring and enforcement of the crab fisheries. Harvesting and processing activity would need to be monitored for compliance with the implementing regulations. Methods for catch accounting and catch monitoring plans would generate data to provide accurate and reliable round weight accounting of the total catch and landings to manage quota share

accounts, prevent overages of IFQ and IPQ, and determine regionalization requirements and fee liability. Monitoring measures would include landed catch weight and species composition, bycatch, and deadloss to estimate total fishery removals.

Economic Data Collection

The Program includes a comprehensive economic data collection program to aid the Council and NMFS in assessing the success of the Program and developing amendments necessary to mitigate any unintended consequences. An Economic Data Report (EDR), containing cost, revenue, ownership, and employment data, would be collected on a periodic basis from the harvesting and processing sectors. The data would be used to study the economic impacts of the Program on harvesters, processors, and communities. Participation in the data collection program would be mandatory for all participants in the crab fisheries.

Cost Recovery and Fee Collection

NMFS would establish a cost recovery fee system, required by section 304(d)(2) of the Magnuson-Stevens Act, to recover actual costs directly related to the management and enforcement of the Program. The crab cost recovery fee would be paid in equal shares by the harvesting and processing sectors and would be based on the ex-vessel value of all crab harvested under the Program, including CDQ crab and Adak crab. NMFS also would enter into a cooperative agreement with the State of Alaska to use IFQ cost recovery funds in State management and observer programs for BSAI crab fisheries. The crab cost recovery fee is prohibited from exceeding 3 percent of the annual ex-vessel value. Within this limit, the collection of up to 133 percent of the actual costs of management and enforcement under the Program would be authorized, which would provide for fuller reimbursement of management costs after allocation of 25 percent of the cost recovery fees to the crew loan program.

Crew Loan Program

To aid captains and crew in purchasing QS, a low interest loan program (similar to the loan program under the halibut and sablefish IFQ program) would be created. This program would be funded by 25 percent of the cost recovery fees as required by the Magnuson-Stevens Act. Loan money would be accessible only to active participants and could be used to purchase either QS or Crew QS. Quota

share purchased with loan money would be subject to all use and leasing restrictions applicable to Crew QS for the term of the loan. This proposed rule does not contain proposed regulations to implement the crew loan program. Those proposed regulations will be developed by NMFS Financial Services.

Annual Reports and Program Review

NMFS, in conjunction with the State of Alaska, would produce annual reports on the Program. Before July 1, 2007, the Council would review the PQS, binding arbitration, and C share components of the Program. After July 1, 2008, the Council would conduct a preliminary review of the Program. A full review of the entire Program would be undertaken in 2010. Additional reviews would be conducted every 5 years. These reviews are intended to objectively measure the success of the Program in achieving the goals and objectives specified in the Council's problem statement and the Magnuson-Stevens Act. These reviews would examine the impacts of the Program on vessel owners, captains, crew, processors, and communities, and include an assessment of options to mitigate negative impacts.

The following sections provide more detail on the key components of the Program.

Quota Share Allocation

This section identifies those who would be eligible to receive QS in the initial allocation and describes the four QS sectors. The following sections discuss the application process and the proposed mechanism for deriving QS and IFQ in each sector. Qualified harvesters would be allocated QS in each crab fishery. To receive an initial QS allocation, a person must either: (1) hold a permanent, fully transferable LLP license endorsed for that crab fishery; or (2) have made a landing under the authority of a State of Alaska Interim Use Permit issued to crew members by the State of Alaska. Quota share would represent an exclusive but revokable privilege that provides the QS holder with an annual allocation to harvest a specific percentage of the TAC from a fishery. The annual allocations to QS holders of TAC, in pounds, are referred to as IFQ.

QS Sectors

The sector of QS issued would be based on eligibility and fishing activity during the qualified period. These distinctions yield four sectors of QS, as follows:

(1) Catcher Vessel Owner (CVO) QS would be issued to an LLP license

holder who harvested and delivered unprocessed crab to a processor.

(2) Catcher/Processor Owner (CPO) QS would be issued to a CP LLP license holder for crab harvested and processed crab on board the same vessel or under that LLP license.

(3) Catcher Vessel Crew (CVC) QS would be issued to a crew member who held a State of Alaska Interim Use Permit and signed a fish ticket for the delivery of crab during the qualifying period.

(4) Catcher/Processor Crew (CPC) QS would be issued to a crew member who held a State of Alaska Interim Use Permit and signed a fish ticket for crab processed at-sea on the vessel that harvested that crab.

Official Crab Rationalization Record

Prior to issuing any QS, NMFS would compile an official record that contains the best available information on the harvesting and processing activities in the crab fisheries. This record would be the basis for determining QS allocations. In order to facilitate the timely issuance of QS, NMFS would require any claims that are contrary to the official record to be substantiated before changing the official record.

NMFS would establish certain operational standards about the use of landings in the official record to facilitate timely issuance of QS. First, NMFS would not issue CPO or CVO QS to any person other than to the applicant who holds the LLP license at the time of application. The Council clearly established that the basis for recognizing and allocating QS is the possession of an LLP license endorsed for the crab fishery, the associated legal landings that were made on the vessel that resulted in the issuance of the LLP license and endorsement, and any landings that were made under the authority of that LLP license.

Second, NMFS would assume any of the legal landings recorded on State of Alaska fish tickets to be correct. An applicant who has information to suggest the fish ticket records are inaccurate would have the burden of proving that to be the case.

Third, NMFS would assume the LLP license issued based on the landings made on a vessel continued to be used on that same vessel, unless the applicant shows, with written documentation, that the LLP license was transferred and used on another vessel. NMFS would make this assumption because, during the years 2000 and 2001, NMFS did not track the vessel on which the LLP license was used. Thus, NMFS would require an applicant to inform NMFS if the LLP license was

used on a vessel other than the vessel for which the LLP license was originally issued. Written documentation establishes a clear record of any transfer of LLP license use prior to tracking by NMFS.

Fourth, if more than one person is claiming legal landings or legal processing activities during the same time at the same processing facility or on board the same vessel, then each person eligible to receive QS or PQS based on those legal landings or legal processing activities would receive any QS or PQS issued divided in equal proportion among all eligible recipients for that time period. This pro rata division of QS would occur unless the applicants can provide written documentation establishing an

alternative means for distributing the QS or PQS resulting from the activities during that time period.

Catcher Vessel Owner - CVO QS Sector

Eligibility to receive QS at initial allocation would be limited to U.S. citizens who hold a permanent, fully transferable LLP license at the time of application. This means any corporation applying to receive CVO QS must also be incorporated as a U.S. corporation.

The landings that would be considered as the basis for a QS allocation for a crab fishery would be those made on the vessel used to qualify for the LLP license and species endorsement for that fishery or were made by the vessel on which that LLP license was used. NMFS would initially

allocate QS only to the person holding that LLP license at the time of application. Any subsequent transfer of QS after initial issuance by the qualified LLP license holder would be subject to the QS transfer provisions described later in this preamble. NMFS would establish that the landings made under the authority of an LLP license are non-severable from that license. In other words, "catch history" that has been separated from an LLP license would not be considered for initial allocation of QS.

The proposed definition of persons eligible to receive an initial allocation of CVO QS and the qualifying periods used to determine the allocation of QS are described in the following table:

TABLE 1—ELIGIBILITY TO RECEIVE CATCHER VESSEL OWNER (CVO) AND CATCHER PROCESSOR OWNER (CPO) QUOTA SHARE (QS) AND ASSOCIATED QUALIFYING YEAR PERIODS

Eligible Person to Receive QS	Crab Fisheries	Qualifying Year Periods for Determining QS Allocation
<p><i>General:</i> A citizen of the United States at the time of application for QS, and is...</p> <p><i>CVO QS:</i> The holder of a permanent, fully transferable LLP license endorsed for that crab fishery at the time of application to receive QS and who is a citizen of the United States at the time of application for QS; or</p> <p><i>CPO QS:</i> (1) The holder of a permanent, fully transferable LLP license endorsed for that crab fishery and endorsed for CP activities at the time of application to receive QS; and (2) Harvested and processed at-sea any crab species in any BSAI crab fishery during the years 1998 or 1999.</p>	Eastern Aleutian Island golden king crab (EAG)	5 years of the 5-year base period beginning on September 1, 1996, and ending on September 24, 2000.
	Western Aleutian Island golden king crab (WAG)	5 years of the 5-year base period beginning on September 1, 1996, and ending on March 30, 2001.
	Bering Sea Tanner crab (BST)	4 years of the 6-year period beginning on November 15, 1992, through November 27, 1996.
	Bering Sea snow crab (BSS)	4 years of the 5-year period beginning on January 15, 1996, and ending on April 8, 2000.
	Bristol Bay red king crab (BBR)	4 years of the 5-year base period beginning on November 1, 1996, and ending on October 20, 2000.
	Pribilof Islands red and blue king crab (PIK)	4 years of the 5-year period beginning on September 15, 1994, and ending on September 28, 1998.
	St. Matthew blue king crab (SMB)	4 years of the 5-year period beginning on September 15, 1994, and ending on September 26, 1998.
	Western Aleutian Islands red king crab (WAI)	3 years of the 4-year period beginning on November 1, 1992, and ending on February 13, 1996.

Catcher Processor Owner - CPO QS Sector

The eligibility to receive a CPO QS is essentially the same as for CVO QS. In order to receive CPO QS, a person would have to be a U.S. citizen who holds a permanent, fully transferable LLP license at the time of application. The LLP license would have to be endorsed for the fisheries for which the QS would be issued and would have to be endorsed to allow the person to harvest and process crab as a CP. Only landings harvested and processed on board the vessel during the qualifying years would be used toward CPO QS. The qualifying periods and number of qualifying years used in CPO QS initial issuance calculations would be the same as those in Table 1. In addition, any person who applies to receive CPO QS would have to have made crab landings that were processed at-sea in either 1998 or 1999. These provisions are intended

to ensure that LLP licenses with a history of harvesting and processing at-sea have continued to do so recently, in order to reduce the amount of QS that would be issued for use on vessels that are no longer active in the fishery.

Catcher Vessel Crew - CVC QS Sector

CVC QS would be issued based on different eligibility criteria. Table 2 summarizes the persons who would be eligible to receive an initial allocation of CVC QS, the qualifying years used, and the number of years that could be selected for initial allocation of QS. Individuals would be qualified to receive QS if they are designated on a State of Alaska Interim Use Permit and had historic and recent participation. NMFS would determine participation based on signed State of Alaska fish tickets because the State of Alaska requires individuals who sign a fish ticket to hold a State of Alaska Interim Use Permit.

Historic participation would be demonstrated by at least one landing in each of three of the qualifying years. Recent participation would be demonstrated by at least one landing in two of the three most recent seasons before June 10, 2002, except for the fisheries that were closed in this period. For these fisheries, Western Aleutian Islands red king crab, the Pribilof Islands red and blue king crab, the St. Matthew Island blue king crab, and Tanner crab, recent participation would be demonstrated by at least one landing in two of the three most recent seasons preceding June 10, 2002, in the snow crab, Bristol Bay red king crab, or one of the Aleutian Islands golden king crab fisheries. The recent participation requirement would be waived for captains who died in fishing-related incidents if the captain's estate applies for QS. See the following table for details:

TABLE 2—ELIGIBILITY TO RECEIVE CATCHER VESSEL CREW (CVC) QUOTA SHARE (QS) AND QUALIFYING YEAR PERIODS

Eligible Person to Receive QS	Crab Fisheries	Number of Qualifying Year Periods for Determining QS Initial Allocation	Qualifying Seasons for Determining Recent Participation
<p>An individual who:</p> <p>(1) is a citizen of the United States, or his or her successor-in-interest if that individual is deceased;</p> <p>(2) has historical participation in the fishery demonstrated by being the individual named on a State of Alaska Interim Use Permit who made at least one legal landing per year for any 3 qualifying years under that permit based on data from fish tickets maintained by the State of Alaska; and</p> <p>(3) has recent participation in the fishery demonstrated by being the individual named on a State of Alaska Interim Use Permit who made at least one legal landing under that permit in any 2 of 3 seasons based on data from fish tickets maintained by the State of Alaska.</p>	Eastern Aleutian golden king crab (EAG)	3 years of the 5-year base period beginning on September 1, 1996, and ending on September 24, 2000.	(1) September 1, 1999, through October 25, 1999. (2) August 15, 2000, through September 24, 2000. (3) August 15, 2001, through September 10, 2001.
	Western Aleutian golden king crab (WAG)	3 years of the 5-year base period beginning on September 1, 1996, and ending on March 30, 2001.	(1) September 1, 1999, through August 14, 2000. (2) August 15, 2000, through March 28, 2001. (3) August 15, 2001, through March 30, 2002.
	Bering Sea Tanner crab (BST)	3 years of the 6-year period beginning on November 15, 1992, through November 27, 1996.	any 2 of the last 3 seasons prior to June 10, 2002 in the Eastern Aleutian Island golden king crab, Western Aleutian Island golden king crab, Bering Sea snow crab, or Bristol Bay red king crab fisheries.

TABLE 2—ELIGIBILITY TO RECEIVE CATCHER VESSEL CREW (CVC) QUOTA SHARE (QS) AND QUALIFYING YEAR PERIODS—Continued

Eligible Person to Receive QS	Crab Fisheries	Number of Qualifying Year Periods for Determining QS Initial Allocation	Qualifying Seasons for Determining Recent Participation
	Bering Sea snow crab (BSS)	3 years of the 5-year period beginning on January 15, 1996, and ending on April 8, 2000.	(1) April 1, 2000, through April 8, 2000. (2) January 15, 2001, through February 14, 2001. (3) January 15, 2002, through February 8, 2002.
	Bristol Bay red king crab (BBR)	3 years of the 5-year base period beginning on November 1, 1996, and ending on October 20, 2000.	(1) October 16, 2000, through October 20, 2000. (2) October 15, 2001, through October 18, 2001. (3) October 15, 2002, through October 18, 2002.
	Pribilof Islands red and blue king crab (PIK)	3 years of the 5-year period beginning on September 15, 1994, and ending on September 26, 1998.	any 2 of the last 3 seasons prior to June 10, 2002, in the Eastern Aleutian Island golden king crab, Western Aleutian Island golden king crab, Bering Sea snow crab, or Bristol Bay red king crab fisheries, except that persons applying for an allocation to receive QS based on legal landings made aboard a vessel less than 60' LOA at the time of harvest are exempt from this requirement.
	St. Matthew blue king crab (SMB)	3 years of the 5-year period beginning on September 15, 1994, and ending on September 26, 1998.	any 2 of the last 3 seasons prior to June 10, 2002, in the Eastern Aleutian Island golden king crab, Western Aleutian Island golden king crab, Bering Sea snow crab, or Bristol Bay red king crab fisheries.
	Western Aleutian Islands red king crab (WAI)	3 years of the 4-year period beginning on November 1, 1992, and ending on February 13, 1996.	any 2 of the last 3 seasons prior to June 10, 2002, in the Eastern Aleutian Island golden king crab, Western Aleutian Island golden king crab, Bering Sea snow crab, or Bristol Bay red king crab fisheries.

In addition, the Program exempts crew members who participated in small vessels (under 60 feet in length)

from seasonal requirements in the Pribilof Islands red and blue king crab fisheries. Such small vessels have

traditionally participated in the fishery, but have been limited in recent years due to hazardous weather conditions.

This exemption for small vessels would allow crew serving in the fishery to be considered for initial allocation.

Catcher Processor Crew - CPC QS Sector

Catcher/Processor crew would be allocated CPC QS that include a harvesting and on-board processing privilege. Harvests with CPC QS also may be delivered to shore-based or floating processors. The definition of an eligible person, the qualifying years, and the seasonal recent participation requirements for the CPC QS sector would be the same as those for the CVC QS sector described in Table 2 above.

The allocation to the CPC QS sector would be based on an individual landing under the authority of a State of Alaska Interim Use Permit and processing the catch on board the vessel that made the landing.

Regional Designations of QS

In addition to the four QS sectors issued in each of the eight crab fisheries, QS would have regional delivery requirements. Regional delivery requirements are based on the specific geographic location in which the crab were landed during the qualifying years. Any QS that is subject to regional

landing requirements must be delivered to a Registered Crab Receiver (RCR) operating in that region. Regional designations would apply to: (1) QS initially issued to the CVO QS sector, (2) CPO QS subsequently transferred for use as CVO QS under the transfer provisions, or (3) after July 1, 2008, QS initially issued for the CVC QS sector. Regional designations would not apply to CPO QS or to CPC QS. Any QS not subject to regional designation would be issued as an "Undesignated" region. The regional designations for each of the fisheries are summarized in the following table:

TABLE 3—REGIONAL DESIGNATIONS OF QUOTA SHARE (QS) AND PROCESSOR QUOTA SHARE (PQS)

Crab Fishery	North Region, North of 56°20' N. lat.	South Region, South of 56°20' N. lat.	West Region, West of 174° W. long.	Undesignated
EAG - Eastern Aleutian golden king crab	X	X		
WAG - Western Aleutian golden king crab			X	X
BST - Bering Sea Tanner crab				X
BSS - Bering Sea snow crab	X	X		
BBR - Bristol Bay red king crab	X	X		
PIK - Pribilof Islands red and blue king crab	X	X		
SMB - St. Matthew blue king crab	X	X		
WAI - Western Aleutian Islands red king crab		X		

The North Region would include all landings made in that crab fishery North of a line at 56°20' N. latitude in the Bering Sea subarea of the EEZ. The South Region would include all landings made in the EEZ south of that line. The West Region would apply only to the Western Aleutian Islands golden king crab fishery. Under this regional designation, 50 percent of the CVO QS issued in the fishery would be designated as West Region and would be limited for delivery West of a line at 174° W. longitude. Undesignated QS may be delivered in any region.

Calculation of QS Issuance

The amount of QS that would initially be issued to any one person would be based on the amount of legal landings made by that person as a percentage of the total legal landings made by all persons eligible to receive QS. NMFS would build the official crab rationalization record, which would contain the total legal landings for each fishery based on the best available information using the State of Alaska fish ticket database. The official record would be established for the CVO and

CPO QS sectors based on the total legal landings during the qualifying years that resulted in the issuance of LLP licenses or that were made under the authority of an LLP license. The official record for the CVC and CPC QS sectors would be based on the total legal landings made under the authority of State of Alaska Interim Use Permits during the qualifying years. The official record is presumed to be correct unless an applicant provides information indicating a correction is necessary.

The computation process for CVO and CPO QS and the computation process for CVC and CPC are the same. The process for determining initial allocation of CVO and CPO QS is detailed first. The following steps would be used to calculate QS for an applicant.

Establish harvest denominator. The official crab rationalization record would result in a harvest denominator for all LLP licenses that would be used in calculating QS. The harvest denominator represents the total legal landings made in each year for each crab fishery.

The use of a harvest denominator allows NMFS to calculate the relative

percentage of the legal landings made by a person applying to receive QS without having to adjust the relative percentage of all other applicants if additional applications are approved after appeal. The harvest denominator would remain fixed for all applicants. One harvest denominator would be established for the CVO and CPO QS sectors, and one for the CVC and CPC QS sectors because the number of qualifying years used differ.

Computation of initial issuance of CVO and CPO QS. In order to facilitate understanding of the computation, a hypothetical example is used to illustrate the process. This example does not use data or persons from existing crab fisheries and is intended for illustrative purposes only. In our example, there are only two participants in the fishery, LLP A and LLP B, each with different landing patterns. The total legal landings, the region in which those landings were made, the amount of the landings harvested on board the vessel and processed at-sea, and the computation process using two LLPs (A and B) are described in the following table:

TABLE 4—HYPOTHETICAL CRAB FISHERY – BEST 3 OF 4 YEARS USED – CALCULATION OF CATCHER VESSEL OWNER (CVO) AND CATCHER PROCESSOR CREW (CPO) QUOTA SHARE (QS) INITIAL ISSUANCE FOR LLPs

	Year 1	Year 2	Year 3	Year 4	Total of Years Used
1. Harvest Denominator in Fishery (Legal Landings)	1,000 lb	500 lb	3,000 lb	1,333 lb	5,833 lb
2. Total Legal Landings of LLP A	500 lb	200 lb	1,000 lb	1,000 lb	2,700 lb
3. Percentage of Harvest Denominator for LLP A (year used)	50 % (Used)	40 % (Used)	33.3 %	75 % (Used)	55.0 %
(3A) Total Landings Landed Onshore for LLP A	500	100	500	200	800 lb
(3B) Total Landings Processed At-sea for LLP A	0	100	500	800	900 lb
(3C) Percentage of Landings Landed on Shore for LLP A = $(800 / (800 + 900)) = 47.06 \%$					
(3D) Percentage of Landings Processed At-sea for LLP A = $(900 / (800 + 900)) = 52.94 \%$					
(3E) Total Onshore Landings in the North Region for LLP A	500	100	0	200	800 lb
(3F) Total Onshore Landings in the South Region for LLP A	0	0	500	0	0 lb
(3G) Percentage of Landings in the North Region for LLP A = $(800 / (800 + 0)) = 100 \%$					
(3H) Percentage of Landings in the South Region for LLP A = $(0 / (800 + 0)) = 0 \%$					
4. Total Legal Landings of LLP B	500 lb	300 lb	2,000 lb	333 lb	3,800 lb
5. Percentage of Harvest Denominator for LLP B	50 % (Used)	60 % (Used)	66.6 % (Used)	25 %	58.9 %
(5A) Total Landings Landed Onshore for LLP B	500	300	1,500	200	2,300 lb
(5B) Total Landings Processed At-sea for LLP B	0	0	500	800	500 lb
(5C) Percentage of Landings Landed on Shore for LLP B = $(2,300 / (2,300 + 500)) = 82.14 \%$					
(5D) Percentage of Landings Processed At-sea for LLP B = $(500 / (2,300 + 500)) = 17.86 \%$					
(5E) Total Onshore Landings in the North Region for LLP B	500	300	500	0	1,300 lb
(5F) Total Onshore Landings in the South Region for LLP B	0	0	1,000	200	1,000 lb
(5G) Percentage of Landings in the North Region for LLP B = $(1,300 / (1,300 + 1,000)) = 56.52 \%$					
(5H) Percentage of Landings in the South Region for LLP B = $(1,000 / (1,300 + 1,000)) = 43.48 \%$					
6. Sum of Total Percentages of Harvest Denominators for All LLPs = LLP A 55 (Line 3) + LLP B 58.9 (Line 5) = 113.9 %					
7. Percentage of the Sum of the Percentage of the Harvest Denominator for LLP A = $(0.550/1.139) = 0.4829$ or 48.29 %					
8. Percentage of the Sum of the Percentage of the Harvest Denominator for LLP B = $(0.589/1.139) = 0.5171$ or 51.71 %					
9. Initial QS Pool = 9,000 Units					
10. Unadjusted Initial QS Allocation for LLP A = $48.29 \% \times 9,000 = 4,346$ QS Units					
11. Unadjusted Initial QS Allocation for LLP B = $51.71 \% \times 9,000 = 4,654$ Units					
12. Initial QS Allocation for LLP A = $4,346$ QS Units $\times (0.97) = 4,216$ QS Units					
13. Initial QS Allocation for LLP B = $4,654$ QS Units $\times (0.97) = 4,514$ QS Units					
14. Percentage of LLP A QS Allocation as CVO QS = $4,216 \times 0.4706$ (Line 3C) = 1,984 CVO QS Units					
15. Percentage of LLP A QS Allocation as CPO QS = $4,216 \times 0.5294$ (Line 3D) = 2,232 CPO QS Units					
16. Percentage of LLP B QS Allocation as CVO QS = $4,514 \times 0.8214$ (Line 5C) = 3,708 CVO QS Units					
17. Percentage of LLP B QS Allocation as CPO QS = $4,514 \times 0.1786$ (Line 5D) = 806 CPO QS Units					

Determine the total legal landings for each applicant. First, NMFS would sum the total legal landings for each LLP license, in each of the crab fisheries for which the LLP is endorsed, for each of the qualifying years. If there were no legal landings in a qualifying year, then the amount would be zero for that year. If a person is applying to receive QS using multiple licenses, the total legal landings would be summed for each license separately. In our hypothetical example this corresponds to Line 2 in Table 4 for LLP A and Line 4 for LLP B.

Determine the percentage of the harvest denominator in each year. NMFS would divide the total legal landings for that person by the harvest denominator for each year. This yields the percentage of the harvest denominator. For LLP A, this corresponds to Line 3 in Table 4. For LLP B, this corresponds to Line 5.

Determine the qualifying years to be used. Most of the crab fisheries have a "best of" provision in which only a select number of the qualifying years are actually used in the QS computation. NMFS would determine which years are used for each initial QS allocation by determining the years that represent the highest percentage of the harvest denominator. In our hypothetical example, 3 of the 4 years representing the greatest percentage of the harvest denominator in each year would be used. This method ensures that a person applying to receive QS would receive a QS allocation based on the highest percentage of the total landings in each year. For LLP A, this corresponds to the

italicized years noted as "(Used)" in Line 3 of Table 4. For LLP B, this corresponds to Line 5. If a person has insufficient years of landings, one or more "0 lb" years would be "(Used)."

Sum the percentages of the harvest denominator for each LLP license. The next step is to sum the percentages for the years used for each LLP license held by the applicant. Then, that amount is divided by the total number of years used for that crab fishery. In our hypothetical example, for LLP A, this would be the sum of the italicized percentages in Line 3 of Table 4 divided by three, or $(50 \text{ percent} + 40 \text{ percent} + 75 \text{ percent})/3 = 55.0 \text{ percent}$. The same computation is provided for LLP B in Line 5 of Table 4, and is equal to 58.9 percent.

Sum the average percent of the harvest denominator. In our example, the percentage of the harvest denominator is 55.0 percent (for LLP A) and 58.9 percent (for LLP B). The sum of the percentages of all LLP licenses is 113.9 percent. This computation is shown in Line 6 of Table 4. The reason that the amount is greater than 100 percent is that NMFS uses the best years of each LLP license to determine the percentage of the harvest denominator that the landings represent.

Divide each LLP license's percentage by the sum of the percentages of the harvest denominator. In order to properly scale the landings so each LLP license is receiving a percentage of the harvest denominator, each LLP license's percentage of the harvest denominator must be divided by the sum of all percentages for all LLP licenses. This

total is the percentage of the sum of the harvest denominators for each LLP license. This computation is shown in Line 7 for LLP A and in Line 8 for LLP B in Table 4.

Multiply the percentage of the sum of the percentages of the harvest denominator by the initial QS pool. The amounts calculated in Lines 7 and 8 are multiplied by the Initial QS Pool; in our example 9,000 QS Units. In the crab fisheries, NMFS would establish an initial QS pool as a fixed amount. This fixed initial QS pool would be used to initially distribute QS to recipients. If appeals are adjudicated, then additional QS may be added to the QS pool, but the process for determining how much QS a person would receive would be established using the same procedure detailed in our example.

Establish the initial QS and PQS pools. The initial QS pool that would be established in each of the eight crab fisheries is an amount large enough so that, on initial issuance, a single unit of QS would yield an annual amount of IFQ less than the average weight of one crab. To achieve this, the initial QS pool for the eight crab QS fisheries would be set at an amount of units equal to three times the highest historical fishery harvest rounded to the nearest 10,000,000 units. The Initial PQS pools are set at the same level as the initial QS pools for ease of computation and to ensure that a single unit of PQS would yield an annual amount of IPQ less than the average weight of one crab. The initial QS pools for all the crab fisheries using this method are shown in the following table:

TABLE 5—INITIAL QS AND PQS POOL FOR EACH CRAB FISHERY

	Initial QS Pool	Initial PQS Pool
EAG - Eastern Aleutian Islands golden king crab	10,000,000	10,000,000
WAG - Western Aleutian Islands golden king crab	40,000,000	40,000,000
BST - Bering Sea Tanner crab	200,000,000	200,000,000
BSS - Bering Sea Snow Crab	1,000,000,000	1,000,000,000
BBR - Bristol Bay red king crab	400,000,000	400,000,000
PIK - Pribilof Islands red and blue king crab	30,000,000	30,000,000
SMB - St. Matthew blue king crab	30,000,000	30,000,000
WAJ - Western Aleutian Islands red king crab	60,000,000	60,000,000

The initial QS pools would be used for all four QS sectors. The amount of QS initially issued as CVO and CPO QS sectors would be 97 percent of the total amount of QS, and the amount of QS initially issued to the CVC and CPC QS

sectors in any one fishery would be 3 percent of the initial QS pools. NMFS would implement this provision by multiplying the amount of QS initially issued by either 97 percent for the CVO and CPO QS sectors, or 3 percent for the

CVC and CPC QS sectors. The calculation showing the unadjusted allocation for LLP A is shown in Line 10 of Table 4, and the adjusted amount for the CVO and CPO QS sectors is shown in Line 12. The same

calculations for LLP B are shown in Lines 11 and 13.

Determine the amount of QS issued as CVO or CPO QS. The amount of QS issued as CVO QS to each LLP license holder would be equal to the percentage of landings delivered unprocessed, to a shorebased or stationary floating processor. In our hypothetical example, the onshore landings made by LLP A in each year are shown in Line 3A of Table 4. The landings processed at-sea in each year are shown in Line 3B. The italicized numbers are the years used in the initial QS calculations because they represent the years with the highest percentage of the total harvest denominator the best years for that LLP license. The total shown in the last column of Line 3A and Line 3B is the total of onshore landings for the best years only. In this case, Year 3 is not used for LLP A. In order to calculate the percentage of QS that would be issued as CVO QS for LLP A, NMFS would determine the percentage of the landings that were landed on shore for each LLP license applying to receive QS. In our example, for LLP A, the percentage of landings delivered onshore is calculated in Line 3C. The percentage calculated in Line 3C is then multiplied by the amount of QS initially issued to LLP A, which is shown in Line 12. This calculation is provided in Line 14 for LLP A. The amount of QS issued as CVO QS for LLP B is determined by using the same methodology. Lines 5A, 5B, 5C, and Line 16 show the same calculation for LLP B. Only landings that were processed at-sea and that gave rise to an LLP license endorsed for CP activity would be allocated CPO QS.

Determination of Regional Designation

Regional designation applies to most of the crab fisheries (see Table 3 for regional designations). Regional designation does not apply to QS initially issued to the CPO QS sector, but can apply to the CVO QS sector. In our example, we assume there are two regions in the hypothetical fishery: a North region and a South region. The percentage of landings made in each region in each year under LLP A is shown in Lines 3E and 3F. The percentages for LLP B are shown in Lines 5E and 5F. In order to calculate the amount of the CVO QS allocated to each region, several additional steps must be taken depending on specific conditions applicable to each LLP license holder.

LLP license holders with landings in only one region. If an LLP license holder made landings in only one region, then all of the QS issued would be for that region. That is the case for LLP A in our

hypothetical fishery example. As shown in Lines 3E and 3F, the amount of landings that occurred in each region are shown in italics. Note the landings processed at-sea are not assigned to a region. As shown in the calculations Line 3G and 3H, 100 percent of the onshore landings subject to regional designation for the years used were in the North region.

LLP license holders with landings in more than one region. If an LLP license holder received QS based on landings made in more than one region, then a one-time additional adjustment in the designation of the QS would be required to account for the issuance of PQS so the amount of QS issued in a region is equal to the amount of PQS in that region. In our hypothetical example, LLP B has qualified landings that would result in QS for both the North and the South Region. Before that QS could be issued, the relative distribution of PQS would need to be determined. The initial issuance of QS for LLP B in the hypothetical example will be explained after the processing sector initial allocation has been discussed.

Other Provisions of Initial QS Issuance

Additional provisions would pertain to the issuance of QS: two provisions for determining QS issuance to vessels that sank, and a provision to allow a person to receive QS for landings made by a vessel not used to qualify for a permanent, fully transferable LLP license endorsed for that fishery.

Sunken vessels. Two provisions would apply to vessels that have sunk. First, a person would receive 50 percent of their average legal landings for the qualifying years unaffected by the sinking after the time of sinking until that vessel was replaced under the provisions established for vessel replacement under the LLP, at 50 CFR 679.4(k)(5)(v). This provision would apply if a person who owned a vessel that sank, replaced that vessel under the LLP qualification rules or after satisfying the LLP qualification requirements. This provision also requires the owner of the vessel to replace the vessel and begin fishing within a specified time period. As an example, if, due to a sinking, a person's vessel was not operational in two of the four qualifying years, that person would receive QS equal to 50 percent of the average of the 2 years during which that vessel was operational to be applied toward the 2 years the vessel was not operational. This provision allows some compensation to LLP holders for some qualifying years in which the LLP holder was prevented from participating due to sinking.

The second sunken vessel provision would apply under circumstances in which a person applying to receive an initial issuance of QS: (1) was denied a request to replace the vessel under the provisions of Public Law 106-554 (Consolidated Appropriations Act of 2001); (2) replaced the vessel with a newly constructed vessel that began construction by June 10, 2002; and (3) participated in any Bering Sea crab fishery by October 31, 2002, with the replacement vessel. A newly constructed vessel would be defined as one the keel of which was laid by June 10, 2002. This provision is intended to accommodate a specific circumstance in which a person delayed construction of a vessel based on Public Law 106-554. Public Law 106-554 was in effect for less than a year during late 2000 and part of 2001. Although the law was in effect for less than a year, it may have hindered the ability of a vessel owner to replace a vessel to participate in crab fisheries and to make qualifying landings. This provision would allow a person to receive QS equal to 50 percent of the average of the years unaffected by the sinking.

For both of these provisions, the calculation methods for determining the actual amount of QS issued would follow the same methods shown earlier. The adjustment for sunken vessels would be made when determining the amount of landings that would be attributed to the LLP license used on board a vessel.

Interim LLP license history exemption. A key component of this program is that QS is awarded based on the legal landing made on a vessel that qualified for a permanent, fully transferable LLP license. The Council recommended a limited provision that would allow a person to apply to receive QS based on legal landings that were not used to qualify for a permanent, fully transferable LLP license. Under this provision, a person who applies to receive QS with an LLP license endorsed for a fishery could choose to receive the QS based either on the landings made by the vessel that was used to qualify for that LLP license or on the landings made on another vessel. The intent of this provision is to allow a vessel owner who had participated in a fishery to use historical landings as long as a permanent, fully transferable LLP license was transferred for use on that vessel after the qualifying period.

An applicant for CVO or CPO QS who deployed a vessel in a crab fishery under the authority of an interim LLP license and later transferred a permanent, fully transferable LLP

license before January 1, 2002, for use in that crab fishery, to insure that the vessel would remain authorized to participate in the fishery following the invalidation of the interim LLP license, may choose to use either: (1) the legal landings made on the vessel that gave rise to the interim LLP license for that crab fishery prior to the transfer of the permanent, fully transferable LLP license for use on that vessel; or (2) the legal landings made on the vessel that gave rise to the permanent, fully transferable LLP license and the legal landings made under the authority of that LLP license in that crab fishery prior to January 1, 2002. This exemption is meant to address a specific circumstance in which a person may have participated in a fishery legally, but required a permanent, fully transferable LLP license to continue participating in the fishery. It is not intended to address transfers of LLP licenses among persons that are undertaken for other reasons. NMFS intends that this provision provide a limited exemption and not a general

opportunity to allow persons who voluntarily transferred LLP licenses to choose a specific catch history that is severable from the LLP license under which a person is applying to receive QS. NMFS specifically requests public comment on this approach relative to Council objectives (see ADDRESSES).

Computation of Initial Issuance of CVC and CPC QS

The method for calculating CVC and CPC QS is essentially the same as the CPO and CVO QS, with some key differences. The first difference is that, for these sectors, the harvest denominator would represent the legal landings made by individuals under the authority of a State of Alaska Interim Use Permit who met the recent participation eligibility requirements. Second, the regional designations would be noted on the QS, but would not be applied to the CVC QS until after July 1, 2008. The regional designations are not shown in this example but would be calculated in the same manner as that used for the CVO and CPO QS.

For illustration purposes, we will demonstrate the initial issuance using the same hypothetical fishery. The issuance process is shown in the following table (Table 6). As with the other example, we will assume there are two crewmembers who are qualified to receive an initial issuance of QS. The specific calculations are not detailed in this example because they are the same as those described under the CVO and CPO QS example. Note the total landings in Line 1 of Table 6 differ from those in Table 4 (CVO and CPO QS) because the recency requirements would exclude certain landings and, under the CVC and CPC QS calculations, landings made legally on a vessel would be considered even if those landings did not result in the issuance of an LLP license for those landings. Additionally, the amount of QS issued to the CVC and the CPC QS sectors is shown in Lines 12 and 13. The QS issued to these sectors is equal to 3 percent of the QS pool.

TABLE 6—HYPOTHETICAL CRAB FISHERY – BEST 3 OF 4 YEARS USED – CALCULATION OF CATCHER VESSEL CREW (CVC) AND CATCHER PROCESSOR CREW (CPC) QUOTA SHARE (QS) INITIAL ISSUANCE FOR STATE OF ALASKA INTERIM USE PERMIT HOLDERS

	Year 1	Year 2	Year 3	Year 4	Total for Years Used
(1) Harvest Denominator in Fishery (Legal Landings)	1,000 lb	200 lb	1,000 lb	1,000 lb	3,200 lb
(2) Total Legal Landings of Crew A	500 lb	20 lb	300 lb	500 lb	1,320 lb
(3) Percentage of Harvest Denominator for Crew A	50 % (Used)	10 %	30 % (Used)	50 % (Used)	43.3 % (Used)
(3A) Total Landings Landed Onshore for Crew A	500	10	200	300	1,000
(3B) Total Landings Processed At-sea for Crew A	0	10	100	200	300
(3C) Percentage of Landings Landed on Shore for Crew A = $(1,000 / (1,000 + 300)) = 76.92 \%$					
(3D) Percentage of Landings Processed At-sea for Crew A = $(300 / (1,000 + 300)) = 23.08 \%$					
(4) Total Legal Landings of Crew B	500 lb	180 lb	700 lb	500 lb	1,880 lb
(5) Percentage of Harvest Denominator for Crew B	50 %	90 % (Used)	70 % (Used)	50 % (Used)	70 % (Used)
(5A) Total Landings Landed Onshore for Crew B	500	100	200	500	800
(5B) Total Landings Processed At-sea for Crew B	0	80	500	0	580
(5C) Percentage of Landings Landed Onshore for Crew B = $(800 / (800 + 580)) = 57.97 \%$					
(5D) Percentage of Landings Processed At-sea for Crew B = $(580 / (800 + 580)) = 42.03 \%$					
(6) Sum of Percentage of Harvest Denominators for All Crew = Crew A 0.433 (Line 3) + Crew B 0.700 (Line 5) = 1.133 or 113.3 %					
(7) Percentage of the Sum of the Percentage of the Harvest Denominator for Crew A = $(0.433/1.133) = 0.3822$ or 38.22 %					
(8) Percentage of the Sum of the Percentage of the Harvest Denominator for Crew B = $(0.700/1.133) = 0.6178$ or 61.78 %					

TABLE 6—HYPOTHETICAL CRAB FISHERY — BEST 3 OF 4 YEARS USED — CALCULATION OF CATCHER VESSEL CREW (CVC) AND CATCHER PROCESSOR CREW (CPC) QUOTA SHARE (QS) INITIAL ISSUANCE FOR STATE OF ALASKA INTERIM USE PERMIT HOLDERS—Continued

	Year 1	Year 2	Year 3	Year 4	Total for Years Used
(9) Initial QS Pool = 9,000 Units					
(10) Unadjusted Initial QS Allocation for Crew A = $38.22\% \times 9,000 = 3,440$ QS Units					
(11) Unadjusted Initial QS Allocation for Crew B = $61.78\% \times 9,000 = 5,560$ Units					
(12) Initial QS Allocation for Crew A = $3,440$ QS Units \times (0.03) = 103 QS Units					
(13) Initial QS Allocation for Crew B = $5,560$ QS Units \times (0.03) = 167 QS Units					
(14) Percentage of Crew A QS Allocation as CVC QS = 103×0.7692 (Line 3C) = 79 CVC QS Units					
(15) Percentage of Crew A QS Allocation as CPC QS = 103×0.2308 (Line 3D) = 24 CPC QS Units					
(16) Percentage of Crew B QS Allocation as CVC QS = 167×0.5797 (Line 5C) = 97 CVC QS Units					
(17) Percentage of Crew B QS Allocation as CPC QS = 167×0.4203 (Line 5D) = 70 CPC QS Units					

Under our example, if the QS issued to the CVO, CPO, CVC, and CPC QS sectors is summed, then the total QS issued for all of the QS recipients is equal to 9,000 units the initial QS pool (sum the total from Lines 14 through 17 in both Table 4 and Table 6). The initial QS pool would be issued to all successful applicants. Additional QS would be issued to applicants who have a successful appeal of an initially denied application. However, it is the initial QS pool that would be used to determine the caps that apply to QS use. Those caps are discussed below.

Processor Quota Share Allocation

A processing privilege, analogous to the harvest privilege allocated to harvesters, would be allocated to processors. Qualified processors would be allocated PQS in each crab fishery. PQS represents an exclusive but revocable privilege to receive deliveries of a specific portion of the annual TAC from a fishery.

PQS allocations would be based on processing history during a specified qualifying period for each fishery. A processor's allocation in a fishery would equal its share of all qualified pounds of crab processed in the qualifying period (i.e., pounds processed by the processor divided by a denominator that represents pounds processed by all qualified processors). Unlike the QS allocation process, PQS is not allocated using a "best of" years provision.

A person would be eligible to receive PQS if they are a: (1) U.S. citizen, corporation, or partnership at the time of application; and (2) legally processed any crab QS species during either 1998 or 1999. In addition, the Council provided an exemption to this eligibility

requirement to accommodate long term participants in the fishery who did not participate in 1998 or 1999. An applicant may receive QS if that person had processed Bering Sea snow crab during each season from 1988 through 1997 and invested at least \$1,000,000 in processing equipment and facilities during the period from January 1, 1995, through June 10, 2002. NMFS has interpreted this requirement to apply from the period of January 1, 1995, through June 10, 2002, the time of final Council action on this provision. This would limit the ability of additional persons to claim eligibility under this provision. The date of final Council action would provide a suitable period of time during which to measure fiscal expenditures.

Under this proposed rule, a person who has acquired or retained legal processing history through transfer by the express terms of a written contract that clearly and unambiguously provides that the legal processing history and rights, may apply for and receive PQS based on that legal processing history. This provision would allow for the transfer or retention of legal processing history prior to the implementation of this program. This provision would apply only if the person applying for PQS either: (1) legally processed any crab during 1998 or 1999 as demonstrated on the official crab rationalization record; or (2) provides documentation of a contractual agreement for the transfer or retention of the legal crab processing history for any amount of any crab during 1998 or 1999, as demonstrated in the official crab rationalization record.

This provision differs from the requirements established for QS holders who must either have an LLP license or be named on a State of Alaska Interim Use Permit in order to apply and receive QS. There is not a licensing requirement that allows for the tracking of processing history to specific persons. State of Alaska revenue codes, port codes, and other identifying elements do not necessarily establish the identity of a processor. Additionally, the Council recognized that custom processing, in which one firm paid another to process crab at a specific facility, or allowed the lease of its facility, did occur and permitted those crab buyers to claim legal processing history and the rights to apply for PQS in cases where documentation indicated that the legal processing that occurred at a facility was conducted by someone other than the buyer of the crab at the time.

Additionally, the Council's motion establishing a qualified person could be interpreted to strictly limit the ability to apply for and receive PQS only if the person who processed crab in 1998 or 1999, or Bering Sea snow crab under the provisions provided above, applies, even if the processing facility, history, and other rights have been transferred to another person. This interpretation appears to narrowly limit the Council's overall recommendation that PQS and IPQ are access rights that may be acquired by a wide range of persons.

This interpretation of Council intent also appears to be consistent with the ability to trade legal landings in the CVO and CPO QS sectors prior to the initial issuance of QS. Legal landings, and the right to apply for and receive CVO or CPO QS may be acquired by

persons who purchase the LLP license and the rights that transfer with that LLP license prior to submitting an application for QS. This provision would require that if legal processing history has been transferred and retained that the basic qualification for eligibility established by the Council, processing of any BSAI crab species in 1998 or 1999, must still be met.

In addition, these regulations would establish that if a person applies to receive PQS, that person or that person's successor-in-interest must exist at the time of application for PQS. A former partner of a dissolved partnership or a former shareholder of a dissolved corporation who would otherwise qualify as a person may apply for PQS in proportion to his or her ownership interest in the dissolved partnership or

corporation. Documentation of ownership interest in a dissolved partnership or corporation, association, or other entity would be limited to corporate documents (e.g., articles of incorporation) or notarized statements signed by each former partner, shareholder or director, and specifying their proportions of interest. These requirements are similar to those used in the halibut and sablefish IFQ Program to establish who may apply to receive QS under the Program. The provisions in this proposed rule require that the person who received the crab and processed that crab, or their successor-in-interest, is a person who is eligible to receive PQS.

The amount of PQS allocated to a person would be based on a record of receiving and processing crab based on

State of Alaska fish ticket data during the qualifying years. Data from the State of Alaska fish tickets concerning legal processing of crab would be presumed to be correct unless other documentation is provided by the applicant. However, allocations can be made to a buyer not recorded on a fish ticket if the applicant can demonstrate that the entity that should receive an allocation is someone other than the entity named on the fish ticket. Proof of this eligibility can include data from the State of Alaska Commercial Operators Annual Report, fish tax records, or other documentation of direct payments to fishermen. This provision is intended to address the custom processing arrangements. The following table establishes the eligibility and qualifying years for receiving PQS.

TABLE 7—PQS ELIGIBILITY AND QUALIFYING YEARS

Eligible Person to Receive PQS	Crab Fisheries	Qualifying Year Periods for Determining PQS Allocation
<p>The person who legally processed the crab during the qualifying years and;</p> <p>(1) is a US Citizen, corporation, or partnership; and</p> <p>(2) processed crab in 1998 or 1999; or</p> <p>(3) processed Bering Sea snow crab during 1988 through 1997 and invested at least \$1,000,000 in processing equipment and facilities during the period from January 1, 1995, through June 10, 2002.</p>	Eastern Aleutian Island golden king crab (EAG)	<p>4 years of the 4-year base period beginning on:</p> <p>(1) September 1, 1996, through December 25, 1996;</p> <p>(2) September 1, 1997, through November 24, 1997;</p> <p>(3) September 1, 1998, through November 7, 1998;</p> <p>(4) September 1, 1999, through October 25, 1999.</p>
	Western Aleutian Island golden king crab (WAG)	<p>4 years of the 4-year base period beginning on:</p> <p>(1) September 1, 1996, through August 31, 1997;</p> <p>(2) September 1, 1997, through August 31, 1998;</p> <p>(3) September 1, 1998, through August 31, 1999;</p> <p>(4) September 1, 1999, through August 14, 2000.</p>
	Bering Sea Tanner crab (BST)	Equivalent to 50 percent of the total legally processed crab in the Bering Sea <i>C. opilio</i> fishery during the qualifying years established for the QS fishery; and 50 percent of the totally legally processed crab in the Bristol Bay red king crab fishery during the qualifying years established for that crab QS fishery.
	Bering Sea snow crab (BSS)	<p>3 years of the 3-year period beginning on:</p> <p>(1) January 15, 1997, through March 21, 1997;</p> <p>(2) January 15, 1998, through March 21, 1998; and</p> <p>(3) January 15, 1999, through March 22, 1999.</p>

TABLE 7—PQS ELIGIBILITY AND QUALIFYING YEARS—Continued

Eligible Person to Receive PQS	Crab Fisheries	Qualifying Year Periods for Determining PQS Allocation
	Bristol Bay red king crab (BBR)	3 years of the 3-year QS base period beginning on: (1) November 1, 1997, through November 5, 1997; (2) November 1, 1998, through November 6, 1998; and (3) October 15, 1999, through October 20, 1999.
	Pribilof Islands red and blue king crab (PIK)	3 years of the 3-year period beginning on: (1) September 15, 1996, through September 26, 1996; (2) September 15, 1997, through September 29, 1997; and (3) September 15, 1998, through September 28, 1998.
	St. Matthew blue king crab (SMB)	3 years of the 3-year period beginning on: (1) September 15, 1996, through September 23, 1996; (2) September 15, 1997, through September 22, 1997; and (3) September 15, 1998, through September 26, 1998.
	Western Aleutian Islands red king crab (WAI)	Equivalent to the total legally processed crab in the Western Aleutian Islands golden king crab fishery during the qualifying years established for that crab QS fishery.

In the Bering Sea Tanner crab fishery, the issuance of PQS would be based on the processing history in the Bering Sea snow crab fishery. The Bering Sea Tanner crab fishery has not been open in recent years and, in the past, both Bering Sea snow crab and Bering Sea Tanner crab were harvested together. In the Western Aleutian Islands red king crab, the issuance of PQS would be based on the processing history in the Western Aleutian golden king crab fishery. This provision recognizes the fact there has been limited processing in these fisheries in recent years and much of the participation is sporadic and conducted by processing entities who have also been involved in the Western Aleutian Islands red king crab fishery.

Computation of Initial Issuance of PQS

The amount of PQS that would initially be issued to any one person would be based on the amount of legal processing by the person as a percentage of a denominator that represents the total legal processing by all persons eligible to receive PQS. The following

steps would be used to calculate PQS for an applicant.

NMFS would build the official crab rationalization record, which would contain the total legal processing for all of the crab fisheries based on the best available information by using the State of Alaska fish ticket database. The official record is presumed to be correct unless an applicant provides information that indicates a correction is necessary. The total legal processing amount is the total processing denominator (TPD).

In order to clearly explain the computation, the hypothetical example used previously for the QS issuance is repeated here. This example does not use data or persons from existing crab fisheries and is intended for illustrative purposes only. In our example, there are only two processors in the fishery: Processor A and Processor B, each with different landings patterns. The total legal processing, the region in which that processing occurred, and the amount of the processing are shown in Table 8. The computation process using two processors (A and B) is described in

the table. Note this hypothetical fishery also assumes all applicable years are used to determine an initial issuance of PQS. As with all crab fisheries, the years used for selecting processing history differ from those used to determine legal landings for allocating QS. Because all years are used, the total processing denominator is not divided by the sum of the percentage of the processing denominator of all persons receiving PQS.

The percentage of the TPD for each person is multiplied by the initial PQS pool, although the initial PQS pool does not need to be set at the same number as the initial QS pool. NMFS would set both pools at the same number for each crab fishery to facilitate ease of computation for use limitations. In our hypothetical example, this means there would be an initial QS pool of 9,000 units and an initial PQS pool of 9,000 units. Although the amount of IFQ a unit of QS yields and the amount of IPQ a unit of PQS may yield would differ, the initial pools of quota would be the same. See the following table for details:

TABLE 8—HYPOTHETICAL CRAB FISHERY – FOUR YEARS USED – CALCULATION OF PQS INITIAL ISSUANCE

	Year 1	Year 2	Year 3	Year 4	Total
(1) Total Processing Denominator in Fishery (Legal Processing)	1,800 lb	400 lb	1,000 lb	1,000 lb	4,200 lb
(2) Total Legal Processing of Processor A	600 lb	200 lb	300 lb	500 lb	1,600 lb
(3) Percentage of Total Harvest Denominator for Processor A	33.3 % (Used)	50 % (Used)	30 % (Used)	50 % (Used)	40.8 % (Used)
(3A) Total Landings in the North Region for Processor A	100	0	100	200	400
(3B) Total Landings in the South Region for Processor A	500	200	200	300	1,200
(3C) Percentage of Processing in the North Region for Processor A = $(400 / (400 + 1,200)) = 25.00\%$					
(3D) Percentage of Processing in the South Region for Processor A = $(1,200 / (400 + 1,200)) = 75.00\%$					
(4) Total Legal Processing of Processor B	1,200 lb	200 lb	700 lb	500 lb	2,600 lb
(5) Percentage of Total Processing Denominator for Processor B	66.7 % (Used)	50 % (Used)	70 % (Used)	50 % (Used)	59.2 %
(5A) Total Processing in the North Region for Processor A	900	100	500	0	1,500
(5B) Total Landings in the South Region for Processor B	300	100	200	500	1,100
(5C) Percentage of Processing in the North Region for Processor B = $(1,500 / (1,500 + 1,100)) = 57.69\%$					
(5D) Percentage of Processing in the South Region for Processor B = $(1,100 / (1,500 + 1,100)) = 42.31\%$					
(6) Sum of Percentage of Total Processing Denominators for All Processors = Processor A 0.408 (Line 3) + Processor B 0.592 (Line 5) = 1.00 or 100 %—NO SCALING FACTOR REQUIRED					
(7) Initial PQS Pool = 9,000 Units					
(8) Initial PQS Allocation for Processor A = 9,000 PQS Units \times 0.408 (Line 3) = 3,672 PQS Units					
(9) Initial PQS Allocation for Processor B = 9,000 PQS Units \times 0.592 (Line 5) = 5,328 PQS Units					
(10) Percentage of Processor A PQS allocation as North Region PQS = $3,672 \times 0.2500$ (Line 3C) = 918 PQS Units					
(11) Percentage of Processor A PQS allocation as South Region PQS = $3,672 \times 0.7500$ (Line 3D) = 2,754 PQS Units					
(12) Percentage of Processor B PQS allocation as North Region PQS = $5,328 \times 0.5769$ (Line 5C) = 3,074 PQS Units					
(13) Percentage of Processor A PQS allocation as South Region PQS = $5,328 \times 0.4231$ (Line 5D) = 2,254 PQS Units					

Regional Designations of PQS

PQS is issued with the same regional designations as those of QS as described in Table 3.

Regional Adjustment for North and South Designations. North and South PQS regional designation is based on the location of the legal processing that is used as the basis for PQS allocation, as shown in Table 8. Once PQS is issued with regional designation, the issuance

of QS would be adjusted so that the regional designations for QS would match the regional designations for PQS in each crab fishery. The adjustment would be made to the QS issued because the processing facilities are typically fixed shorebased plants. The adjustments to establish the same regional designation ratios is necessary to ensure matches in the amounts of IPQ and IFQ that are harvested and delivered in any one region.

This adjustment process would be made prior to the issuance of the QS and PQS. The ratio between the regions should be the same even if the number of QS units differs. Using our hypothetical fishery example, we illustrate this process by showing how each LLP license holder's QS allocation would be adjusted at initial allocation. Drawing on information from Table 4 and Table 6, the calculation is shown in the following table:

TABLE 9—ADJUSTMENT FOR NORTH AND SOUTH REGIONAL DESIGNATION FOR QS

(1) Percentage of Landings in the North Region for LLP A = 100 % (Line 3G of Table 4) of 1,984 QS Units (Line 14 of Table 4) = 1,984 QS Units
(2) Percentage of Landings in the South Region for LLP A = 0 % (Line 3H of Table 4) of 1,984 QS Units (Line 14 of Table 4) = 0 QS Units

TABLE 9—ADJUSTMENT FOR NORTH AND SOUTH REGIONAL DESIGNATION FOR QS—Continued

(3) Percentage of Landings in the North Region for LLP B = 56.52 % (Line 5G of Table 4) of 3,708 QS Units (Line 16 of Table 4) = 2,086 QS Units
(4) Percentage of Landings in the South Region for LLP B = 43.48 % (Line 5H of Table 4) of 3,708 QS Units (Line 16 of Table 4) = 1,612 QS Units
(5) Total QS (Sum of Lines 1-4) = 5,692 Units
(6) Total QS in North Region (Sum Lines 1 and 3) = 4,080 Units
(7) Total QS in South Region (Sum Lines 2 and 4) = 1,612 Units
(8) Percentage of North QS to South QS = $4,080/5,692 = 71.68\%$ North, $1,612/5,692 = 28.32\%$ South
(9) QS issued as North Region only = 1,984 Units (Line 1)
(10) QS as both North and South Region = (Line 5 - Line 1) = 3,708 Units
(11) Percentage of Processing in the North Region for Processor A = 25.00 % (Line 3C of Table 8) of 3,672 Units (Line 8 of Table 8) = 918 Units
(12) Percentage of Processing in the South Region for Processor A = 75.00 % (Line 3D of Table 8) of 3,672 Units (Line 8 of Table 8) = 2,754 Units
(13) Percentage of Processing in the North Region for Processor B = 57.69 % (Line 5C of Table 8) of 5,328 Units (Line 9 of Table 8) = 3,074 Units
(14) Percentage of Processing in the South Region for Processor B = 42.31 % (Line 5D of Table 8) of 5,328 Units (Line 9 of Table 8) = 2,254 Units
(15) Total PQS in North Region = 3,992 Units (Sum of Line 11 and 13)
(16) Total PQS in South Region = 5,008 Units (Sum of Line 12 and 14)
(17) Ratio of North PQS : South PQS = 44.36% North, 55.64 % South
Calculations: (a) QS North Region = Total QS 5,692 (Line 5) \times 44.38% (Line 17) = 2,525 Units
(b) QS South Region = Total QS 5,692 (Line 5) \times 55.64 % (Line 17) = 3,167 Units
(c) QS North Region for all persons holding North Region and South Region QS = QS North Region - North Region only QS 2,525 Units - 1,984 (Line 9) Units = 541 Units
(d) QS South Region for all persons holding North Region and South Region QS = QS South Region - South Region only QS 3,167 Units - 0 Units = 3,167 Units
(e) North Region QS issued to LLP A = 1,984 QS Units
(f) North Region QS issued to LLP B = Total QS held by LLP B (3,708) \times 541 Units/3,708 Units = 541 North Region QS Units
(g) South Region QS issued to LLP B = Total QS held by LLP B (3,708) - 541 North Region QS Units = 3,167 South Region QS Units

In this example, only one of the LLP license holders holds QS that would require adjustment. Although CVC QS is not subject to regional delivery requirements until after July 1, 2008, NMFS would compute the amount of QS designated for each region prior to the issuance of the CVC QS. This would allow a holder of CVC QS to know the regional designation of the QS prior to the application of that designation. The ratio of North and South regional designation would be the same for both the CVO and CVC QS.

The adjustment for regional designation would need to occur once appeals are decided and those readjustments in regional designation would be made prior to fishing to minimize disruptions in the fishery. A person who would receive QS with more than one regional designation for that crab fishery would have his or her QS holdings regionally adjusted on a pro rata basis according to the following process:

(1) Determine the ratio of the initial PQS pool in the North and South regions.

(2) Multiply Initial QS pool by the ratio of North and South PQS. This would yield the target North QS pool and the target South QS pool.

(3) Sum the QS for all persons who are eligible to receive North QS. This is the unadjusted North QS pool.

(4) Repeat the procedure for the South Region. This is the unadjusted South QS pool.

(5) Subtract the amount of QS for persons receiving North QS only from the unadjusted North QS pool to calculate the amount of North QS available to all persons holding both North and South region QS.

(6) Subtract the amount of QS for persons receiving South QS only from the unadjusted South QS pool to calculate the amount of South QS available to all persons holding both North and South region QS.

(7) Subtract the Unadjusted North QS pool from the Target North QS pool to calculate the number of QS units that would be applied to the North QS pool to adjust the regional designations. This amount is the Adjustment Amount.

(8) Divide the Adjustment Amount by the unadjusted North QS pool for North

and South QS holders. This yields the regional adjustment factor (RAF) for each person.

(9) For each person who holds both North and South Region QS, the QS adjustment (QS Adj. p) to that person's Unadjusted North QS is expressed in the following equation as:

$$QS \text{ adj. } p = \text{Unadjusted North QS } p \times \text{RAF}$$

(10) If the QS adjustment for a person is negative, the QS adjustment for that person is subtracted from that person's unadjusted North QS amount and added to that person's unadjusted South QS. If the QS adjustment for a person is positive, the QS adjustment for that person is added to that person's unadjusted North QS amount and subtracted from that person's unadjusted South QS. These adjustments would yield the regional amount of QS for that person.

Regional Adjustment in the Western Aleutian Islands Golden King Crab Fishery. The PQS issued would need to be adjusted so that 50 percent of the PQS is designated as West region, and 50 percent is undesignated. However, the process for regionally allocating PQS

in the Western Aleutian Islands golden king crab fishery differs slightly from the North and South PQS regional designation, which is based on the location of the legal processing. Fifty percent of the PQS that would be issued in the Western Aleutian Islands golden king crab fishery would be issued with a West designation. The West designation applies to PQS for processing west of a line at 174° W. long. The remaining 50 percent of the PQS issued for this fishery is undesignated region PQS.

If a person owns a crab processing facility that is located in the West region at the time of application, that person would receive West PQS only. If a person applies to receive PQS and does not own a crab processing facility located in the West region at the time of application, then that person would receive West region (West) and Undesignated region (Und.) PQS. Expressed algebraically, for any person (p) allocated both West region PQS and undesignated region PQS the formula is as follows:

$$(1) PQS_{West} = PQS \times 0.50$$

$$(2) PQS_{Und.} = PQS \times 0.50$$

$$(3) PQS_{West} \text{ for } PQS_{West \& Und.} \text{ holders} = PQS_{West} - PQS_{West \text{ only}}$$

$$(4) PQS_{West} \text{ for Person}_p = PQS_p \times (PQS_{West} \text{ for } PQS_{West \& Und.} \text{ holders} / (PQS_{West} \text{ for } PQS_{West \& Und.} \text{ holders} + PQS_{Und.}))$$

$$(5) PQS_{Und.} \text{ for Person}_p = PQS_p - PQS_{West} \text{ for Person}_p$$

For purposes of the allocation of PQS in the Western Aleutian Islands golden king crab fishery, ownership of a processing facility is defined as a sole proprietor, or a relationship between 2 or more entities in which a person directly or indirectly owns a 10-percent or greater interest in the facility. A processing facility is defined as a shorebased, or stationary floating processor. Catcher/Processors would not be considered as ownership of a processing facility operating in the West region.

The QS issued to the Western Aleutian Islands golden king crab fishery is adjusted so 50 percent of the QS issued is West QS, which can be delivered only to an RCR located west of the 174° W. longitude. The adjustment in the initial issuance of QS would be made for persons who made landings of Western Aleutian Islands golden king crab west and east of 174° W. longitude.

If a person received QS based solely on landings made east of 174° W. longitude, all of that QS would be issued to that person as regionally undesignated QS. If a person received QS based on landings made only west of 174° W. longitude, all of that QS would be issued as West QS. However,

if a person received QS based on landings made both east and west of the 174° W. longitude line, then, that QS would be issued such that a portion of the QS would be issued as "Undesignated" and a portion as "West" so that all of the QS issued in the Western Aleutian Islands golden king crab fishery are issued with a 50 percent West and a 50 percent Undesignated ratio. Person's receiving QS with both regional designations would have the QS pro-rated so the total of all QS is issued initially as 50 percent West and 50 percent Undesignated QS. The following process would be followed:

(1) Sum the QS for all persons who are eligible to receive West QS. This is the unadjusted West QS pool;

(2) Sum the QS for all persons who are eligible to receive Undesignated QS. This is the unadjusted Undesignated QS pool;

(3) Subtract the amount of QS for persons receiving West QS only from the unadjusted West QS pool to calculate the amount of West QS available to all persons holding both West and Undesignated region QS;

(4) Subtract the amount of QS for persons receiving Undesignated QS only from the unadjusted Undesignated QS pool to calculate the amount of Undesignated QS available to all persons holding both West and Undesignated region QS;

(5) Subtract the Unadjusted West QS pool from the Target West QS pool to calculate the number of QS units that would be applied to the West QS pool to adjust the regional designations. This amount is the Adjustment Amount;

(6) Divide the Adjustment Amount by the unadjusted QS pool for West and Undesignated QS holders. This yields the regional adjustment factor (RAF) for each person;

(7) For each person who holds both unadjusted West and Undesignated Region QS, the QS adjustment to that person's Unadjusted West QS is determined by multiplying the Unadjusted West QS by the RAF; and

(8) If the QS adjustment for person is negative, the QS adjustment for that person is added to that person's unadjusted West QS amount and subtracted from that person's unadjusted Undesignated QS. If the QS adjustment for a person is positive, the QS adjustment for that person is subtracted from that person's unadjusted West QS amount and added to that person's unadjusted Undesignated QS. These adjustments would yield the regional adjustment amounts for that person.

Initial Issuance of Crab QS and PQS

In order to receive an initial allocation of QS or PQS, an eligible person would need to submit an Application for Crab QS or PQS. The application would be sent to the last known address of a person identified as an eligible applicant by the official crab rationalization record and would be available on the NMFS Alaska Region web page at www.fakr.noaa.gov. All applications would have to be submitted by the close of the application period. The application period would be specified in the Federal Register at the time of the publication of the Final Rule.

Applications could be mailed, faxed, or hand delivered to the NMFS, Alaska Region (see ADDRESSES). The contents of the application vary, depending on the type of QS and/or PQS for which a person is applying. If an applicant is applying as the successor-in-interest to an eligible applicant, an application must also contain valid documentation demonstrating the applicant's status as a successor-in-interest to that eligible applicant.

An Application for Crab QS or PQS would be signed by the applicant or the individual representing the applicant and would contain the necessary information to identify the person applying, the basis for applying for QS or PQS, any necessary information on the vessel or processor, documentation of crew participation, contract provisions for community ROFR, and any other information deemed necessary by the Regional Administrator.

Additional requirements in the Application for Crab QS or PQS exist for persons applying to receive PQS from legal landings made in an ECC, or in a community in the GOA north of a line at 56°20' N. latitude — a North GOA Community. Prior to the initial issuance of PQS based on legal processing located in an ECC, that person must provide documentation he or she has completed a contract with the entity representing the ECC that sets out the terms for ROFR for any PQS to be transferred in a future sale. In the case of a North GOA Community, a ROFR contract must be signed with the City of Kodiak and the Kodiak Island Borough.

The Regional Administrator would evaluate Applications for QS and PQS submitted during the specified application period and compare all claims in the application with the information in the official crab rationalization record. Claims in the application consistent with information in the official record would be accepted by the Regional Administrator.

Inconsistent claims in the application, unless verified by documentation, would not be accepted.

If NMFS determines the additional information or documentation submitted by the applicant is correct and supports the applicant's burden of proving the inconsistent claims, the information would be used to determine whether the applicant is eligible for a QS or PQS allocation. However, if the Regional Administrator determines the additional information or documentation does not support the applicant's burden, the applicant would be notified through an initial administrative determination (IAD), stating the applicant did not meet the burden of proof.

NMFS would specify a 30-day evidentiary period during which an applicant may provide additional information or documentation to support the claims made in his or her application. An applicant would be limited to one 30-day evidentiary period per application. Additional information or documentation, or a revised application, received after the 30-day evidentiary period, but before an IAD is issued, would be considered.

NMFS would prepare and send an IAD to the applicant following the expiration of the 30-day evidentiary period if sufficient documentation is not provided. The IAD would indicate the deficiencies in the application. The IAD would also indicate which claims cannot be approved based on the available information or documentation. An applicant who receives an IAD may appeal. An applicant who avails himself or herself of the opportunity to appeal an IAD would not receive the QS or PQS being contested.

NMFS would not initiate an IAD in the case of an Application for Crab QS or PQS that is complete except for a signed ROFR contract. This provision would accommodate applicants who have complied with the application requirements with the exception of a mutually signed contract which relies on agreement of both parties. Once an application is submitted with a ROFR contract, NMFS would allocate PQS to that person.

IFQ Issuance

The annual allocations of the TAC, in pounds, to QS holders are referred to as IFQ. IFQ would be issued for each of the four QS sectors. IFQ is a permit that allows the harvesting of an amount of the TAC for a fishery. As with QS, IFQ would be issued on a fishery-by-fishery and regional basis.

IFQ would be issued once the TAC for that crab fishery in that crab fishing year

has been specified by the State of Alaska. The TAC available as IFQ would be the fishery TAC minus the 10 percent CDQ allocation. For the Western Aleutian Islands golden king crab fishery, the 10 Adak allocation would be deducted from the TAC prior to allocating the IFQ. All IFQ would be issued for a crab fishing year.

QS issued after NMFS has issued annual IFQ would not result in IFQ for that crab fishery for that fishing year. If additional actions such as appeals, or other administrative decisions occur after IFQ has been issued for that fishery, the person would not receive IFQ until the following year. This single annual issuance is required for administrative purposes so that mid-year adjustments to other IFQ holders would not occur that would alter their allocation or the ratio of QS to IFQ for that year.

The account of the person holding IPQ would be debited as soon as the landings are reported. A person would be prohibited from harvesting an amount of crab in excess of the IFQ held. Penalties would be imposed for any overage in excess of a person's IFQ. The IFQ is subject to use provisions described later in this preamble. Descriptions of the types of IFQ resulting from each type of QS follow:

CVO IFQ

CVO QS yields two separate classes of IFQ: Class A IFQ and Class B IFQ. Class A IFQ limits the delivery of any crab harvested with that IFQ to an RCR holding unused IPQ with a specific regional designation. Class B IFQ could be delivered to any RCR, except to an RCR that has already used CPO or CPC IFQ in that crab fishery during that season. Class B IFQ would not be regionally designated.

The Class A/Class B IFQ distinction would be made only in the annual IFQ allocations. QS would be issued in a single class. Since the Class B IFQ are intended to provide negotiating leverage to harvesters who are unaffiliated with holders of PQS or IPQ, only QS holders who do not also hold PQS or who are unaffiliated with holders of PQS, would receive Class B IFQ. Holders of PQS or IPQ and their affiliates who hold QS would be allocated Class A IFQ for all of their QS holdings. For each region of each fishery, the allocation of Class B IFQ would be 10 percent of the total allocation of IFQ. For example, if no North QS holders are affiliated with PQS or IPQ holders, each IFQ allocation would be 90 percent North Class A IFQ and 10 percent Class B IFQ. If half of the North QS is held by persons affiliated with a PQS or IPQ holder, the holders

of North QS who are not affiliated with a PQS or IPQ holder would receive 80 percent Class A IFQ and 20 percent Class B IFQ. The result would be that 10 percent of the total North IFQ in the fishery would be Class B IFQ. The absence of an affiliation with a holder of PQS or IPQ would be established by a harvester filing an annual affidavit stating the use of any IFQ held by that harvester is not subject to any control of any holder of PQS or IPQ.

Persons who hold CVO IFQ and also hold PQS or IPQ would receive only Class A IFQ. Persons who hold CVO IFQ and are affiliated with a person who holds PQS or IPQ would receive only Class A IFQ. Affiliation would be determined based on two factors: ownership and control. IFQ would be considered to be held by a processor if a PQS or IPQ holder directly or indirectly owns at least 10 percent of an entity who holds or receives IFQ. This 10 percent ownership standard has been used in other rationalization programs in the past as a means of measuring ownership and comports with the mechanism employed to measure common ownership for purposes of QS use caps. The definition of affiliation used in this proposed rule is similar to that developed for the AFA regulations, and is consistent with Council intent.

Examples of the affiliation rule follow: First, if a PQS or IPQ holder also held QS and received IFQ, that IFQ would be considered to be affiliated and issued as Class A IFQ; second, if a PQS or IPQ holder owned 50 percent of Corporation A and Corporation A owned 50 percent of Corporation B, which received IFQ, that IFQ would be considered to be affiliated with a processor because that PQS or IPQ holder indirectly owns 25 percent of Corporation B, which is receiving the IFQ; third, if a PQS or IPQ holder owned 20 percent of Corporation C and Corporation C owned 20 percent of Corporation D, which received IFQ, that IFQ would not be considered affiliated because the PQS or IPQ holder indirectly owns only 4 percent of Corporation D; therefore, both Class A and Class B IFQ would be issued to Corporation D.

Control of IFQ by a PQS or IPQ holder would be measured by linkages between the PQS or IPQ holder and the IFQ holder and would serve as a means of effectively extending the ability of the PQS or IPQ holder to control the deliveries of crab to a specific processor. NMFS would interpret control in situations in which the person holding PQS or IPQ: Control exists if an individual, corporation, or other business entity that holds PQS controls a 10 percent or greater interest in the

IFQ holder. An entity controls a 10 percent or greater interest in a second entity if the first entity: (1) Controls a 10 percent ownership share of the second entity, or (2) Controls 10 percent or more of the voting stock of the second entity. In addition to this direct form of control, affiliation would also include other means whereby an entity otherwise controls another entity.

An entity otherwise controls another when the first entity has the power to exercise a controlling influence over the management or policies of the other entity, unless such power is solely the result of an official position with such entity. This definition is drawn from the Investment Company Act of 1940. This definition is intended to incorporate all forms of control. Examples of the types of control that may be encompassed by this definition, include the authority to direct the delivery of crab harvested under an IFQ permit held by the second entity to a specific RCR, or when one entity absorbs the majority of costs and normal business risks associated with the operation of a second entity, including the costs associated with obtaining and using any amount of the QS, PQS, IFQ, or IPQ held by the second entity.

NMFS would require QS holders to submit an affidavit on an annual basis, along with the Annual Application for Crab IFQ/IPQ Permit, to attest to whether an affiliation exists between a PQS or IPQ holder and the IFQ recipient.

The Regional Administrator would determine the amount of Class A and Class B IFQ that is issued to a QS holder. This is calculated by allocating 90 percent of the TAC (TAC_a) as Class A IFQ. A portion of TAC_a is allocated to persons eligible to hold only Class A IFQ (TAC_a only), the remaining TAC (TAC_r) is allocated for harvest by a person (p) eligible to receive both Class A IFQ and Class B IFQ. Expressed algebraically, for an individual person (p) eligible to hold both Class A and Class B IFQ the annual allocation formula is as follows:

1. $TAC_a = TAC \times 0.90$
2. $TAC_r = TAC_a - TAC_{a \text{ only}}$
3. $IFQ_{ap} = TAC_r / (TAC_r - TAC_{a \text{ only}}) \times IFQ_p$
4. $IFQ_{bp} = IFQ_p - IFQ_{ap}$

CPO IFQ

CPO QS yields only one class of IFQ, CPO IFQ. This IFQ allows the harvest and processing of an amount of crab. The person holding CPO IFQ can choose to harvest an amount of crab and

process it on board that same vessel. Alternatively, the CPO IFQ holder can harvest crab and deliver the crab to a separate RCR. CPO IFQ is not subject to regional restrictions while used as CPO IFQ.

CVC IFQ

CVC QS yields CVC IFQ. CVC IFQ would not be subject to regional designation until July 1, 2008. After July 1, 2008, CVC IFQ would be issued as Class A and Class B IFQ, subject to the same regional designation and affiliation requirements as those described under CVO IFQ.

CPC IFQ

CPC QS yields CPC IFQ. As with CPO IFQ, there are no regional delivery requirements, and crab harvested using a CPC IFQ can be harvested and processed on board a vessel, or it can be delivered to another RCR. Unlike CVC IFQ, CPC IFQ would not convert to Class A and Class B shares annually starting July 1, 2008.

IPQ Issuance

An annual allocation of PQS is referred to as IPQ and expressed in pounds of crab. IPQ would be equivalent to the amount of the TAC that is issued as Class A IFQ for that crab fishery. Processor privileges do not apply to the amount of the TAC allocated as Class B IFQ, or prior to July 1, 2008, allocated for use by the CPO and CPC sectors. IPQs would be regionally designated for processing with the same regional designations that apply to IFQ. The account of the person holding IPQ would be debited as soon as the landings are reported.

Annual Application for Crab IFQ/IPQ Permit

Prior to the issuance of IFQ or IPQ for a crab fishery, each person that wishes to receive IFQ or IPQ must submit an Annual Application for Crab IFQ/IPQ Permit. This application is necessary for NMFS to administer several aspects of this program, specifically: (1) to determine the designation of Class A and Class B IFQ in each crab fishing year for each person based on the affidavit; (2) to determine whether the applicant would be using the IFQ as part of a crab harvesting cooperative; and (3) to ensure that an EDR has been submitted, if required. This application must be submitted prior to the start of the crab fishing year.

A complete Annual Application for Crab IFQ/IPQ Permit would include the applicant's identification and contact information, whether the applicant has joined a crab cooperative, and a completed affidavit of affiliation declaring any and all affiliations with any PQS or IPQ holder. An affidavit of affiliation would include the applicant's relationships with IPQ or PQS holders that may involve direct or indirect ownership or control of the delivery of IFQ and any supplemental documentation deemed necessary by NMFS to determine whether an affiliation exists. This includes the names of all persons, to the individual level, holding an ownership interest in the entity and the percentage ownership each person holds. The application must also include the submission of an EDR, and pay any outstanding fees, if required.

As with the other permit applications, NMFS would review the application for completeness, payment of any fees required under this program, and other provisions required for permit holders.

QS/IFQ and PQS/IFQ Transfer Provisions

After the initial allocation of QS and PQS, these shares and their corresponding IFQ and IPQ, may be transferred. All transfers must be approved by NMFS. A transfer is any change in the person holding the QS or using the IFQ, permanently or for a fixed period of time. IFQ used by a person holding a Crab IFQ Hired Master Permit issued by NMFS, and the use of IFQ assigned to a crab harvesting cooperative and used within that cooperative, are not considered to be transfers of IFQ.

Eligibility to Transfer Quota

Before receiving quota by transfer quota, a person must establish eligibility to receive QS, PQS, IFQ, or IPQ by transfer by submitting a completed Application for Eligibility to Receive QS/IFQ or PQS/IPQ by Transfer, available on the NMFS Alaska Region website at <http://www.fakr.noaa.gov>, or from the NMFS Alaska Region (see ADDRESSES). If a person is an initial issuee of QS, an eligibility application is not required. To be eligible to receive QS, PQS, IFQ, or IPQ by transfer, a person must first meet the requirements in the following table:

TABLE 10—ELIGIBILITY REQUIREMENTS TO RECEIVE QUOTA BY TRANSFER

Quota Type	Eligible Person	Eligibility Requirements
PQS	Any person	None
IPQ	Any person	None
CVO or CPO QS	A person Initially Issued QS	None
	An individual	who is a U.S. citizen with at least 150 days of sea time as part of a harvesting crew in any U.S. commercial fishery
	A corporation, partnership, or other entity	with at least one individual member who is a U.S. citizen and who: (1) owns at least 20 percent of the corporation, partnership, or other entity; and (2) has at least 150 days of sea time as part of a harvesting crew in any U.S. commercial fishery
	An ECCO	None
	A CDQ Group	None
CVO or CPO IFQ	All persons eligible for CVO or CPO QS	Same as the requirements for CVO and CPO QS
	A crab harvesting cooperative	None
CVC or CPC QS	An individual initially issued QS	None
	An individual	who is 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) recent participation in the 365 days prior to the transfer.
CVC or CPC IFQ	All persons eligible for CVC or CPC QS	Same as the requirements for CVC and CPC QS
	A crab harvesting cooperative	None

Prior to receiving QS by transfer on behalf of a specific ECC, a non-profit entity that intends to represent that ECC as an ECCO must have approval from the Regional Administrator. To receive approval, the non-profit entity seeking to become an ECCO must submit a complete Application to Become an ECCO to NMFS, available on the NMFS Alaska Region website at <http://www.fakr.noaa.gov>, or from the NMFS Alaska Region (see ADDRESSES). If an application is disapproved, then the determination may be appealed.

An ECCO is a non-profit organization that is authorized to hold QS and lease the resulting IFQ to residents of the ECC on whose behalf it holds the QS. Each ECC would have to designate an ECCO to transfer and hold QS on its behalf. The ECCO would be identified by either the CDQ group, or the municipality in which the ECC is located, except in cases where the ECC is also located in a borough. In such case, the municipality and borough must agree to designate the same non-profit organization to serve as the ECCO. Each ECC may designate only one ECCO to

hold crab QS on behalf of that community at any one time.

A complete Application to Become an ECCO consists of: (1) The articles of incorporation under the laws of the State of Alaska for that non-profit entity; (2) A statement indicating the ECC represented by that non-profit entity for purposes of holding QS; (3) Management organization information; and (4) A statement describing the procedures that would be used to determine the distribution of IFQ to residents of the community represented by that ECCO.

Transfer Applications

Once an eligibility application is submitted, and eligibility to receive QS, PQS, IPQ, or IFQ is established, a transfer application must be submitted to NMFS for the actual transfer of a specific type of quota. There are three forms of transfer applications and the application form used would vary depending on the person applying for the transfer. The three forms are: (1) Application for Transfer of Crab QS/IFQ or PQS/IPQ. This application is required to transfer any amount of QS, PQS, IFQ,

or IPQ from an entity that is not an ECCO or a crab harvesting cooperative; (2) Application for Transfer of Crab QS/IFQ to or from an ECCO. This application is required to transfer any amount of QS or IFQ to or from an entity that is an ECCO; or (3) Application for Inter-cooperative Transfer. This application is required to transfer any amount of IFQ from a crab harvesting cooperative to another crab harvesting cooperative. All of these transfer forms would be available on the NMFS Alaska Region website at <http://www.fakr.noaa.gov>, or from the NMFS Alaska Region (see ADDRESSES).

For the transfer of PQS or IPQ, an application must contain a signature of a representative of an ECC entity with ROFR. For the transfer of CVC QS or IFQ or CPC QS or IFQ, individuals must submit proof of at least one landing of crab in any crab fishery in the 365 days prior to submission to NMFS of the application. Proof of this landing is either: signature of the applicant on an ADF&G Fish Ticket; or an affidavit from the vessel owner attesting to that individual's participation as a member

of a fish harvesting crew on board that vessel at the time of the landing.

NMFS would establish the deadline of August 1 by which QS and PQS holder must apply for their annual IFQ or IPQ permits for that crab fishing year. This deadline provides NMFS the time necessary to calculate whether, and how much, of the IFQ issued to a person should be designated as Class A or Class B IFQ based on the affidavit of affiliation provided in the application. NMFS would need to know all affiliation information for all persons to calculate the Class A/B IFQ ratios for each person accurately. Without this deadline, NMFS would not have sufficient information on affiliations and could not calculate the Class A/B ratio for a person.

This deadline date of August 1 allows NMFS time to issue the IFQ and IPQ for the Aleutian Islands golden king crab fishery (which typically begins in mid-August) and sufficient time to calculate and issue the IFQ and IPQ for all the other fisheries when the TACs are announced by the State of Alaska (in the Fall). Between August 1 and the issuance of IFQ or IPQ for a crab fishery, NMFS would not approve any transfers of QS, PQS, IFQ, or IPQ. This limit on transfer approval ensures that NMFS calculates the Class A/B IFQ ratio based on the affiliation information of all persons in the fishery at the same time. Once the IFQ and IPQ is issued, NMFS would resume the approval of valid transfer applications. For most crab fisheries, this would effectively result in a one month period when NMFS would not approve transfers. Persons may still submit applications during this time, but approval would not occur until NMFS has issued the IFQ and IPQ for the crab fishery.

Approval criteria for an Application for Transfer of Crab QS/IFQ or PQS/IPQ. An Application for Transfer of Crab QS/IFQ or PQS/IPQ would not be approved until the Regional Administrator has determined that: (1) The person applying to receive the quota is eligible to receive it; (2) The application is notarized; (3) All fees for this program are paid as well as any fines, civil penalties, or other payments due and owing, or outstanding permit sanctions, resulting from Federal fishery violations involving either party exist; (4) The person applying to receive quota currently exists; (5) The transfer would not cause the person applying to receive the quota to exceed the use limit; (6) The person applying to make or receive the QS, PQS, IFQ or IPQ transfer has submitted an EDR, if required; (7) In the case of the transfer of PQS or IPQ, that the provisions for ROFR have been met;

and (8) Other pertinent information requested on the application for transfer has been supplied to the satisfaction of the Regional Administrator.

Application for Transfer of Crab QS/IFQ to or from an ECCO. An Application for Transfer of Crab QS/IFQ to or from an ECCO must be approved by the Regional Administrator. This application is required for the ECCO to hold the QS and for the individual that would use the IFQ to harvest crab. Any transfer of QS from an ECC by the ECCO requires authorization of the appropriate governing body of the ECC to ensure proper oversight.

In the application, all individuals applying to receive IFQ by transfer from an ECCO must submit proof of at least one delivery of crab in any crab fishery in the 365 days prior to submission to NMFS of the application. Proof of this landing is either: the signature of the applicant on an ADF&G Fish Ticket; or an affidavit from the vessel owner attesting to that individual's participation as a member of a fish harvesting crew on board that vessel during that landing. In conjunction with the transferee, the ECCO would be a party to the Application for the Transfer of QS/IFQ to or from an ECCO. The ECCO would provide to NMFS an explanation for the transfer of QS/IFQ to be included in NMFS' review of the community benefits of ECCO's. Included among the reasons for transfer are: facilitation of ECCO management and administration; to finance future QS purchases by the ECCO; to permit community residents to fish; or, to facilitate dissolution of the ECCO. A person receiving IFQ from an ECCO must affirm that they have been a permanent resident in the ECC for a period of 12 months prior to the submission of the application.

ECCO Annual Report for an ECC. In addition to the Application to Transfer Crab QS/IFQ to or from an ECCO, the ECCO must submit an annual report for the ECC to NMFS. An ECCO would be required to submit a complete annual report by June 30 of the crab fishing year that it is required. If an ECCO did not submit an annual report for the previous year, NMFS would not approve an Application to Transfer Crab QS/IFQ to or from that ECCO. This annual report is similar to the requirement in the current halibut and sablefish community purchase program. The annual report would ensure that the ECCO maintains the intent of the ECC QS purchase provisions that the QS and IFQ benefit residents of eligible communities.

The annual report would detail the use of the QS and IFQ in that

community, including information on the IFQ lease holders, crew employed, criteria used by the ECCO to distribute IFQ leases among eligible community residents, any changes in the management structure of the ECCO, and copies of decision making documents from ECCO board meetings. In addition, NMFS would request a description of efforts the ECCO has made to ensure that IFQ lessees employ crew members who are eligible community residents of the ECC aboard vessels on which IFQ derived from QS held by an ECCO is being fished.

Inter-cooperative Transfers

A crab harvesting cooperative would be permitted to transfer its IFQ only to another crab harvesting cooperative. Crab harvesting cooperatives wishing to engage in an inter-cooperative transfer must complete an Application for Inter-cooperative Transfer.

Application for Inter-cooperative Transfer. A complete application consists of the following: (1) the name and contact information of the crab harvesting cooperative transferor and transferee; (2) the identification of the crab IFQ being transferred, including the permit number, year that permit was issued, and number of pounds being transferred; (3) price paid for the IFQ; (4) whether an EDR was submitted, if required; (5) whether all fees have been paid; and (6) original notarized signatures of both the transferee and transferor. The approval criteria for an Application for Inter-Cooperative Transfer are the same as those for an Application for Transfer of Crab QS/IFQ or PQS/IPQ.

Specific Provisions on the Transfer of CVO and CPO QS and IFQ

CVO and CPO QS and the resulting IFQ would be transferrable under the Program, subject to the caps on the amount of shares a person may hold or use. Leasing would be defined for purposes of this program as the use of IFQs on a vessel in which the QS holder has less than 10 percent ownership interest or on which the QS holder is not present. The general provisions for the leasing of CVO and CPO IFQ (i.e., the temporary transfer of IFQs without the accompanying QS) would expire on July 1, 2010, which is five years after Program implementation. Leasing among crab harvesting cooperatives would not expire. The Council's intent in allowing leasing to continue through crab harvesting cooperatives is to create an incentive for cooperative membership.

Specific Provision on the Transfer of CVC and CPC QS and IFQ

CVC or CPC QS would be fully transferable to persons determined by NMFS to be eligible to receive this type of QS by transfer. In order to be eligible to receive CVC/CPC QS and/or IFQ by transfer, a person must be an individual U.S. citizen with at least 150 days of sea time as part of a harvesting crew in any U.S. commercial fishery. Additionally, the person must be an "active participant" in the BSAI crab fisheries as demonstrated by a landing in a crab fishery in the last 365 days. Documentation of "active participation" includes an ADF&G fish ticket, an affidavit from the vessel owner, or other verifiable documentation.

The accompanying CVC or CPC IFQ may also be leased until July 1, 2008. After July 1, 2008, leasing would be permitted only in the case of a documented hardship for the term of the hardship, subject to a maximum of 2 years over a 10 year period. A hardship would be considered if there is: (1) a severe medical condition of the QS holder documented by a medical doctor who verifies the QS holder cannot participate in the fishery because of the medical condition, (2) a medical condition involving a person that requires the QS holder's full-time care of that person, or (3) a total or constructive physical loss of a vessel. The QS holder would be required to provide documentation to NMFS the vessel was lost and could not be replaced in time to participate in the fishery.

Specific Provisions on the Transfer of PQS and IPQ

PQS and the resulting IPQ are fully transferable subject only to use and ownership caps. This allows for the entry of new processors into the fishery. The Council did not identify any specific eligibility criteria for persons wishing to obtain PQS or IPQ by transfer. However, the Council did establish a ROFR provision that restricts transfers of PQS and IPQ out of a community.

Right of First Refusal (ROFR)

The Program contains provisions for a ROFR to be granted to ECCs, with the exception of Adak, for the purchase of PQS/IPQ that is proposed by the PQS holder to be transferred out of the ECC. ROFR would apply to all crab PSQ/IPQ derived from legal processing that occurred in that ECC except for PSQ/IPQ issued for Tanner crab, Western Aleutian Islands golden king crab, and Adak red king crab. The Tanner crab

fishery is exempt because this species has been and likely would continue to be a concurrent fishery with Bristol Bay red king crab and snow crab. The Western Aleutian Islands golden king crab fishery is exempt because the fishery is regionalized in a manner that largely makes ROFR provisions unnecessary. Last, the Adak red king crab fishery was closed for several years limiting community dependence on that fishery.

To qualify as an ECC, a community must have processor history that accounts for at least 3 percent of the initial allocation of PQS in any crab fishery. The 3 percent threshold is intended to limit the ROFR to communities with historical dependence on the crab fisheries. Based on the Alaska State fish ticket database, the following nine communities meet this threshold of historical dependence as an ECC: Adak, Akutan, False Pass, St. George, St. Paul, Dutch Harbor, Kodiak, King Cove, and Port Moller. Adak is not eligible for ROFR because the Program excludes any community that receives a direct allocation of crab, which Adak does (see provisions for Adak allocation within this proposed rule). The rationale for this provision is that the direct allocation of crab is sufficient to support Adak's dependence on the crab fisheries, and any further protection of the community's interest in the fisheries is unnecessary.

ECCs would be required to designate an entity to represent it for purposes of ROFR. For those ECCs that are also CDQ communities (Akutan, False Pass, St. George, and St. Paul), the entity would be the CDQ group of which the community is a member. For non CDQ communities that are ECCs (Dutch Harbor, Kodiak, King Cove, and Port Moller), the entity would be a person or organization designated by the governing bodies of the ECCs. The entity for an ECC would be designated the right to intervene on behalf of its communities if a PQS holder proposes to transfer PQS or IPQ outside the community.

The ROFR provisions attempt to strike a balance between community and industry interests. Generally, the ROFR provides an ECC with the right to purchase PQ or IPQ from a processor for the same price and subject to the same conditions as offered by the seller in an open market. Under this system, the holder of PQS/IPQ would notify the ECC or its representative of the terms of the pending sale. The ECC would then have the opportunity to exercise the ROFR by notifying the seller of acceptance of those terms within a specified time period. If the terms are

not accepted, the open market sale may proceed.

An exception to the ROFR would allow a company to consolidate operations among several commonly owned plants to achieve intra-company efficiencies. In addition, companies could lease IPQ for use outside a community. However, use of more than 20 percent of a person's IPQ holdings outside an ECC during a crab fishing year would trigger the ECC's right of first refusal. The time period of a crab fishing year to allow for this 20 percent exception differs from the Council's motion that was based on a time period of "3 of the preceding 5 years." Under the Council's motion, 5 years potentially would need to pass before an ECC entity could determine whether or not to exercise ROFR. This approach would be inconsistent with the community protection objective of ROFR. Thus, NMFS proposes to base this 20 percent exception on an annual time period and specifically requests public comment on this approach relative to Council objectives and practicality (see ADDRESSES).

The designation of a representing entity for non-CDQ ECCs must be completed well in advance of the end of the application period for initial issuance of PQS to allow applicants for PQS and ECC entities to develop and sign contracts between the ECC entity and the applicant for PQS. The Council suggested ECCs designate the entity to represent it for purposes of ROFR at least 90 days before the end of the application period for initial issuance of PQS. This time frame would provide processors time to enter a contract that would establish ROFR. Given the proposed application period is 60 days and in order to meet a schedule that would allow for issuance of QS for the 2005 Fall crab fisheries, NMFS proposes that ECCs designate the entity to represent them within 30 days of the publication of the final rule which implements the Program. This time frame still would allow a 60-day period for processors to enter into contracts prior to submission of their application for PQS. An application for PQS would not be considered complete until it is accompanied by a valid contract signed by the applicant for initial issuance of PQS and the ECC entity.

To exercise a ROFR, an ECC would be required to meet all of the terms and conditions of the underlying transaction. As indicated above, the ROFR would be established by a contract to be entered into between the PQS holder receiving the allocation of PQS and the ECC entity. The applicant for PQS would be required to enter the

contract in order to receive the initial allocation of PQS by NMFS.

The contracts establishing the ROFR for ECCs must include specified conditions set forth at § 680.40(m). An explanation for each of these conditions is presented in section 3.6.2.2 of Appendix 1 to the EIS (see ADDRESSES). These conditions were developed by an ad hoc committee assigned by the Council to develop community protection measures and were ultimately adopted by the Council. They generally are intended to protect a balance between community and processor interests while providing some flexibility under contractual arrangements that would be enforced through civil contract law. NMFS does not intend to provide draft contractual language for purposes of ROFR; however, the agency would support the enforcement of some of the contract conditions, such as requiring signed contracts to be submitted as part of the application process for initial issuance of PQS. Similarly, NMFS would require the ECC entity as signatory on the contract to acknowledge in writing the community does not wish to exercise ROFR prior to agency approval of any transfer of PQS or IPQ. NMFS also could annually notify each ECC entity of the location where IPQs from the community were used and of any transfer of shares linked to the community. This notification could assist the community in tracking transfers and use of shares, thereby assisting the community efforts to enforce the ROFR. NMFS specifically requests comments on whether such notification would be helpful (see ADDRESSES).

The Program would establish an additional ROFR provision for ECCs located in the northern GOA. The only ECC in this area is the combined City and Borough of Kodiak. Under this provision, the ECC entity representing Kodiak would have a ROFR to purchase PQS that is proposed to be transferred from non ECC communities located in the northern GOA. The terms and conditions supporting Kodiak's ROFR

would be the same as those for the general ROFR provisions referenced above. Applicants for PQS in non ECC communities in the northern GOA would be required to enter into a contract with the ECC entity representing Kodiak and to submit a copy of a signed contract with their application for initial issuance of PQS. Subsequently, a holder of PQS in a non ECC community in the northern GOA who wishes to transfer PQS out of that community must provide NMFS with a written acknowledgment from the ECC entity representing Kodiak confirming that Kodiak does not wish to exercise ROFR prior to agency approval of transfer of PQS to a community other than Kodiak.

The northern GOA ROFR provision is intended to provide Kodiak with a ROFR that would enable it to consolidate processing shares of non ECC communities in the northern GOA.

QS, PQS, IFQ, and IPQ Use Caps

This proposed rule establishes use caps on the amount of QS, PQS, IFQ, and IPQ which may be held by a person and the amount of IFQ used on a vessel. Use caps would limit the degree of consolidation of QS and PQS holders and the numbers of vessels in the crab fisheries.

QS and IFQ Use Caps

Use caps would be imposed on a person's holdings of QS. No person could use IFQ in excess of the amount of IFQ that is yielded from these QS caps unless that IFQ is derived from QS that was received by that person in the initial allocation of QS for that crab fishery. Different caps are chosen for the different fisheries because fleet characteristics and dependence differ across fisheries. Separate caps on QS holdings are established for CDQ groups. Also, separate caps would be established for persons who hold QS and PQS.

Use caps on the amount of QS and IFQ a person may hold are based on the initial QS pools to provide greater stability for participants and to determine where their allocation is

relative to the overall allocations. Because the QS pool would change over time, establishing a set pool early-on would provide greater stability and would not require QS holders to divest themselves of QS should the quota pool change. The QS use caps in the halibut and sablefish IFQ program are set at a fixed amount of QS units, and a similar management approach is used to set use caps in this Program.

A person who receives an initial allocation of QS that exceeds the use caps listed here is limited to hold no more than that amount. NMFS would not issue a person QS in excess of use caps based on QS derived from landings attributed to an LLP license obtained via transfer after June 10, 2002. This provision would prevent excessive consolidation prior to the issuance of QS through the trading of LLP licenses and their associated history.

Non-individuals holding QS would be required to provide, on an annual basis, ownership information as required by the Annual Application for Crab IFQ/IPQ Permit. Use caps would be applied both individually and collectively. Under this rule, all of a person's direct holdings of QS and IFQ would be credited toward the cap. In addition, a person's indirect holdings would be also credited toward the cap in proportion to the person's ownership interest. For example, if a person owns a 20 percent interest in a company that holds 100 QS units, that person is credited with holding 20 QS units for purposes of determining compliance with the cap.

These caps would be applied in two steps. First, NMFS would use a threshold rule for determining whether the shares are held by a person. Second, NMFS would use the individual and collective rule for determining the extent of share ownership. Under the threshold rule, any entity with 10-percent or more common ownership is considered to be an owner for purposes of determining this cap. Any direct holding of QS by those entities would be fully credited to the QS holder for purposes of establishing use caps. See the following table for details:

TABLE 11—USE CAPS ON QS AND IFQ HOLDINGS FOR ALL PERSONS NOT HOLDING PQS, AND NON-CDQ GROUPS

Fishery	CVO and CPO Use Cap in QS Units	CVC and CPC Use Cap in QS Units
1.0 percent of the initial QS pool for Bristol Bay red king crab	3,880,000	120,000
1.0 percent of the initial QS pool for Bering Sea snow crab	9,700,000	300,000
1.0 percent of the initial QS pool for Bering sea Tanner crab	1,940,000	60,000
2.0 percent of the initial QS pool for Pribilof Islands red and blue king crab	582,000	18,000

TABLE 11—USE CAPS ON QS AND IFQ HOLDINGS FOR ALL PERSONS NOT HOLDING PQS, AND NON-CDQ GROUPS—Continued

Fishery	CVO and CPO Use Cap in QS Units	CVC and CPC Use Cap in QS Units
2.0 percent of the initial QS pool for St. Matthew blue king crab	582,000	18,000
10.0 percent of the initial QS pool for Eastern Aleutian Islands golden king crab	970,000	30,000
10.0 percent of the initial QS pool for Western Aleutian Islands golden king crab	3,880,000	120,000
10.0 percent of the initial QS pool for Western Aleutian Islands golden king crab	5,820,000	180,000

The use cap limits for CDQ Groups are shown in the following table (Table 12). The QS and IFQ use caps in Table 12 apply to a CDQ group regardless of

whether the CDQ holds PQS and QS. No CDQ group could use IFQ in excess of the amount of IFQ that is yielded from these QS caps unless that IFQ is derived

from QS that was received by that CDQ group in the initial allocation of QS for that crab fishery.

TABLE 12—USE CAPS ON QS AND IFQ HOLDINGS FOR CDQ GROUPS

Fishery	CDQ CVO and CPO Use Cap in QS Units
5.0 percent of the initial QS pool for Bristol Bay red king crab	19,400,000
5.0 percent of the initial QS pool for Bering Sea snow crab	48,500,000
5.0 percent of the initial QS pool for Bering sea Tanner crab	9,700,000
10.0 percent of the initial QS pool for Pribilof Islands red and blue king crab	2,910,000
10.0 percent of the initial QS pool for St. Matthew blue king crab	2,910,000
20.0 percent of the initial QS pool for Eastern Aleutian Islands golden king crab	1,940,000
20.0 percent of the initial QS pool for Western Aleutian Islands golden king crab	7,760,000
20.0 percent of the initial QS pool for Western Aleutian Islands golden king crab	11,640,000

No person who holds QS and PQS could use IFQ in excess of the amount of IFQ that is yielded from these QS

caps unless that IFQ is derived from QS that was received by that person in the initial allocation of QS for that crab

fishery. The use cap limits for PQS holders who also hold QS are shown in the following table:

TABLE 13—USE CAPS ON QS AND IFQ HOLDINGS FOR PERSONS WHO HOLD QS AND PQS

Fishery	CVO and CPO Use Cap in QS Units	CVC and CPC Use Cap in QS Units
5.0 percent of the initial QS pool for Bristol Bay red king crab	19,400,000	600,000
5.0 percent of the initial QS pool for Bering Sea snow crab	48,500,000	1,500,000
5.0 percent of the initial QS pool for Bering sea Tanner crab	9,700,000	300,000
5.0 percent of the initial QS pool for Pribilof Islands red and blue king crab	1,455,000	45,000
5.0 percent of the initial QS pool for St. Matthew blue king crab	1,455,000	45,000
5.0 percent of the initial QS pool for Eastern Aleutian Islands golden king crab	485,000	15,000
5.0 percent of the initial QS pool for Western Aleutian Islands golden king crab	1,940,000	60,000
5.0 percent of the initial QS pool for Western Aleutian Islands golden king crab	2,910,000	90,000

CVC and CPC QS and IFQ use is capped based on the QS and IFQ pool that is issued to those QS sectors, not as a percentage of the whole QS pool, or TAC issued for that fishery for that year. The effect is that the use caps are set at the percentage of the QS pool for that sector. This is intended to preserve the goals of CVC and CPC QS and IFQ allocations as a means to provide participation for crew members and limit consolidation in crew employment.

PQS Use Caps

A person may not use more than 30 percent of the initial PQS pool in any crab fishery unless that person received an initial allocation of PQS in excess of this limit. A person would not be issued PQS in excess of the use caps based on processing history transferred after June 10, 2002, the same date for limiting the QS use caps. This would limit the consolidation that could occur prior to the implementation of this Program, thereby frustrating the goals of a use cap limitation.

As with vertical integration caps, PQS use caps would be applied using a threshold rule for determining whether the shares are held by a processor and then the individual and collective rule for determining the extent of share ownership. Under the threshold rule, any entity with 10 percent or more common ownership with a processor is considered to be a part of that processor. Any direct holdings of those entities would be fully credited to the processor's holdings. Indirect holdings of those entities would be credited toward the processor's cap in proportion to the entity's ownership.

IPQ Use Caps

IPQs would be capped at the same levels as those for the PQS, and the same would be established using the same threshold rule for determining the amount of PQS held by a person. In addition to this general use cap, two other provisions would apply to IPQs. In addition to the overall 30 percent PQS use cap, in the Bering Sea snow crab fishery no person would be permitted to hold in excess of 60 percent of the IPQ issued with a North region designation for that fishery.

A further restriction would exist, which limits the annual allocation of IPQs in seasons when the TAC exceeds a threshold amount in two fisheries. In the Bristol Bay red king crab fishery, IPQs would not be issued for the amount of the TAC in excess of 20 million pounds (9,072 mt). In the Bering Sea snow crab fishery, IPQs would not be issued for the amount of the TAC in

excess of 175 million pounds (79,379 mt). Any Class A IFQ issued in excess of the threshold would not be required to be delivered to an RCR with unused IPQ, but it would be subject to the regional landing requirements. This Class A IFQ would be distributed among users based on their QS holdings.

Vessel Use Caps

The amount of CVO or CPO IFQ that could be used on any one vessel during a crab fishing year would be limited. This vessel use limit would apply for all vessels, except for vessels that participate solely in a crab harvesting cooperative. A vessel could not harvest crab in excess of the following percentages of the TAC for that crab fishery for that crab fishing year: (1) 2 percent of the TAC for the Bering Sea snow crab, Bristol Bay red king crab, and Bering Sea tanner crab fisheries; (2) 4 percent of the TAC for the Pribilof Islands red and blue king crab, and St. Matthew blue king crab fisheries; and (3) 20 percent for Eastern Aleutian Islands golden king crab, Western Aleutian Islands golden king crab, and Western Aleutian Islands red king crab west of 179° W. long.

CVC or CPC QS used on a vessel would not be included in determining whether a vessel use cap is met. Crab that are allocated to the CDQ program or the Adak community entity would not be included in determining whether a vessel use cap is met.

A person who receive an approval of IFQ allocation in excess of these vessel use caps may catch and retain all of that IFQ with a single vessel. However, two or more persons may not catch and retain their IFQs with one vessel in excess of these limitations.

The vessel use cap would not apply to a vessel if all of the IFQ used on that vessel in a crab fishing year is IFQ held by a crab harvesting cooperative. This exemption does not apply if that vessel is used to harvest any amount of IFQ not held by a crab harvesting cooperative during the same crab fishing year.

Catcher/Processor Vessel Activity

A person may purchase additional PQS for use on a CP vessel, but any crab processed with purchased PQS must be processed within three miles of shore in the region designated for that PQS. This effectively limits the use of PQS and the resulting IPQ to vessels that are operating as stationary floating crab processors.

A vessel operating as a CP may not accept deliveries of Class B IFQ for processing. For purposes of this provision, any vessel that receives and processes crab harvested with Class B

IFQ for processing during a season would be prohibited from acting as a CP during the remainder of the season, and any vessel that operates as a CP during a season would be prohibited from receiving and processing crab harvested with Class B IFQ during that season. This provision only applies for that crab fishery for that season. A vessel could operate as a CP in one crab fishery and receive crab harvested with Class B IFQ in another crab fishery.

QS Holder On Board Provisions

A person holding CVC or CPC QS is required to be aboard the vessel upon which their IFQ is being harvested; unless the IFQ resulting from that QS has been: (1) leased to a qualified person; or (2) is used by a crab harvesting cooperative.

A person holding CVO or CPO QS does not have to be aboard the vessel being used to harvest their IFQ if they hold at least a 10 percent ownership interest in the vessel upon which the IFQ is to be harvested and are represented by a crab IFQ hired master employed by that QS holder.

Crab Harvesting Cooperatives

Consistent with the Fishermen's Collective Marketing Act (FCMA, 15 U.S.C. 521) and other applicable laws, including antitrust, QS holders may form voluntary crab harvesting cooperatives to combine and cooperatively manage their aggregate QS holdings. Each cooperative that is approved by NMFS would receive the amount of cooperative IFQ that would be yielded by the aggregate QS holdings of all of the members of the cooperative. The Program contains two primary incentives to encourage individual QS holders to join and participate in crab harvesting cooperatives. First, vessels fishing exclusively in cooperatives would be exempt from the vessel use caps that restrict vessels that harvest individually-held IFQ. Second, beginning in the sixth year of the program, only leasing within cooperatives or between cooperatives would be allowed. The proposed regulations at § 680.21 set out the provisions governing the formation and operation of crab harvesting cooperatives.

Membership Requirements

Under the Program, a minimum membership of four unique QS holders would be required for cooperative formation. The language of Amendment 18 explicitly states that the four or more unique members of a crab harvesting cooperative are to be harvester QS holders engaged in one or more crab

fisheries. Therefore, the proposed regulations concerning membership requirements for a crab harvesting cooperative require that members of a cooperative be QS holders. However, there is no explicit language in Amendment 18 as to whether QS holders who also hold PQS or IPQ, or are affiliated with persons who hold PQS or IPQ, may be members of a crab harvesting cooperative. NMFS considered this issue in developing the proposed rule and, for the reasons set forth below, proposes that QS holders who also hold PQS or IPQ or are affiliated with persons who hold PQS or IPQ be prohibited from joining a crab harvesting cooperative.

Section 313(j)(6) of the Magnuson-Stevens Act (16 U.S.C. 1862(j)(6)) states that "Nothing in [the Magnuson-Stevens Act] shall constitute a waiver, either express or implied, of the antitrust laws of the United States." However, the FCMA was enacted to provide exemptions from antitrust liability for certain activities by associations of qualified members. The FCMA reads as follows:

Sec. 521. Fishing industry; associations authorized; "aquatic products" defined; marketing agencies; requirements

Persons engaged in the fishery industry, as fishermen, catching, collecting, or cultivating aquatic products, or as planters of aquatic products on public or private beds, may act together in associations, corporate or otherwise, with or without capital stock, in collectively catching, producing, preparing for market, processing, handling, and marketing in interstate and foreign commerce, such products of said persons so engaged.

The term "aquatic products" includes all commercial products of aquatic life in both fresh and salt water, as carried on in the several States, the District of Columbia, the several Territories of the United States, the insular possessions, or other places under the jurisdiction of the United States.

Such associations may have marketing agencies in common, and such associations and their members may make the necessary contracts and agreements to effect such purposes: Provided, however, That such associations are operated for the mutual benefit of the members thereof, and conform to one or both of the following requirements:

First. That no member of the association is allowed more than one vote because of the amount of stock or membership capital he may own

therein; or

Second. That the association does not pay dividends on stock or membership capital in excess of 8 per centum per annum.

and in any case to the following:

Third. That the association shall not deal in the products of nonmembers to an amount greater in value than such as are handled by it for members.

The FCMA, enacted in 1934, permits persons engaged in the fishing industry,

as fishermen that catch, collect, or cultivate aquatic products or as planters of aquatic products, to act together in associations (cooperatives) for the purposes listed. The FCMA extended to the fishing industry the exemption from the operation of antitrust laws that is granted to agricultural cooperatives in the Clayton Act (15 U.S.C. 17) and the Capper-Volstead Act (7 U.S.C. 291, *et seq.*). The intent of the FCMA is to provide fishermen, acting through fishery cooperatives, an opportunity to compete on the same basis as may an individual corporation. Because there is no waiver of antitrust laws in the Magnuson-Stevens Act and because the only exemption from antitrust law for fishing cooperatives is provided by the FCMA, crab harvesting cooperatives are required to be organized and operate in a manner that is consistent with requirements of the FCMA and the proposed rule contains a provision reflecting this requirement.

According to the case law that has developed under the Capper-Volstead Act and the FCMA (particularly *National Broiler Marketing Assn. v. United States*, 436 U.S. 816 (1978) and *United States v. Hinote*, 823 F. Supp. 1350 (S.D. Miss. 1993)), all members of an FCMA-protected cooperative must be "producers" and any non-producer participation in the control and policy making of a cooperative would disqualify the cooperative for exemption from antitrust law provided by the FCMA. While NMFS recognizes that there is some legal uncertainty as to whether members of a cooperative who participate in both production and processing would be considered "non-producers," NMFS has determined that there is a significant likelihood that a crab harvesting cooperative that is permitted to include members that hold PQS or IPQ or process Class B IFQ, or who are affiliated with persons who hold PQS or IPQ or process Class B IFQ would be found to include non-producer members and therefore would fail to have the protections from antitrust law afforded by the FCMA. Therefore, persons holding CVO, CVC, CPO, or CPC QS would be considered QS holders for purposes of crab harvesting cooperative formation. However, QS holders who also (1) hold PQS or IPQ, (2) are affiliated with a person who holds PQS or IPQ, (3) process Class B IFQ, or (4) are affiliated with a person that processes Class B IFQ would be prohibited from joining a crab harvesting cooperative.

NMFS acknowledges that the proposed exclusion of QS holders that also hold PQS or IPQ or process Class

B IFQ, or that are affiliated with persons that hold PQS or IPQ or process Class B IFQ from cooperative membership would deny these QS holders from taking advantage of the vessel use cap exemption that participation in a cooperative would afford. However, even if the proposed regulations permitted the membership of such persons in a cooperative, it is likely that such participation could be excluded through other means. Additionally, NMFS notes that although the proposed rule would not exclude CP QS holders from membership in crab harvesting cooperatives, the proposed rule would exclude CP QS holders that also hold PQS or IPQ or process Class B IFQ, or who are affiliated with persons that hold PQS or IPQ or process Class B IFQ from cooperative membership.

The proposed regulations also would prohibit members of a cooperative, including CP QS holders, from acquiring PQS or IPQ during the valid duration of the cooperative IFQ permit. These measures are intended to minimize the risk of a finding that a crab harvesting cooperative's members were not "producers" as required by the FCMA. However, it is not clear that these limitations on membership and acquisition remove the risk entirely. NMFS stresses that although a crab harvesting cooperative may meet the regulatory requirements set for in § 680.21, the cooperative may not satisfy all of the requirements for an FCMA cooperative. Persons wishing to form a crab harvesting cooperative are strongly encouraged to consult with experts in the field of antitrust.

In addition to the requirement that crab harvesting cooperatives be organized according to the requirements of the FCMA, a cooperative also would be required to be formed as a legal business entity registered under the laws of one of the 50 states or the District of Columbia in order to be eligible for a cooperative IFQ permit issued by NMFS.

Cooperative membership would be "all or nothing" in that each QS holder would be able to join only one crab harvesting cooperative at the beginning of each fishing year, and all QS held by each member would be converted to cooperative IFQ. A QS holder would be prohibited from joining more than one cooperative, and would be unable to allocate only a portion of his QS holdings to a cooperative and retain the remainder for conversion to individual IFQ for his own exclusive use.

NMFS believes that because the proposed rule would allow unrestricted leasing between crab harvesting cooperatives, each cooperative would be

free to focus on harvesting IFQ for the fisheries of its choice. Thus, through leasing, cooperative members could realize the same benefits in being a member of one cooperative as they could in joining multiple cooperatives. Additionally, NMFS believes the ability to join multiple cooperatives would cause a potentially unmanageable number of cooperatives to be formed. NMFS is concerned that if membership is allowed in more than one cooperative, then it would be easy for QS holders to allocate a nominal amount of IFQ to a given cooperative and form what would be, in effect, single member cooperatives. This would undermine the Council's intent that each cooperative have at least four independent members. Also, NMFS is concerned that bycatch may increase if single-species cooperatives are formed because the cooperative would have to discard all legal crab of species for which the cooperative does not have IFQ. Finally, cooperative management by its members is complex and technical, and NMFS is concerned that cooperative management would be diluted by members who have joined multiple cooperatives, and therefore, each cooperative would be less effective at managing the harvesting of the cooperative's IFQ. NMFS specifically requests public comment on whether QS holders should be able to join more than one cooperative relative to these assumptions and Council intent (see ADDRESSES).

Membership in crab harvesting cooperatives would be voluntary. No QS holder would be required to join a cooperative to receive or harvest IFQ, and no cooperative would be required to accept as a member a QS holder that the cooperative does not wish to admit. Each member of a cooperative would be required to maintain their membership in the cooperative for the one-year duration of the cooperative IFQ permit, or as long as they hold any amount of QS upon which the cooperative's IFQ permit is based. However a cooperative member would have an opportunity to leave their cooperative or change cooperatives each year during the annual application process.

Members of a cooperative fishing under a cooperative IFQ permit would be governed by the same regulations that govern individuals fishing under an individual IFQ permit. The only persons eligible to fish for crab under a cooperative IFQ permit would be the members of the cooperative, or a crab IFQ hired master who is fishing on board a vessel that is affiliated with (i.e. owned or controlled) by a member of the cooperative. In addition, the

members of a cooperative may be held liable for any violations of the regulations applicable to fishing for crab made by any person fishing under the cooperative.

Application for an Annual Crab Harvesting Cooperative IFQ Permit

Cooperatives would be required to apply for a cooperative IFQ permit on an annual basis prior to July 1 of each year. If a cooperative's application is approved by NMFS, the cooperative would receive the sum of the annual IFQ allocations of its members in the form of a cooperative IFQ permit that is issued to the cooperative rather than the individual QS holders. Cooperative IFQ permits would maintain all of the region, species, and sector designations of the underlying QS held by the members of the cooperative with the following exception.

CVC IFQ would lose their "C" designation (and associated holder on board and leasing restrictions) when converted to cooperative IFQ so that the CVC QS holders would be able to participate in cooperatives on an equal basis with other QS holders. This means CVC IFQ could be harvested by the cooperative without the CVC IFQ holder on board the vessel. NMFS has determined that this approach is necessary to allow the CVC QS holders to join and participate in cooperatives. The primary purpose of crab harvesting cooperatives is to allow crab fishermen to consolidate and collectively manage their QS holdings. If each cooperative is required to treat CVC IFQ separately from other types of IFQ, and if each CVC QS holder is required to be on board the vessel any time the cooperative's CVC IFQ are being fished, then CVC QS holders gain nothing from participating in a cooperative and would have incentives to avoid joining cooperatives. This is because CVC QS holders could otherwise retain their shares as individually-held IFQ and fish their shares on board any vessel fishing for crab in the BSAI. Without the ability to participate fully in the cooperative, CVC QS holders would have no incentive to join any cooperative. In fact, they would have reasons to avoid joining cooperatives because they would gain no benefits from cooperative participation while at the same time subjecting themselves to the increased complexity and potential liability of participating in a cooperative.

Incentives to Join Crab Harvesting Cooperatives

The Program provides two incentives for QS holders to join cooperatives. First, fishing vessels that are used to

harvest cooperative IFQ exclusively and that do not harvest any amount of non-cooperative-held IFQ would be exempt from the vessel use caps that apply to vessels used to harvest non-cooperative-held IFQ. Second, beginning July 1, 2011, only cooperatives would be allowed to lease IFQ and leasing of IFQ by non-cooperative IFQ holders would be prohibited.

Transfers of QS and IFQ by Members of a Cooperative

The regulations governing the transfer of QS and IFQ would apply somewhat differently to members of a cooperative who wish to transfer QS and IFQ during the fishing season than they would to QS holders who are not members of a cooperative. This is because at the time a QS holder joins a cooperative, all of his or her QS would be converted to cooperative IFQ that is held in common by the cooperative. A member of a cooperative may buy or sell QS at any time during the fishing season or between seasons simply by following the general requirements for the transfer of QS at § 680.41. A member of a cooperative also may obtain IFQ at any time by following the general requirements for the transfer of IFQ at § 680.41 and may individually hold that IFQ or may transfer the IFQ to the member's cooperative. However, once a cooperative has been issued an IFQ permit, the members of that cooperative cannot transfer away IFQ because they hold no IFQ of their own. Only the cooperative may transfer away cooperative IFQ, and only by following the requirements for the transfer of cooperative IFQ at § 680.41.

Additionally, members of a cooperative would be prohibited from acquiring any amount of PQS or IPQ during the valid duration of the cooperative IFQ permit. The rationale for this provision is provided under the discussion of cooperative membership requirements.

A cooperative that has been issued cooperative IFQ is not allowed to hold QS directly, even though as a legal business entity, a cooperative would otherwise be eligible to acquire and hold QS. This prohibition on cooperatives holding QS is necessary to maintain the regulatory distinctions between non-cooperative-held IFQ and cooperative IFQ, and to simplify the administration of the Program.

Inseason Membership Changes

Because cooperative IFQ permits are annual permits, and cooperatives are required to apply annually for each year's cooperative IFQ permit, any changes in cooperative membership that

occur between fishing seasons would simply be reflected in the following year's cooperative IFQ permit application. However, inseason transfers of QS by members of a cooperative may result in the situation where a current member of the cooperative no longer holds QS and/or a new person holds QS that has been allocated to the cooperative in the form of IFQ. If this occurs, then the cooperative has the option of amending its membership to add or remove members through the submission of an amended cooperative IFQ permit application. If the cooperative chooses to amend its membership during the fishing season, then the cooperative would be required to submit to NMFS an amended application for cooperative IFQ reflecting the membership change. If the change to cooperative membership is approved, NMFS would issue an amended IFQ permit application to the cooperative reflecting the change in membership. The same process may be used by a cooperative to accommodate the rights of a successor in interest in the event that a member dies (in the case of an individual), or dissolves (in the case of a business entity).

Each cooperative would be free to develop its own procedures for dealing with inseason membership changes. Cooperatives may choose to grant automatic membership to persons who obtain QS through purchase or as successors-in-interest to a member that died. Conversely, they may establish their own procedures for deciding whether to admit new members on an inseason basis. However a cooperative decides to address the issue of inseason membership changes a cooperative would not be required by NMFS to grant membership to a QS holder with whom it does not wish to associate, regardless of how that person acquired the QS in question. It is important to note that the inseason membership process could not be used by a cooperative for inseason expulsions of a member who holds QS that is allocated to the cooperative in the form of IFQ. If a cooperative wishes to expel a member that holds QS upon which the cooperative's IFQ is based, it must wait until the end of the fishing year. In addition, this inseason process could not be used to add a member that has not obtained QS that is allocated to the cooperative in the form of IFQ. These two types of membership changes can only be accomplished between fishing years through the annual permit application process.

Protections for GOA Groundfish Fisheries

Protections, called sideboards limits, restrict the ability of vessels with Bering Sea snow crab fishing history to participate in GOA groundfish fisheries. The purpose of the proposed sideboard limits is to prevent vessels that traditionally participated in the Bering Sea snow crab fishery from using the flexibility of the Program to increase their level of participation in the GOA groundfish fisheries, and primarily the GOA Pacific cod fishery. Historically, the Bering Sea snow crab fishery and GOA groundfish fisheries operated concurrently from January through March, meaning that a crab vessel owner had to decide whether to fish for Bering Sea snow crab or GOA groundfish but could not participate fully in both fisheries. With crab rationalization, vessel owners have the flexibility to fish for snow crab whenever they want, or to lease their crab IFQ and not fish at all. This increased flexibility for crab fishermen could lead to increases in fishing effort in GOA groundfish fisheries, especially the Pacific cod fishery, which is the primary groundfish target species for pot vessels, negatively affecting the other participants in those fisheries. This concern about spillover effects is limited primarily to the GOA where the Pacific cod TAC is not allocated among gear types. In the BSAI, most of the Pacific cod TAC is allocated to vessels using longline and trawl gear and LLP license restrictions prevent the entry of new pot vessels into the BSAI Pacific cod fishery, meaning that snow crab fishermen who wish to increase their groundfish fishing activity would need to look primarily to the GOA Pacific cod fishery.

The GOA groundfish sideboard restrictions would apply to any non-AFA crab vessel with a fishing history that generated any amount of Bering Sea snow crab QS, and to any LLP licenses earned in whole or in part by the crab fishing history of such vessels. Because AFA catcher vessels are already subject to sideboard restrictions in the GOA under the implementing regulations for the AFA, no additional restrictions for AFA catcher vessels with snow crab history are proposed here. Those snow crab vessels subject to GOA groundfish sideboard restrictions would be limited, in the aggregate, from harvesting an amount of each GOA groundfish species that exceeds the percentage of each species that such vessels retained, in the aggregate, from 1996 to 2000 relative to the total retained catch of each species

by all groundfish vessels during the same period. The sideboard restrictions are also apportioned by season and/or area for each GOA groundfish TAC that is apportioned by season or area.

There are some additional sideboard restrictions and exemptions for GOA Pacific cod that do not apply to other GOA groundfish species. Specifically, any vessel subject to GOA groundfish sideboards that landed less than 50 mt (110,231 lb) of GOA groundfish between 1996 and 2000 would be prohibited from engaging in directed fishing for Pacific cod at all times. Additionally, any vessel that landed less than 100,000 pounds (45.4 mt) of Bering Sea snow crab and more than 500 mt (1,102,311 lb) of GOA Pacific cod between 1996 and 2000 would be exempt from the GOA Pacific cod sideboard restrictions. NMFS would notify all persons who own a vessel or hold a LLP license as to whether they are subject to the sideboard restrictions by issuing amended Federal fisheries permits and LLP licenses to each affected vessel owner or LLP license holder. The amended Federal fisheries permits and LLP licenses would display the type of sideboard restriction on the face of the permit or license.

Arbitration System

The Council developed the Arbitration System to compensate for complications arising from the creation of both QS/IFQ and PQS/IPQ. These complications include price negotiations that could continue indefinitely and result in costly delays, and the "last person standing" problem where the last parties to contract will have a single market for their product or service. The Arbitration System is designed to alleviate many of the concerns arising from the parity of supply and demand under the Program. If an IPQ holder or IFQ holder were unable to reach an agreement on price during open negotiations, the negotiation approaches prescribed in the proposed regulations could be used by certain participants to settle their disputes. This also encourages more efficient negotiations by preventing indefinite stalemates.

The Council, along with considerable input from the potential participants, developed the Arbitration System to accommodate the varied interests of the parties involved as well as reflect the historical negotiations between harvesters and processors. The Arbitration System identifies the general structure of the system and the general principles that guide oversight and management. It also identifies the roles and fundamental standards for the

Market Analyst in developing and producing a preseason Market Report for each fishery, the Formula Arbitrator in developing a single annual fleet-wide pricing formula (non-binding price formula), the Contract Arbitrators in making decisions, and the last best offer binding arbitration method as the arbitration procedure for participants.

Section 313(j)(6) of the Magnuson-Stevens Act, as amended by section 801 of Pub. L. 108-199, stipulates that the legislation does not provide any exemption to the antitrust laws. To the extent the Arbitration System, as approved by the Council, would have permitted actions that put the participants at risk of subjecting themselves to antitrust liability, the Council approved minor changes, primarily to address information exchanges that could have occurred under the Arbitration System as originally approved. At its June 2004, meeting, the Council adopted changes to the Arbitration System for approval by January 1, 2005. The Council's changes are in Amendment 19 to the FMP and would be implemented by these proposed regulations.

Council-Approved Changes to the Arbitration System

First, the Council eliminated a provision that would have allowed PQS or IPQ holders to participate in common discussions concerning historical prices in the fisheries. The intent of the provision was to facilitate the development of information about historic division of revenues, which is one of the primary bases upon which the Formula Arbitrator establishes the non-binding price formula and upon which the Contract Arbitrators will base a decision. The only limitation upon PQS or IPQ holders was that the discussion would be about historical prices. The provision, however, could have allowed PQS or IPQ holders to engage in collective, direct discussions regarding pricing information. The potential anticompetitive risks associated with encouraging competitors to discuss pricing information, even historical information, was too great. There was a high probability that competitors could move beyond discussions on strictly "historical" information. Moreover, the availability of pricing information facilitates collusion, especially when the processors will be identified with the prices they charge. Further, information about historical prices could be generated through other means, such as information provided to the Market Analyst.

Second, the Council adopted changes to limit access of parties to an arbitration proceeding to information provided directly by them to the Contract Arbitrator in the proceeding in which they participate. The Program originally provided all participants in an arbitration access to all information provided to their Contract Arbitrator, which could include information provided to other Contract Arbitrators in binding arbitration proceedings to assist them in reaching decisions. This provision could have allowed participants to access pricing and other competitively sensitive information submitted to a Contract Arbitrator by every Arbitration IFQ holder and IPQ holder during all prior arbitration proceedings. Accordingly, it presented a serious antitrust risk. Under the antitrust immunity provided by the FCMA, a crab harvesting cooperative or members of a cooperative could share sensitive competitive information with other members of the same cooperative, but the arbitrator would not be the person to disseminate such information. All participants in an arbitration proceeding would be required to sign a confidentiality agreement stating they would not disclose any information received from the Contract Arbitrator.

Third, the Arbitration System permitted harvesters to act collectively during binding arbitration to the extent permitted by the FCMA. The FCMA authorizes the establishment of cooperatives comprised of fishermen. Pursuant to the FCMA, cooperative members may freely exchange information, agree among themselves on the price they will accept for their products, bargain jointly and agree on the basis for negotiations without risking antitrust liability. If the cooperative or members of the cooperative share sensitive competitive information or attempt to collaborate with non-member harvesters on any issues relating to price or costs, they would risk antitrust liability. The Council adopted a change to clarify that IFQ holders that are members of a FCMA crab harvesting cooperative can participate collectively as a member of that FCMA cooperative in binding arbitration and that non-member harvesters cannot participate collectively with cooperative members during the arbitration procedures.

The proposed rule would clearly prohibit crab harvesting cooperative members from sharing sensitive competitive information or any issues relating to costs or price or collaborate with nonmembers at any stage of the arbitration proceedings without risking antitrust liability. Moreover, the

proposed rule would prohibit collaboration among members of different FCMA cooperatives for purposes other than nominating and selecting the arbitrators and market analysts to avoid behavior that is outside the scope of the antitrust immunity provided by the FCMA.

Fourth, the Council eliminated a provision that required the Market Analyst to survey the crab product throughout the year and periodically publish prices in the crab product market. The periodic announcement of prices presented a serious antitrust risk since it could provide a way of matching up prices with individual market participants. To the extent the information about product prices is necessary for the Formula and Contract Arbitrators to perform their functions, they will have it from other sources. The more frequent the periodic price updates, the smaller would be the number of IFQ and IPQ holders as well as distributors or customers generating the composite price that was reported. Aggregation would have been less effective and if market participants could know or learn which particular IPQ and IFQ holders had completed negotiations or arbitrations during a particular survey period, then it could be difficult to ensure price anonymity.

The announcement of recent prices and the lack of anonymity could have made it easier for IPQ holders to arrive at agreements to set prices and for IPQ holders to enforce the agreements. Under the proposed rule, the Market Analyst would prepare only one annual Market Report for each fishery and would be prohibited from issuing interim or supplemental reports for each fishery.

Fifth, the Council changed the Arbitration System to limit the announcement of the results of each arbitration decision as it occurs to an IPQ holder and IFQ holders in that particular arbitration as well as to IFQ holders that are not affiliated and have not committed to an IPQ holder and who may want to opt-in to a previously completed contract. The Program would have allowed the public announcement of the outcome of each binding arbitration proceeding to inform IFQ holders with uncommitted IFQ so they could decide whether to opt into the completed contract. The provision raised antitrust concerns. If the results of an arbitration decision were announced before all binding arbitration proceedings were completed, they could influence what was asked by the parties in a subsequent arbitration, resulting in price stabilization. The change allows disclosure of all arbitration decisions to

the Contract Arbitrators and to non-affiliated IFQ holders who have not committed to an IPQ holder. The parties to an arbitration would be required to agree to make the terms and conditions of the arbitration decision available to non-affiliated uncommitted IFQ holders.

Arbitration System Requirements

The Council intended the Arbitration System to function as an "industry-run" system with minimal involvement by NMFS. The Program establishes a structure for the negotiation of price, delivery and other contract terms between an IPQ holder and IFQ holders. It specifies the basic elements of the Arbitration System: the standards for arbitration; the roles of the Market Analyst, Formula Arbitrator and Contract Arbitrators; the data available to the Market Analyst and Arbitrators; restrictions on participation by PQS and IPQ holders (processors) and IFQ holders that are affiliated with PQS and IPQ holders (processor-affiliates); last best offer binding arbitration procedures; and payment for the system. The Program also specifies that processor-affiliated shares can participate to the extent allowed under the antitrust laws and that processors can participate individually and not collectively, except in the choice of the Market Analyst and the Arbitrators. The Arbitration System also is mandatory for all IPQ and IFQ holders participating in the Program.

First, at any time prior to the season opening date, IPQ and IFQ holders can initiate discussions through open negotiations. Open negotiation is available to both affiliated and non-affiliated IFQ holders and all IPQ holders. If they are unable to conclude a contract through open negotiations, eligible persons, as defined by the proposed rule, may use several other negotiation approaches to reach agreement, including share-matching, mediation and binding arbitration procedures.

The negotiation approaches and Binding Arbitration procedure are limited to IPQ holders and Arbitration IFQ holders. Under the proposed rule, Arbitration IFQ means: (a) Class A CVO IFQ held by a person who is not a holder of PQS or IPQ and who is not affiliated with any holder of PQS or IPQ; (b) prior to July 1, 2008, CVC IFQ held by a person who is not a holder of PQS or IPQ and who is not affiliated with any holder of PQS or IPQ that the holder has elected to submit to the Arbitration System; (c) after July 1, 2008, Class A CVC IFQ held by a person who is not a holder of PQS or IPQ and is not affiliated with any holder of PQS or IPQ;

and (d) IFQ held by a crab harvesting cooperative as long as no member of such cooperative holds PQS or IPQ or is affiliated with a person who holds PQS or IPQ.

Under the proposed rule, the structure of the Arbitration System would be managed and carried out primarily by the participants in the crab fisheries through contractual arrangements, with NMFS oversight. The proposed rule would require that participants in the crab fisheries join and maintain membership in an Arbitration Organization. The persons who are eligible to join an Arbitration Organization are: (a) holders of CVO and CVC QS; (b) holders of PQS; (c) holders of Arbitration IFQ, (d) holders of Class A IFQ affiliated with a PQS or IPQ holder; and (e) holders of IPQ.

While the Program does not require the establishment of arbitration organizations and membership in such organizations, NMFS believes the structure is necessary to facilitate the industry's ability to coordinate among its members and carry out the Council's intent to establish the Arbitration System primarily as an "industry-run" system. This approach also facilitates the ability of NMFS to monitor the activities of members more efficiently and effectively than monitoring numerous contracts among unique quota holders. NMFS believes industry participants will have sufficient interest in establishing the arbitration organizations, agreeing to the contracts, and selecting the Market Analysts, Formula Arbitrators and Contract Arbitrators necessary for the Arbitration System to function. NMFS particularly invites public comment on the feasibility of basing the structure of the Arbitration System upon intra-industry contracts.

To minimize antitrust risks, this proposed rule would not allow harvesters and processors to be members of the same Arbitration Organization. The proposed rule would require that PQS and IPQ holders and QS and IFQ holders must be members of different arbitration organizations. Holders of PQS or IPQ could only be a member of a PQS/IPQ Arbitration Organization, and they may join separate such organizations. Holders of QS or IFQ who neither hold nor are affiliated with a person who holds PQS or IPQ could only be a member of an Arbitration QS/IFQ Arbitration Organization, and they may join separate such organizations. Holders of QS or IFQ who are affiliated with a person who holds PQS or IPQ could only be a member of an Affiliated QS/IFQ Arbitration Organization, and they

may join separate such organizations. There could be Arbitration Organizations comprised solely of members who hold QS or IFQ or PQS or IPQ.

Under the proposed rule, the Arbitration QS/IFQ Arbitration Organizations and PQS/IPQ Arbitration Organizations would be responsible for nominating and mutually selecting persons for the positions of Market Analyst, Formula Arbitrators, and Contract Arbitrators and establishing contracts with such persons. The contracts would stipulate the functions and obligations of those positions consistent with the roles and standards for the Market Analyst, Formula Arbitrator, and Contract Arbitrators, as specified by the Program and reflected in the proposed rule. They also would provide certain information to NMFS. All arbitration organizations, among other matters, would be responsible for ensuring the collection and payment of all fees required to fund the Arbitration System; providing information to their members, such as copies of the contracts with the Market Analyst, Formula Arbitrator and Contract Arbitrators; and enforcing the terms of various contracts to which they are a party. The Arbitration Organizations would be prohibited from engaging in any contract negotiations on behalf of their members except to the degree necessary to hire the Market Analyst, Formula Arbitrator, and Contract Arbitrators. This is not intended to prohibit the members of an Arbitration IFQ Arbitration Organization from negotiating as a crab harvesting cooperative under the FCMA.

Arbitration Standard

Reflecting the economic reality faced by both harvesters and processors, the Council determined that preserving the historical division of revenues in the fisheries in order to protect the investment and reliance of the harvesters and processors should guide the Arbitration System. The Program requires the Market Analyst, Formula Arbitrator and Contract Arbitrators, in developing the non-binding price formula and deciding an individual arbitration, to consider: (1) current pricing; (2) consumer and wholesale product prices; (3) innovations and developments of the different sectors; (4) efficiency and productivity of the different sectors; (5) quality standards for each market; (6) maintaining financially healthy and stable harvesting and processing sectors; (7) safety; (8) the timing and location of deliveries; and (9) reasonable underages to avoid

penalties for overharvesting IFQ and reasonable deadloss.

Under the proposed rule, the Arbitration System would commence preseason when the Arbitration QS Arbitration Organizations and the PQS Arbitration Organizations nominate persons for the positions of Market Analyst, Formula Arbitrator, and Contract Arbitrators. The PQS and QS holders, who are members of their respective Arbitration Organizations, then choose, by mutual agreement, the persons for these positions.

NMFS has interpreted "mutual agreement" to mean the agreement of not less than 50 percent of the PQS holders and not less than 50 percent of the QS holders in a fishery. This standard does not require complete consensus, but requires a majority of harvesters and processors to agree on specific individuals. This approach increases the likelihood of the selection of Market Analysts, Formula Arbitrators, and Contract Arbitrators who are acceptable to the majority of participants. Because the selection of the Market Analyst, Formula Arbitrator, and Contract Arbitrators is critical to the effective implementation of the Arbitration System, the standard for the selection process should not be so stringent so as to prevent the possibility of actually selecting a mutually acceptable Market Analyst, Formula Arbitrator, and Contract Arbitrators.

To ensure the market analyses and pricing formula are available to inform all negotiation among the IFQ and IPQ holders, the Arbitration QS/IPQ Arbitration Organizations and PQS/IPQ Arbitration Organizations would mutually agree through their contract to notify NMFS of the selection of the Market Analysts, Formula Arbitrator and Contract Arbitrators by June 1 for that crab fishing year, except during 2005, they would be required to notify NMFS by July 1, 2005. The proposed rule reflects the Program in that the same person could be selected as Market Analyst and Formula Arbitrator; but the Contract Arbitrators could not be the same person as the Market Analyst and Formula Arbitrator, and could not be employed or associated with those persons.

Market Report

The Program requires the promulgation of a preseason Market Report for each crab fishery to help inform all negotiations among all IPQ and IFQ holders. The Market Report would be produced annually by a Market Analyst selected jointly by the arbitration organizations. It would provide an analysis of the market based

on a survey of the market for crab products from that fishery as well as information provided by the IPQ and IFQ holders.

NMFS recognized the potential antitrust risk involved in exchanges of cost and price information, and so the proposed rule requires that the information provided by the participants must be historical in nature and that the Market Report cannot identify which participants provided specific information. These requirements are consistent with the U.S. Department of Justice and Federal Trade Commission Statements of Antitrust Enforcement Policy in Health Care (1966) (Guidelines). The Guidelines create an antitrust "safety zone" around the exchange of cost and price information when (1) the collection of the data is managed by a third party, including a government agency; (2) the information shared is based on information more than three months old; and (3) there are at least five providers reporting data such that recipients would be unable to identify the prices charged by any particular firm. In adhering to the Guidelines, the proposed regulations require that the IFQ holders and IPQ holders would give information directly to the Market Analyst and not to any other IPQ holder or IFQ holder, except that IFQ holders who are members of any single crab harvesting cooperative may share such information with other members of the same crab harvesting cooperative who are authorized to participate in the Arbitration System, that the information provided would be more than three months old, and the information and data would be aggregated in the report so that prices would not be identifiable with the person offering the price.

The Market Report could include information that is provided through surveys, directly from IFQ and IPQ holders, and from other sources that voluntarily provide data. The Market Analyst would not have subpoena power to obtain information. The Market Analyst could meet with crab harvesting cooperative members collectively, but would have to meet individually with: (a) IPQ holders; (b) distinct crab harvesting cooperatives; and (c) IFQ holders who are not members of the same crab harvesting cooperative. The proposed rule prohibits the Market Analyst from disclosing any information to any person except as allowed by the requirements of the contract. The contract with the Market Analyst would specify that the Market Analyst will provide the Market Report not later than 50 days prior to the first crab fishing

season for that crab QS fishery in that crab fishing year to each Arbitration Organization in that fishery and NMFS.

Non-binding Price Formula

To further guide the negotiations among all IFQ and IPQ holders, the proposed rule would mirror the Program by requiring the development and announcement of a non-binding pricing formula. Under the proposed rule, the Arbitration QS Arbitration Organizations and the PQS Arbitration Organizations contract with a Formula Arbitrator to develop a non-binding price formula. The contract would specify that the Formula Arbitrator must conduct a single annual fleet-wide analysis of arbitrations to establish a non-binding pricing formula under which a fraction of the weighted average first wholesale prices for crab products from each fishery may be used to set an ex-vessel price. The contract also would require that the non-binding price formula: (a) must be based upon the historical distribution of first wholesale revenues between fishermen and processors in the aggregate based on arm's length first wholesale prices and ex-vessel prices, taking into consideration the size of the harvest in each year; and (b) must establish a price that preserves the historical division of revenues in the fishery while considering the nine factors described in the Arbitration Standard.

The non-binding pricing formula would be guided by the general factors for the fishery as well as arbitration decisions from the previous season. IPQ and IFQ holders could furnish relevant information and data upon the request of the Formula Arbitrator subject to the antitrust requirements that the information be historical and the persons submitting information should not be identified as having submitted specific information in the report. The contract would require the Formula Arbitrator to provide the non-binding pricing formula not later than 50 days prior to the first crab fishing season for that crab QS fishery in that crab fishing year to each Arbitration Organization in that fishery and NMFS.

Open Negotiations

The Program provides that prior to the crab fishing season, any IFQ holder can negotiate with any IPQ holder on price and delivery terms for the upcoming season. It allows the IFQ and IPQ holders to freely contact each other to initiate open negotiations. If they reach an agreement on all price and delivery terms during the preseason, a binding contract would result. Due to the limitations of the antitrust laws, IPQ

holders would be required to negotiate individually with IFQ holders, whereas IFQ holders who are members of the same crab harvesting cooperative can negotiate collectively with a single IPQ holder. An affiliated IFQ holder could negotiate during the open negotiations period, but individually, and not as part of a crab harvesting cooperative. The proposed rule provides the period of open negotiations would end at the date of the first crab fishing season for that crab QS fishery in that crab fishing year. In effect, this removes the ability of affiliated IFQ holders to negotiate contracts once the crab fishing season has begun because they cannot use the negotiation methods in the Arbitration System due to antitrust constraints.

Lengthy Season Approach

Rather than mediate immediately during the preseason, the Program provides and the proposed rule would allow IPQ holders and Arbitration IFQ holders to choose to adopt a "Lengthy Season" approach and postpone negotiation of specific contract terms and binding arbitration until during the regular season. If the parties reach a final agreement on contract terms, binding arbitration is not necessary. If the parties are unable to reach an agreement on whether to adopt a Lengthy Season, they could request mediation or determine whether to adopt the approach. If mediation is unsuccessful, the parties enter binding arbitration to determine whether to adopt a Lengthy Season approach.

Share Matching Approach

To facilitate the ability of Arbitration IFQ holders to find IPQ holders with available quota, the proposed rule implements the Program's provision for a share-matching approach. Under the proposed rule, 25 days prior to the date of the first crab fishing season for that crab QS fishery in that crab fishing year, IPQ holders would be required to make known to holders of uncommitted Arbitration IFQ the amount of IPQ that is uncommitted and remains available. An uncommitted Arbitration IFQ holder could match up its uncommitted IFQ by indicating its intention to deliver its catch to a specific IPQ holder with sufficient available uncommitted IPQ.

The Arbitration IFQ holder must offer the IPQ holder a substantial amount of the Arbitration IFQ holder's uncommitted IFQ. While the Program does not define "substantial," the proposed rule defines "substantial" as not less than 50 percent of the Arbitration IFQ holder's total uncommitted IFQ in order to prevent IPQ holders from potentially

coordinating countless arbitration sessions. After matching, an Arbitration IFQ holder and IPQ holder could either arbitrate or, at the discretion of both parties, try to mediate to determine the contract terms. The Program and the proposed rule require the IPQ holder to accept all proposed matches up to the amount of its uncommitted IPQ.

Last Best Offer Binding Arbitration

The centerpiece of the Arbitration System is the last best offer binding arbitration procedure. It would be available to resolve price and delivery disputes arising from open negotiations among Arbitration IFQ holders and IPQ holders, lengthy season approach, share matching or performance disputes. Specifically, Arbitration IFQ holders and IPQ holders would be eligible to participate in binding arbitration. As with the other negotiation approaches, the role of the Contract Arbitrator would be specifically detailed in the contracts among the Arbitration Organizations and the Contract Arbitrator.

In a last best offer arbitration, the parties each would submit a last best offer defining all the terms specified for inclusion in a last best offer by the Contract Arbitrator. An Arbitration IFQ holder that is a crab harvesting cooperative could submit a last best offer that defines terms for the delivery of crab harvested by members of that crab harvesting cooperative with IFQ held by the cooperative. The Contract Arbitrator would choose one of the last best offers for price made by the IPQ holder and IFQ holder(s). The arbitration organizations' contract with the Contract Arbitrator would require that the Contract Arbitrator base the decision on specific information, including consideration of the factors in the Arbitration Standard, the historical distribution of first wholesale revenues between fishermen and processors, and the Market Report. The Contract Arbitrator also could use information from previous arbitrations, the non-binding price formula and other information provided to the Contract Arbitrator by the parties to the arbitration. The Council chose to adopt a last best offer arbitration with the intent that it would deter parties from exaggerating their offers in hopes of achieving a more favorable result.

The proposed rule provides that at any point more than 15 days prior to the date of the first crab fishing season for a crab QS fishery, an Arbitration IFQ holder or IPQ holder may initiate a binding arbitration procedure. Prior to the submission of the last best offer, the Contract Arbitrator would work with the parties to generate the information the

Contract Arbitrator would require for reaching a decision. To minimize antitrust risk, the proposed rule reflects the Council's change and provides that only the parties to the arbitration and the Contract Arbitrators would have access to information provided directly by the parties to the Contract Arbitrator for that particular arbitration. To further preclude antitrust risk, the Program and the proposed rule require the parties to sign a confidentiality agreement stipulating they shall not disclose any confidential information generated during the arbitration proceeding.

To ensure the parties understand their obligations as early as possible, the Program requires the Contract Arbitrator to notify the parties to an arbitration of the arbitration decision no later than 10 days before the season opening date. In order to implement that provision, the proposed rule requires that if last best offers are submitted at least 15 days before the first crab fishing season for that crab fishing year for that crab QS fishery, the Contract Arbitrator must issue arbitration decisions no later than 10 days before the first crab fishing season for that crab fishing year for that crab QS fishery. In effect, the Contract Arbitrator would have 5 days to render a decision in order to notify the parties 10 days before the season opening date. The proposed rule provides that in other situations, the Contract Arbitrator will notify the parties of the arbitration decision within 5 days of the parties submitting their last best offers.

The proposed rule provides that the arbitration decision would result in a binding contract between the parties that could be enforced by the parties to that contract, not NMFS. The parties would have to agree to make the contract terms available, when requested, to Arbitration IFQ holders with uncommitted IFQ to enable an IFQ holder to determine whether to opt into the completed contract. The Contract Arbitrator would need to provide this information within 5 days of receiving the request for that information.

At its June 2004 meeting, the Council considered the antitrust risks of sharing the arbitration results among IPQ holders or affiliated IFQ holders or Arbitration IFQ holders that already have committed to an IPQ holder. The Council agreed that such information sharing would raise antitrust concerns regarding illicit price stabilization or collusion. To the extent IFQ holders are members of a crab harvesting cooperative under the FCMA, they are allowed to share the information with other members of the same cooperative and set prices with antitrust immunity.

However, sharing the results of arbitrations with IPQ holders or affiliated IFQ holders or Arbitration IFQ holders that already committed to an IPQ holder and so have no need to opt-in could create serious antitrust risks. If IPQ holders shared the results of completed arbitrations with other PQS or IPQ holders, they would risk antitrust violations. Without antitrust immunity, sharing current pricing information could facilitate illicit price stabilization or collusion. Also, if IPQ holders shared the results of arbitrations before all arbitrations were completed, an IPQ holder could alter its final offer to the Contract Arbitrator to make it closer to the price in previous arbitrations in a manner similar to what would occur if the IPQ holders coordinated on prices.

Therefore, the proposed rule allows the disclosure of arbitration results only to Arbitration IFQ holders that have not committed to an IPQ holder so they have access to the real-time results of completed arbitrations for purposes of determining whether to opt-in to a completed contract. The information would be provided to the Arbitration Organization of which the parties the arbitration are members in order for the Arbitration Organization to make such information available to the uncommitted Arbitration IFQ holders.

The proposed rule also would require the Contractor Arbitrator to provide NMFS, among other information, any last best offers made during the binding arbitration process, including all contract details, the names of participants in the arbitration, the arbitration decision and the completed contract. This information is necessary for DOJ to carry out its mandate under section 313(j)(6) of the Magnuson-Stevens Act to determine whether any acts of anti-competition, antitrust or price collusion have occurred among PQS or IPQ holders under the Program.

Post Binding Arbitration Opt-In

The post binding arbitration opt-in provisions reflect the Council's belief in the efficiency and fairness of the arbitration procedure. The proposed rule reflects the Program's opt-in provisions. The proposed rule allows a holder of uncommitted Arbitration IFQ to opt-in to any contract that results from a completed arbitration with any IPQ holder with available uncommitted IPQ. To facilitate the process, the Program requires that IPQ holders provide information regarding the amount of uncommitted IPQ they have available. The proposed rule would

require the arbitration organizations to agree in their contract to establish a system to ensure access to such information by Arbitration IFQ holders that have uncommitted IFQ. All the same terms from the original contract would apply. Once exercised, the opt-in is a binding contract.

To initiate the process, the Arbitration IFQ holder would notify the IPQ holder and the Contract Arbitrator to the original contract of its intent to opt-in, specifying the amount of IFQ involved, and indicating acceptance of the terms of the original contract. However, if a dispute arose regarding whether the opt-in offer was consistent with the terms of the completed contract, the dispute could be decided by the Contract Arbitrator who arbitrated the original contract.

Performance and Quality Disputes

Building on the arbitration infrastructure, the Program provides that performance and quality disputes that could not be resolved through commercial channels could be arbitrated following procedures similar to those laid out for binding arbitration. The disputes could be raised at any point in time prior to the commencement of the first crab fishing season for the following crab fishing year in that crab fishery. Meanwhile, when disputes over the quality of the harvested crab arise within the context of an existing contract, if the parties employed a formula-based price, the proposed rule provides they each will receive their share of the value of the amount of crab delivered based on the provisions of the contract. When the Arbitration IFQ holder prefers to use actual ex-vessel price and not a formula-based price and a dispute arises regarding crab quality and price, the dispute should be referred to a mutually agreeable independent quality specialist firm with both parties sharing the costs.

Payment of Costs for Arbitration

The Program provides that the costs of the market analysis and the arbitrators must be shared by the two sectors. The proposed rule interprets that provision to require the costs of the Arbitration System to be shared equally by all IPQ holders and Arbitration IFQ holders and Class A IFQ holders. The costs of the system would include all costs of the Market Analyst, Formula Arbitrator and Contract Arbitrator, dissemination of information concerning uncommitted IPQ to holders of uncommitted Arbitration IFQ, and the costs of such person associated with lengthy season approach, share matching approach,

binding arbitration, and quality and performance disputes.

The proposed rule requires the arbitration organizations to develop a system to determine such costs, assess them equally among the participants, and collect the fees. The proposed rule provides that such costs must be shared based on the amount of IPQ or IFQ held by each person and that the costs must be divided so that the IPQ holders pay 50 percent of the costs and the Arbitration IFQ and Class A IFQ holders pay 50 percent of the costs. Consistent with the Program, PQS holders would be required to advance all costs and collect the contribution of Class A IFQ holders at landing subject to terms mutually agreed upon by the arbitration organizations.

Monitoring and Catch Weighing Requirements for Catcher/Processors, Registered Crab Receivers, and Catcher Vessels

NMFS has identified three primary objectives for monitoring catch in rationalized fisheries. First, monitoring must ensure independent verification of catch weight, species composition, and location data for every delivery by a catcher vessel or every pot by a CP. Second, all catch must be weighed accurately. Third, the system must provide a verifiable record of the weight of each delivery.

To effectively manage the crab fisheries, NMFS must have data that will provide reliable independent estimates of the total catch by quota sector for all crab harvested. Because participants are operating under their own IFQ, they have a strong interest in ensuring that catch data do not overestimate the amount of crab harvested. Based on experience gained under other quota-based programs, NMFS anticipates estimates of catch will be questioned frequently by industry. Further, individual harvesters and processors would benefit directly if catch is under reported because each processor or vessel is operating under an individual allocation. For these reasons, NMFS is proposing a catch-weighing system for the crab fisheries under this Program that is more rigorous than that required in non-rationalized fisheries.

In order to implement the Program, NMFS proposes new monitoring and catch weighing requirements for RCRs taking deliveries of crab, catcher vessels harvesting crab, and CPs catching and/or harvesting crab. These proposed new requirements are summarized in the following table:

TABLE 14—SUMMARY OF MONITORING REQUIREMENTS FOR CRAB FISHERY PARTICIPANTS

Requirement	RCR Taking Deliveries of Crab	Catcher Vessel Harvesting Crab	Catcher Processor Harvesting or Processing Crab
Weigh all retained quota by quota category prior to processing.	Yes. On a scale approved by the State in which the RCR is located.	No.	Yes. On a scale approved by NMFS.
Scale testing requirements.	Yes. On demand.	N/A	Yes. Scale must be tested daily when use is required.
Printed record of scale weights.	Yes.	N/A	Yes. Printed record of scale weights for unprocessed crab as well as for processed product.
Operate under an approved catch monitoring plan (CMP).	Yes.	No.	No.
Offload requirements.	No.	Yes. All offloads must be to an RCR. Vessel may not leave RCR until reporting of offload is completed.	Yes. All product must be offloaded on shore.
Product weighing requirements.	No.	N/A	Yes. All product must be weighed on a scale approved by the State in which product offload takes place.
Vessel Monitoring System (VMS) requirements.	N/A	Yes.	Yes.
Provide Observer work station.	No.	No.	Yes.

Catcher/Processors Catch-Weighing and Monitoring Requirements

NMFS proposes to require all crab IFQ harvested and processed by CPs be weighed at-sea prior to processing. These catch weighing requirements include the following:

(1) Scales must meet the performance and technical requirements specified in appendix A to part 679. At this time, NMFS has approved scales produced by Marel hf and Skanvaegt International A/S for weighing total catch. Marel hf, Skanvaegt International A/S and Pols hf manufacture scales that have been approved for use by observers.

(2) Each scale must be inspected and approved annually by a NMFS-approved scale inspector.

(3) Each observer sampling scale must be accurate within 0.5 percent when its use is required.

(4) The observer sampling scale must be accompanied by accurate test weights sufficient to test the scale at 10, 25 and 50 kg or, if the scale is denominated in pounds, at 25, 50 and 100 lb.

(5) Each scale used to weigh crab must be tested daily. Automatic hopper scales must be tested at their minimum and maximum capacity using certified test weights. Flow scales must be tested with no less than 400 kg of fish or other test material.

(6) When tested, a flow scale and the observer sampling scale must agree

within 3 percent. An automatic hopper scale must be accurate within 2 percent when compared with the known weight of the certified test weights.

(7) Scales must produce a printed record of all crab retained by the vessel. This record must be printed no less than once every 24 hours when use of the scale is required.

In other programs where NMFS requires all catch be weighed at-sea, NMFS also requires that an observer be on duty whenever catch may be weighed. Because fishing operations occur on a 24 hour basis, this generally requires that the vessel carry two observers. This is necessary because no catch-weighing system is tamper proof and NMFS ensures that all catch is being weighed by requiring an observer to be on duty at all times. This allows NMFS to audit the vessel's reported weight of groundfish against the observer's data. However, the crab fisheries differ from the groundfish fisheries in two important ways. First, the final Council motion establishing the Program delegated observer coverage responsibility to the State of Alaska, and, at this time, the State requires CPs to provide only a single observer. Second, crab are far more valuable per pound than groundfish. Thus, while it is probably not practical for vessel crew to attempt to bypass the scale with groundfish, it may be more tempting to do so with a comparatively high value

product such as crab. Because of these differences, NMFS believes crab weights must be audited at the point of offload. This would require a crab CP to offload all product shoreside at a designated port and weigh that product on a scale approved by the State in which the offload takes place. These offload product-weighing requirements include the following:

(1) Offload all product to a shoreside location in the United States accessible by road service or regularly scheduled air service.

(2) Weigh all product on a scale approved by the State in which the RCR is located, which must be equipped with a printer.

(3) Report the total weight of the offload to NMFS.

Observer sampling stations provide a location where observers can work safely and effectively. While the Program delegates observer coverage requirements to the State of Alaska, NMFS believes a quota type program necessarily imposes new duties on observers because of the increased season length and subsequent need to be on station more often. In spite of the requirements detailed above for full accounting of product, observers would still play an important role in ensuring catch weights are accurately reported. In order to facilitate these duties, NMFS is proposing to require vessels to provide minimal work areas and facilities for the

use of the observer. NMFS proposes to require that CPs provide the following for observers:

(1) An observer work area for sampling unsorted crab. The work area must be no less than 6 square meters and no less than 1 meter on each side. The work area must be located within 3 meters of where the vessel crew sort crab.

(2) An observer work area for sampling retained crab. The work area must be no less than 1 meter on each side. The work area must be located downstream from the scale used to weigh total catch and upstream from the area where crab are processed.

(3) The observer work area for sampling retained crab must be provided with a NMFS-approved motion compensated platform scale located within 5 meters of the work area. Clear and unobstructed passage must be provided between the scale and the observer work area. The scale must be accompanied with certified test weights sufficient to test the scale at 10, 25 and 50 kg (or 25, 50 and 100 lb if scale is denominated in lb). The scale may also be used by vessel crew, but must be available to the observer at all times.

(4) Both observer work areas must be protected from extreme weather and unusual safety hazards.

(5) Vessel crew may use both observer work areas, but the entire area must be available to the observer whenever the observer is working.

(6) The vessel owner must prepare a diagram, drawn to scale, showing the location of both observer work areas. The diagram must be retained on board the vessel whenever the vessel is harvesting or processing crab quota.

Registered Crab Receivers Catch-Weighing and Monitoring Requirements

This proposed rule would establish a new catch monitoring system for RCRs. The catch management goals established by NMFS for the crab fisheries are the same for the inshore and offshore sectors. However, NMFS does not believe the regulations developed for CPs are adequate for inshore processors and other RCRs for two reasons. First, inshore processors vary more in size, facilities and layout than do CPs. Second, the State is responsible for approving scales used for trade within the State in which the landing is made and has developed an effective program for their inspection and approval.

Catch Monitoring Plans

The catch monitoring system developed by NMFS for CPs is based on

a standardized system of round weight accounting and offload monitoring. Because of the wide variation among RCRs, NMFS believes a performance-based catch monitoring system is more appropriate for this sector. Under this system, each RCR would be required to submit a Catch Monitoring Plan (CMP) to NMFS for approval. The CMP would detail how the RCR would meet the following standards for each location where crab would be received:

(1) All crab, including crab parts, and dead or otherwise unmarketable crab, must be sorted and weighed by quota category. The CMP must detail how and where crab are sorted and weighed.

(2) Scales used for weighing crab must be identified by serial number.

(3) Scales identified in the CMP must be accurate within specified limits. For each scale identified in a CMP, a testing plan must be developed showing how the RCR will test the scale, where the required test weights are located, and what personnel are responsible for scale testing.

(4) A printed record of the weight of each delivery must be produced. A sample copy of the printed record must be included in the CMP.

(5) The CMP must designate an observation area. The observation area is a location where an individual may monitor the offloading and weighing of crab during a delivery. From the observation area, an individual must have an unobstructed view or be able otherwise to monitor the entire offload of crab between the first location where crab are removed from the boat and a location where all sorting has taken place and all quota has been weighed. The observation area must be accessible to authorized personnel, be sheltered from the weather, and not be exposed to undue safety hazards.

(6) The CMP must designate a plant liaison. The plant liaison is responsible for orienting new observers or NMFS-authorized personnel to the plant, assisting in the resolution of NMFS or observer concerns, and informing NMFS if changes are made to the CMP.

(7) The CMP must be accompanied by a scale drawing of the plant showing where crab are removed from a delivering vessel, the observation area, all scales used to weigh crab, and each location where crab is sorted.

(8) All offloading and weighing locations detailed in the CMP must be located on the same vessel or in the same geographic location. If a CMP describes facilities for the offloading of vessels at more than one location it

must be possible to see all locations simultaneously.

Each CMP location would be inspected by NMFS or NMFS authorized personnel to ensure the layout conforms to the elements of the plan. A CMP that meets all of the standards would be approved by NMFS for 1 year, unless during the year changes are made in plant operations or layout that do not conform to the CMP. After 1 year, NMFS would review the CMP with plant management to ensure the CMP has been implemented and the standards continue to be met.

Proposed catch weighing standards for CPs are based on the use of scales approved by NMFS. Because Federal and State scale approval standards differ, most NMFS-approved scales are not legal for trade in most States and most State-approved scales do not meet NMFS criteria for inseason testing and auditing. NMFS believes the State in which the landing is made should be the primary authority responsible for approving and testing scales located onshore or on vessels anchored inside the territorial sea and that weighing crab delivered inshore on scales approved by NMFS is unnecessary. Under existing State regulations, crab buyers and processors are required to weigh all catch that is bought or sold on State-approved scales. In most states, including Alaska, these scales must be inspected annually by State-authorized inspectors. However, State regulations generally do not provide for inseason testing of scales nor do they require that scales produce a printed record of each delivery. NMFS believes these are essential features of an acceptable catch weighing system. Therefore, NMFS has developed a catch-weighing system that implements these additional features within the existing framework of State scale inspection and approval.

Thus, this proposed rule reflects cooperative State and Federal development of catch weighing requirements for RCRs and includes the following provisions:

(1) As described above, each RCR would be required to submit a scale testing plan as part of its CMP that describes the procedure the plant will use to test each scale identified in the CMP. The testing plan would list the test weights and equipment required to test the scale, where the test weights and equipment are stored, and the names of the plant personnel responsible for testing the scale. Test amounts for various scale types are shown in Table 15.

(2) Test weights would have to be certified at least biannually by a metrology laboratory approved by the

National Institute of Standards and Technology (NIST).

(3) NMFS or NMFS-authorized personnel could request that any scale be tested in accordance with the testing plan, provided the scale had not been tested and found accurate within the past 24 hours.

(4) Each scale would have to be accurate within the limits specified in Table 15 when tested by the plant staff.

(5) Each scale used to weigh catch must be equipped with a printer to provide a printout or printouts showing the total weight of each delivery, which would have to be generated after each

delivery had been weighed. The printouts must be retained by the plant and made available to NMFS-authorized personnel, including observers. See Tables 15 and 16 for details:

TABLE 15—TEST WEIGHT AND TEST LOAD AMOUNTS THAT WOULD BE REQUIRED TO PERFORM INSEASON TESTING ON VARIOUS SCALE TYPES AND CAPACITIES

Scale Type	Capacity ¹	Test Weights ²	Test Loads ³
Automatic Hopper	0 to 150 kg	Minimum Weight ¹ or 10 kg, whichever is greater	Minimum ¹
		Maximum ¹	Maximum ¹
Automatic Hopper	>150 kg	Minimum weight ¹ or 10 kg, whichever is greater	Minimum ¹
		25 percent of Maximum ¹ or 150 kg, whichever is greater	Maximum ¹
Platform or flatbed	0 to 150 kg	10 kg	Not Acceptable
		Midpoint	
		Maximum ¹	
Platform or flatbed	>150 kg	10 kg	Not Acceptable
		12.5 percent of Maximum ¹ or 75 kg, whichever is greater	50 percent of Maximum ¹ or 75 kg, whichever is greater
		25 percent of Maximum ¹ or 150 kg, whichever is greater	75 percent of Maximum ¹ or 150 kg, whichever is greater

¹These amounts will be shown on the scale marking plate.

²Test Weights are weights that have been approved by a NIST-approved laboratory.

³Test load is any combination of approved test weights and other material specified in the scale testing plan. Test material other than test weights must be weighed on an accurate observer platform scale at the time of each use.

TABLE 16—PROPOSED MAXIMUM PERMISSIBLE ERRORS FOR INSEASON SCALE TESTING¹

Test Load in Scale Divisions ²	Maximum Error in Scale Divisions
0-500	1
501-2,000	2
2,001-4,000	3
>4,000	4

¹Maximum permissible errors and testing procedure for inseason testing are not the same as for State scale approval. A scale that is accurate for the purposes of inseason testing may or may not be accurate enough to be approved by the State.

²Division size is shown on the scale's marking plate.

Catcher Vessels Catch Monitoring Requirements

Under this proposed rule, NMFS is not requiring catcher vessels to weigh their own catch. Rather, the proposed catch-accounting system would be based on data received from the RCR. Because this is the location where all

non-CP catch accounting would take place, NMFS would require that all crab retained by a catcher vessel be landed to an RCR. The proposed regulations do not make any exceptions for activities such as dockside sales or tendering. Thus, if a holder of CVO or CVC IFQ wished to sell their own catch to the general public, the quota holder would be required to be an RCR and to conduct the offload of crab from the vessel in accordance with the requirements described above for an RCR.

Interagency Electronic Reporting System (IERS)

The RCR would obtain at his or her own expense, hardware, software, and Internet connectivity to support Internet submissions of the crab rationalization (CR) crab landing report on the IERS.

IERS application for user ID. Each RCR permit holder would submit a data-entry application to the Regional Administrator to provide information needed to process account access into the IERS. The IERS will provide a web page where the applicant would enter information. The IERS would confirm

that all required information is submitted, that the information entered is in correct format, and also that the requested user ID is not already in use. The IERS would generate a PDF document from the information entered by the applicant. The user would sign and submit the form. An Agency IERS staff would review the form, confirm that the user should be authorized for the system, and would activate the user on the IERS. The IERS would then send the user(s) an email telling them they can now use their new user ID.

CR Crab Landing Report. The CR crab landing report (internet version and fax version) would be submitted through the IERS, which is the result of collaboration among NMFS Alaska Region, International Pacific Halibut Commission, and State of Alaska, Department of Fish and Game (ADF&G). The CR crab landing report is the first step of a complete, unified IERS that would be extended in future years to the groundfish fisheries, IFQ, and CDQ halibut fisheries. This internet report would replace the paper ADF&G fish ticket for debiting CR crab landings. All

retained CR crab catch would be weighed, reported and debited from the appropriate IFQ or IPQ account under which the catch was harvested or received, as appropriate. The IERS is a more convenient, accurate, and timely method of reporting.

Additionally, the proposed IERS would provide continuous access to IFQ and IPQ accounts. These provisions would make recordkeeping and reporting requirements less burdensome on participants by allowing participants to more efficiently monitor his or her accounts and fishing activities.

Catcher/Processor Offload Report

An RCR receiving CR crab that were harvested and processed by a CP must complete a CP offload report at the time of offload and attach a scale printout showing gross product offload weight. Crab weights must be audited at the point of offload. This report would allow audit comparisons of catch accounting information between the vessel's reported weight of crab with the observer's data.

ECCO Annual Report for an ECC (see Approval criteria for an Application for Transfer of QS/IFQ to or from an ECCO).

Vessel Monitoring System (VMS) Requirements

Under the proposed rule, a vessel that harvests crab in the crab fisheries, including a vessel harvesting CDQ or Adak allocations, would be required to have aboard an operating NMFS-approved VMS transmitter at any time when the vessel has crab gear on board. These transmitters automatically determine the vessel's location several times per hour using Global Positioning System (GPS) satellites and send the position information to NMFS via a mobile communication service provider. The VMS transmitters are designed to be tamper-resistant and automatic. The vessel owner should be unaware of exactly when the unit is transmitting and would be unable to alter the signal or the time of transmission.

NMFS believes a VMS system is an essential component of a rationalized crab fishery. A VMS system would allow NMFS to verify where fishing is taking place and ensure that vessels harvesting crab were permitted to do so and that harvested IFQ is properly debited. A VMS system also allows NMFS to track vessels as they arrive in port to offload crab or crab product. This helps to ensure all landings are properly made to an RCR and the landing is properly debited from the IFQ holder's account.

NMFS has approved VMS system components manufactured by several

vendors. Additional details concerning these VMS components may be found in the NMFS' notice of approval of these VMS components published in the Federal Register on April 15, 2004 (69 FR 1986).

Economic Data Collection

The Program includes a comprehensive economic data collection program to aid the Council and NMFS in assessing the success of the Program and developing amendments necessary to mitigate any unintended consequences. The data would be used to study the economic effects of the Program on harvesters, processors, and communities. Participation in the data collection program would be mandatory for all participants in the fisheries.

The Magnuson-Stevens Act authorizes a mandatory economic data collection system that would provide analysts with information necessary to study the impacts of the Program and to ensure the Program would equitably distribute benefits between the harvesting and processing sectors and provide a stable economic environment. The Magnuson-Stevens Act also authorizes NMFS to supply economic data to the Federal Trade Commission (FTC) and the Department of Justice (DOJ) for analysis by those agencies. The authority to collect a wide variety of economic data from both harvesters and processors is exclusive to the crab fisheries.

Selection and Scope of Work for the Data Collection Agent

To address concerns for strict control over sensitive economic data, collection of economic data would not be performed by NMFS but by a third-party agent, or Data Collection Agent. NMFS has determined the Pacific States Marine Fisheries Commission (Pacific States) would be the Data Collection Agent, although NMFS is authorized to select any appropriate entity. NMFS would establish the regulatory structure for mandatory submission of economic data by harvesters and processors. Pacific States would establish systems for the collection and compilation of the data.

Pacific States, in a cooperative agreement or another form of a procurement agreement with NMFS, would be authorized to collect data, ensure confidentiality of the data by following all statutory and regulatory data confidentiality guidelines, and release the data to NMFS and other authorized users. Among other duties, Pacific States, acting as an agent for NMFS, would identify submitters,

forward EDRs to submitters and collect the data. Once received, Pacific States would act as a storehouse for the data and provide it only to authorized users and only in authorized form.

In instances where NMFS economists, Council staff, or other authorized users accessing the data for crab management analysis or report purposes request data, Pacific States would furnish them but eliminate or remove the identifiers for the submitter. This would make the data "blind" to these users. However, if the data are requested by NMFS Enforcement, NOAA GC, RAM, DOJ, or FTC, and the purpose is connected to law enforcement or qualification for QS, PQS, IFQ, IPQ, and other Federal permits, Pacific States would provide the data and the identity of the submitter.

Pursuant to a procurement agreement with NMFS, Pacific States would be authorized to establish a method and protocol for ensuring accuracy of the data submissions. Measures to verify the accuracy of the data would include consultation with NMFS economists and analysts to ascertain anomalies, outliers, and other deviations from averaged variables. The principle means to verify data would be consultation between Pacific States staff and the submitter when questions arise regarding data. To assure timely resolution of verification consultations, submitters would be required to respond to Pacific States inquiries within 15 days. Pacific States would request oral or written confirmation of data submissions and request copies of or review documents or statements that would substantiate data submissions. Data in EDRs would be amended by Pacific States in response to submitter requests and the results of the follow-up verification processes.

EDR audits would occur either through random selection or when circumstances require more thorough review of the submissions. Pacific States, in instances where a random audit occurs or an audit is otherwise justified, would retain a professional auditor/accounting specialist who would review and request financial documents substantiating economic data that is questioned. In an instance where data cannot be verified or concerns resolved by Pacific States, NMFS would request referral of the matter to the auditor for further disposition.

Pacific States would provide support for arbitrators for binding arbitration. If an arbitrator is involved in price determinations for parties to binding arbitration, Pacific States would, at the request of a binding arbitrator, supply

detailed revenue, landing, and production data to the binding arbitrator. The information supplied to the arbitrator by Pacific States would be aggregated so as to avoid releasing confidential information.

Type of Data to Be Submitted

Cost, revenue, production, and ownership data would be submitted in an EDR. Relevant state and local fishing-related taxes would be reported. The data would assist in the analysis of the variable costs of processors and harvesters. Data on fixed costs would not be collected unless such data informs the analysis of industry variable costs. NMFS would require submission of data recommended for collection by the Council's data collection committee. This committee reviewed NMFS' economist's data surveys and proposed additional data to be collected. The surveys that resulted from the committee deliberations are the foundation for the EDRs.

To analyze local and regional seafood employment, owners and lease holders of vessels submitting annual EDRs would submit State of Alaska crew license numbers and Commercial Fisheries Entry Commission permit serial numbers of their harvesting and processing employees. Additionally, identification of number of employees or crew, and their home state or country would be provided in the EDRs.

There would be two variations of the EDRs, an historic EDR and an annual EDR. The first would require submission of historical-based economic data. Historical data would capture economic data from 1998 through 2004. It would capture pre-Program implementation data for comparison to the economics of harvesting and processing before and after Program implementation. The annual EDR would capture economic data on an annual basis at the conclusion of each calendar years' crab fisheries.

For a crab harvester or CP, the annual EDR data collection system is based on collection of data relating to costs and revenues for a vessel. For crab processing entities, the data collection system is based on collection of costs and revenues for a processing company or plant. Processor submitters would distinguish data stemming from custom processing and business with affiliated processors from otherwise standard operations data.

The EDR forms would be accessible to submitters on the NMFS Alaska Region website at www.fakr.noaa.gov. Persons may download the form to complete manually or may complete it electronically on the website. Paper

copies of the forms would also be mailed directly to identified persons. Persons would submit the completed EDRs to Pacific States.

Who Must Provide an EDR

Participants in the crab fishing industry harvesting or processing fish under Magnuson-Stevens Act authority after enactment of Pub. Law 108-199 on January 23, 2004, would submit data in the EDR. The members of the crab industry include a potentially broad range of individuals, corporations, partnerships, and other business formations. Both owners and lessees of fishing vessels and processing operations would be responsible for submission of the EDR.

Because of the contractual nature of leasing vessels or processing operations, whether someone has leased a vessel or processing operation remains a private business matter and not apparent to NMFS. To ascertain leasing arrangements and determine who is a lessee that should submit an EDR, NMFS would be requiring the lessors to identify his or her lessees in the EDR and QS or transfer applications.

Some members of the harvesting and processing industry who NMFS has the authority to require submission of an EDR would not be required to submit an annual EDR. Persons who hold QS, such as those who hold CPC QS, that do not own or lease a vessel, would not be required to submit an annual EDR. Additionally, harvesters and processors of crab not included in the Program, such as Norton Sound red king crab, would not be obligated to submit annual or historic EDRs for that crab.

For catcher vessels owners submitting historic data, there would be a sample based selection of owners of these vessels for submission of any 3 years selected between 1998 through 2004. Catcher vessel owners would not be required to submit historical data for all years 1998 through 2004 because of the extraordinary reporting burden this would entail. A notice published in the Federal Register would identify each vessel selected for submission of catcher vessel historical data. The owner or lessee of the vessel would be required to submit the EDR.

Catcher/processor EDRs would consist of one form for annual data and one form for historical data and would not require submission of both "harvester" and "processor" EDRs, unless, the person owned or leased a vessel that also operated as a catcher vessel during the specified year. The submitter of the historical EDR for a CP would be the owner or lessee of a vessel that made at least one landing of crab

in the years 1998, 2001, or 2004, as there is an insufficient number of CPs to apply a sample based selection submission requirement.

For shore-side and stationary floating processors, the submitter of the EDR would be the owner or lessee of a processing company consisting of one or more fish processing plants. For processors, the submission of the EDR is required if they qualified for or received QS, PQS, IFQ, or IPQ. Data would be reported for individual plants owned by the submitter. For historical data submissions, owners or lessees of processing companies processing crab in 1998, 2001, or 2004, and who would be participating in the Program, would be required to submit these data in the EDR.

NMFS has determined that there are persons that do have historic data from the years 1998 to 2004 that would not be required to submit an EDR. The effect of eliminating this historical data on the 18 month and 3 year review of Program is not possible to determine at this time, but would be better understood at the conclusion of the verification process for historical EDR data.

The owner or lessee of the fishing vessel or processing company required to submit the EDR may appoint a contact individual, who on his or her behalf, would respond to inquiries and verification processes from Pacific States regarding data and the EDR.

Because EDR submission is mandatory, NMFS must ensure there are compliance incentives. In addition to incentives to avoid enforcement actions, another incentive would be to withhold issuance or transfer of IFQ, PQS, IFQ, or QS should a submitter fail to submit an EDR. For example, if a prior year's EDR is not submitted by a crab IFQ applicant who was obligated to submit the EDR, the permit application would be considered incomplete by NMFS, the permit application denied and an IAD issued setting forth the facts, a discussion and determination. Upon issuance of the IAD, NMFS may withhold issuance of any new IFQ or IPQ and disapprove any transfer of IFQ, IPQ, and/or QS, PQS to or from a permit holder until final agency action. An aggrieved permit or transfer applicant could appeal an IAD through the Office of Administrative Appeals (OAA) in NMFS as described at § 680.43. An IAD that is not appealed within 60 days of issuance of the OAA, would become a final agency action. To facilitate NMFS' determination of whether an application is complete by virtue of completion of a prior years' EDR, Pacific States would inform NMFS of the status of EDR submissions. If the application was

otherwise complete, NMFS would provide the permit for IFQ or IPQ once the submitter files the EDR with Pacific States.

Submission Deadlines for EDRs

Submission deadlines for both historical and annual EDRs would correspond with availability of the data to the submitters, providing sufficient time for preparation, and providing NMFS with sufficient time to prepare reports based on the data for Program review. NMFS would require an annual EDR be submitted each year on or before May 1, encompassing the previous calendar year. An EDR for historical data would be submitted no later than 60 days after the effective date of the final rule. The EDR for catcher vessel historic data would be required to be submitted within 60 days of publication of a Federal Register notice identifying vessels that must submit historic data to Pacific States.

DOJ/FTC Review of the Program

Section 313(j)(6) of the Magnuson-Stevens Act states there is no waiver of the anti-trust laws of the United States for persons receiving PQS. Anti-trust laws include the Sherman Act, (15 U.S.C. sec. 1, *et seq.*), the Clayton Act, (15 U.S.C. sec 12, *et seq.*), and the Federal Trade Commission Act (15 U.S.C. sec. 41, *et seq.*). The Federal anti-trust laws are enforced by criminal and civil enforcement actions brought by the Antitrust Division of the DOJ, and civil enforcement actions brought by the FTC.

Although the Program proposes caps and limitations on the accumulation and holding of PQS, there remains potential for consolidations resulting in anti-competitive conduct or price collusion. To the extent possible through information collectible in the Program and to reduce the potential for violations of the anti-trust laws and related concerns, the Program would provide for review of processor activity by DOJ, or FTC. This information would assist analysis of consolidations and market impacts of processor activities.

Pursuant to section 313(j)(6) of the Magnuson-Stevens Act, NMFS has consulted with DOJ and FTC to develop and implement a system for accessing data and information DOJ and FTC have identified as helpful to them. In general, access to collected information in the Program would shorten investigation time by DOJ or FTC and possibly lead to earlier detection of anti-competitive conduct. Access to the information would be for the perpetuity of the Program. Should DOJ and FTC require additional information in the future,

NMFS would take appropriate actions to provide for its collection to the extent authorized under the Magnuson-Stevens Act.

To assist determination of whether anti-competitive conduct, price collusion, or violations of the anti-trust law exist, the Program, principally through memorandums of understanding and administrative precesses, would authorize and allow access to data and information to DOJ or FTC. When either DOJ or FTC request information held by NMFS or any NMFS agent, access to it would not be conditioned or restricted, and access would be contemporaneous with the request, or provided routinely through a data report. For example, Pacific States, who would be a NMFS agent for collection of economic data from members of the crab harvesting and processing industry, would provide DOJ and FTC access to these data. DOJ and FTC would also have access to the identity of the submitters of the data both for the economic data and any other information held by NMFS or its agents.

The information that would be available to DOJ and FTC includes the following: all data submitted in EDRs by any submitter, including catcher vessel owners and lessees, and all varieties of processors, including owners and lessees of processing entities. All QS holder information would be accessible by DOJ or FTC. This includes information required by and provided in permit applications, transfer of QS, and related forms submitted to RAM. If an application requires submission of a copy of a contract for sale of QS or a permit for annual issuance of IFQ or IPQ, a copy of such contract could be accessed by DOJ or FTC.

Cost Recovery and Fee Collection

Section 304(d)(2)(A) of the Magnuson-Stevens Act requires the Secretary to "collect a fee to recover the actual costs directly related to the management and enforcement of any...individual fishing quota program [or] community development quota program." As a quota program, the Program must follow the statutory provisions set forth by section 304(d) and section 313(j) of the Magnuson-Stevens Act.

Paragraphs 304(d)(2)(B) and (C) of the Magnuson-Stevens Act specify an upper limit on fees, when the fees must be collected, and where the fees must be deposited. Section 303(d)(4) of the Magnuson-Stevens Act allows NMFS to reserve up to 25 percent of the fees collected for use in a loan program to aid in financing the purchase of quota

by entry-level and small-vessel fishermen.

The Magnuson-Stevens Act specifies the following with respect to the imposition of cost-recovery fees:

(1) Fees are collected to recover actual costs directly related to actual enforcement and management of an individual fishing quota program or community development quota program that allocates a percentage of the total allowable catch of a fishery to such program;

(2) Fees must not exceed 3 percent of ex-vessel value;

(3) Fees collected under this program are in addition to any other fees charged under the Magnuson-Stevens Act;

(4) With the exception of money reserved for the loan program, fees must be deposited in the Limited Access System Administrative Fund (LASAF) in the U.S. Treasury; and

(5) Fees must be collected at either the time of a legal landing of harvested fish, filing of a landing report, or the sale of such fish during a fishing season or in the last quarter of the calendar year in which the fish are harvested.

Section 313(j) of the Magnuson-Stevens Act provides that the Secretary will approve a cost recovery program for the Program, conducted in accordance with the existing halibut and sablefish cost recovery program. Similar to the halibut and sablefish cost recovery program, the Crab Rationalization cost recovery program would allow for the collection of actual management and enforcement costs up to 3 percent of ex-vessel gross revenues and a loan program based on 25 percent of the fees collected.

Section 313(j) provides several additional provisions specific to the cost recovery program to accommodate the processing component of the Program and to address problems experienced under the halibut and sablefish cost recovery program. Unique to Crab Rationalization, the Council authorized the collection of 133 percent of actual costs of management, which would provide for fuller reimbursement of the management and enforcement costs of the program after allocation of 25 percent of the cost recovery to the loan program. Additionally, the Council provided that cost recovery fees would be paid in equal shares by the harvesting and processing sectors and that CPs, being a combination of both sectors, would pay the full fee percentage.

Cost Recovery Program Description

NMFS developed the cost recovery program in conformance with statutory requirements and to provide for partial

compensation to the agency for the added costs of management and enforcement of the Program. Key provisions of the cost recovery program include (1) a new definition and application of "fee liability," (2) the establishment of an RCR permit system to streamline management and reporting, (3) the establishment of a "crab fishing year" for biological and administrative purposes, and (4) a new administrative process that requires the collection and submission of fees by RCRs rather than requiring separate billings for each individual crab rationalized allocation (crab allocation) holder. The crab allocations include IFQ, Crew IFQ, IPQ, CDQ, and the Adak community allocation. This system would impose less of an administrative burden on the industry as a whole, provide more efficiency in the agency administrative process, and reduce the overall cost of managing the Program.

Generally, any crab allocation holder would incur a cost recovery fee liability for every pound of crab landed in the crab fisheries. The RCR permit holder would be responsible for collecting any fee liability for the crab allocation holder landing crab and self-collecting any fee liability for all crab landed at that facility. Under a CDQ or the Adak community allocation, the harvester delivering the crab on behalf of the community entity to the RCR would be responsible for paying the harvester share of the fee liability at the time of landing to the RCR. The RCR permit holder would be responsible for submitting this payment to NMFS on or before the due date of July 31 following the crab fishing year in which payment for the crab was made. The dollar amount of the fee due would be determined by multiplying the fee percentage (not to exceed 3 percent) by the ex-vessel value of crab debited from the allocation.

Registered Crab Receiver

NMFS determined the need for a focal point for landing crab to ensure proper monitoring and enforcement of the rationalized fishery. Subsequently, NMFS determined that, under the Program, it must identify and receive reporting from all entities that receive and/or process crab. As a result, NMFS concluded that all persons who receive and/or process crab must apply for and possess an RCR permit before receiving any crab. This designation would ensure that all processors who receive crab, whether or not they possess IPQ, would be responsible for any fee liabilities associated with any crab received by those processors.

Fee Percentage

Three percent of the ex-vessel value of crab harvested under a quota program is the maximum fee amount allowed by section 304(d)(2)(B) of the Magnuson-Stevens Act. This proposed rule would set a 3 percent fee at the start of each crab fishing year, but would allow the Regional Administrator to reduce the fee percentage if actual management and enforcement costs could be recovered by using a smaller percentage. NMFS recognizes that in order for fishermen to budget their costs, they need to know the fee percentage that would apply to any crab deducted from a crab allocation in a crab fishing year at the time of sale. Based on preliminary calculations, NMFS expects that 3 percent of ex-vessel value would not cover the management and enforcement costs of the Program. NMFS proposes to begin the cost recovery program by using the maximum of 3 percent and, if possible, adjusting the fee downward in the following season. The fee percentage calculation adjusts for overpayment of the management and enforcement costs through a variable that considers the balance in the LASAF account.

Calculating Ex-vessel Value

The ex-vessel value of a crab landing would equal the sum of all payments of monetary worth made to fishermen for the sale of crab (e.g., ex-vessel value = cash payment + bait discount from processor + bonus). This would include any retro-payments (e.g., bonuses, delayed partial payments, post-season payments) made to any crab allocation holder for previously received crab. Retro-payments would be part of the ex-vessel value and, as such, carry a fee liability. The fee liability for retro-payments would be based on the crab fee percentage in effect at the time the crab was received by the RCR. If crab allocation holders receive retro-payments after the initial payment, but during the same crab fishing year, the cost recovery fee for those retro-payments would be due by the following July 31. If retro-payments were received by crab allocation holders during the year following the crab fishing year when those crab were landed, cost recovery fees associated with those post-season retro-payments would be due the following July 31. In other words, no matter when the crab was received by the RCR, the cost recovery fee would be due by July 31 of the crab fishing year following the crab fishing year in which payment was received.

Ex-vessel Value

Throughout this section, "value" refers to the worth, in U.S. dollars, of any amount of crab as determined by the sale, or potential economic return for the sale, of those crab. "Value" shall also include any money, services, or goods-in-kind exchanged for crab. "Price" is the worth in U.S. dollars, for 1 lb (0.45 kg) of crab debited from any allocation. Therefore, in this context, value and price mean the same thing only when describing the worth of 1 lb (0.45 kg) of crab when sold. For purposes of determining cost recovery fees, NMFS would distinguish between two types of ex-vessel values: "shoreside ex-vessel value" and "CP ex-vessel value." Shoreside ex-vessel value would be the amount of money an RCR permit holder paid for any crab he or she received. As explained below, this proposed rule would establish CP ex-vessel values to accommodate the special conditions for CPs who conduct processing on board the vessel.

Shoreside Processor Ex-vessel Value

For the shoreside processing sector, NMFS would define ex-vessel value as the value paid by the RCR to the allocation holder at the time of receipt. Shoreside RCR permit holders would calculate and retain both the harvesting and processing sector's fee liability portions for any crab debited from an allocation based on the value paid for that crab. This method of determining ex-vessel value for the shoreside processing sector requires no prior calculation of ex-vessel value by NMFS because the shoreside processors would determine the ex-vessel value at the time they receive the crab from the allocation holder. Shoreside processors would pay the actual ex-vessel value, which they would also use to calculate fee liability.

CP Ex-vessel Value

For the CP sector, NMFS would calculate the ex-vessel value based on a weighted average of previous years' shoreside ex-vessel values. This method correlates with an existing method used to calculate standard prices under the halibut and sablefish IFQ program. NMFS determined that using the weighted average method for CPs represents the method best suited for achieving both equity and accurate accounting for the CP sector. Based on the information received through the electronic reporting system, NMFS would annually calculate and publish in the Federal Register a list of CP standard prices broken down by crab species, month, and port or port group.

The CP standard prices would remain in effect until changed by the Regional Administrator through publication in the Federal Register the following year. The Regional Administrator would revise the CP standard prices annually based on information regarding current volume and value provided by RCRs operating as shoreside processors. The CP standard prices would be calculated by NMFS to reflect as accurately as practical the seasonal and regional variations in the shoreside ex-vessel prices of crab.

The information that would be reviewed by the Regional Administrator to determine CP standard prices would include the following: (1) Landed pounds by crab species, port or port-group, and date; (2) Total ex-vessel value by species, port or port-group, and date; and (3) Price adjustments based on retro-payments.

Fee Liability

Under this proposed rule, NMFS would identify the crab cost recovery fee liability as the total fee owed by a crab allocation holder based on the applicable period's fee percentage and the ex-vessel value for the crab species, as calculated according to § 680.44(a)(2)(ii), including any retro-payments, penalties, or interest. Fee liability would be calculated by multiplying the fee percentage by the ex-vessel value of the crab. For example, a crab allocation holder who lands 10 pounds (4.54 kg) of crab at an ex-vessel price of \$1 a pound under a fee percentage of 3 percent is subject to and must pay a fee of \$0.03 for that crab.

A fee liability would attach to any crab debited from an allocation during a crab fishing year. By using the "debited" designation rather than the term "landed," NMFS created a more specific method of ensuring that RCRs properly apply fee liability to crab. The use of the term "landed" contradicts Council intent to avoid imposing fees on forfeited or confiscated crab. Although deadloss must be debited from allocations by statute and thus be subject to crab cost recovery fee liability, the ex-vessel value of deadloss would most likely be \$0 and would result in no fees.

Fee Liability Calculation. The fee amount would be the product (in U.S. dollars) of multiplying the appropriate ex-vessel value by the fee percentage (up to 3 percent). The RCR permit holder would document the calculations of fees based on applicable ex-vessel values through the electronic reporting system provided by NMFS. The following example shows how an RCR

permit holder would calculate fee liabilities.

Example of Ex-vessel Value Determination. A crab allocation fisherman makes a landing of Bristol Bay red king crab at Dutch Harbor in February that results in a debit of 1,000 lb (0.35 mt) from his or her allocation (1,000 raw crab pounds). He or she sells all the crab to a shoreside processor for \$1.00 per pound. If the fee percentage is 3 percent, then a shoreside RCR who receives the crab would deduct \$.015 for each pound of crab received from what he or she pays the allocation holder who landed the crab. The RCR would be responsible for an additional \$.015 for each pound of crab received after payment to the allocation holder for a total of \$.03 on every \$1.00 of crab, or 3 percent. On the other hand, a CP would be responsible for the full 3 percent from the same landing of crab. The RCR would determine the ex-vessel value as follows:

(Raw Crab Pounds Sold × Price per crab lb) × Fee Percentage = allocation or RCR Permit Holder Fee

CP: (1,000 IFQ lb × \$1.00/IFQ lb) × 0.03 = \$30.00

Shoreside Processor: (1,000 IFQ lb × \$1.00/IFQ lb) × 0.015 = \$15.00

Allocation Harvester: (1,000 IFQ lb × \$1.00/IFQ lb) × 0.015 = \$15.00

Fishing Year

NMFS determined the need for a "crab fishing year" to accommodate biological and administrative requirements of the crab fishery. The proposed crab fishing year would run from July 1 to June 30 to support molting and mating requirements for crab, required biological surveys, the State's calculation of the TAC, and Federal administrative application and permitting requirements. The proposed rule would require all RCRs to submit all fee liabilities and any associated documentation by July 31 of the following crab fishing year.

Payment Submission

Instead of a billing system similar to the halibut and sablefish IFQ program, this proposed rule would require all RCRs to retain, document, and submit all fee liabilities for themselves and any crab allocation holders from which they receive crab. NMFS determined that this method provides the highest degree of administrative efficiency with the lowest burden on the affected public. Under this method, NMFS would establish the fee percentage for the pending year based on a calculation similar to that used under the halibut and sablefish model. NMFS would

publish the fee percentage calculation in the Federal Register prior to fishing for the pending crab fishing year. All RCRs would apply that fee percentage to any crab they receive or process during the period in which the fee percentage applies.

RCR permit holders must collect all fee liabilities for any crab received and debited from a crab allocation throughout the fishing year and submit those fees by July 31 of the following crab fishing year. Early payments would be allowed but would not relieve an RCR permit holder from any associated reporting requirements.

Payment Compliance

An RCR permit holder who has incurred a fee liability would be required to pay the fee to NMFS by July 31 of the year following the crab fishing year in which the applicable crab was debited from a crab allocation and payment was made. The issuance of new permits would be contingent on an RCR's submission of his or her full fee liability as indicated by his or her own reporting. NMFS would provide due process under an administrative appeals system similar to that of the halibut and sablefish IFQ program for any RCRs who choose to challenge any dispute regarding fee liability based on the RCRs own submitted data. However, no permit would be issued until his or her full fee liability is received or there is final agency action resolved in favor of the RCR. Furthermore, any RCR that fraudulently submits required information regarding cost recovery fee collection would face an enforcement action under the prohibitions for this section.

If an RCR permit holder has made a timely payment to NMFS of any amount less than the fee liability indicated by the RCR permit holder's own reporting, the RCR permit holder has the burden of demonstrating the fee amount submitted is correct. If, upon preliminary review of the accuracy and completeness of a fee payment, NMFS determines the RCR permit holder has not paid a sufficient amount, NMFS would, at any time thereafter, send an IAD to the RCR permit holder. The IAD would present the facts, explain those facts within the context of the relevant agency policies and regulations, and make a determination as to the appropriate disposition of the matter. In the IAD, NMFS would explain that the RCR permit holder's estimated fee liability failed to correspond with the RCR permit holder's own reporting and would provide the correct fee liability due as calculated from the RCR permit holder's own reporting. Upon issuance

of an IAD, NMFS may withhold issuance of any new IFQ, IPQ, or RCR permit and disapprove any transfer of IFQ, IPQ, PQS, and/or QS to or from the RCR permit holder until final agency action is taken. An aggrieved RCR permit holder could appeal an IAD through the OAA as described at § 679.43. An IAD that is not appealed to the OAA within 60 days of issuance in NMFS would become a final agency action.

Upon final agency action, the RCR would remain subject to several conditions. If the final agency action determines the RCR permit holder owes additional fees and if the RCR permit holder has not paid such fees, no new RCR, IFQ, or IPQ permit(s) would be issued to the RCR permit holder for the current or subsequent crab fishing years until the required payment is received by NMFS. Additionally, the RCR permit holder would continue to be restricted from transferring or receiving by transfer any PQS, QS, IFQ or IPQ. An RCR permit holder could pay, under protest, the disputed fee difference in order to avoid permit restrictions. If NMFS does not receive the required payment within 30 days of the issuance of the final agency action, NMFS would refer the matter to the appropriate authorities within the U.S. Treasury for purposes of collection.

Limited Access System Administrative Fund (LASAF)

Most of the fees collected would be deposited in the LASAF established in the U.S. Treasury. Up to 25 percent could be deposited separately in the U.S. Treasury and made available to cover the costs of the loan program, as required by sections 304(d)(2)(C) and 313(j) of the Magnuson-Stevens Act. Separate accounts would be created within the LASAF to ensure that NMFS would use funds from the Program's cost recovery only to pay for the costs directly related to the management and enforcement of the Program, and not other limited access programs.

Community Development Quota Fee Provisions

Section 304(d)(2)(A) of the Magnuson-Stevens Act requires the Secretary to collect a fee to recover the actual costs directly related to the management and enforcement of any community development quota program. Community development quota programs under the Program include those CDQ allocations established under section 305(i). Additionally, Magnuson-Stevens Act section 313(j) requires the Secretary to collect a fee to recover the actual costs

directly related to the management and enforcement of the Adak community allocation. NMFS and ADF&G believe there would be increased management and enforcement costs associated with the CDQ and Adak community allocations under the Program. Therefore, all fee liability provisions would apply equally to any allocation of crab regardless of its designation under the Program.

Section 305(i)(3), requires the Secretary to deduct the costs incurred by participants in a community development quota program for observer and reporting requirements that are in addition to observer and reporting requirements of other participants in the fishery from any fees collected under section 304(d)(2). ADF&G confirmed its intention to manage the Adak community allocation similar to a CDQ allocation under its management authority. ADF&G also stated it does not intend to impose any observer and reporting requirements for the community allocations beyond those required for any other allocation under the Program. Therefore, no deductible costs would exist for any community development quota program under this Program. This allows for a uniform and administratively simple fee calculation and payment system for the entire cost recovery program.

Annual Report

NMFS would publish an annual report on the performance of the cost recovery program. The annual report, which could be included with other reports on the performance of the Program, would provide information regarding the amount of the fees received by NMFS, the disposition of the fees, the status of the Program's account in the LASAF, and the Program costs for the previous year.

Section 679.5 Recordkeeping and Reporting (R&R)

In § 679.5, paragraph (a)(7)(i) would be revised by adding a new paragraph (a)(7)(i)(B) to describe the added fishing activities of shoreside processors and stationary floating processors (SFPs) of "purchase or arrange to purchase" and by redesignating (a)(7)(i)(B) through (E) as (a)(7)(i)(C) through (i)(F), respectively. Newly redesignated paragraph (a)(7)(i)(C) would be revised by removing reference to shoreside processors and SFPs.

The longline and pot gear daily fishing logbook (DFL) and longline and pot gear daily cumulative production logbook (DCPL) would be revised for use by the operator on crab catcher vessels of all lengths and on all crab

CPs. In § 679.5, paragraph (C)(1) would be revised to include crab numbers, crab weight in pounds, and Federal crab vessel permit number.

In § 679.5, regulations for the product transfer report (PTR), as well as the PTR form, would be revised so the PTR could also be used to document shipments of crab managed under 50 CFR part 680. Paragraph (g)(1) would be revised by splitting the paragraph into three subparagraphs. Paragraph (g)(1)(i) would describe PTR requirements when documenting shipments of groundfish. The operator of a mothership or CP or the manager of a shoreside processor or SFP is responsible for the PTR. Paragraph (g)(1)(ii) would describe PTR requirements when documenting shipments of IFQ halibut, IFQ sablefish, and CDQ halibut. The Registered Buyer is responsible for the PTR. Paragraph (g)(1)(iii) would describe new PTR requirements when documenting shipments of crab. The RCR would be responsible for the PTR.

The requirements for the receiver of fish to submit a PTR would be removed from § 679.5(g). The NOAA Fisheries Office for Law Enforcement (OLE) has determined that it is no longer necessary for a receiver to submit a PTR. Therefore, only shipments of fish would be documented on a PTR.

In § 679.5, a new heading, "Exceptions" would be added as new paragraph (g)(2). Paragraphs (g)(1)(i) through (iii) and (g)(1)(v) and (vi) would be redesignated as (g)(2)(i) through (v), respectively. Paragraph (g)(1)(iv) would be removed because the requirement for receivers to submit a PTR is removed. Newly redesignated paragraph (g)(2)(i) "Bait sales (non-IFQ groundfish only)" would be revised to clarify the requirement. Newly redesignated paragraph (g)(2)(ii) "Retail sales" would be revised to create paragraphs (g)(ii)(A) and (ii)(B). Paragraph (g)(ii)(A) would address existing requirements for retail sales of IFQ halibut, IFQ sablefish, CDQ halibut, and non-IFQ groundfish. Paragraph (g)(ii)(B) would add new requirements for retail sales of crab. Newly redesignated paragraph (g)(iv)(A) "Dockside sales" would be revised by removing "IFQ fish" and adding in its place "IFQ halibut and IFQ sablefish." Newly redesignated paragraph (g)(v) "Transfer directly from the landing site to a processing facility ..." would be revised to include shipment of crab. Paragraph (g)(v)(A) would address the current IFQ landing report receipt requirements for CDQ halibut, IFQ halibut, and IFQ sablefish. Paragraph (g)(v)(B) would describe new requirements for crab landing report receipt. Paragraphs (g)(v)(A) and

(g)(v)(B) would further be revised by removing "(Internet or transaction terminal receipt)" and by adding in its place "(Internet receipt)." Paragraphs (g)(v)(C) and (g)(v)(D) would be revised to include the crab landing report receipt.

Newly redesignated paragraph (g)(3) would be revised to include requirements for an RCR. Paragraph (g)(3)(iii) would be revised to remove "ensure ... a revised PTR is submitted" and would be replaced by "submit a revised PTR."

The heading of newly redesignated paragraph (g)(4) would be revised by removing "general information" and by adding in its place "required information." Paragraph (g)(4) would be revised to include requirements for an RCR. Paragraph (g)(4)(i) would be revised. The OLE has determined that a confirmation number documenting receipt of a PTR by NMFS would be beneficial to record tracking. The fishermen would submit the PTR to OLE, who would return by e-mail the confirmation number for each PTR submitted.

The vessel activity report (VAR) would be revised for use by the operator on crab vessels required to obtain a Federal Crab Fishing Vessel permit. Section 679.5(k) would be revised to require a catcher vessel of any length that is required to obtain a Federal Crab Fishing Vessel permit that has fish, fish products, shellfish, or shellfish products to submit a VAR prior to crossing the seaward boundary of the EEZ off Alaska or the U.S.-Canadian international boundary between Alaska and British Columbia.

Use of the ATM terminals for submitting IFQ landing reports for IFQ halibut, IFQ sablefish, and CDQ halibut would be removed, because ATM terminals and associated printers have become obsolete, in fact have not been manufactured since 2001. It is no longer possible to obtain new units or parts for existing terminals or ribbons for the printers.

Internet and ATMs are completely different technologies, that require entirely separate software to run them. NMFS Alaska Region can no longer afford staff resources to maintain two electronic reporting systems for IFQ halibut, CDQ halibut, and IFQ sablefish.

Internet is easier and more convenient for constituents to use and less prone to result in incorrect account. Users would have a larger screen with which to review all data at the same time and make corrections before submitting as compared with the small LED display for ATMs. Another advantage of the Internet is the fact that users won't have

to upgrade every time software changes. Internet use costs are relatively low. There would be no NMFS telephone charges or equipment maintenance. Because IFQ fees are charged for NMFS program costs, user fees may well be lower when ATMs are no longer used.

All of NMFS Alaska Region reporting within the next 1-2 years is planned to be via an Internet-based interagency electronic "fish ticket" or "shared reporting system" with the State of Alaska and International Pacific Halibut Commission. The ATMs are obsolete when compared with this envisioned new system.

NMFS Alaska Region introduced use of an Internet alternative for IFQ landing reports in June 2002. In 2004, 97 percent of reports were submitted electronically, and of all reports, 84 percent were made using the Internet system. In 2004 to date, all but 12 of the locations from which landings were filed have used the Internet at least once, indicating that almost everyone has the capability to use the Internet. However, since 1995, NMFS Alaska Region has offered a limited-use manual backup system for those persons who are unable to report electronically.

In § 679.5, text referring to the ATM terminal would be removed from paragraphs (l)(2)(iii)(M), (l)(2)(iv), (l)(2)(iv)(A), (l)(2)(iv)(C), and (l)(2)(iv)(D). In addition, the Federal Fisheries Permit application would be revised to remove references to the ATM terminal.

In § 679.5(l), two of the existing IFQ forms would be revised for use by the operator on crab vessels of any length required to obtain a Federal Crab Fishing Vessel permit: Paragraph (l)(3) would be revised to require a transshipment authorization from an OLE clearance officer prior to crab or crab products being transferred between vessels.

In § 679.5, paragraph (l)(4) would be revised to require the RCR to submit a Departure Report prior to departing the waters of the EEZ adjacent to the jurisdictional waters of the State of Alaska, the territorial sea of the State of Alaska, or the internal waters of the State of Alaska when crab are on board.

In § 679.28, paragraph (f)(4)(i) would be changed by adding the requirements to enter the Federal crab vessel permit number to the VMS check-in report and by removing outdated text "and approximately when and where the vessel began fishing." Removal of this outdated text would align the regulations at § 679.28 with NMFS' current VMS policy.

A new Table 13 to part 679—Transfer Form Summary—would be added. This

table previously occurred in the regulatory text at § 679.5(a)(15) as an in-text table. Table 13 would be revised to include paperwork requirements for crab transfers. In Section 679, paragraph (a)(15) would be revised to reference Table 13.

Table 14a to part 679—Port of Landing Codes, Alaska—and Table 14b to part 679—Port of Landing Codes, Non-Alaska—would be indicated for use by crab participants completing paperwork requirements. Table 14b would be revised by moving the port of Olympia from the state of Oregon and placing it under the state of Washington. Table 14c At-sea Operation Type Codes would be added for use by crab participants.

Table 15 to part 679—Gear Codes, Descriptions, and Use—would be indicated for use by crab participants completing paperwork requirements. Table 15 would be revised by adding a column for crab and indicating pot gear.

Part 680 would have nine tables to support the regulatory text. Table 1 to Part 680—Crab Rationalized (CR) Fisheries—presents the crab species that are included in the Crab Rationalization Program and areas where each crab species occurs. The coordinates for each area are given in latitude and longitude. A 3-digit alphabetic code is given for each combination of crab species and area.

Table 2 to Part 680—Crab Species Codes—presents 3-digit numeric species codes for the crab species that occur in the EEZ off the coast of Alaska. Both common names and Latin names are provided.

Table 3a to Part 680—Crab Delivery Condition Codes—presents codes to represent the condition of the shellfish at the point it is weighed and recorded on an ADF&G fish ticket.

Table 3b to Part 680—Crab Disposition or Product Codes—presents codes to represent the product that was made from the crab or whether the crab was used for personal use.

Table 4 to Part 680—Crab Process Codes—presents codes to represent the process used to create the crab product.

Table 5 to Part 680—Crab Size—presents codes to represent the size of crab product.

Table 6 to Part 680—Crab Grade—presents codes to represent quality of crab product.

Table 7 to Part 680—Eligibility for Initial Issuance of Crab QS by Crab QS Fishery—presents the qualifying years for CVO and CPO QS, the qualifying years for CVC and CPC QS, recent participation seasons for CVC and CPC QS, and subsets of qualifying years that

can be used to calculate QS for each QS fishery.

Table 8 to Part 680—Initial QS and PQS Pool for each Crab QS Fishery—presents the initial QS pool for the eight crab QS fisheries.

Table 9 to Part 680—Eligibility for Initial Issuance of Crab PQS by Crab QS Fishery—presents for each crab QS fishery, the qualifying periods used to determine the allocation of PQS.

Classification

The Magnuson-Stevens Act mandates that NMFS approve Amendment 18 to the FMP by January 1, 2005. At this time, NMFS has not determined that Amendment 19 and the provisions in this rule that would implement Amendments 18 and 19 are consistent with the national standards of the Magnuson-Stevens Act and other applicable laws. NMFS, in making the determination that this proposed rule is consistent, will take into account the data, views, and comments received during the comment period (see DATES).

A Regulatory Impact Review (RIR) was prepared to assess all costs and benefits of available regulatory alternatives. The RIR considers all quantitative and qualitative measures. The Program was chosen based on those measures that maximize net benefits to affected participants in the BSAI crab fisheries. Additionally, a draft initial regulatory flexibility analysis (IRFA) was prepared that describes the impact this proposed rule would have on small entities. Copies of the RIR/draft IRFA prepared for this proposed rule are available from NMFS (see ADDRESSES).

The complete IRFA includes the draft IRFA and this preamble document. The IRFA describes in detail the reasons why this action is being proposed, describes the objectives and legal basis for the proposed rule, and discusses both small and non-small regulated entities to adequately characterize the fishery participants. Section 313(j) of the Magnuson-Stevens Act provides the legal basis for the proposed rule, namely to achieve the objective of reducing excessive fishing capacity and ending the race for fish under the current management strategy for commercial fishing vessels operating in the BSAI crab fisheries. By ending the race for fish, NMFS expects the proposed action to increase resource conservation, improve economic efficiency, and address social concerns.

The IRFA contains a description and estimate of the number of small entities to which the proposed rule would apply. Approximately 236 entities own crab harvest vessels that are directly regulated under the alternatives

considered. Of those entities, 223 are small entities because they either generated 3.5 million or less in gross revenue, based on participation in 1998, 1999, or 2000, or they are independent entities not affiliated with a processor that would increase the entities average revenue above the small business size standards. Thirteen of the entities (owning 38 vessels) are considered non-small entities. NMFS requests public comment on which small business size standard is appropriate for catcher processors: the catcher vessel size standard or the processor size standard (see ADDRESSES).

A total of 134 entities made at least one crab landing from 1991 to 2000, but do not appear to qualify for an initial allocation of QS. Five of these entities are not small entities and 129 qualify as "small" by SBA standards. The non-small entities owned a total of nine catcher vessels. The small entities owned a total of 155 catcher vessels and one CP. By and large, vessels that do not qualify for the Program either left the fishery or currently fish under interim LLP licenses. Moreover, the vessels the IRFA considers "non-qualified" could not or would not be allowed to continue fishing under the current LLP. The impacts to the small entities that would be prohibited from fishing by the LLP were analyzed in the RIR/IRFA and FRFA prepared for the LLP. Therefore, the non-qualified vessels are not considered impacted by the proposed rule and are not discussed in this IRFA.

Eight small entities and nine non-small entities appear to qualify for processor allocations based on participation during 1998 and 1999. These totals exclude CPs, which are included in the vessel discussion. The nine inshore processors are considered non-small entities because they appear to exceed the "500 or more employees" threshold when all their affiliates, worldwide, are included. The nine large processing entities owned 28 separate crab processing facilities, and the eight small processing entities owned 10 plants. Forty-three small processing entities (owning 50 plants) appear not to qualify for initial PQS allocations.

Thirteen communities could be directly impacted by the regionalization provisions under consideration. The overall impact on communities cannot be determined until NMFS makes all of the allocations of processing shares. At a minimum, St. Paul, St. George, Adak, Akutan, Dutch Harbor, King Cove, False Pass, Ninilchik, Homer, Port Moller, Cordova, and Kodiak possess recorded landings in the crab fisheries under any of the alternatives. The communities where these processors are located

would all be considered small government jurisdictions. Each of the communities have populations well under the 50,000 limit for consideration as a small entity.

Other supporting businesses may also be indirectly affected by this action if it leads to fewer vessels participating in the fishery. These impacts are treated in the RIR prepared for this action (see ADDRESSES).

The Council considered an extensive and elaborate series of alternatives, options, and suboptions as it designed and evaluated the potential for rationalization of the BSAI crab fisheries, including the "no action" alternative. The RIR presents the complete set of alternatives, in various combinations with the complex suite of options. The EIS presents four alternative programs for management of the BSAI crab fisheries, namely, Status Quo/No Action (Alternative 1); the Crab Rationalization Program (Alternative 2); an Individual Fisherman's Quota (IFQ) Program (Alternative 3); and a Cooperative Program (Alternative 4). These alternatives constitute the suite of "significant alternatives", under the proposed action, for RFA purposes. Each is addressed briefly below. Please refer to the EIS and its appendices for more detail (see ADDRESSES). The following is a summary of the contents of those more extensive analyses, specifically focusing on the aspects which pertain to small entities.

Under the status quo, the BSAI crab fisheries have followed the well known pattern associated with managed open access. Enticed by the prospect of capturing 100 percent of the benefits, while externalizing all but a very small "common" share of the cost of an individual fishing decision (i.e., no enforceable ownership rights to ration access) these BSAI crab fisheries have been characterized by "race-for-fish", capital stuffing behavior, excessive risk taking, and a dissipation of potential rents. In the face of substantial stock declines, participants in these fisheries are confronted by significant surplus capacity (in both the harvesting and processing sectors), financial distress (for some, failure), and widespread economic instability, all contributing to resource conservation and management difficulties.

In response to worsening biological, economic, social, and structural conditions in many of the BSAI crab fisheries, the Council found that the status quo management structure was causing significant adverse impacts to the participants in these fisheries, as well as the communities that depend on these fisheries. As indicated in the

IRFA, many small entities, as defined under RFA, are negatively impacted under current managed open access rules. The management tools in the existing FMP (e.g., time/area restriction, LLP, pot limits) do not provide managers with the ability to effectively solve these problems, thereby making Magnuson-Stevens Act goals difficult to achieve and forcing reevaluation of the existing FMP.

In an effort to alleviate the problems caused by excess capacity and the race for fish, the Council determined that the institution of some form of rationalization program is needed to improve crab fisheries management in accordance with the Magnuson-Stevens Act.

The IFQ alternative would, as the name implies, allocate individual shares of the crab TAC to harvesters, imparting a "quasi-private property interest" (i.e. a transferrable access privilege) in a share of the TAC, thus removing the undesirable "common property" attributes of the status quo on qualifying harvesters. The rationalization of the BSAI crab fisheries would likely benefit the approximately 223 businesses that own harvest vessels and are considered small entities. In recent years these entities have competed in the race to fish against larger businesses. The IFQ alternative would allow these operators to slow their rate of fishing and give more attention to efficiency. Some of these operations and the vessels they use could be negatively impacted if the allocations they qualify for are small and cannot be fished economically. The participants, however, would be permitted to lease or sell their allocations, and could obtain some return from their allocations. Differences in efficiency implications of rationalization by business size cannot be predicted. Some participants believe that smaller vessels could be more efficient than larger vessels in a rationalized fishery because a vessel only needs to be large enough to harvest the IFQ. Conversely, under open access, a vessel has to be large enough to out compete the other fishermen and, hence, the overcapacity problems under the race for fish. If that is true, it is possible that some of the smaller participants in the fishery could increase their activity (by purchasing or leasing QS/IFQ) in a rationalized fishery.

However, the IFQ alternative would fail to protect the economic and social interests of other participants, also dependent on these crab fisheries, namely, processor and community entities. As the analysis in the RIR demonstrates, while harvesters clearly

benefit, the IFQ alternative likely would increase the negative economic impacts relative to status quo on processor and community small entities. Specifically, as discussed in the RIR and SIA, harvesters may deliver crab to new processors in locations with more access to the outside world, forcing the closing of processing facilities in remote areas, such as Saint Paul, Saint George, and Unalaska/Dutch Harbor.

The Cooperative alternative yields many of the positive economic, social, and structural results cited above for the IFQ alternative. In addition, however, the Cooperative alternative holds out the promise of providing efficiency gains to both small entity harvesters and the processors. Data on cost and operating structure within each sector are unavailable, so a quantitative evaluation of the size and distribution of these gains, accruing to each sector under this management regime, cannot be provided. Nonetheless, it appears that the Cooperative alternative offers all of the same "improvements" over the status quo as does the IFQ alternative (e.g., institution of "rights-based-management" structure, reduction in uncertainty) while including another of the populations of participants the Council expressed explicit concern about protecting, in its problem statement and objectives for this action (i.e., crab processors). While, on the basis of available information, the Cooperative alternative appears to minimize negative economic impacts on small entities to a greater extent than does an IFQ alternative, and both appear to minimize negative economic impacts compared to the Status Quo, it is apparent, on the basis of the EIS and RIR analyses, that the Cooperative alternative does not extend the benefits of rationalization to the third population of small entities, fishery dependent communities.

After an exhaustive public process, spanning several years, the Council concluded that the Program best accomplishes the stated objectives articulated in the problem statement and applicable statutes, and minimizes to the extent practicable adverse economic impacts on the universe of directly regulated small entities. This proposed rule would implement the Program.

The Program makes three separate allocations; one to the harvest sector, one to the processing sector, and one to defined regions. All three allocations are based on historic participation to protect investment in and reliance on the fisheries. Harvesters would receive harvest allocations, processors would receive processing allocations, and

regions would receive allocations of landings and processing activity. These three separate allocations are also intended to mitigate the negative effects of the transition from a regulated open access race-for-fish to rationalized fisheries, burdens which tend to fall most heavily on small entities.

The competing interests of harvesters and processors, many of which are small entities, are balanced by allocating different portions of the total harvest to the two sectors. Harvesters would be allocated harvest shares for 100 percent of the TAC, minus the community allocations. Processors would be allocated processing shares for 90 percent of the TAC. To ensure corresponding allocations to the two sectors, 90 percent of the harvest allocation is allocated as Class A IFQ that require delivery to a processor that holds IPQ. The remaining 10 percent would be Class B IFQ shares that can be delivered to any processor. Under the Program, harvesters (many of whom, as noted, are small entities) would be permitted to form cooperatives to achieve efficiencies and reduce transaction costs through the coordination of harvest activities and deliveries to processors.

Small harvester entities that receive allocations large enough to support their participation could benefit from not needing to participate in the race for fish, as with the IFQ alternative. The portion of the fishery allocated as Class B IFQ, also known as open delivery IFQ, would also impact the effects of the Program on small harvesters, since Class B IFQ are likely to provide harvesters with additional power in their delivery negotiations with processors.

Small processors appear to have been exiting the crab fishery in recent years as the harvest levels have declined and seasons have been compressed. The proposed rule would allocate PQS to processors that participated in the fishery in either 1998 or 1999. "Small" processors that plan to enter or reenter the crab fisheries (but did not participate during the qualifying years) would be allowed to process crab harvested with Class B IFQ and CDQ crab. Class B IFQ and CDQ crab would provide a mechanism for small processors to enter the fishery without large capital outlays to purchase PQS or IPQ. Class B IFQ, however, would reduce the allocation of PQS to the small and large processors that qualify for the Program. Class B IFQ therefore may negatively impact small processors, if they are unable to compete with large processors in the market place for the Class B IFQ.

To resolve impasses in price negotiations, a potentially crippling occurrence for the smaller operators, the Program would include a mandatory binding arbitration program for the settlement of price disputes between harvesters and processors. Historically, prices have been settled by protracted, often contentious negotiations, from time to time resulting in harvesters delaying fishing (i.e., strikes), which can be detrimental to all concerned. An effective system of binding arbitration could protect the interests of both sectors in negotiations, while avoiding costly delays in fishing due to strikes.

A number of small governmental jurisdictions would be directly regulated by, and therefore could be impacted by, this proposed rule. All communities benefitting from these special provisions of the proposed rule are "small", under SBA criteria. Community interests have been explicitly considered in the Program, and special provisions have been included to minimize (to the extent practicable) adverse impacts on these small entities. Under these provisions the degree of protection would likely vary community-to-community.

The allocation to regions is accomplished by regionally designating all Class A IFQ (delivery restricted) and all corresponding IPQ. In most fisheries, regionalized IFQ and IPQ are either North or South, with North IFQ designated for delivery in areas on the Bering Sea north of 56°20' north latitude and South IFQ designated for any other areas, including Kodiak and other areas on the Gulf of Alaska. IFQ and IPQ designations are based on the historic location of the landings and processing that gave rise to the shares. The proposed rule would also increase the allocation of crab to CDQ groups from 7.5 percent to 10 percent, providing additional aid to the 65 CDQ communities (all small entities).

Community processing requirements in the first two years of the Program and ROFR would benefit communities with history supporting initial allocations and are intended to protect community interests. The ROFR provisions are likely to benefit communities that are more capable of exercising the right. Under the more general regional protection, processing activity could move between communities in a region. This is likely to benefit those communities able to attract additional processing activity from other communities in the region and harm communities that processing activity leaves. IPQ caps would benefit communities able to attract processing in years of high total harvest.

Additionally, CDQ groups would be able to purchase QS and PQS to increase their participation in the BSAI crab fisheries above the CDQ allocation.

The proposed rule also contains several additional measures to protect various interests. Eligible crew would receive 3 percent of the initial allocation of QS. Sideboards would limit the activity of crab vessels in other fisheries (such as the GOA groundfish fisheries) to protect participants in those fisheries from a possible influx of activity that could arise from vessels that exit the crab fisheries, or are able to time activities to increase participation in other fisheries. While these benefactors of this provision are not directly regulated, and therefore not counted among the entities addressed in this IRFA, they are predominantly small entities.

Fish taxes would likely be redistributed with any redistribution of processing activity. In addition, the provision of support services and associated sales taxes would likely be redistributed to some extent by redistribution of landings in a rationalized fishery. Increased efficiency in the fisheries arising from the Program could reduce the demand for support services, impacting sales tax revenues, if the fleet is able to reduce their overall costs. These impacts may occur in large and small communities. Since the redistribution of activity and the increased efficiency cannot be predicted these effects cannot be fully characterized. Additional analysis of community impacts is contained in the Social Impact Analysis, EIS Appendix 3 (see ADDRESSES).

Implementation of the proposed rule would change the overall reporting structure and recordkeeping requirements of the participants in the BSAI crab fisheries. Under the statutorily mandated proposed rule, all participants would be required to provide additional reporting. Each harvester would be required to track harvests to avoid exceeding his or her allocation. As in other North Pacific rationalized fisheries, processors would provide catch recording data to managers to monitor harvest of allocations. Processors would be required to record deliveries and processing activities to aid in the Program administration.

NMFS would be required to develop new databases to monitor harvesting and processing allocations. These changes could require the development of new reporting systems. The costs of NMFS' monitoring of the fisheries would be passed to participants through the cost recovery program.

To participate in the Program, persons would be required to complete application forms, transfer forms, EDR forms, reporting requirements, and other collections-of-information. These the forms are either required by the Magnuson-Stevens Act or required for the administration of the Program. These forms impose costs on small entities in gathering the required information and completing the forms.

We have estimated the costs of complying with the reporting requirements based on the burden hours per response, number of responses per year, and a standard estimate of \$25 per burden hour (except the estimate for the EDR forms is \$100 per burden hour). Persons would be required to complete most of the forms at the start of the Program, like applications for initial issuance of QS/PQS and the historic EDR. Persons would be required to complete some forms every year, like applications for IFQ/IPQ and annual EDRs. Participation in the binding arbitration program would be also be annual. Additionally, reporting would be completed more frequently.

The proposed rule also includes a comprehensive data collection program, which would require participants to submit detailed economic data concerning their participation in these fisheries. The data collection program is intended to provide managers with better information concerning the fisheries to aid in management and to limit negative unintended consequences arising from management decisions. Under the required data collection program, NMFS minimized the cost and time burden associated with the data collection components by breaking down the program into specific forms directed at specific segments of the fishery. Although most participants collect data similar to that which would be collected by the data collection program for making business decisions, the data collection program could impose additional recordkeeping requirements on participants in the fisheries. The detailed level of data required would likely require some additional data compilation and reporting beyond the status quo. Professional assistance, such as accounting services, are likely to be necessary for most participants to comply with these requirements. NMFS estimates that it would cost small entities that hold CVO QS and PQS approximately \$1,503 to complete the historic EDR and an additional \$1,503 to complete the annual EDR every year. It would cost small entities that hold CPO QS \$2,503 to complete each EDR

because they would report both harvesting and processing information.

It would cost participants in the Program \$56 to complete applications to receive an initial allocation of QS and PQS, \$55 for the annual application for IFQ and PQS, \$61 to complete the one-time application to be eligible to receive transfers, and \$61 to complete a transfer application. Additionally, it would cost processors who intend to process crab \$16 to complete an RCR permit application. It would cost an ECCO \$64 to complete the Application to Become an ECCO and \$54 to complete the Application to Transfer Crab QS/IFQ to or from the ECCO. Additionally, it would cost an ECCO \$206 to complete the required annual report.

Congress directed the implementation of much of the proposed Program through statute. To the extent that the statute allowed flexibility, NMFS considered multiple alternatives to effectively implement specific provisions within the proposed Program through regulation. In each instance, NMFS attempted to impose the least burden on the public, including the small entities subject to the Program.

The CR crab landing report (internet version and optional fax version) would be used to debit crab landings. All retained crab catch must be weighed, reported, and debited from the appropriate IFQ account under which the catch was harvested and IPQ account under which the catch was processed. Under recordkeeping and reporting, NMFS considered the options of a paper based reporting system or an electronic reporting system. NMFS chose to implement an electronic reporting system as a more convenient, accurate, and timely method of reporting. Additionally, the proposed electronic reporting system would provide continuous access to IFQ and IPQ accounts. These provisions would make recordkeeping and reporting requirements less burdensome on participants by allowing participants to more efficiently monitor their accounts and fishing activities. NMFS recognizes that participants in the current fishery might be more comfortable with the paper based fish ticket system, but believes that the added benefits of the electronic reporting system outweigh any benefits of the paper based system. However, NMFS would also provide an optional lower tech backup using existing telecommunication and paper based methods, which would reduce the burden on small entities in more remote areas possessing less electronic infrastructure.

As an IFQ system, the Magnuson-Stevens Act requires NMFS to collect cost recovery fees associated with the monitoring and enforcement of the proposed Program. The fees would be charged to harvesters and processors based on the amount of IFQ and IPQ used by each IFQ and IPQ holder. The initial amount of the fee would be 3 percent of the ex-vessel value of each fishery. We can not calculate the actual amount of the fee for each fishery in each year because we can not predict the future TACs or future ex-vessel values. NMFS considered options that included: (1) collection and payment individually by harvesters and processors under a billing system, and (2) collection of fees from the harvester by the processor and self-collection of processor fees under an annual fee submission process. NMFS determined that the collection of all fees from the harvesting and processing sector by the receiving processor for submission to NMFS on an annual basis would impose the least administrative burden on the affected public. The collection of fees by the receiving processor corresponds with the existing requirement for many processors to collect excise taxes from delivering harvesters in other fisheries. Additionally, rather than use the calendar year for administrative purposes, NMFS negotiated an administrative year for the program that accommodates fee collection by imposing the most significant administrative burden on the affected participants during the time of year when the crab fisheries are closed.

Under this proposed rule, CPs would be required to purchase and install motion-compensated scales to weigh all crab at-sea. Such scales would cost on a one-time basis, approximately \$25,000 per vessel. Additional costs on a one-time basis associated with the installation of the scales are estimated to be between \$10,000 and \$40,000, depending on the extent to which the vessel must be reconfigured to install the scale. Scale monitoring requirements would cost approximately \$6,235 per year. Based on discussions with equipment vendors, NMFS estimates that 8 CPs, one of which is a small entity, would choose to fish CPO or CPC IFQ.

NMFS considered, but rejected, the use of product weight and recovery rates (PRRs) in favor of the use of at-sea scales for catch accounting on CPs. NMFS rejected the use of PRRs for several reasons. First, the technology for weighing catch at-sea is well developed, and NMFS believes that the catch weights generated from these scales produce the best available data for catch

accounting purposes. Second, recovery rates are not well known for many stocks, and, because recovery could vary with season, the rates may change when fishing occurs over a larger portion of the year. Third, glaze percentages on CPs product vary widely. If NMFS chose to use PRRs, NMFS must either apply vessel specific rates that incorporate glaze percentages or develop a standard glaze percentage that would either unfairly penalize the boats with high amounts of glaze or underestimate the amount of harvest on boats with low glaze percentages. Finally, CPs conduct different cooking, pre-cooking, pre-freeze brining and freezing processes. These procedural differences create significant uncertainty in calculating and verifying recovery. NMFS acknowledges that PRRs would be less costly to the affected public, particularly the small entities, but determined that the added management benefits of scales outweigh their costs. To the extent that additional PRR data become available to NMFS for analysis, future rules may allow PRR based catch accounting. CPs not wishing to incur the costs associated with scale installation prior to that time have the option of either joining a cooperative or leasing their quota.

NMFS considered, but rejected, requirements for increased observer coverage for the CP fleet. Under existing State regulations, CPs are required to pay for and carry one observer when engaged in crab fishing operations. In similar NMFS managed quota fisheries, NMFS requires that all fishing activity be observed. In most cases, this means that a vessel must carry two observers. NMFS rejected this approach in the crab fisheries for two reasons. First, the Council motion specifically delegated observer coverage responsibility to the State of Alaska. Second, NMFS felt that the monitoring approach developed for the fishery (total catch weighing plus a requirement for a total offload weight) provided for more effective monitoring at a lower cost. NMFS estimates that a requirement for increased observer coverage would have cost CPs approximately \$400/day plus the additional costs associated with reconfiguring vessels to ensure that adequate space was available for the additional observer.

For monitoring of processing activity, it would cost shore-based processors approximately \$416 to complete the catch monitoring plan and an additional \$2,800 annually to complete all landing reports.

NMFS determined that a VMS program is essential to the proper enforcement of the Program. Therefore, all vessels participating in the Program

would be required to participate in a VMS program. Depending on which brand of VMS a vessel chooses to purchase, NMFS estimates that this requirement would impose a cost of \$2,000 per vessel for equipment purchase, \$780 for installation and maintenance, and \$5 per day for data transmission costs. Based on the number of qualified vessels, NMFS estimates that a maximum of 276 vessels, of which 238 are considered small entities, could incur this cost if they choose to participate in the Program.

Collection-of-information

This rule contains new collection-of-information requirements subject to review and approval by OMB under the Paperwork Reduction Act (PRA). These requirements have been submitted to OMB for approval. Public reporting burden per response for these requirements are listed by topic.

Crab Permits, Transfers, and Fees

These requirements and their associated burden estimates per response are: 2 hours for Annual Application for Crab IFQ/IPQ Permit; 2 hours for Application for Crab QS/IFQ or PQS/IPQ; 2 hours for Application for annual crab harvesting cooperative IFQ permit; 30 minutes for Application for Crab IFQ Hired Master permit; 30 minutes for Application for RCR Permit; 20 minutes for Application for Federal crab vessel permit; 2 hours for Application for eligibility to receive Crab QS/IFQ or PQS/IPQ by transfer; 2 hours for Application to Become an Eligible Crab Community Organization (ECCO); 2 hours for Application for transfer of Crab QS/IFQ or PQS/IPQ; 2 hours for Application for transfer of crab QS/IFQ to or from an ECCO; 2 hours for Application for Inter-cooperative Transfer; 30 minutes for RCR fee submission form; and 4 hours for a letter of appeal, if denied a permit.

Crab Reports

These requirements and their associated burden estimates per response are: 35 minutes to electronically submit crab landing report and print receipts, 35 minutes to submit crab landing report paper backup (ADF&G fish ticket), 15 minutes for application for user ID, 20 minutes for CP offload report, 40 hours for ECCO annual report for an ECC.

Crab Economic Data Reports

These requirements and their associated burden estimates per response are: 25 hours for Catcher processor historical EDR, 25 hours for

Catcher processor annual EDR, 15 hours for Catcher vessel historical EDR, 15 hours for Catcher vessel annual EDR, 15 hours for Catcher vessel annual EDR, 15 hours for Stationary crab floating processor historical EDR, 15 hours for Stationary crab floating processor annual EDR, 15 hours for Shoreside crab processor historical EDR, 15 hours for Shoreside crab processor annual EDR, and 3 hours for historical and annual audits.

Crab Arbitration Reports

These requirements and their associated burden estimates per response are: 4 hours for Annual Arbitration Organization Report, 1 hour for Arbitration Organization miscellaneous reporting, 40 hours for Market Report, 40 hours for Non-binding Price Formula Report, and 45 minutes to establish price for arbitration negotiations.

This rule also contains revised requirements that have been submitted to OMB for approval. These requirements are listed by OMB control number.

OMB No. 0648—0213

This requirement and its associated burden estimate per response is: 14 minutes for Vessel Activity Report, 20 minutes for Product transfer report, and 28 minutes for Catcher vessel longline and pot gear daily fishing logbook.

OMB No. 0648—0272

These revised requirements and their associated burden estimates per response are: 6 minutes for Application for Replacement of Certificates, Permits, or Cards; 6 minutes for Transshipment authorization; and 6 minutes for Departure report.

OMB No. 0648—0330

These revised requirements and their associated burden estimates per response are: 6 minutes for At-sea inspection request, 45 minutes for Record of daily scale tests, 45 minutes for printed output of at-sea scale weight, 45 minutes for printed output of State of Alaska scale weight, 80 hours for scale type evaluation, 6 minutes for at-sea scale approval report/sticker, 2 hours for Observer sampling station inspection request, 2 minutes for prior notice to Observers of scale tests, and 40 hours for Crab catch monitoring plan.

OMB No. 0648—0445

These revised requirements and their associated burden estimates per response are: 12 minutes for VMS check-in form, 6 hours for VMS installation, 4 hours for VMS annual

maintenance, and 6 seconds for each VMS transmission.

Response times include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Public comment is sought regarding whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology.

Send comments on these or any other aspects of the collection of information to NMFS, Alaska Region at the ADDRESSES above, and e-mail to DRostker@omb.eop.gov, or fax to (202) 395-7285.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

This proposed rule has been determined to be significant for purposes of Executive Order 12866.

A Draft Environmental Impact Statement (EIS) (dated March 2004) was prepared for this rule and made available to the public for comment (69 FR 13036, March 19, 2004). The Final EIS was prepared and made available to the public on September 3, 2004 (69 FR 53915). Copies of the Final EIS for this action are available from NMFS (see ADDRESSES).

Dated: October 22, 2004.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 679 is proposed to be amended and new 50 CFR part 680 is proposed to be added as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

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

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*; Title II of Division C, Pub. L. 105-277; Sec. 3027, Pub. L. 106-31, 113 Stat. 57; 16 U.S.C. 1540(f).

2. In § 679.1, revise paragraphs (g) and (j) to read as follows:

§ 679.1 Purpose and scope.

* * * * *

(g) *Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs.* Regulations in this part govern commercial fishing for king and Tanner crab in the Bering Sea and Aleutian Islands Area by vessels of the United States, and supersede State of Alaska regulations applicable to the commercial king and Tanner crab fisheries in the Bering Sea and Aleutian Islands Area EEZ that are determined to be inconsistent with the FMP (see subparts A, B, and E of this part). Additional regulations governing commercial fishing for, and processing of, king and Tanner crab managed pursuant to section 313(j) of the Magnuson-Stevens Act and the Crab Rationalization Program are codified at 50 CFR part 680.

* * * * *

(j) *License Limitation Program (LLP).* (1) Regulations in this part implement the LLP for the commercial groundfish fisheries in the EEZ off Alaska and the LLP for the commercial crab fisheries in the Bering Sea and Aleutian Islands Area.

(2) Regulations in this part govern the commercial fishing for groundfish under the LLP by vessels of the United States using authorized gear within the GOA and the BSAI and the commercial fishing for crab species under the LLP by vessels of the United States using authorized gear within the Bering Sea and Aleutian Islands Area.

* * * * *

3. In § 679.2, revise the definitions of "Alaska local time," and "Shoreside processor," revise paragraphs (2) and (3) of the "Directed fishing" definition, and add a definition of "Registered crab receiver" in alphabetical order to read as follows:

§ 679.2 Definitions.

* * * * *

Alaska local time (A.l.t.) means the time in the Alaska time zone.

* * * * *

Directed fishing means:

* * * * *

(2) With respect to license limitation groundfish species, directed fishing as defined in paragraph (1) of this definition.

(3) With respect to crab species under this part, the catching and retaining of any crab species.

* * * * *

Registered crab receiver (RCR) means a person issued by the Regional Administrator an RCR permit described under 50 CFR part 680.

* * * * *

Shoreside processor means any person or vessel that receives, purchases, or arranges to purchase, unprocessed groundfish, except catcher/processors, motherships, buying stations, restaurants, or persons receiving groundfish for personal consumption or bait.

* * * * *

4. In § 679.3, revise paragraph (d) to read as follows:

§ 679.3 Relation to other laws.

* * * * *

(d) *King and Tanner crabs.* Additional regulations governing conservation and management of king crab and Tanner crab in the Bering Sea and Aleutian Islands Area are contained in 50 CFR part 680 and in Alaska Statutes at A.S. 16 and Alaska Administrative Code at 5 AAC Chapters 34, 35, and 39.

* * * * *

5. In § 679.4, revise paragraph (k)(1)(ii), remove and reserve paragraphs (l)(3)(ii)(D), (l)(4)(i), and (l)(5)(ii), and remove paragraphs (l)(4)(ii)(D), (l)(4)(ii)(E), (l)(5)(iv)(E), and (l)(5)(iv)(F) to read as follows:

§ 679.4 Permits.

* * * * *

(k) * * *

(1) * * *

(ii) Each vessel must have a crab species license issued by NMFS on board at all times it is engaged in fishing activities, defined in § 679.2, for the crab fisheries identified in this paragraph. A crab species license may be used only to participate in the fisheries designated on the license and on a vessel that complies with the vessel designation and MLOA specified on the license. NMFS requires a crab species license for participation in the following crab fisheries:

(A) Aleutian Islands red king crab in waters of the EEZ with an eastern boundary the longitude of Scotch Cap Light (164°44' W. long.) to 53°30' N. lat., then west to 165° W. long., a western boundary of 174° W. long., and a northern boundary of a line from the latitude of Cape Sarichef (54°36' N. lat.) westward to 171° W. long., then north to 55°30' N. lat., and then west to 174° W. long.;

(B) Aleutian Islands Area *C. opilio* and *C. bairdi* in waters of the EEZ with an eastern boundary the longitude of Scotch Cap Light (164°44' W. long.) to 53°30' N. lat., then west to 165° W. long., a western boundary of the U.S.-Russian Convention Line of 1867, and a northern boundary of a line from the latitude of Cape Sarichef (54°36' N. lat.) westward to 171° W. long., then north to 55°30' N. lat., then west to 174° W. long.;

(C) Norton Sound red king and Norton Sound blue king in waters of the EEZ with a western boundary of 168° W. long., a southern boundary of 62° N. lat., and a northern boundary of 65°36' N. lat.;

(D) Bering Sea brown king crab (*Lithodes aequispinus*) in waters of the EEZ east of the U.S.-Russian Convention line of 1867 with a southern boundary of 54°36' N. lat. to 171° W. long., and then south to 54°30' N. lat.

(E) Scarlet or deep sea king crab (*Lithodes couesi*) in the waters of the Bering Sea and Aleutian Islands Area;

(F) Grooved Tanner crab (*Chionoecetes tanneri*) in the waters of the Bering Sea and Aleutian Islands Area; and

(G) Triangle Tanner crab (*Chionoecetes angulatus*) in the waters of the Bering Sea and Aleutian Islands Area.

* * * * *

6. In § 679.5, revise paragraphs (a)(7)(i) table only, (a)(15), (c)(1), (g), (k), (l) introductory text, (l)(2)(iii)(M), (l)(2)(iv) introductory text, (l)(2)(iv)(C), (l)(2)(iv)(D), (l)(3)(i), and (l)(4), and remove and reserve (l)(2)(iv)(A) to read as follows:

§ 679.5 Recordkeeping and reporting (R&R).

(a) * * *

(7) * * *

(i) * * *

If participant is...	And fishing activity is...	An active period is...	An inactive period is...
(A) CV ¹	Harvest or discard of groundfish	When gear remains on the grounds in a reporting area (except 300, 400, 550, or 690), regardless of the vessel location	When no gear remains on the grounds in a reporting area

If participant is...	And fishing activity is...	An active period is...	An inactive period is...
(B) SS, SFP	Receipt, purchase or arrange to purchase, or processing of groundfish	When checked in or processing	When not checked in or processing
(C) MS	Receipt, discard, or processing of groundfish	When checked in or processing	When not checked in or not processing
(D) CP	Harvest, discard, or processing of groundfish	When checked in or processing	When not checked in or not processing
(E) BS	Receipt, discard, or delivery of groundfish	When conducting fishing activity for an associated processor	When not conducting fishing activity for an associated processor

¹CV = Catcher vessel; SS = Shoreside processor; SFP = stationary floating processor; MS = mothership; Catcher/processor = CP; BS = Buying station

* * * * *

(15) *Transfer comparison.* The operator, manager, Registered Buyer, or Registered Crab Receiver must refer to Table 13 to this part for paperwork submittal, issuance, and possession requirements for each type of transfer activity of non-IFQ groundfish, IFQ halibut, IFQ sablefish, CDQ halibut, and CR crab.

* * * * *

(c) *Catcher vessel DFL and catcher/processor DCPL—(1) Longline and pot gear catcher vessel DFL and catcher/processor DCPL.* (i) In addition to information required at paragraphs (a) and (b) of this section:

(A) *Groundfish fisheries.* (1) The operator of a catcher vessel using longline or pot gear to harvest groundfish and that retains any groundfish from the GOA, or BSAI, must maintain a longline and pot gear DFL.

(2) The operator of a catcher/processor using longline or pot gear to harvest groundfish and that retains any groundfish from the GOA, or BSAI, must maintain a longline and pot gear DCPL.

(B) *IFQ halibut, CDQ halibut, and IFQ sablefish fisheries.* (1) The operator of a catcher vessel using longline or pot gear to harvest IFQ sablefish, IFQ halibut, or CDQ halibut from the GOA, or BSAI, must maintain a longline and pot gear DFL.

(2) The operator of a catcher/processor using longline or pot gear to harvest IFQ sablefish, IFQ halibut, or CDQ halibut from the GOA, or BSAI, must maintain a longline and pot gear DCPL.

(C) *CR crab fisheries.* (1) The operator of a catcher vessel using longline or pot gear to harvest CR crab from the BSAI, must maintain a longline and pot gear DFL.

(2) The operator of a catcher/processor using longline or pot gear to harvest CR crab from the BSAI, must maintain a longline and pot gear DCPL.

(ii) *Required information.* The operator of a catcher vessel or catcher/processor identified in paragraph (c)(1)(i) of this section must record in the DFL or DCPL, the following information:

(A) *Federal reporting area.* Federal reporting area code (see Figures 1 and 3 to this part) where gear retrieval (see § 679.2) was completed, regardless of where the majority of the set took place. Use a separate logsheet for each reporting area.

(B) *Number of crew.* If a catcher vessel, the number of crew, excluding observer(s), on the last day of a trip. If a catcher/processor, the number of crew, excluding observer(s), on the last day of the weekly reporting period.

(C) *Gear type.* Use a separate logsheet for each gear type.

(1) Circle gear type used to harvest the fish. If gear is other than those listed, circle "Other" and describe. If using hook-and-line gear, enter the alphabetical letter that coincides with gear description.

(2) If gear information is the same on subsequent pages, mark the box instead of re-entering the gear type information.

(3) *Pot gear.* If you checked pot gear, enter the number of pots set and the number of pots lost (if applicable).

(4) *Hook-and-line gear.* If hook-and-line gear:

(i) Indicate whether gear is fixed hook (conventional or tub), autoline, or snap (optional, but may be required by IPHC regulations).

(ii) *Skates.* Indicate length of skate to the nearest foot (optional, but may be required by IPHC regulations), number of skates set, and number of skates lost (optional, but may be required by IPHC regulations).

(iii) *Hooks.* Indicate size of hooks, hook spacing in feet, number of hooks per skate (optional, but may be required by IPHC regulations).

(iv) *Seabird avoidance gear code.* Record seabird avoidance gear code(s)

(see § 679.24(e) and Table 19 to this part).

(D) *Permit numbers.* Enter the permit number(s) for the applicable fishery in which you participated.

(1) IFQ permit number of the operator and of each IFQ permit holder aboard the vessel.

(2) CDQ group number (if applicable).

(3) Halibut CDQ permit number (if applicable).

(4) Federal crab vessel permit number (if applicable).

(E) *Observer information.* Record the number of observers aboard, the name of the observer(s), and the observer cruise number(s).

(F) *Management program.* Use a separate logsheet for each management program. Indicate whether harvest occurred under one of the following management programs. If harvest is not under one of these management programs, leave blank:

(1) *Exempted Fishery.* Record exempted fishery permit number (see § 679.6).

(2) *Research Fishery.* Record research program permit number (see § 600.745(a) of this chapter).

(G) *Catch by set.* (See § 679.2 for definition of set). The operator must record the following information for each set, if applicable:

(1) If no catch occurred for a day, write "no catch;"

(2) Set number, sequentially by year;

(3) Gear deployment date (month-day), time (in military format, A.l.t.), and begin position coordinates (in lat and long to the nearest minute);

(4) Gear retrieval date (month-day), time (in military format, A.l.t.), and end position coordinates (in lat and long to the nearest minute);

(5) *Begin and end buoy or bag numbers* (optional, but may be required by IPHC regulations);

(6) *Begin and end gear depths,* recorded to the nearest fathom (optional, but may be required by IPHC regulations);

(7) *Target species code.* Enter the species code of the species you intend to catch;

(8) *Estimated haul weight.* Enter the total estimated haul weight of all retained species. Indicate whether to the nearest pound or to the nearest 0.001 mt (2.20 lb);

(9) *IR/IU Species (see § 679.27).* If a catcher/processor, enter species code of IR/IU species and estimated total round weight for each IR/IU species; indicate whether to the nearest pound or the nearest 0.001 mt (2.20 lb);

(10) Estimated total round weight of IFQ halibut and CDQ halibut to the nearest pound;

(11) Number and estimated total round weight of IFQ sablefish to the nearest pound;

(12) Circle to indicate whether IFQ sablefish product is Western cut (WC), Eastern cut (EC), or round weight (RD); and

(13) Number and scale weight of raw CR crab to the nearest pound.

(H) *Data entry time limits.* (1) The operator must record in the DFL or DCPL within 2 hours after completion of gear retrieval: Set number; time and date gear set; time and date gear hauled; begin and end position; CDQ group number, halibut CDQ permit number, IFQ permit number, and/or Federal crab vessel permit number (if applicable), number of pots set, and estimated total haul for each set.

(2) If a catcher vessel, the operator must record all other required information in the DFL within 2 hours after the vessel's catch is off-loaded, notwithstanding other time limits.

(3) If a catcher/processor, the operator must record all other required information in the DCPL by noon of the day following completion of production.

(4) If a catcher/processor, the operator must record product information in the DCPL by noon each day to record the previous day's production information.

* * * * *

(g) *Product transfer report (PTR)—(1) General requirements.* Except as provided in paragraph (g)(1)(i) through (vi) of this section:

(i) *Groundfish.* The operator of a mothership or catcher/processor or the manager of a shoreside processor or SFP must complete and submit a separate PTR for each shipment of groundfish and donated prohibited species caught in groundfish fisheries. A PTR is not required to accompany a shipment.

(ii) *IFQ halibut, IFQ sablefish, and CDQ halibut.* A Registered Buyer must submit a separate PTR for each shipment of halibut or sablefish for which the Registered Buyer submitted

an IFQ landing report or was required to submit an IFQ landing report. A PTR is not required to accompany a shipment.

(iii) *CR crab.* A Registered Crab Receiver (RCR) must submit a separate PTR for each shipment of crab for which the RCR submitted a CR crab landing report or was required to submit a CR crab landing report. A PTR is not required to accompany a shipment.

(2) *Exceptions—(i) Bait sales (non-IFQ groundfish only).* During one calendar day, the operator or manager may aggregate and record on one PTR the individual sales or shipments of non-IFQ groundfish to vessels for bait purposes during the day recording the amount of such bait product shipped from a vessel or facility that day.

(ii) *Retail sales—(A) IFQ halibut, IFQ sablefish, CDQ halibut, and non-IFQ groundfish.* During one calendar day, the operator, manager, or Registered Buyer may aggregate and record on one PTR the amount of transferred retail product of IFQ halibut, IFQ sablefish, CDQ halibut, and non-IFQ groundfish if each sale weighs less than 10 lb or 4.5 kg.

(B) *CR crab.* During one calendar day, the RCR may aggregate and record on one PTR the amount of transferred retail product of CR crab if each sale weighs less than 100 lb or 45 kg.

(iii) *Wholesale sales (non-IFQ groundfish only).* The operator or manager may aggregate and record on one PTR, wholesale sales of non-IFQ groundfish by species when recording the amount of such wholesale species leaving a vessel or facility in one calendar day, if invoices detailing destinations for all of the product are available for inspection by an authorized officer.

(iv) *Dockside sales.* (A) A person holding a valid IFQ permit, IFQ card, and Registered Buyer permit may conduct a dockside sale of IFQ halibut or IFQ sablefish with a person who has not been issued a Registered Buyer permit after all IFQ halibut and IFQ sablefish have been landed and reported in accordance with paragraph (l) of this section.

(B) A person holding a valid halibut CDQ permit, halibut CDQ card, and Registered Buyer permit may conduct a dockside sale of CDQ halibut with a person who has not been issued a Registered Buyer permit after all CDQ halibut have been landed and reported in accordance with paragraph (l) of this section.

(C) A Registered Buyer conducting dockside sales must issue a receipt to each individual receiving IFQ halibut,

CDQ halibut, or IFQ sablefish in lieu of a PTR. This receipt must include:

(1) Date of sale;
(2) Registered Buyer permit number;
(3) Weight by product of the IFQ halibut, CDQ halibut or IFQ sablefish transferred.

(D) A Registered Buyer must maintain a copy of each dockside sales receipt as described in § 679.5(l).

(v) *Transfer directly from the landing site to a processing facility (CDQ halibut, IFQ halibut, IFQ sablefish, or CR crab only).* A PTR is not required for transportation of unprocessed IFQ halibut, IFQ sablefish, CDQ halibut, or CR crab directly from the landing site to a facility for processing, provided the following conditions are met:

(A) A copy of the IFQ landing report receipt (Internet receipt) documenting the IFQ landing accompanies the offloaded IFQ halibut, IFQ sablefish, or CDQ halibut while in transit.

(B) A copy of the CR crab landing report receipt (Internet receipt) documenting the IFQ landing accompanies the offloaded CR crab while in transit.

(C) A copy of the IFQ landing report or CR crab landing report receipt is available for inspection by an authorized officer.

(D) The Registered Buyer submitting the IFQ landing report or RCR submitting the CR crab landing report completes a PTR for each shipment from the processing facility pursuant to paragraph (g)(1) of this section.

(3) *Time limits and submittal.* The operator of a mothership or catcher/processor, the manager of a shoreside processor or SFP, the Registered Buyer, or RCR must:

(i) Record all product transfer information on a PTR within 2 hours of the completion of the shipment.

(ii) Submit a PTR by facsimile or electronic file to OLE, Juneau, AK (907-586-7313), by 1200 hours, A.l.t., on the Tuesday following the end of the applicable weekly reporting period in which the shipment occurred.

(iii) If any information on the original PTR changes prior to the first destination of the shipment, submit a revised PTR by facsimile or electronic file to OLE, Juneau, AK (907-586-7313), by 1200 hours, A.l.t., on the Tuesday following the end of the applicable weekly reporting period in which the change occurred and indicate the confirmation number of the original PTR.

(4) *Required information.* The operator of a mothership or catcher/processor, the manager of a shoreside processor or SFP, the Registered Buyer,

or RCR must include the following information on a PTR:

(i) *Original or revised PTR.* Whether a submittal is an original or revised PTR. If revised, record the confirmation number of the original PTR.

(ii) *Shipper information.* Name, telephone number, and facsimile number of the representative. According to the following table:

If you are shipping...	Enter under "Shipper"...
(A) Non-IFQ ground-fish	Your processor's name, Federal fisheries or Federal processor permit number.

If you are shipping...	Enter under "Shipper"...
(B) IFQ halibut, CDQ halibut or IFQ sablefish	Your Registered Buyer name and permit number.
(C) CR crab	Your RCR name and permit number.
(D) Non-IFQ ground-fish, IFQ halibut, CDQ halibut or IFQ sablefish, and CR crab on the same PTR	(1) Your processor's name and Federal fisheries permit number or Federal processor permit number, (2) Your Registered Buyer's name and permit number, and (3) Your RCR name and permit number.

(iii) *Receiver information.* Using descriptions from the following table, enter receiver information, date and time of product transfer, location of product transfer (e.g., port, position coordinates, or city), mode of transportation, and intended route:

If you are the shipper and...	Then enter...			
	Receiver	Date & time of product transfer	Location of product transfer	Mode of transportation and intended route
(A) Receiver is on land and transfer involves one van, truck, or vehicle.	Receiver name and Federal fisheries or Federal processor permit number (if any).	Date and time when shipment leaves the plant.	Port or city of product transfer	Name of the shipping company; destination city and state or foreign country.
(B) Receiver is on land and transfer involves multiple vans, trucks, or vehicles.	Receiver name and Federal fisheries or Federal processor permit number (if any).	Date and time when loading of vans or trucks is completed each day.	Port or city of product transfer	Name of the shipping company; destination city and state or foreign country.
(C) Receiver is on land and transfer involves one airline flight.	Receiver name and Federal fisheries or Federal processor permit number (if any).	Date and time when shipment leaves the plant.	Port or city of product transfer	Name of the airline company; destination airport city and state.
(D) Receiver is on land and transfer involves multiple airline flights.	Receiver name and Federal fisheries or Federal processor permit number (if any).	Date and time of shipment when the last airline flight of the day leaves.	Port or city of product transfer	Name of the airline company(s); destination airport(s) city and state.
(E) Receiver is a vessel and transfer takes occurs at sea.	Vessel name and call sign	Start and finish dates and times of transfer.	Transfer position coordinates in latitude and longitude, in degrees and minutes.	The first destination of the vessel.
(F) Receiver is a vessel and transfer takes place in port.	Vessel name and call sign	Start and finish dates and times of transfer.	Port or position of product transfer.	The first destination of the vessel.
(G) Receiver is an agent (buyer, distributor, or shipping agent) and transfer is in a containerized van(s).	Agent name and location (city, state).	Transfer start and finish dates and times.	Port, city, or position of product transfer.	Name (if available) of the vessel transporting the van; destination port.
(H) You are aggregating individual retail sales for human consumption. (see paragraph 679.5(g)(2)).	"RETAIL SALES"	Date of transfer.	Port or city of product transfer	n/a
(I) You are aggregating individual bait sales during a day onto one PTR (non-IFQ groundfish only).	"BAIT SALES"	Date of transfer.	Port or city of product transfer	n/a

If you are the shipper and...	Then enter...			
	Receiver	Date & time of product transfer	Location of product transfer	Mode of transportation and intended route
(J) <i>Non-IFQ Groundfish only.</i> You are aggregating wholesale non-IFQ groundfish product sales by species during a single day onto one PTR and maintaining invoices detailing destinations for all of the product for inspection by an authorized officer.	"WHOLESALE SALES"	Time of the first sale of the day; time of the last sale of the day.	Port or city of product transfer	n/a

(iv) *Products shipped.* The operator, manager, Registered Buyer, or RCR must record the following information for each product shipped:

(A) *Species code and product code.*

(1) For non-IFQ groundfish, IFQ halibut, IFQ sablefish, and CDQ halibut, the species code and product code (Tables 1 and 2 to this part).

(2) For CR crab, the species code and product code (Tables 1 and 2 to 50 CFR part 680).

(B) *Species weight.* Use only if recording 2 or more species with 2 or more product types contained within the same production unit. Enter the actual scale weight of each product of each species to the nearest kilogram or pound (indicate which). If not applicable, enter "n/a" in the species weight column. If using more than one line to record species in one carton, use a brace "{" to tie the carton information together.

(C) *Number of units.* Total number of production units (blocks, trays, pans, individual fish, boxes, or cartons; if iced, enter number of totes or containers).

(D) *Unit weight.* Unit weight (average weight of single production unit as listed in "No. of Units" less packing materials) for each species and product code in kilograms or pounds (indicate which).

(E) *Total weight.* Total weight for each species and product code of shipment less packing materials in kilograms or pounds (indicate which).

(F) *Total or partial offload.* (1) If a mothership or catcher/processor, the operator must indicate whether fish or fish products are left onboard the vessel (partial offload) after the shipment is complete.

(2) If a partial offload, for the products remaining on board after the transfer, the operator must enter: species code, product code, and total product weight to the nearest kilogram or pound (indicate which) for each product.

* * * * *

(k) *U.S. Vessel Activity Report (VAR)*—(1) *Fish or fish product other than crab onboard.* Except as noted in paragraph (k)(4) of this section, the operator of a catcher vessel greater than 60 ft (18.3 m) LOA, a catcher/processor, or a mothership required to hold a Federal fisheries permit issued under this part and carrying fish or fish product onboard must complete and submit a VAR by facsimile or electronic file to OLE, Juneau, AK (907-586-7313) before the vessel crosses the seaward boundary of the EEZ off Alaska or crosses the U.S.-Canadian international boundary between Alaska and British Columbia.

(2) *Combination of non-IFQ groundfish with IFQ halibut, CDQ halibut, IFQ sablefish or CR crab.* If a vessel is carrying non-IFQ groundfish and IFQ halibut, CDQ halibut, IFQ sablefish or CR crab, the operator must submit a VAR in addition to an IFQ Departure Report required by paragraph (l)(4) of this section.

(3) *Revised VAR.* If fish or fish products are landed at a port other than the one specified on the VAR, the operator must submit a revised VAR showing the actual port of landing before any fish are offloaded.

(4) *Exemption: IFQ Departure Report.* A VAR is not required if a vessel is carrying only IFQ halibut, CDQ halibut, IFQ sablefish, or CR crab onboard and the operator has submitted an IFQ Departure Report required by paragraph (l)(4) of this section.

(5) *Information required.* (i) Whether original or revised VAR.

(ii) Name and Federal fisheries permit number of vessel.

(iii) Type of vessel (whether catcher vessel, catcher/processor, or mothership).

(iv) Name, daytime telephone number (including area code), and facsimile number and COMSAT number (if available) of representative.

(v) *Return report.* "Return," for purposes of this paragraph, means returning to Alaska. If the vessel is

crossing the seaward boundary of the EEZ off Alaska or crossing the U.S.-Canadian international boundary between Alaska and British Columbia into U.S. waters, indicate a "return" report and enter:

(A) Intended Alaska port of landing (see Table 14 to this part);

(B) Estimated date and time (hour and minute, Greenwich mean time) the vessel will cross the boundary; and

(C) The estimated position coordinates in latitude and longitude where the vessel will cross.

(vi) *Depart report.* "Depart" means leaving Alaska. If the vessel is crossing the seaward boundary of the EEZ off Alaska and moving out of the EEZ or crossing the U.S.-Canadian international boundary between Alaska and British Columbia and moving into Canadian waters, indicate a "depart" report and enter:

(A) The intended U.S. port of landing or country other than the United States;

(B) Estimated date and time (hour and minute, Greenwich mean time) the vessel will cross the boundary; and

(C) The estimated position coordinates in latitude and longitude where the vessel will cross.

(vii) *The Russian Zone.* Indicate whether the vessel is returning from fishing in the Russian Zone or is departing to fish in the Russian Zone.

(viii) *Fish or fish products.* For all fish or fish products (including non-groundfish) on board the vessel, enter:

(A) Harvest zone code;
 (B) species codes;
 (C) product codes; and
 (D) total fish product weight in lbs or to the nearest 0.001 mt (2.20 lb).

(i) *IFQ halibut, CDQ halibut, IFQ sablefish, or CR crab R&R.* In addition to the R&R requirements in this section, in 50 CFR 680.5 with respect to CR crab, and as prescribed in the annual management measures published in the Federal Register pursuant to § 300.62 of this title, the following reports and authorizations are required, when

applicable: IFQ Prior Notice of Landing, Product Transfer Report (see § 679.5(g)), IFQ landing report, IFQ Transshipment Authorization, and IFQ Departure Report.

- (2) * * *
- (iii) * * *

(M) After the Registered Buyer enters the landing data in the Internet submission form(s) and receipts are printed, the Registered Buyer, or his/her representative, and the IFQ cardholder or CDQ cardholder must sign the receipts to acknowledge the accuracy of the IFQ landing report.

(iv) Submittals. Except as indicated in paragraph (l)(2)(iv)(C) of this section, IFQ landing reports must be submitted electronically to OLE, Juneau, AK by using the Internet as indicated below:

(C) *Manual landing report.* Waivers from the Internet reporting requirement can only be granted in writing on a case-by-case basis by a local clearing officer. If a waiver is granted, manual landing instructions must be obtained from OLE, Juneau, AK, at 800-304-4846 (Select Option 1). Registered Buyers must complete and submit manual landing reports by facsimile to OLE, Juneau, AK, at 907-586-7313. When a waiver is issued, the following additional information is required: whether the manual landing report is an original or revised; and name, telephone number, and facsimile number of individual submitting the manual landing report.

(D) *Properly debited landing.* A properly concluded printed Internet submission receipt or a manual landing report receipt which is sent by facsimile from OLE to the Registered Buyer, and which is then signed by both the Registered Buyer and cardholder constitutes confirmation that OLE received the landing report and that the cardholder's account is properly debited. A copy of each receipt must be maintained by the Registered Buyer as described in § 679.5(l).

(3) * * *

(i) No person may transship processed IFQ halibut, CDQ halibut, IFQ sablefish, or CR crab between vessels without authorization by a local clearing officer. Authorization from a local clearing officer must be obtained for each instance of transshipment at least 24 hours before the transshipment is intended to commence.

(4) *IFQ departure report—(i) General requirements—(A) Time limit and submittal.* A vessel operator who

intends to make a landing of IFQ halibut, CDQ halibut, IFQ sablefish, or CR crab at any location other than in an IFQ regulatory area or in the State of Alaska must submit an IFQ Departure Report, by telephone, to OLE, Juneau, AK, at 800-304-4846 or 907-586-7163 between the hours of 0600 hours, A.l.t., and 2400 hours, A.l.t.

(B) *Completion of fishing.* A vessel operator must submit an IFQ Departure Report after completion of all fishing and prior to departing the waters of the EEZ adjacent to the jurisdictional waters of the State of Alaska, the territorial sea of the State of Alaska, or the internal waters of the State of Alaska when IFQ halibut, CDQ halibut, IFQ sablefish, or CR crab are on board.

(C) *Permit—(1) Registered Crab Receiver permit.* A vessel operator submitting an IFQ Departure Report for CR crab must have a Registered Crab Receiver permit.

(2) *Registered Buyer permit.* A vessel operator submitting an IFQ Departure Report for IFQ halibut, CDQ halibut, or IFQ sablefish must have a Registered Buyer permit.

(D) *First landing of any species.* A vessel operator submitting an IFQ Departure Report must submit IFQ landing reports for all IFQ halibut, CDQ halibut, IFQ sablefish, and CR crab on board at the same time and place as the first landing of any IFQ halibut, CDQ halibut, IFQ sablefish, or CR crab.

(E) *Permits on board.* (1) A vessel operator submitting an IFQ Departure Report to document IFQ halibut, IFQ sablefish, or CR crab must have one or more IFQ cardholders on board with a combined IFQ balance equal to or greater than all IFQ halibut, IFQ sablefish, and CR crab on board the vessel.

(2) A vessel operator submitting an IFQ Departure Report to document CDQ halibut must ensure that one or more CDQ cardholders are on board with enough remaining CDQ halibut balance to harvest amounts of CDQ halibut equal to or greater than all CDQ halibut on board.

(ii) *Required information.* When submitting an IFQ Departure Report, the vessel operator must provide the following information:

(A) Intended date, time (A.l.t.), and location of landing;

(B) Vessel name and ADF&G vessel registration number;

(C) Vessel operator's name and Registered Buyer permit or Registered Crab Receiver permit number;

(D) Halibut IFQ, halibut CDQ, sablefish IFQ, and CR crab permit numbers of IFQ and CDQ cardholders on board:

(E) *Area of harvest.* (1) If IFQ or CDQ halibut, then halibut regulatory areas (see Figure 15 to this part).

(2) If IFQ sablefish, then sablefish regulatory areas (see Figure 14 to this part).

(3) If CR crab, then the crab rationalization fishery code (see Table 1 to part 680).

(F) Estimated total weight as appropriate of IFQ halibut, CDQ halibut, IFQ sablefish, or CR crab on board (lb/kg/mt).

(iii) *Revision to Departure Report.* A vessel operator who intends to make an IFQ landing at a location different from the location named on the IFQ Departure report must submit a revised report naming the new location at least 12 hours in advance of the offload. Revisions must be submitted by telephone, to OLE, Juneau, AK, at 800-304 4846 or 907 586 7163 between the hours of 0600 hours, A.l.t., and 2400 hours, A.l.t.

7. In § 679.7, revise paragraph (a)(15) and (k)(1)(iii), remove and reserve paragraphs (k)(2)(ii), (k)(3)(iii), (k)(4)(ii), and remove paragraph (k)(8) to read as follows:

§ 679.7 Prohibitions.

(a) * * *

(15) *Federal processor permit.* Receive, purchase or arrange for purchase, discard, or process groundfish harvested in the GOA or BSAI by a shoreside processor or SFP that does not have on site a valid Federal processor permit issued pursuant to § 679.4(f).

(k) * * *

(1) * * *

(iii) *Processing BSAI crab.* Use a listed AFA catcher/processor to process any crab species harvested in the BSAI.

8. In § 679.28, add a new paragraph (b)(1)(v) and revise paragraph (f)(4)(i) to read as follows:

§ 679.28 Equipment and operational requirements.

(b) * * *

(1) * * *

(v) *Exceptions.* A scale manufacturer or their representative may request that NMFS approve a custom built automatic hopper scale under the following conditions:

(A) The scale electronics are the same as those used in other scales on the Regional Administrator's list of scales eligible for approval:

(B) Load cells have received Certificates of Conformance from NTEP or OIML;

(C) The scale compensates for motion in the same manner as other scales made by that manufacturer which have been listed on the Regional Administrator's list of scales eligible for approval;

(D) The scale, when installed, meets all of the requirements set forth in paragraph 3 of Appendix A to this part, except those requirements set forth in paragraph 3.2.1.1.

* * * * *

(f) * * *

(4) * * *

(i) Contact the NMFS Enforcement Division by Facsimile at 907-586-7703

and provide: the VMS transmitter ID, the vessel name, the Federal Fisheries Permit number or Federal Crab Vessel Permit number.

* * * * *

9. In § 679.31, revise paragraph (d) to read as follows:

§ 679.31 CDQ reserves.

* * * * *

(d) *Crab CDQ reserves.* Crab CDQ reserves for crab species governed by the Crab Rationalization Program are specified at § 680.40 (a)(1). For Norton Sound red king crab, 7.5 percent of the guideline harvest level specified by the State of Alaska is allocated to the crab CDQ reserve.

10. In § 679.43, revise paragraph (a) to read as follows:

§ 679.43 Determinations and appeals.

(a) *General.* This section describes the procedure for appealing initial administrative determinations made under part 300, part 679, and part 680. This section does not apply to initial administrative determinations made under § 679.30(d).

* * * * *

§ 679.65 [Reserved]

11. Remove and reserve § 679.65.

12. In part 679, Tables 14a, 14b, and 15 are revised; and Tables 13 and 14c are added to read as follows:

TABLE 13 TO PART 679—TRANSFER FORM SUMMARY

If participant type is ...	And has Fish product onboard	And is involved in this activity	Submit				Issue	Possess
			VAR (\$ 679.5(k))	PTR (\$ 679.5(g))	Trans-ship (\$ 679.5(l)(3))	Departure Report (\$ 679.5(l)(4))	Dockside Sales Receipt (\$ 679.5(g)(1)(v))	Landing Receipt (\$ 679.5(g)(1)(vi))
Catcher vessel greater than 60 ft LOA, mothership or catcher/processor	Only non-IFQ groundfish.	Vessel leaving or entering Alaska	X					
Catcher vessel greater than 60 ft LOA, mothership or catcher/processor	Only IFQ sablefish, IFQ halibut, CDQ halibut, or CR crab	Vessel leaving Alaska				X		
Catcher vessel greater than 60 ft LOA, mothership or catcher/processor	Combination of IFQ sablefish, IFQ halibut, CDQ halibut, or CR crab and non-IFQ groundfish	Vessel leaving Alaska	X			X		
Mothership, catcher/processor, shoreside processor, or SFP	Non-IFQ groundfish	Transfer of product		X				
Registered Buyer	IFQ sablefish, IFQ halibut or CDQ halibut	Transfer of product		X				
Registered Crab Receiver	CR crab	Transfer of product		X				
A person holding a valid IFQ permit, IFQ card, and Registered Buyer permit	IFQ sablefish, IFQ halibut or CDQ halibut	Transfer of product					XXX	
Registered Buyer	IFQ sablefish, IFQ halibut, or CDQ halibut	Transfer from landing site to Registered Buyer's processing facility						XX
Registered Crab Receiver	CR crab	Transfer from landing site to RCR's processing facility						XX
Vessel operator	Processed IFQ sablefish, IFQ halibut, CDQ halibut, or CR crab	Transshipment between vessels			XXXX			

"X" indicates under what circumstances each report is submitted.

"XX" indicates that the document must accompany the transfer of IFQ species from landing site to processor.

"XXX" indicates receipt must be issued to each receiver in a dockside sale.

"XXXX" indicates authorization must be obtained 24 hours in advance.

TABLE 14A TO PART 679--PORT OF LANDING CODES¹: ALASKA

Port Name	NMFS Code	ADF&G Code
Adak	186	ADA
Akutan, Akutan Bay	101	AKU
Alitak	103	ALI
Anchorage	105	ANC
Angoon	106	ANG
Aniak	n/a	ANI
Anvik	n/a	ANV
Atka	107	ATK
Auke Bay	136	JNU
Beaver Inlet	119	DUT
Bethel	n/a	BET
Captains Bay	119	DUT
Cheformak	189	n/a
Chignik	113	CHG
Cordova	115	COR
Craig	116	CRG
Dillingham	117	DIL
Douglas	136	JNU
Dutch Harbor/Unalaska	119	DUT
Egegik	122	EGE
Ekuk	n/a	EKU
Elfin Cove	123	ELF
Emmonak	n/a	EMM
Excursion Inlet	124	XIP
False Pass	125	FSP
Fairbanks	n/a	FBK
Gatena	n/a	GAL
Glacier Bay	n/a	GLB
Glennallen	n/a	GLN
Gustavus	127	GUS
Haines	128	HNS
Halibut Cove	130	n/a
Homer	132	HOM
Hoonah	133	HNH
Hydaburg	n/a	HYD
Hyder	134	HDR

TABLE 14A TO PART 679--PORT OF LANDING CODES¹: ALASKA--Continued

Port Name	NMFS Code	ADF&G Code
Juneau	136	JNU
Kake	137	KAK
Kaltag	n/a	KAL
Kasilof	138	KAS
Kenai	139	KEN
Kenai River	139	KEN
Ketchikan	141	KTN
King Cove	142	KCO
King Salmon	143	KNG
Kipnuk	144	n/a
Klawock	145	KLA
Kodiak	146	KOD
Kotzebue	n/a	KOT
La Conner	n/a	LAC
Mekoryuk	147	n/a
Mellakatia	148	MET
Moser Bay	n/a	MOS
Naknek	149	NAK
Nenana	n/a	NEN
Nikiski (or Nikishka)	150	NIK
Ninilchik	151	NIN
Nome	152	NOM
Nunivak Island	n/a	NUN
Old Harbor	153	OLD
Other Alaska ¹	499	UNK
Pelican	155	PEL
Petersburg	156	PBG
Port Alexander	158	PAL
Port Armstrong	n/a	PTA
Port Bailey	159	PTB
Port Graham	160	GRM
Port Lions	n/a	LIO
Port Moller	n/a	MOL
Port Protection	161	n/a
Quinhagak	187	n/a

TABLE 14A TO PART 679--PORT OF LANDING CODES¹: ALASKA--Continued

Port Name	NMFS Code	ADF&G Code
Sand Point	164	SPT
Savoonga	165	n/a
Seldovia	166	SEL
Seward	167	SEW
Sitka	168	SIT
Skagway	169	SKG
Soldotna	n/a	SOL
St. George	170	STG
St. Mary	n/a	STM
St. Paul	172	STP
Tee Harbor	136	JNU
Tenakee Springs	174	TEN
Togiak	176	TOG
Toksook Bay	177	n/a
Tununak	178	n/a
Ugashik	n/a	UGA
Unalakleet	n/a	UNA
Valdez	181	VAL
Wasilla	n/a	WAS
Whittier	183	WHT
Wrangell	184	WRN
Yakutat	185	YAK

¹ To report a landing at a location not currently assigned a location code number: use the code for "Other" for the state or country at which the landing occurs and notify NMFS of the actual location so that the list may be updated. For example, to report a landing for Levelock, Alaska which currently has no code assigned, use code "499" "Other AK."

TABLE 14B TO PART 679--PORT OF LANDING CODES: NON-ALASKA (CALIFORNIA, OREGON, CANADA, WASHINGTON)

Port Name	NMFS Code	ADF&G Code
CALIFORNIA		
Eureka	500	EUR
Other California ¹	599	n/a
CANADA		

TABLE 14B TO PART 679—PORT OF LANDING CODES: NON-ALASKA (CALIFORNIA, OREGON, CANADA, WASHINGTON)—Continued

Port Name	NMFS Code	ADF&G Code
Other Canada ¹	899	n/a
Port Edward	802	PRU
Prince Rupert	802	PRU
OREGON		
Astoria	600	AST
Newport	603	NPT
Other Oregon ¹	699	n/a
Portland	n/a	POR
Warrenton	604	n/a
WASHINGTON		
Anacortes	700	ANA

TABLE 14B TO PART 679—PORT OF LANDING CODES: NON-ALASKA (CALIFORNIA, OREGON, CANADA, WASHINGTON)—Continued

Port Name	NMFS Code	ADF&G Code
Bellingham	702	n/a
Blaine	717	BLA
Everett	704	n/a
La Conner	708	LAC
Olympia	n/a	OLY
Other Washington ¹	799	n/a
Seattle	715	SEA
Tacoma	n/a	TAC

¹ To report a landing at a location not currently assigned a location code number, use the code for "Other" for the state or country at which the landing occurs and notify NMFS of the actual location so that the list may be updated. For example, to report a landing for Vancouver, which currently has no code assigned, use "899" "Other Canada."

TABLE 14C TO PART 679—AT-SEA OPERATION TYPE CODES TO BE USED AS PORT CODES FOR VESSELS MATCHING THIS TYPE OF OPERATION

Code	Description
FCP	Floating catcher processor
FLD	Floating domestic mothership
IFP	Inshore floating processor - processing in State of Alaska waters only

TABLE 15 TO PART 679—GEAR CODES, DESCRIPTIONS, AND USE (X INDICATES WHERE THIS CODE IS USED)

Name of Gear	Use Alphabetic Code to Complete the Following:			Use Numeric Code to Complete the Following:				
	Alpha Gear Code	NMFS Logbooks & Paper Forms ¹	Electronic WPR & Check-in/Check-out Code ¹	Numeric Gear Code	Shoreside Electronic Logbook (SPELR)	IFQ Internet & Forms	CR Crab	ADF&G
Diving	OTH	X	X	11	X			X
Dredge	OTH	X	X	22	X			X
Dredge, hydro/mechanical	OTH	X	X	23	X			X
Fish wheel	OTH	X	X	08	X			X
Gillnet, drift	OTH	X	X	03	X			X
Gillnet, herring	OTH	X	X	34	X			X
Gillnet, set	OTH	X	X	04	X			X
Gillnet, sunken	OTH	X	X	41	X			X
Hand line/jig/troll (IFQ name: hand troll)	n/a			05	X	X		X
Handpicked	OTH	X	X	12	X			X
Hatchery	n/a			77	X			X
Hook-and-line	HAL	X	X	61	X	X		X
Jig, mechanical (IFQ name: jigs)	JIG	X	X	26	X	X		X
Net, dip	OTH	X	X	13	X			X
Net, ring	OTH	X	X	10	X			X
Other/specify	OTH	X	X	99	X			X
Pair trawl	(1)			37				X

TABLE 15 TO PART 679—GEAR CODES, DESCRIPTIONS, AND USE (X INDICATES WHERE THIS CODE IS USED)—Continued

Name of Gear	Use Alphabetic Code to Complete the Following:			Use Numeric Code to Complete the Following:				
	Alpha Gear Code	NMFS Logbooks & Paper Forms ¹	Electronic WPR & Check-in/Check-out Code ¹	Numeric Gear Code	Shoreside Electronic Logbook (SPELR)	IFQ Internet & Forms	CR Crab	ADF&G
Pot	POT	X	X	91	X	X	X	X
Pound	OTH	X	X	21	X			X
Seine, purse	OTH	X	X	01	X			X
Seine, beach	OTH	X	X	02	X			X
Shovel	OTH	X	X	18	X			X
Trap	OTH	X	X	90	X			X
Trawl, beam	(1)			17	X			X
Trawl, double otter	(1)			27	X			X
Trawl, nonpelagic/bottom	NPT	X	X	07	X			X
Trawl, pelagic/midwater	PTR	X	X	47	X			X
Troll, dinglebar	TROLL	X	X	25	X	X		X
Troll, power gurdy	TROLL	X	X	15	X	X		X
Welr	OTH	X	X	14	X			X

¹For groundfish logbooks, forms, electronic WPR, electronic check-in/out reports: all trawl gear must be reported as either nonpelagic trawl (NPT) or pelagic trawl (PTR).

13. Add part 680 to read as follows:

PART 680—SHELLFISH FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

Subpart A—General

Sec.

- 680.1 Purpose and scope.
- 680.2 Definitions.
- 680.3 Relation to other laws.
- 680.4 Permits.
- 680.5 Recordkeeping and reporting (R&R).
- 680.6 Crab economic data report (EDR).
- 680.7 Prohibitions.
- 680.8 Facilitation of enforcement.
- 680.9 Penalties.

Subpart B—Management Measures

- 680.20 Arbitration System.
- 680.21 Crab fishery cooperatives.
- 680.22 Sideboard protections for GOA groundfish fisheries.
- 680.23 Equipment and operational requirements.
- 680.30 [Reserved]

Subpart C—Individual Fishing Quota Management Measures

- 680.40 Quota Share (QS), Processor QS (PQS), Individual Fishing Quota (IFQ), and Individual Processor Quota (IPQ) Issuance.
- 680.41 Transfer of QS and IFQ.

680.42 Limitations on use of QS, PQS, IFQ, and IPQ.

680.43 Determinations and appeals.

680.44 Cost recovery.
Table 1 to Part 680—Crab Rationalized (CR) Fisheries

Table 2 to Part 680—Crab Species Codes

Table 3a to Part 680—Crab Delivery Condition Codes

Table 3b to Part 680—Crab Disposition or Product Codes

Table 4 to Part 680—Crab Process Codes

Table 5 to Part 680—Crab Size

Table 6 to Part 680—Crab Grade

Table 7 to Part 680—Eligibility for Initial Issuance of Crab QS by Crab QS Fishery

Table 8 to Part 680—Initial QS and PQS Pool for Each Crab QS Fishery

Table 9 to Part 680—Eligibility for Initial Issuance of Crab PQS by Crab QS Fishery

Authority: 16 U.S.C. 1862.

Subpart A—General

§ 680.1 Purpose and scope.

Regulations in this part implement policies developed by the North Pacific Fishery Management Council and approved by the Secretary of Commerce in accordance with the Magnuson-Stevens Fishery Conservation and Management Act. In addition to part 600 of this chapter, these regulations implement the following:

(a) *Fishery Management Plan (FMP) for Bering Sea and Aleutian Islands King and Tanner Crabs.* Regulations in this part govern commercial fishing for, and processing of, king and Tanner crabs in the Bering Sea and Aleutian Islands Area pursuant to section 313(j) of the Magnuson-Stevens Act, including regulations implementing the Crab Rationalization Program for crab fisheries in the Bering Sea and Aleutian Islands Area, and including regulations superseding State of Alaska regulations applicable to the commercial king and Tanner crab fisheries in the Exclusive Economic Zone (EEZ) of the Bering Sea and Aleutian Islands Area that are determined to be inconsistent with the FMP.

(b) *License Limitation Program.* Commercial fishing for crab species not included in the Crab Rationalization Program for crab fisheries of the Bering Sea and Aleutian Islands Area remains subject to the License Limitation Program for the commercial crab fisheries in the Bering Sea and Aleutian Islands Area under part 679 of this chapter.

§ 680.2 Definitions.

In addition to the definitions in the Magnuson-Stevens Act, in 50 CFR part

600, and § 679.2 of this chapter, the terms used in this part have the following meanings:

Adak community entity means the non-profit entity incorporated under the laws of the state of Alaska that represents the community of Adak and has a board of directors elected by the residents of Adak.

Affiliation means a relationship between two or more entities in which one directly or indirectly owns or controls a 10-percent or greater interest in, or otherwise controls another, or a third entity directly or indirectly owns or controls a 10-percent or greater interest in, or otherwise controls both. For the purpose of this definition, the following terms are further defined:

(1) **Entity**. An entity may be an individual, corporation, association, partnership, joint-stock company, trust, or any other type of legal entity, any receiver, trustee in bankruptcy or similar official or liquidating agent, or any organized group of persons whether incorporated or not, that holds direct or indirect interest in:

(i) QS, PQS, IFQ, or IPQ; or

(ii) For purposes of the EDR, a vessel or processing plant operating in CR fisheries.

(2) **Indirect interest**. An indirect interest is one that passes through one or more intermediate entities. An entity's percentage of indirect interest in a second entity is equal to the entity's percentage of direct interest in an intermediate entity multiplied by the intermediate entity's direct or indirect interest in the second entity.

(3) **Controls a 10-percent or greater interest**. An entity controls a 10-percent or greater interest in a second entity if the first entity:

(i) Controls a 10-percent ownership share of the second entity, or

(ii) Controls 10-percent or more of the voting stock of the second entity.

(4) **Otherwise controls**. An entity otherwise controls another when the first entity has the power through any other means whatsoever to exercise a controlling influence over the management or policies of the other entity, unless such power is solely the result of an official position with such entity.

Arbitration IFQ means:

(1) Class A CVO IFQ held by a person who is not a holder of PQS or IPQ and who is not affiliated with any holder of PQS or IPQ.

(2) Prior to July 1, 2008, CVC IFQ held by a person who is not a holder of PQS or IPQ and who is not affiliated with any holder of PQS or IPQ that the holder has elected to submit to the Arbitration System, and

(3) After July 1, 2008, Class A CVC IFQ held by a person who is not a holder of PQS or IPQ and is not affiliated with any holder of PQS or IPQ.

(4) IFQ held by a crab harvesting cooperative so long as no member of that crab harvesting cooperative:

(i) Holds PQS or IPQ; or

(ii) Is affiliated with a person who holds PQS or IPQ.

Arbitration QS means:

(1) CVO QS held by a person who is not a holder of PQS or IPQ and is not affiliated with any holder of PQS or IPQ.

(2) Prior to July 1, 2008, CVC QS held by a person who is not a holder of PQS or IPQ and is not affiliated with any holder of PQS or IPQ and that the holder has elected to submit to the arbitration process,

(3) After July 1, 2008, CVC QS held by a person who is not a holder of PQS or IPQ and is not affiliated with any holder of PQS or IPQ.

Arbitration System means the system established by the contracts required by § 680.20 including the process by which the Market Report and Non-Binding Price Formula are produced and the Binding Arbitration process.

Assessed value means the most recent value for a vessel and gear provided in a marine survey.

Auditor means an examiner employed by, or under contract to, the data collection agent to verify data submitted in an economic data report.

Blind data means any data collected from the economic data report by the data collection agent that are subsequently amended by removing personal identifiers, including, but not limited to social security numbers, crew permit numbers, names and addresses, Federal fisheries permit numbers, Federal processor permit numbers, Federal tax identification numbers, State of Alaska vessel registration and permit numbers, and by adding in their place a nonspecific identifier.

Box size means the capacity of a crab-packing container in kilograms or pounds.

BSAI crab means those crab species governed under the Fishery Management Plan (FMP) for Bering Sea/Aleutian Islands King and Tanner Crabs.

BSAI Crab Capacity Reduction Program means the program authorized by Public Law 106-554, as Amended by Public Law 107-20 and Public Law 107-117.

BSAI crab fisheries means those crab fisheries governed under the Fishery Management Plan (FMP) for Bering Sea/Aleutian Islands King and Tanner Crabs.

Captain means, for the purposes of the EDR, a vessel operator.

Catcher/Processor (CP) means a vessel that is used for catching crab and processing that crab.

Catcher vessel means a vessel that is used for catching crab and that does not process crab on board.

CDQ community means a community eligible to participate in the Western Alaska Community Development Program under subpart C of 50 CFR part 679.

CDQ group means a CDQ group as that term is defined at 50 CFR 679.2.

Committed IFQ means:

(1) Any Arbitration IFQ for which the holder of such IFQ has agreed or committed to delivery of crab harvested with the IFQ to the holder of previously uncommitted IPQ and for which the holder of the IPQ has agreed to accept delivery of that crab, regardless of whether such agreement specifies the price or other terms for delivery, or

(2) Any Arbitration IFQ for which, on or after the date which is 25 days prior to the opening of the first crab fishing season in the QS crab fishery for such IFQ, the holder of the IFQ has unilaterally committed to delivery of crab harvested with the IFQ to the holder of previously uncommitted IPQ, regardless of whether the IFQ and IPQ holders have reached an agreement that specifies the price or other terms for delivery.

Committed IPQ means any IPQ for which the holder of such IPQ has received a commitment of delivery from a holder of Arbitration IFQ such that the Arbitration IFQ is committed IFQ, regardless of whether the Arbitration IFQ and IPQ holders have reached an agreement that specifies the price or other terms for delivery.

CP standard price means price, expressed in U.S. dollars per raw crab pound, for all CR crab landed by a CP as determined for each crab fishing year by the Regional Administrator and documented in a CP standard price list published by NMFS.

Crab cooperative IFQ means the annual catch limit of IFQ crab that may be harvested by a crab harvesting cooperative that is lawfully allocated a harvest privilege for a specific portion of the TAC of a CR fishery.

Crab cost recovery fee liability means that amount of money, in U.S. dollars, owed to NMFS by a CR allocation holder or RCR as determined by multiplying the appropriate ex-vessel value of the amount of CR crab debited from a CR allocation by the appropriate crab fee percentage.

Crab fee percentage means that positive number no greater than 3 percent determined for each crab fishing year by the Regional Administrator and

used to calculate the crab cost recovery fee liability for a CR allocation holder under the Crab Rationalization Program.

Crab fishing year means the period from July 1 of one calendar year through June 30 of the following calendar year.

Crab grade means a grading system to describe the quality of crab.

(1) Grade 1 means standard or premium quality crab, and

(2) Grade 2 means below standard quality crab.

Crab Individual Fishing Quota (Crab IFQ) means the annual catch limit of a CR fishery that may be harvested by a person who is lawfully allocated a harvest privilege for a specific portion of the TAC of a CR fishery with the following designations or with the designation as a crab IFQ hired master:

(1) **Catcher Vessel Crew IFQ (CVC)** means a permit to annually harvest, but not process, a CR crab on board a vessel.

(2) **Catcher Vessel Owner IFQ (CVO)** means a permit to annually harvest, but not process, a CR crab on board a vessel.

(i) **Class A IFQ** means IFQ that is required to be delivered to a processor holding unused IPQ.

(ii) **Class B IFQ** means IFQ that is not required to be delivered to a processor holding unused IPQ.

(3) **Catcher/Processor Owner IFQ (CPO)** means a permit to annually harvest and process a CR crab with that vessel.

(4) **Catcher/Processor Crew IFQ (CPC)** means a permit to annually harvest and process a CR crab with that vessel.

Crab IFQ hired master means a person who holds a crab IFQ hired master permit issued under § 680.4.

Crab IFQ permit holder means the person identified on an IFQ permit.

Crab LLP license history means for any particular crab LLP license: the total legal landings made on the vessel or vessels that gave rise to that license and any total legal landings made under the authority of that license.

Crab quota share (crab QS) means a permit the face amount of which is used as the basis for the annual calculation and allocation of a person's crab IFQ with the following designations:

(1) **Catcher vessel crew CVC QS** means a permit the face amount of which is used as the basis for the annual calculation and allocation of crab IFQ to qualified persons.

(2) **Catcher vessel owner (CVO) QS** means a permit the face amount of which is used as the basis for the annual calculation and allocation of crab IFQ to qualified persons.

(3) **Catcher/processor owner (CPO) QS** means a permit the face amount of which is used as the basis for the annual calculation and allocation of crab IFQ to qualified persons.

(4) **Catcher/processor crew (CPC) QS** means a permit the face amount of which is used as the basis for the annual calculation and allocation of crab IFQ to qualified persons.

Crab QS fishery means those CR fisheries under Table 1 to this part that require the use of QS and PQS and their resulting IFQ and IPQ to harvest and process IFQ crab.

Crab QS program means the individual fishing quota (IFQ) or individual processing quota (IPQ) programs for CR crab of the BSAI off Alaska and governed by regulations under this part.

Crab QS regional designation means the designation of QS or PQS and the associated IFQ and IPQ subject to regional delivery requirements in this part.

Crab Rationalization (CR) crab means those crab species subject to management under the Crab Rationalization Program described in Table 1 to this part.

Crab Rationalization (CR) Program means the individual fishing quota (IFQ), individual processing quota (IPQ), Community Development Quota (CDQ), and the Adak community allocation programs, including all management, monitoring, and enforcement components, for Bering Sea/Aleutian Islands King and Tanner Crabs in waters off Alaska governed by the regulations of this part.

Crab rationalized (CR) allocation means any allocation of CR crab authorized under the QS/IFQ, PQS/IPQ, CDQ, or the Adak community allocation programs.

Crab rationalized (CR) fisheries means those fisheries defined in Table 1 to part 680.

Crew means:

(1) Any individual, other than the captain or fisheries observers, working on a vessel that is engaged in fishing.

(2) For the purposes of the EDR, each employee on a vessel, excluding the captain, that participated in any CR fishery.

Custom processing means processing of crab undertaken on behalf of another person.

Data collection agent (DCA) means the entity selected by the Regional Administrator to distribute an economic data report (EDR) to a person required to complete it, to receive the completed EDR, to review and verify the accuracy of the data in the EDR, and to provide those data to authorized recipients.

Days at Sea means, for the purpose of the EDR, the number of days spent at sea while fishing for crab, including travel time to and from fishing grounds.

Economic data report (EDR) means the report of cost, labor, earnings, and revenue data for catcher vessels, catcher/processors, shoreside crab processors, and stationary floating crab processors participating in CR fisheries.

Eligible crab community (ECC) means a community in which at least 3 percent of the initial allocation of processor quota share of any crab fishery is allocated. The specific communities include:

(1) CDQ Communities.

(i) Akutan;

(ii) False Pass;

(iii) St. George; and

(iv) St. Paul.

(2) Non-CDQ Communities.

(i) Dutch Harbor;

(ii) Kodiak;

(iii) King Cove;

(iv) Port Moller; and

(v) Adak.

Eligible crab community (ECC) entity means a non-profit organization specified under § 680.41(j)(2) that is designated by an ECC other than Adak to represent it for the purposes of engaging in the right of first refusal of transfer of crab PQS or IPQ outside the ECC under contract provisions set forth under § 680.40(m). For those ECCs that also are CDQ communities, the ECC entity is the CDQ group to which the ECC is a member.

Eligible crab community organization (ECCO) means a non-profit organization that represents at least one ECC as defined in this part and that has been approved by the Regional Administrator to obtain by transfer and hold crab QS and to lease IFQ resulting from the crab QS on behalf of an ECC.

Eligible community resident means, for purposes of the Crab QS program, any individual who:

(1) Is a citizen of the United States;

(2) Has maintained a domicile in the ECC from which the individual requests to lease crab IFQ for at least 12 consecutive months immediately preceding the time when the assertion of residence is made and who is not claiming residency in another community, state, territory, or country; and

(3) Is otherwise eligible to receive crab QS or IFQ by transfer.

Ex-vessel value means:

(1) **For the shoreside processing sector.** The total U.S. dollar amount of all compensation, monetary and non-monetary, including any retro-payments, received by a CR allocation holder for the purchase of any CR crab debited from the CR allocation described in terms of raw crab pounds.

(2) **For the catcher/processor sector.** The total U.S. dollar amount of CR crab

landings as calculated by multiplying the number of raw crab pounds debited from the CR allocation by the appropriate CP standard price determined by the Regional Administrator.

Finished pounds means the total weight of processed product, not including container, in pounds.

IFQ account means the amount of crab IFQ in round pounds that is held by a person at any particular time for a crab QS fishery, sector, region, and class.

IFQ crab means crab species listed in Table 1 to this part subject to management under the crab QS program.

Initial processor quota share pool means the total number of processor quota share units for each crab QS fishery which is the basis of initial processor quota share allocations.

Initial quota share pool means the total number of non-processor quota share units for each CR fishery which is the basis of initial QS allocations.

Individual processor quota (IPQ) means the annual amount of crab that may be processed by a person who is lawfully allocated a processing privilege for a specific portion of the TAC for a CR fishery.

IPQ account means the amount of crab IPQ in round pounds that is held by a person at any particular time for a CR fishery and region.

Landing means the transfer of raw crab harvested by a vessel prior to that crab being reported on a CR crab landing report.

(1) For catcher/processors, the amount of crab retained during a reporting period constitutes a landing.

(2) For catcher vessels, the amount of crab landed from the boat at a single location/time constitutes a landing.

Lease of QS/IFQ or PQS/IPQ means a temporary, annual transfer of crab IFQ or IPQ without the underlying QS or PQS.

Leaseholder means, for purposes of the EDR, a person who:

(1) Is identified as the leaseholder in a written lease of a catcher vessel, catcher/processor, shoreside crab processor, or stationary floating crab processor, or

(2) Pays the expenses of a catcher vessel, catcher/processor, shoreside crab processor, or stationary floating crab processor, or

(3) Claims expenses for the catcher vessel, catcher/processor, shoreside crab processor, or stationary floating crab processor as a business expense on schedule C of his/her Federal income tax return or on a state income tax return.

Mutual Agreement for purposes of the Arbitration System means the consent and agreement of Arbitration Organizations that represent an amount of Arbitration QS equal to more than 50 percent of all the Arbitration QS in a fishery, and an amount of PQS equal to more than 50 percent of all the PQS in a fishery based upon the Annual Arbitration Organization Reports.

Newly constructed vessel means, for the purposes of initial QS issuance, a vessel on which the keel was laid by June 10, 2002.

Official crab rationalization record means the information prepared by the Regional Administrator about the legal landings and legal processing by vessels and persons in the BSAI crab fisheries during the qualifying periods specified at § 680.40.

Processing, or to process means the preparation of, or to prepare, crab to render it suitable for human consumption or storage. This includes, but is not limited to, cooking, canning, butchering, sectioning, freezing or icing.

Processor quota share (PQS) means a permit the face amount of which is used as the basis for the annual calculation and allocation of an IPQ.

Raw crab pounds means the recorded weight of crab in pounds at landing or prior to processing.

Registered crab receiver (RCR) means a person holding an RCR Permit issued by the Regional Administrator.

Right of First Refusal (ROFR) means the contractual provisions set forth under § 680.40(m) between the holders of PQS and ECC entities for the opportunity of ECCs to exercise the right to purchase PQS proposed to be transferred by a holder of PQS in an ECC.

Seafood Marketing Association Assessment (SMAA) means the seafood processing assessment collected by processing firms and buyers from fishery harvesters for the State of Alaska.

Share payment means an amount of monetary compensation (not salary or wages) based on gross or net earnings of a BSAI crab fishing vessel.

Shoreside crab processor means any person or vessel that receives, purchases, or arranges to purchase unprocessed crab, except a catcher/processor or a stationary floating crab processor.

Stationary floating crab processor (SFCP) means a vessel of the United States that remains anchored or otherwise remains stationary while receiving or processing in the waters of the State of Alaska.

Uncommitted IFQ means any Arbitration IFQ that is not Committed IFQ.

Uncommitted IPQ means any IPQ that is not Committed IPQ.

U.S. Citizen means:

(1) Any individual who is a citizen of the United States; or

(2) Any corporation, partnership, association, or other entity that is organized under Federal, state, or local laws of the United States or that may legally operate in the United States.

§ 680.3 Relation to other laws.

(a) *King and Tanner crab.* (1) Additional laws and regulations governing the conservation and management of king crab and Tanner crab in the BSAI area are contained in 50 CFR part 679, Alaska Statutes at A.S. 16, and Alaska Administrative Code at 5 AAC Chapters 34, 35, and 39.

(2) The Alaska Administrative Code (at 5 AAC 39.130) governs reporting and permitting requirements using the ADF&G "Intent to Operate" registration form and "Fish Tickets."

(b) *Sport, personal use, and subsistence.* (1) For State of Alaska statutes and regulations governing sport and personal use crab fishing other than subsistence fishing, see Alaska Statutes, Title 16—Fish and Game; 5 AAC Chapters 47 through 77.

(2) For State of Alaska statutes and regulations governing subsistence fishing for crab, see Alaska Statutes, Title 16—Fish and Game; 5 AAC 02.001 through 02.625.

§ 680.4 Permits.

Persons participating in the CR crab fisheries are required to possess the permits described in this section. Approval of applications under this part may be conditioned on the payment of fees under § 680.44 or the submission of an EDR as described under § 680.6.

(a) *Crab QS Permit.* Crab QS is issued by the Regional Administrator to persons who successfully apply for an initial allocation under § 680.40 or to receive QS by transfer under § 680.41. Once issued, a QS permit is valid until modified by transfer under § 680.41; or the permit is revoked, suspended, or modified pursuant to § 679.43 or under 15 CFR part 904.

(b) *Crab PQS Permit.* Crab PQS is issued by the Regional Administrator to persons who successfully apply for an initial allocation under § 680.40 or receive PQS by transfer under § 680.41. Once issued, a PQS permit is valid until modified by transfer under § 680.41 or until the permit is revoked, suspended, or modified pursuant to § 679.43 or under 15 CFR part 904.

(c) *Crab IFQ Permit.* (1) A Crab IFQ Permit authorizes the person identified on the permit to harvest crab in the fishery identified on the permit at any time the fishery is open during the crab fishing year for which the permit is issued, subject to conditions of the permit. A crab IFQ permit is valid in the following circumstances:

(i) Until the end of the crab fishing year for which the permit is issued;

(ii) Until the amount harvested is equal to the amount specified on the permit;

(iii) Until the permit is modified by transfers under § 680.41; or

(iv) Until the permit is revoked, suspended, or modified pursuant to § 679.43 or under 15 CFR part 904.

(2) A legible copy of any Crab IFQ Permit must be carried on board the vessel used by the permitted person at all times that such crab are retained on board.

(3) A Crab IFQ Permit is issued on an annual basis by the Regional Administrator to persons who hold crab QS of the type specified by the QS and who have submitted a complete Annual Application for Crab IFQ/IPQ Permit that is subsequently approved by the Regional Administrator.

(d) *Crab IPQ Permit.* (1) A Crab IPQ Permit authorizes the person identified on the permit to process the IFQ crab identified on the permit, subject to conditions of the permit, until the amount processed is equal to the amount specified on the permit or until the permit is revoked, suspended, or modified under 15 CFR part 904. An IPQ permit is valid in the following circumstances:

(i) Until the end of the crab fishing year for which the permit is issued;

(ii) Until the amount harvested is equal to the amount specified on the permit;

(iii) Until the permit is modified by transfers under § 680.41; or

(iv) Until the permit is revoked, suspended, or modified pursuant to § 679.43 or under 15 CFR part 904.

(2) A legible copy of a Crab IPQ Permit authorizing processing of IFQ crab must be retained on the premises or vessel used by the permitted person to process the IFQ crab at all times that such crab are retained on the premises or vessel.

(3) A Crab IPQ Permit is issued on an annual basis by the Regional Administrator to persons who hold crab processor QS of the type specified by the QS and who have submitted a complete Annual Application for Crab IFQ/IPQ Permit that is subsequently approved by the Regional Administrator. A complete application

must be submitted no later than August 1 of the crab fishing year for which a person is applying to receive IFQ or IPQ. If a complete application is not submitted by this date, that person will not receive IFQ or IPQ for that crab fishing year.

(e) *Contents of Annual Application for Crab IFQ/IPQ permit.* A person applying for an Annual Crab IFQ or IPQ permit must include the following information:

(1) *Applicant information.* (i) Applicant's name and NMFS Person ID;

(ii) Applicant's date of birth or, if a non-individual, date of incorporation;

(iii) Applicant's social security number (optional) or tax identification number;

(iv) Applicant's permanent business mailing address and any temporary mailing address the applicant wishes to use;

(v) Applicant's telephone number, facsimile number, and e-mail address;

(2) *Crab IFQ or IPQ Permit identification.* (i) Indicate Crab QS fishery(ies) for which applicant is applying to receive IFQ or IPQ by type;

(ii) Indicate (YES or NO) whether applicant has joined a crab cooperative; if YES, indicate cooperative's name;

(3) *Affidavit of affiliation.* A completed affidavit of affiliation declaring any and all affiliations, as the term "affiliation" is defined at § 680.2, with any PQS permit holders. An affidavit of affiliation will include affirmations by the applicant pertaining to relationships that may involve direct or indirect ownership or control of the delivery of IFQ and any supplemental documentation deemed necessary by NMFS to determine whether an affiliation exists;

(i) Whether any entity holding PQS or IPQ owns, directly or indirectly, 10 percent or more of the applicant for IFQ or IPQ;

(ii) Whether any entity that holds PQS or IPQ is affiliated with the applicant, as affiliation is defined in § 680.2;

(iii) If the answer is YES to either paragraph (e)(3)(i) or (e)(3)(ii) of this section, provide a list of all PQS or IPQ holders with which you are affiliated, including: full name, business mailing address, and business telephone number.

(4) *Identification of ownership interests.* If the applicant is not an individual, the names of all persons, to the individual level, holding an ownership interest in the entity and the percentage ownership each person and individual holds in the applicant;

(5) *Certification of applicant.* The applicant must sign and date the application certifying that all

information is true, correct, and complete to the best of his/her knowledge and belief. Print the name of the applicant. If the application is completed by an authorized representative, proof of authorization must accompany the application.

(6) *EDR submission.* Verification that a current EDR was submitted to the DCA for this applicant, if required under § 680.6.

(f) *Crab IFQ Hired Master Permit.* (1) A Crab IFQ Hired Master Permit authorizes the individual identified on the permit to harvest and land IFQ crab for debit against the specified Crab IFQ Permit until the Crab IFQ Hired Master Permit expires or is revoked, suspended, or modified under 15 CFR part 904 or on request of the Crab IFQ Permit holder.

(2) A legible copy of an IFQ Hired Master Permit must be on board a vessel used to harvest IFQ crab at all times such crab are retained on board. Except as specified in § 680.42, an individual who is issued a Crab IFQ Hired Master Permit must remain aboard the vessel used to harvest IFQ crab with that permit during the crab QS fishing trip and at the landing site until all crab harvested under that permit are offloaded and the landing report for such crab is completed.

(3) *Contents of Application for Crab IFQ Hired Master Permit.* A complete application for a Crab IFQ Hired Master Permit must include the following:

(i) *Purpose of application.* Whether the application is to add or to delete a hired master and identification of crab permit(s) for which this application is submitted;

(ii) *Permit holder information.* (A) Name and NMFS Person ID; (B) Social security number (optional) or tax ID number;

(C) Permanent business mailing address, and any temporary mailing address the applicant wishes to use, business telephone number, facsimile number, and e-mail address (if available);

(iii) *Identification of vessel upon which crab IFQ will be harvested.* (A) Vessel Name, ADF&G vessel registration number, USCG documentation number;

(B) Indicate whether (YES or NO) the applicant owns at least a 10 percent ownership interest in the vessel the Crab IFQ hired master will use to fish permit holder's IFQ. If YES, provide documentation of applicant's 10-percent ownership interest.

(iv) *Crab IFQ hired master permit holder information.* Complete a separate section for each crab IFQ hired master.

(A) Name and NMFS Person ID; (B) Social security number (optional);

(C) Date of birth of hired master;
 (D) Permanent business mailing address, and any temporary mailing address the applicant wishes to use, business telephone number, facsimile number, and e-mail address (if available).

(v) *Applicant certification.* The applicant must sign and date the application certifying that all information is true, correct, and complete to the best of his/her knowledge and belief. If the application is completed by an authorized representative, then a proof of authorization must accompany the application.

(g) *RCR permit.* (1) An RCR permit is issued on an annual basis. An RCR permit is valid during the crab fishing year for which it is issued until the RCR permit expires or is revoked, suspended, or modified under 15 CFR part 904.

(2) An RCR permit is required for:

(i) Any person who receives unprocessed CR crab from the person(s) who harvested the crab;

(ii) The owner or operator of a vessel that processes CR crab at sea; and

(iii) Any person required to submit a Departure Report under 50 CFR 679.5(l)(4).

(3) *Contents of Application for RCR permit.* A complete application for an RCR permit must include verification that any and all fees owed by the applicant are paid and that a current EDR was submitted to the DCA for this applicant, if required under § 680.6. In addition, the applicant must include the following information:

(i) Indicate whether the application is a renewal of an existing RCR permit, an amendment to an existing RCR permit, or a request for a new RCR permit. If a renewal of or amendment to an existing RCR permit, include the applicant's RCR permit number;

(ii) *Applicant identification.* (A) Name and NMFS Person ID of the applicant;

(B) Applicant's social security number or tax ID number;

(C) Name of contact person for the applicant, if applicant is not an individual;

(D) Permanent business mailing address;

(E) Physical land-based location of facility including street, city, and state, at which the RCR operates. A separate RCR permit is required for each facility;

(F) Physical location of vessel including port name and position coordinates in latitude and longitude to the nearest minute; and

(G) Business telephone number, facsimile number, and e-mail address (if available).

(iii) *Type of activity.* Type of receiving or processing activity whether catcher/processor or shoreside processor;

(iv) *Individual responsible for the submission of the EDR.* (A) Name of the designated representative submitting the EDR required at § 680.6 on behalf of the RCR;

(B) Business mailing address, telephone number, facsimile number, and e-mail address, if different from the RCR's contact information;

(v) *Application certification.* The applicant must sign and date the application certifying that all information is true, correct, and complete to the best of his/her knowledge and belief. If the application is completed by an authorized representative, then a proof of authorization must accompany the application.

(vi) Verification that a current EDR was submitted to the DCA for this applicant, if required under § 680.6.

(h) *Federal Crab Vessel Permit.* The owner of a vessel must have a Federal Crab Vessel Permit on board that vessel when used to fish for CR crab.

(1) A Federal Crab Vessel Permit is issued on an annual basis and is in effect from the date of issuance through the end of the current crab fishing year, unless it is revoked, suspended, or modified under § 600.735 or § 600.740.

(2) A Federal Crab Vessel Permit may not be surrendered at any time during the crab fishing year for which it is issued.

(3) *Contents of Application for Federal Crab Vessel Permit.* A complete application for a Federal Crab Vessel Permit must include verification that a current EDR was submitted to the DCA for this applicant, if required under § 680.6, and the following information:

(i) Indicate whether (YES or NO) the application amends an existing Federal Crab Vessel permit; if YES, indicate permit number of the existing permit;

(ii) *Owner information.* The name(s), permanent business mailing address, social security number (voluntary) or tax ID, business telephone number, business facsimile number, business e-mail address (if available) of all vessel owners, and the name of any person or company (other than the owner) that manages the operation of the vessel;

(iii) *Vessel information.* The vessel's name and home port (city and state), ADF&G processor code, whether a vessel of the United States, USCG documentation number, and ADF&G vessel registration number, vessel's LOA (in feet), registered length (in feet), gross tonnage, net tonnage, and shaft horsepower.

(iv) *Type of vessel operation.* Indicate the type of operations the vessel may conduct during a crab fishing year.

(v) *Designated representative for EDR.* The name, permanent business mailing address, business telephone number, business facsimile number, and business e-mail address of the designated representative.

(vi) *Applicant certification.* The owner(s) of the vessel must sign and date the application certifying that all information is true, correct, and complete to the best of his/her knowledge and belief. Print the applicant name. If the application is completed by an authorized representative, then a proof of authorization must accompany the application.

(4) *Transfer.* A Federal Crab Vessel Permit issued under this paragraph is not transferable or assignable and is valid only for the vessel for which it is issued.

(5) *Amended Application.* The holder of a Federal Crab Vessel Permit must submit an amended application for a Federal Crab Vessel Permit within 60 days of the date of change in:

(i) The ownership of the vessel. A copy of the current USCG documentation for the vessel showing the change in ownership must accompany the amended application.

(ii) The individual responsible for submission of the EDR on behalf of the vessel's owner(s).

(i) *Annual Crab Harvesting Cooperative IFQ Permit.* See § 680.21.

(j) *Issuance.* The Regional Administrator may issue or amend a Crab QS, PQS, IFQ, and IPQ Permit or a Crab IFQ Hired Master Permit annually or at other times as needed under this part.

(k) *Transfer.* Crab QS, PQS, IFQ and IPQ permits and Federal Crab Vessel Permits issued under § 680.4 are not transferable, except as provided under § 680.41. Crab IFQ Hired Master Permits, RCR permits, and crab cooperative permits issued under this section are not transferable.

(l) *Inspection.* The holder of a Crab IFQ Permit, Crab IPQ Permit, or Crab IFQ Hired Master Permit must present a legible copy of the permit on request of any authorized officer or RCR receiving a crab IFQ landing. The operator of a vessel used to fish for BSAI crab must present the original Federal Crab Vessel Permit on request of any authorized officer or RCR receiving a crab IFQ landing. A legible copy of the RCR permit must be present at the location of a crab IFQ landing and must be made available by an individual representing

the RCR for inspection on request of any authorized officer.

§ 680.5 Recordkeeping and reporting (R&R).

(a) General requirements—(1)

Recording and reporting crab. Any CR crab harvested that is retained, landed, received or processed, and crab that cannot be processed, must be recorded and reported.

(2) Responsibility. The following participants in the CR crab fisheries are responsible for complying with the applicable R&R requirements provided in paragraph (a)(2)(v) of this section:

(i) The owner and operator of any vessel used to harvest or process CR crab;

(ii) A crab IFQ permit holder or crab IFQ hired master;

(iii) A crab IPQ permit holder or the manager of a crab IPQ permit holder;

(iv) An RCR, including an RCR that receives CR crab for custom processing, and an RCR that is the operator of a catcher vessel;

(v) The persons that are responsible for specific reports, forms, and records are specified in the following table:

Recordkeeping and Reporting Report	Person Responsible	Reference
(A) Product Transfer Report (PTR)	Owner and operator of catcher/processor; Owner and manager of shoreside processor or SFCP; RCR	§ 679.5(g)
(B) U.S. Vessel Activity Report (VAR)	Owner and operator of vessel	§ 679.5(k)
(C) Transshipment Authorization	Owner or operator of catcher/processor; RCR	§ 679.5(l)(3)
(D) IFQ Departure Report	Owner and operator of vessel	§ 679.5(l)(4)
(E) CR crab Landing Report	RCR	§ 680.5(b)
(F) Catcher/processor offload report	RCR	§ 680.5(c)
(G) Eligible Crab Community Organization (ECCO) Annual Report for an Eligible Crab Community (ECC)	ECCO	§ 680.5(d)
(H) RCR Fee Submission Form	RCR	§ 680.5(e)
(I) Crab Economic Data Report (EDR)	Owners or leaseholders of a catcher vessel, catcher/processor, shoreside processor, or SFCP	§ 680.6

(3) Representative. Designation of a representative to complete R&R requirements does not relieve the person(s) responsible for compliance or ensuring compliance with this section.

(4) Submittal of information. A person must submit to NMFS all information, records, and reports required in this section in English and in a legible, timely, and accurate manner, based on A.I.T.; if handwritten or typed, in indelible ink.

(5) Alteration of records. A person may not alter or change any entry or record submitted to NMFS, except that an inaccurate, incomplete, or incorrect entry or record may be corrected after notifying the Regional Administrator at the address and fax number listed on each form.

(6) Inspection of records. A person responsible for R&R under paragraph (a)(2)(i) of this section must make available for inspection all reports, forms, scale receipts, and CR crab landing report receipts upon the request of an authorized officer for the time periods indicated in paragraph (a)(7) of this section.

(7) Retention of records. A person responsible for R&R under paragraph

(a)(2)(i) of this section must retain all records and receipts as follows:

(i) *On site.* Until the end of the crab fishing year during which the records were made and for as long thereafter as crab or crab products recorded in the records are retained onboard the vessel or onsite at the facility; and

(ii) *For 3 years.* For 3 years after the end of the crab fishing year during which the records were made.

(8) Landing verification and inspection. Each CR crab landing and all crab retained on board the vessel making a CR crab landing are subject to verification and inspection by authorized officers.

(9) Sampling. Each CR crab landing and all crab retained onboard a vessel making a CR crab landing are subject to sampling by authorized officers and observers.

(b) Interagency electronic reporting system (IERS). The RCR must obtain at his or her own expense, hardware, software, and Internet connectivity to support Internet submissions of the CR crab landing report on the IERS.

(1) IERS application for user ID. Each RCR and permit holder must submit a data-entry application to the Regional

Administrator to provide information needed to process account access into the IERS. The IERS will provide a web page where the applicant will enter information. The IERS will validate that all required information is submitted, that the information entered is in correct format, and also that the requested user ID is not already in use. The IERS will generate a PDF document from the information entered by the applicant. The user will sign and submit the form. An agency user will review the form, confirm that the user should be authorized for the system, and will activate the user on the IERS. The IERS will then send the user an email telling them they can now use their new user ID.

(2) Contents of the IERS. The IERS application for user ID must contain the following information:

- (i) Date of application;
- (ii) Name of applicant (user);
- (iii) Processor name and location (city and state);
- (iv) Business telephone number, facsimile number, and e-mail address;
- (v) Requested user ID;
- (vi) Initial password;
- (vii) Security question;

(viii) Security answer;
 (ix) Processor code(s);
 (x) Federal processor permit number(s);
 (xi) RCR permit number(s);
 (xii) Registered buyer permit number(s);
 (xiii) Signature of applicant and date signed. Signature of applicant on form means that RCR or permit holder, as appropriate, agrees to use access privileges to the IERS for purposes of submitting legitimate fishery landing reports and to safeguard the user ID and password to prevent their use by unauthorized persons.
 (xiv) Signature of plant manager and date signed. Signature of plant manager ensures that the applicant is authorized to submit landing reports for the processor identification number(s) listed.

(c) *CR crab landings*—(1) *Joint and several liability.* The CR crab permit holder and crab IFQ hired master are required to provide accurate information to the RCR to complete the CR crab landing report.

(2) *Reporting.* Any CR crab not previously reported must be reported by the RCR on any day when CR crab is landed.

(3) *Submission requirement.* An RCR is required to submit a CR crab landing report to the Regional Administrator for each catcher vessel landing.

(4) *Properly debited landing.* All retained crab catch must be weighed, reported and debited from the appropriate IFQ or IPQ account under which the catch was harvested, as appropriate. A properly debited Internet receipt from the IERS or a manual landing report receipt constitutes confirmation that NMFS received the CR crab landing report and that the permit holder's account is properly debited. The receipt must be signed and dated by both the RCR and permit holder.

(5) *Remain at landing site.* Except for landings of CR crab processed at sea, once the landing has commenced, the CR crab permit holder or crab IFQ hired master and the harvesting vessel may not leave the landing facility until the CR crab account is properly debited (as defined in paragraph (c)(4) of this section).

(6) *No movement of CR crab.* The landed crab may not be moved from the facility where it is landed until the CR crab landing report is received by the Regional Administrator, and the IFQ permit holder's or IPQ permit holder's account is properly debited (as defined in paragraph (c)(4) of this section). A properly printed Internet submission receipt, or a receipt from another

NMFS-approved reporting method, must be signed by both the RCR and permit holder. This receipt constitutes confirmation that NMFS received the CR crab landing report and that the permit holder's account is properly debited.

(7) *Time limits.* (i) A landing of CR crab may commence at any time.

(ii) For CR crab harvested under a CPO or CPC permit, an RCR must submit a completed CR crab landing report to NMFS within 6 hours of the end of each calendar day (A.I.T.) in which the CR crab was harvested.

(iii) For CR crab harvested on a catcher/processor, the owner or operator is required to submit a daily CR crab landing report to NMFS within 6 hours of the end of each calendar day (A.I.T.) in which CR crab was harvested.

(8) *IERS CR landing report procedure.*

(i) An RCR must enter his or her authorized user ID and password to access the IERS. An RCR obtains a user ID by submitting to NMFS an IERS application for user ID (see paragraph (b)(1) of this section).

(ii) The CR crab permit holder must provide his or her name, NMFS person ID number, crab permit holder permit number, and his or her own password or personal identification number (PIN), if required, to enter a CR crab landing report.

(iii) A person who for any reason is unable to properly submit an electronic CR crab landing report or debit a landing as required under paragraph (c) of this section must telephone NMFS at 800-304-4846;

(iv) The address of the NMFS Alaska Region Internet site will be provided to all RCRs receiving crab;

(9) *Contents of CR landing report.* The RCR must accurately enter the following information in a CR crab landing report:

(i) RCR permit number;
 (ii) ADF&G processor code of first purchaser;
 (iii) CFEC permit number;
 (iv) Vessel name;
 (v) Valid year of CFEC license;
 (vi) Valid year of processor permit;
 (vii) CR fishery code from Table 1 to this part;

(viii) Indicate (YES or NO) if a portion of the harvested CR crab was delivered to another processor; if YES, indicate the other processor's name and associated crab fish ticket number;

(ix) Indicate (YES or NO) whether all CR crab are removed from the vessel;

(x) Management program: IFQ, CDQ, or Adak. If CDQ enter CDQ group number;

(xi) ADF&G vessel registration number of the delivering vessel;

(xii) Date fishing began;

(xiii) Date of the CR crab landing;

(xiv) Number of pot lifts in each ADF&G statistical area;

(xv) Number of crew. Enter crew including operator and excluding observer(s);

(xvi) Number of observers;

(xvii) ADF&G fish ticket number;

(xviii) Type of processing operation. If shoreside processor, enter port code from Tables 14a or 14b to part 679. If catcher/processor, enter operation type from Table 14c to part 679.

(xix) ADF&G statistical area of harvest reported by the IFQ permit holder;

(xx) Species code of catch from Table 2 to this part;

(xxi) Delivery-condition code of catch from Table 3 to this part.

(xxii) Number of crabs retained (optional);

(xxiii) Price per pound;

(xxiv) Total value for each species of CR crab reported;

(xxv) Scale weight of live crab in pounds;

(xxvi) Scale weight of deadloss in pounds;

(xxvii) Scale weight of crab retained for personal use in pounds; and

(xxviii) Gear code to describe gear used to harvest CR crab (see Table 15 to 50 CFR part 679).

(10) *Custom processing.* In addition to the information required in paragraph (b)(6) of this section, if custom processing CR crab, enter the name and ADF&G processor code of that other person;

(11) *CDQ and Adak landings.* Instead of the information described in paragraph (b)(6) of this section, an RCR who receives a landing of CR crab harvested under the CDQ or Adak community allocation programs must submit for each landing the following information for each CR fishery and species:

(i) RCR permit number;
 (ii) CR fishery code from Table 1 to this part;
 (iii) Crab species code from Table 2 to this part;

(iv) Type of crab, either CDQ or Adak community allocation;

(v) If CDQ, enter CDQ group number;

(vi) Crab species amount. Enter the initial accurate scale weight(s) in raw crab pounds landed or processed at sea;

(vii) Price per pound; and

(viii) Total value for each species of CR crab reported (optional).

(12) *Required signature.* After the RCR enters the landing and/or processing data in the Internet submission form(s) or other electronic method approved by NMFS, the RCR and the IFQ permit holder must sign the printed receipts to acknowledge the accuracy of the CR crab landing report.

(d) *Catcher/processor offload report.* The owner or operator of a catcher/processor that harvested CR crab must complete a catcher/processor offload report at the time of offload of CR crab and attach a scale printout showing gross product offload weight.

(1) *Contents of catcher/processor offload report.* The catcher/processor offload report must include the following:

(i) Name, ADF&G processor code, and Federal crab vessel permit number of the catcher/processor;

(ii) Fishing start date and time;

(iii) Fishing stop date and time;

(iv) Product code from Table 3 to this part

(v) Total gross weight of product offload, including glaze and packaging;

(vi) Estimated glaze percentage;

(vii) Case count and average box weight (lb or kg);

(viii) Net weight of crab product (lb or kg);

(ix) Completion date and time of catcher/processor offload;

(x) Location (port) of catcher/processor offload (see Tables 14a and 14b to part 679);

(xi) ADF&G fish ticket number.

(2) The RCR must submit electronically or by fax the catcher/processor offload report and a copy of the scale printout within 2 hours of completion of offload to the Regional Administrator at Facsimile No. (907-586-7465).

(e) *ECCO Annual Report for an ECC.*

(1) Annually by June 30, each ECCO must submit a complete annual report on its CR crab activity for the prior crab fishing year for each ECC represented by the ECCO. The ECCO must submit a copy of the annual report to the governing body of each community represented by the ECCO and to the Regional Administrator, NMFS, Alaska Region; P.O. Box 21668; Juneau, AK 99802.

(2) *Contents of ECCO Annual Report.*

A complete annual report must include the following information for the IFQ derived from the QS held by the ECCO:

(i) Name, ADF&G vessel registration number, USCG documentation number, length overall (LOA), and home port of each vessel from which the IFQ was harvested;

(ii) Name and business addresses of individuals employed as crew members when fishing the IFQ;

(iii) Criteria used by the ECCO to distribute IFQ leases among eligible community residents;

(iv) Description of efforts made to ensure that IFQ lessees employ crew members who are eligible community residents of the ECC aboard vessels on which IFQ derived from QS held by a ECCO is being fished;

(v) Description of the process used to solicit lease applications from eligible community residents of the ECC on whose behalf the ECCO is holding QS;

(vi) Names and business addresses and amount of IFQ requested by each individual applying to receive IFQ from the ECCO;

(vii) Any changes in the bylaws of the ECCO, board of directors, or other key management personnel;

(viii) Copies of minutes, bylaw changes, motions, and other relevant decision making documents from ECCO board meetings.

(f) *RCR fee submission form.* (See § 680.44.)

(1) *Applicability.* An RCR who receives any CR crab per § 680.44 or the RCR's authorized representative must submit a complete RCR Fee Submission Form electronically, by mail, or by facsimile to the Regional Administrator. Mail to: Regional Administrator, NMFS, Alaska Region; Attn: Operations, Management, & Information Division (OMI); P.O. Box 21668; Juneau, AK 99802-1668; Facsimile No. (907-586-7354). RCRs may also submit an RCR Fee Submission Form electronically to NMFS via forms available from RAM or on the RAM area of the Alaska Region Home Page at <http://www.fakr.noaa.gov/ram>.

(2) *Due date and submittal.* The reporting period of the RCR Fee Submission Form shall be the crab fishing year. An RCR must submit any crab cost recovery fee liability payment(s) and the RCR Fee Submission Form to NMFS electronically or to the address provided at paragraph (e)(1) of this section not later than July 31 following the crab fishing year in which the payment for CR crab landings were made.

(3) *Required information.* An RCR must accurately record on the RCR Fee Submission Form the following information:

(i) *Identification of the HCR.* (A) Printed full name and NMFS person ID of RCR;

(B) Social security number or Federal tax identification number;

(C) Permanent or temporary business mailing address;

(D) Business telephone number, business facsimile number, and business e-mail address (if available).

(E) *Certification of applicant.* Printed name and signature of applicant and date signed. If authorized representative, attach authorization to application.

(ii) *Method of Payment* (see § 680.44 (a)(4)). The RCR must indicate the form of payment for fees including personal check, bank certified check (cashier's check), money order, or credit card. If credit card, the RCR must submit the card number, expiration date, amount of payment, name as printed on the card, signature of the card holder, and date of signature.

(g) *Product transfer report.* (See § 679.5(g).)

(h) *U.S. Vessel activity report (VAR).* (See § 679.5(k).)

(i) *Transshipment authorization.* (See § 679.5(l)(3).)

(j) *IFQ departure report.* (See § 679.5(l)(4).)

(k) *Catcher vessel longline and pot daily fishing logbook (DFL) and catcher/processor daily cumulative production logbook (DCPL).* (See § 679.5 (c)).

§ 680.6 Crab economic data report (EDR).

(a) *Catcher vessel historical EDR.* (1) NMFS will select catcher vessels from a list of known catcher vessels that made at least one landing from fisheries listed in Table 1 to this part between January 1, 1998, through December 31, 2004, and will publish a Federal Register notice identifying vessels whose existing or former owners and leaseholders are required to submit an EDR, as follows:

(i) Owners or leaseholders of catcher vessels that participated in the BSAI crab fisheries between January 1, 1998, through December 31, 2004 and have qualified for or hold QS, PQS, IFQ, or IPQ under this Program.

(ii) Owners or leaseholders of catcher vessels that participated in the BSAI crab fisheries between January 1, 1998, through December 31, 2004, that did not qualify for and receive QS, PQS, IFQ, or IPQ, but are participants at any time since January 23, 2004, in the BSAI crab fisheries.

(2) *Time limit.* The owner or leaseholder of the identified vessels must submit the historical EDR to the DCA 60 days after the Federal Register notice notifying owners or leaseholders to the address provided on the form.

(3) *Instructions.* Instructions for submitting a catcher vessel historical EDR and certification page are specified in the following table:

If you were ...	And ...	You must complete and submit ...
(i) The catcher vessel owner as described in paragraph (a)(1) of this section	(A) You harvested BSAI crab in the vessel described at paragraph (a)(4)(ii)(B) of this section and were notified by NMFS to submit an EDR for selected years.	Entire EDR for each year that BSAI crab was harvested.
	(B) No one harvested BSAI crab in the vessel described at paragraph (a)(4)(ii)(B) of this section and were notified by NMFS to submit an EDR for selected years.	EDR certification pages.
	(C) You leased the vessel to another party, and harvested no BSAI crab in the vessel described at paragraph (a)(4)(ii)(B) of this section and were notified by NMFS to submit an EDR for selected years.	(1) EDR certification pages. (2) Provide the name, address, and telephone number of the person to whom you leased the vessel during the NMFS-selected years.
	(D) You leased the vessel for a portion of the year to another party, but harvested some BSAI crab in the vessel described at paragraph (a)(4)(ii)(B) of this section and were notified by NMFS to submit an EDR for selected years.	(1) Entire EDR for each year that BSAI crab was harvested. (2) Provide the name, address, and telephone number of the person to whom you leased the vessel during the NMFS-selected years.
(ii) The leaseholder as described in paragraph (a)(1) of this section	You harvested BSAI crab in the vessel described at paragraph (a)(4)(ii)(B) of this section vessel and were notified by NMFS to submit an EDR for selected years.	Entire EDR for each year that BSAI crab was harvested.

(4) *EDR certification pages.* (i) The owner or leaseholder must submit the EDR certification pages either:

(A) *As part of the entire EDR.* The owner or leaseholder must submit the completed EDR certification pages as part of the entire EDR and must attest to the accuracy and completion of the EDR by signing and dating the certification pages; or

(B) *As a separate document.* The owner or leaseholder must submit the completed EDR certification pages only, and must attest that they meet the conditions exempting them from submitting the EDR, by signing and dating the certification pages (see paragraph (a)(3) of this section).

(ii) The owner or leaseholder must submit the following information on the certification pages:

(A) *Calendar year of EDR.* Calendar year for which the vessel is selected;

(B) *Catcher vessel information:* Vessel name, company name, USCG documentation number, ADF&G vessel registration number, Federal crab vessel permit number, crab LLP license number(s), estimated market value of vessel and equipment, and replacement value of vessel and equipment.

(C) *Owner information:* Owner name, title, and business telephone number, facsimile number, and e-mail address (if available).

(D) *Designated representative.* Any owner or leaseholder may appoint a designated representative who is an individual for responding to questions on the EDR and must ensure that the designated representative complies with

the regulations in this part. The designated representative is the primary contact person for the DCA on issues relating to data required in the EDR.

(E) *Person completing this report.* (1) Indicate whether the person completing this report is the owner or leaseholder;

(2) If the owner is the person completing this report, check the correct box. The information provided above does not need to be repeated here; and

(3) Name of person, title, and business telephone number, facsimile number, and e-mail address (if available).

(5) *EDR.* The owner or leaseholder must record the following information on an EDR:

(i) *Crab activity chart.* Complete a crab activity chart by entering the following information: CR fishery code (see Table 1 to this part), ADF&G Fish ticket number(s), number of days at sea, average crew size, and number of pots lost (if applicable).

(ii) *Crab sales gross revenue.* CR fishery code, pounds sold, and gross revenue.

(iii) *CDQ crab lease costs.* CR fishery code, pounds leased, and total cost of lease.

(iv) *Crab harvesting labor costs.* CR fishery code, number of crew earning shares, total crew share payment, and captain's share payment.

(v) *BSAI crab crew residence information.* For each employee in the calendar year being reported, record location of residence and number of employees that reside in each location as follows:

(A) If Alaska, enter primary city of residence.

(B) If state other than Alaska, enter primary state of residence.

(C) If country other than United States, enter primary country of residence.

(vi) *BSAI crab-specific vessel costs.* For the fishing year being reported, record insurance premiums (for hull, property and indemnity, and pollution), insurance deductible fees, quantity and cost of pots purchased, line, and other crab fishing gear purchases, pounds and cost of bait by species, gallons and cost of fuel, cost of lubrication and hydraulic fluids, cost of food and provisions for crew, other crew costs, freight costs of supplies shipped to you for the vessel, freight costs for landed crab, storage, observer costs, fish taxes, and other crab-specific costs.

(vii) *Vessel-specific costs.* Record the total for each category. If the reported total expense should not be attributed solely to BSAI crab operations, please place an "X" in the PRORATE OVER ALL ACTIVITIES column. The analyst will prorate this amount over all vessel activities: improvements for vessel, gear and equipment; repair and maintenance (R&M) expenses for vessel, gear and equipment; other vessel overhead expenses; and other vessel-specific costs (specify).

(viii) *Labor payment details.* (A) Indicate whether the following expenses were deducted (by circling 1) or not deducted (by circling 2) from the total revenue before calculating the crew share: Fuel and lubrication, food and

provisions, bait, fish tax, observer costs, CDQ fish, freight, gear loss, and other (specify).

(B) Indicate percentage of the net share that was applied to boat share and crew share (including captain).

(ix) *Prorating information.* Enter the totals for the vessel for the calendar year

in all fisheries for each of the following categories: days at sea, revenue, pounds retained, and labor costs.

(b) *Catcher vessel annual EDR—(1) Requirement.* On or before May 1 of each year, beginning with Year 2005, any owner or leaseholder of a catcher vessel that landed crab from a CR

fishery must submit to the DCA, at the address provided on the form, an EDR for annual data for the previous year.

(2) *Instructions.* Instructions for submitting a catcher vessel annual EDR and certification page are specified in the following table:

If you are ...	And ...	You must complete and submit ...
(i) The catcher vessel owner	(A) You harvested BSAI crab in the vessel described at paragraph (b)(3)(ii)(B) of this section during this calendar year.	Entire EDR
	(B) No one harvested BSAI crab in the vessel described at paragraph (b)(3)(ii)(B) of this section during this year.	EDR certification pages
	(C) You leased the vessel to another party, and harvested no BSAI crab in the vessel described at paragraph (b)(3)(ii)(B) of this section during this calendar year.	(1) EDR certification pages (2) Provide the name, address, and telephone number of the person to whom you leased the vessel during this calendar year.
	(D) You leased the vessel for a portion of the year to another party, but harvested some BSAI crab in the vessel described at paragraph (b)(3)(ii)(B) of this section during this calendar year.	(1) Entire EDR (2) Provide the name, address, and telephone number of the person to whom you leased the vessel during this calendar year.
(ii) The leaseholder	You harvested BSAI crab in the vessel described at paragraph (b)(3)(ii)(B) of this section vessel during this calendar year.	Entire EDR

(3) *EDR certification pages.* (i) The owner or leaseholder must submit the EDR certification pages either:

(A) *As part of the entire EDR.* The owner or leaseholder must submit the completed EDR certification pages as part of the entire EDR and must attest to the accuracy and completion of the EDR by signing and dating the certification pages; or

(B) *As a separate document.* The owner or leaseholder must submit the completed EDR certification pages only, and must attest that they meet the conditions exempting them from submitting the EDR, by signing and dating the certification pages.

(ii) The owner or leaseholder must submit the following information on the certification pages:

(A) *Calendar year of EDR.* Calendar year of reporting year;

(B) *Catcher vessel information.* Catcher vessel name, company name, USCG documentation number, ADF&G vessel registration number, Federal Crab Vessel Permit number, crab LLP license number(s), estimated market value of vessel and equipment, and replacement value of vessel and equipment;

(C) *Owner information.* Owner name, title, and business telephone number, facsimile number, and e-mail address (if available);

(D) *Designated representative.* Any owner or leaseholder may appoint a designated representative who is an individual for responding to questions on the EDR and must ensure that the designated representative complies with the regulations in this part. The designated representative is the primary contact person for the DCA on issues relating to data required in the EDR.

(E) *Person completing this report.* (1) Indicate whether the person completing this report is the owner or leaseholder;

(2) If the owner is the person completing this report, check the correct box. The information provided above does not need to be repeated here; and

(3) Name of person, title, and business telephone number, facsimile number, and e-mail address (if available).

(4) EDR. The owner or leaseholder must record the following information on an EDR.

(i) *Season interval chart.* Complete a season interval chart by entering the following information: calendar year, season interval number, CR fishery code(s) (see Table 1 to this part), ADF&G fish ticket number, number of days at sea, average crew size, and number of pots lost (if applicable).

(ii) *Crab sales gross revenue.* Season interval number, species code, pounds sold, and gross revenue:

(iii) *CDQ and IFQ crab leases.* Season interval number, species code, pounds leased, and total cost of leasing the quota;

(iv) *Crab harvesting labor costs—(A) Standard crew payment (shares) for non-IFQ crew and/or captains.* Season interval number, number of crew earning shares, crew share payment, and captain's share payment;

(B) *Payments to IFQ-holding crew and/or captains.* Season interval number, number of crew contributing IFQ shares, pounds of IFQ contributed by crew, total payment to crew for IFQ and shares (for all fish caught, and residual profit on their IFQ), pounds of IFQ contributed by captain, and payment to captain for IFQ and shares (for all fish caught, and residual profit on their IFQ);

(v) *BSAI crab crew identification—(A) Employees with crew license.* Alaska Commercial Crew license number or the State of Alaska Commercial Fisheries Entry Commission (CFEC) gear operator permit number, and location of crew residence (city and state);

(B) *Employees without crew license.* Location of residence and the number of employees that reside in each location as follows:

(1) If Alaska, enter primary city of residence:

(2) If state other than Alaska, enter primary state of residence; or

(3) If country other than United States, enter primary country of residence.

(vi) *BSAI crab-specific vessel costs.* Insurance premiums (hull, property and indemnity, and pollution), insurance deductible fees, pots purchased, line and other gear purchases, pounds and cost of bait by species, gallons and cost of fuel, lubrication and hydraulic fluids, food and provisions for crew, other crew costs, freight costs of supplies shipped to you for the vessel, freight costs for landed crab, storage, observer costs, fish taxes, other crab-specific costs (specify), and fishing cooperative costs.

(vii) *Vessel-specific costs.* Record the total for each category. If the reported total expense should not be attributed solely to BSAI crab operations, please place an "X" in the PRORATE OVER ALL ACTIVITIES column. The analyst will prorate this amount over all vessel activities: improvements in vessel, gear,

and equipment (city and state where purchased); R&M for vessel gear, and equipment (city and state where repairs were made); other vessel overhead expenses; and other vessel-specific costs (specify).

(viii) *Labor payment details.* (A) Indicate whether the following expenses were deducted from the total revenue before calculating the crew share: Fuel and lubrication, food and provisions, bait, fish tax, observer costs, CDQ fish, IFQ leases, freight, gear loss, and other (specify);

(B) Indicate percentage of the net share that is applied to boat share and crew share (including captain).

(ix) *Prorating information.* Enter the totals for the vessel, for the calendar year in all fisheries for each of the following categories: days at sea, revenue, pounds retained, and labor costs.

(c) *Catcher/processor historical EDR—*

(1) *Requirement.* Any owner or leaseholder of a catcher/processor that

harvested or processed BSAI crab in the calendar years 1998, 2001, or 2004 must submit to the DCA, at the address provided on the form, an EDR for historical data for each of the specified calendar years, if they:

(i) Qualified for or hold QS, PQS, IFQ, or IPQ under this program;

(ii) Did not qualify for and receive QS, PQS, IFQ, or IPQ, but are participants at any time since January 23, 2004, in the BSAI crab fisheries.

(2) *Time limit.* Any owner or leaseholder of the catcher/processor described in paragraph (c)(4)(ii)(B) of this section must submit the historical EDR to the DCA by [DATE 60 DAYS AFTER THE DATE OF EFFECTIVENESS OF THE FINAL RULE] at the address provided on the form.

(3) *Instructions.* Instructions for submitting a catcher/processor historical EDR and certification page are specified in the following table:

If you were ...	And ...	You must complete and submit ...
(i) The catcher/processor owner described in paragraph (c)(1) of this section	(A) You processed BSAI crab in the vessel described at paragraph (c)(4)(ii)(B) of this section during 1998, 2001, or 2004.	Entire EDR for each year that BSAI crab was processed.
	(B) No one processed BSAI crab in the vessel described at paragraph (c)(4)(ii)(B) of this section during 1998, 2001, or 2004.	EDR certification pages for each year that no one processed BSAI crab.
	(C) You leased your catcher/processor to another party, and processed no BSAI crab in the vessel described at paragraph (c)(4)(ii)(B) of this section during 1998, 2001, or 2004.	(1) EDR certification pages. (2) Provide the name, address, and telephone number of the person to whom you leased the catcher/processor during 1998, 2001, or 2004.
	(D) You leased your catcher/processor for a portion of the year to another party, but processed some BSAI crab in the vessel described at paragraph (c)(4)(ii)(B) of this section during 1998, 2001, or 2004.	(1) Entire EDR for each year that BSAI crab was processed. (2) Provide the name, address, and telephone number of the person to whom you leased the catcher/processor during 1998, 2001, or 2004.
(ii) The leaseholder described in paragraph (c)(1) of this section	You processed BSAI crab in the vessel described at paragraph (c)(4)(ii)(B) of this section during 1998, 2001, or 2004.	Entire EDR for each year that BSAI crab was processed.

(4) *EDR certification pages.* (i) The owner or leaseholder must submit the EDR certification page either:

(A) *As part of the entire EDR.* The owner or leaseholder must submit the completed EDR certification pages as part of the entire EDR and must attest to the accuracy and completion of the EDR by signing and dating the certification pages; or

(B) *As a separate document.* If the owner or leaseholder did not process BSAI crab in 1998, 2001, or 2004, he or she must submit the completed EDR certification pages only, and must attest that he or she meets the conditions

exempting him or her from submitting the EDR, by signing and dating the certification pages, for each year of 1998, 2001, or 2004 that this applies.

(ii) The owner or leaseholder must submit the following information on the certification pages:

(A) *Calendar year of EDR.* Calendar year corresponding to 1998, 2001, or 2004;

(B) *Catcher/processor information.* Catcher/processor name, company name, USCG documentation number, ADF&G processor code, Crab Processor Permit number, crab LLP license number(s), estimated market value of

vessel and equipment, and replacement value of vessel and equipment.

(C) *Owner information.* Owner name, title, and business telephone number, facsimile number, and e-mail address (if available).

(D) *Designated representative.* Any owner or leaseholder may appoint a designated representative who is an individual for responding to questions on the EDR and must ensure that the designated representative complies with the regulations in this part. The designated representative is the primary contact person for the DCA on issues relating to data required in the EDR.

(E) *Person completing this report.* (1) Indicate whether the person completing this report is the owner or leaseholder;

(2) If the owner is the person completing this report, check the correct box. The information provided above does not need to be repeated here; and

(3) Name of person, title, and business telephone number, facsimile number, and e-mail address (if available).

(5) *EDR.* The owner or leaseholder must record the following information on an EDR.

(i) *BSAI crab activity chart.* Complete a crab activity chart by entering the following information: CR fishery code (see Table 1 to this part); dates covered (beginning and ending day, month and year); number of days at sea; number of crab processing days, and number of pots lost (if applicable).

(ii) *BSAI crab production.* CR fishery code, raw crab pounds, product code, process code, crab size, crab grade, box size, finished pounds, and whether custom processed (yes or no).

(iii) *Crab harvesting labor costs.* CR fishery code, number of crew earning shares, total crew share payment, and captain's share payment.

(iv) *Crab processing labor costs.* CR fishery code, number of crew with pay determined by processing work, average number of crab processing positions, and total processing labor payment.

(v) *BSAI crab crew residence identification.* For each employee in the calendar year being reported, record location of residence and number of employees that reside in each location as follows:

(A) If Alaska, enter primary city of residence;

(B) If state other than Alaska, enter primary state of residence;

(C) If country other than United States, enter primary country of residence;

(vi) *BSAI crab custom processing done for you.* CR fishery code, raw pounds supplied to custom processors,

raw pounds purchased from custom processors, product code, process code, crab size, crab grade, box size, finished pounds, and processing fee.

(vii) *Raw crab purchases from delivering vessels.* CR fishery code, crab size, crab grade, raw pounds purchased, and gross payment.

(viii) *CDQ Crab Costs (leases).* CR fishery code, pounds leased, and total cost.

(ix) *Annual BSAI crab sales.* Record the following information on crab sales to affiliated entities and to unaffiliated entities: species code, product code, process code, crab size, crab grade, box size, finished pounds, and gross revenue.

(x) *BSAI crab-specific vessel costs.* Insurance premiums (hull, property and indemnity, and pollution); insurance deductible fees; total of fisheries taxes which includes the Alaska fisheries business tax, Alaska fisheries resource landing tax, SMAA taxes, and other local sales tax on raw fish; pots purchased (quantity and cost); line and other crab fishing gear purchases; bait (by each CR fishery code, species, pounds and cost); fuel (by CR fishery code, gallons and cost); lubrication and hydraulic fluids; food and provisions for crew; other crew costs; processing and packaging materials, equipment and supplies; re-packing costs, broker fees and promotions for BSAI crab sales (by CR fishery code); observer costs (by CR fishery code); freight costs for supplies to the vessel; freight and handling costs for processed crab products from the vessel; product storage; waste disposal; and other crab-specific costs (specify).

(xi) *Vessel-specific costs.* Record the total for each category. If the reported total expense should not be attributed solely to BSAI crab operations, please place an "X" in the PRORATE OVER ALL ACTIVITIES column. The analyst will prorate this amount over all vessel activities: improvements in vessel, gear,

and equipment; R&M for vessel gear, and equipment; number of employees and salaries for foremen, managers, and other employees not included in direct labor costs; other vessel overhead expenses; and other vessel-specific costs (specify).

(xii) *BSAI crab custom processing performed for others.* CR Fishery code, product code, process code, whether OUR CRAB or THEIR CRAB, and processing revenue.

(xiii) *Prorating information.* Enter the totals for the year for the vessel in all fisheries for each of the following categories: processing days, days at sea, revenue, pounds processed, pounds retained, and labor costs.

(xiv) *Labor payment details.* (A) Indicate whether the following expenses were deducted (by circling 1) or not deducted (by circling 2) from the total revenue before calculating the crew share: Fuel and lubrication, food and provisions, bait, fish tax, observer costs, CDQ fish, freight, gear loss, and other (specify).

(B) Indicate percentage of the net share that was applied to boat share and harvesting crew share (including captain).

(C) If processing workers were paid on a share system, indicate percentage of the net share (if applicable) that was applied to processing workers based on product value or net share.

(d) *Catcher/processor annual EDR—(1) Requirement.* On or before May 1 of each year, beginning with Year 2005, any owner or leaseholder of a catcher/processor that landed or processed crab from a CR fishery must submit to the DCA, at the address provided on the form, an EDR for annual data for the previous year.

(2) *Instructions.* Instructions for submitting a catcher/processor annual EDR and certification page are specified in the following table:

If you are ...	And ...	You must complete and submit ...
(i) The catcher/processor owner	(A) You processed BSAI crab in the vessel described at paragraph (d)(3)(ii)(B) of this section during this calendar year.	Entire EDR
	(B) No one processed BSAI crab in the vessel described at paragraph (d)(3)(ii)(B) of this section during this calendar year.	EDR certification pages
	(C) You leased all of your IPO to another party, and processed no BSAI crab in the vessel described at paragraph (d)(3)(ii)(B) of this section during this calendar year.	(1) EDR certification pages (2) Provide the name, address, and telephone number of the person to whom you leased the IPO during this calendar year.

If you are ...	And ...	You must complete and submit ...
	(D) You leased portions of your IPQ to another party, but processed some BSAI crab in the vessel described at paragraph (d)(3)(ii)(B) of this section during this calendar year.	(1) Entire EDR (2) Provide the name, address, and telephone number of the person to whom you leased the IPQ during this calendar year.
(ii) The leaseholder described in paragraph (d)(1) of this section	You processed BSAI crab in the vessel described at paragraph (d)(3)(ii)(B) of this section during this calendar year.	Entire EDR

(3) *EDR certification pages.* (i) The owner or leaseholder must submit the EDR certification pages either:

(A) *As part of the entire EDR.* The owner or leaseholder must submit the completed EDR certification pages as part of the entire EDR and must attest to the accuracy and completion of the EDR by signing and dating the certification pages; or

(B) *As a separate document.* The owner or leaseholder must submit the completed EDR certification pages only, and must attest that they meet the conditions exempting them from submitting the EDR, by signing and dating the certification pages.

(ii) The owner or leaseholder must submit the following information on the certification pages:

(A) *Calendar year of EDR.* Calendar year for the reporting year;

(B) *Catcher/processor information.* Catcher/processor name, company name, USCG documentation number, ADF&G processor code, Crab Processor Permit number, crab LLP license number(s), estimated market value of vessel and equipment, and replacement value of vessel and equipment.

(C) *Owner information.* Owner name, title, business telephone number, facsimile number, and e-mail address (if available).

(D) *Designated representative.* Any owner or leaseholder may appoint a designated representative who is an individual for responding to questions on the EDR and must ensure that the designated representative complies with the regulations in this part. The designated representative is the primary contact person for the DCA on issues relating to data required in the EDR.

(E) *Person completing this report.* (1) Indicate whether the person completing this report is the owner or leaseholder;

(2) If the owner is the person completing this report, check the correct box. The information provided above does not need to be repeated here; and

(3) Name of person, title, and business telephone number, facsimile number, and e-mail address (if available).

(4) *EDR.* The owner or leaseholder must record the following information on an EDR.

(i) *Season interval chart.* Complete a season interval chart by entering the following information: Calendar year, season interval number, CR fishery code (see Table 1 to this part), dates covered, number of days at sea, number of crab processing days, and number of pots lost (if applicable).

(ii) *BSAI crab production.* Season interval number, species code, raw pounds, product code, process code, crab size, crab grade, box size, finished pounds, and whether custom processed (Yes or No).

(iii) *Harvesting labor costs.* Record the following information for crew if they harvest crab only, or harvest and process crab.

(A) *Standard crew payment (shares) for non-IFQ contributing crew and/or captains.* Season interval number, number of crew earning shares, crew share payment, and captain's share payment.

(B) *Payments to IFQ-holding crew and/or captains.* Season interval number, number of crew contributing IFQ shares, pounds of IFQ contributed by crew, total payment to crew for IFQ and shares, pounds of IFQ contributed by captain, and payment to captain for IFQ and shares.

(iv) *Crab processing labor costs.* Season interval number, number of crew with pay determined by processing work, average number of crab processing positions, and total processing labor payment.

(v) *BSAI crab crew identification—(A) Employees with crew license.* Alaska Commercial Crew license number or the CFEC gear operator permit number, and location of crew residence (city and state).

(B) *Employees without crew license.* Location of residence and the number of employees that reside in each location as follows:

(1) If Alaska, enter primary city of residence.

(2) If state other than Alaska, enter primary state of residence, or

(3) If country other than United States, enter primary country of residence.

(vi) *BSAI crab custom processing done for you.* Season interval number:

species code, raw pounds supplied to custom processors, raw pounds purchased from custom processors, product code, process code, crab size, crab grade, box size, finished pounds, and processing fee.

(vii) *Raw crab purchases from delivering vessels.* Season interval number, species code, crab size, crab grade, raw pounds purchased, and gross payment.

(viii) *CDQ and IFQ crab costs (leases).* For CDQ and IFQ leases enter season interval number, species code, pounds leased, and total cost.

(ix) *Annual BSAI crab sales.* For affiliated entities and unaffiliated entities enter species code, product code, process code, crab size, crab grade, box size, finished pounds, and gross revenue.

(x) *BSAI crab-specific vessel costs.* Insurance premiums (hull, property and indemnity, and pollution); insurance deductible fees; total of fisheries taxes which include the Alaska fisheries business tax, Alaska fisheries resource landing tax, SMAA taxes, and other local sales tax on raw fish; pots purchased by city and state (quantity and cost); line and other crab fishing gear purchases by city, state, and cost; bait (by each season interval number by city and state, species, pounds, and cost); fuel in gallons and cost by season interval number, city and state; lubrication and hydraulic fluids by city and state; food and provisions for crew; other crew costs; processing and packaging materials, equipment and supplies by city and state; re-packing costs; broker fees and promotions for BSAI crab sales (by season interval number); observer costs (by season interval number); freight costs for products to the vessel; freight and handling costs for processed crab products from the vessel; product storage; waste disposal; other crab-specific costs (specify), and fishing cooperative costs.

(xi) *Vessel-specific costs.* Record the total for each category. If the reported total expense should not be attributed solely to BSAI crab operations, please place an "X" in the PRORATE OVER

ALL ACTIVITIES column. The analyst will prorate this amount over all vessel activities: improvements for vessel, gear, and equipment (by city and state); R&M for vessel, gear, and equipment (by city and state); number of employees and salaries for foremen, managers and other employees not included in direct labor costs; other vessel overhead expenses; and other vessel-specific costs (specify).

(xii) *BSAI crab custom processing performed for others.* Season interval number, species code, product code, process code, whether OUR CRAB or THEIR CRAB, and processing revenue.

(xiii) *Prorating information.* Enter the totals for the year for the vessel in all fisheries for each of the following categories: processing days, days at sea, revenue, pounds processed, pounds retained, and labor costs.

(xiv) *Labor payment details.* (A) Indicate whether the following expenses

were deducted (by circling 1) or not deducted (by circling 2) from the total revenue before calculating the crew share: Fuel and lubrication, food and provisions, bait, fish tax, observer costs, CDQ fish, IFQ leases, freight, gear loss, and other (specify).

(B) Indicate percentage of the net share that is applied to boat share and harvesting crew share (including captain).

(C) If processing workers are paid on a share system, indicate percentage of the net share (if applicable) that is applied to processing workers based on product value or net share.

(e) *Stationary floating crab processor (SFCP) historical EDR—(1) Requirement.* Any owner or leaseholder of an SFCP that processed CR fisheries crab in the calendar years 1998, 2001, or 2004 must submit to the DCA, at the address provided on the form, an EDR

for historical data for each of the specified calendar years, if they:

(i) Qualified for or hold QS, PQS, IFQ, or IPQ under this program;

(ii) Did not qualify for and receive QS, PQS, IFQ, or IPQ, but are participants at any time since January 23, 2004, in the BSAI crab fisheries.

(2) *Time limit.* Any owner or leaseholder of the SFCP described in paragraph (e)(4)(ii)(B) of this section must submit the historical EDR to the DCA by [DATE 60 DAYS AFTER THE DATE OF EFFECTIVENESS OF THE FINAL RULE] at the address provided on the form.

(3) *Instructions.* Instructions for submitting an SFCP historical EDR and certification page are specified in the following table:

If you were ...	And ...	You must complete and submit ...
(i) The SFCP owner described in paragraph (e)(1) of this section	(A) You processed BSAI crab in the SFCP described at paragraph (e)(4)(ii)(B) of this section during 1998, 2001, or 2004.	Entire EDR for each year that BSAI crab was processed.
	(B) No one processed BSAI crab in the SFCP described at paragraph (e)(4)(ii)(B) of this section during 1998, 2001, or 2004.	EDR certification pages for each year that no one processed BSAI crab.
	(C) You leased your SFCP to another party, and processed no BSAI crab in the SFCP described at paragraph (e)(4)(ii)(B) of this section during 1998, 2001, or 2004.	(1) EDR certification pages (2) Provide the name, address, and telephone number of the person to whom you leased the SFCP during 1998, 2001, or 2004.
	(D) You leased your SFCP a portion of the time to another party, but processed some BSAI crab in the SFCP described at paragraph (e)(4)(ii)(B) of this section during 1998, 2001, or 2004.	(1) Entire EDR for each year that BSAI crab was processed. (2) Provide the name, address, and telephone number of the person to whom you leased the SFCP during 1998, 2001, or 2004.
(ii) The leaseholder described in paragraph (e)(1) of this section	You operated the SFCP described at paragraph (e)(4)(ii)(B) of this section and processed some BSAI crab during 1998, 2001, or 2004.	Entire EDR for each year that BSAI crab was processed.

(4) *EDR certification pages.* (i) The owner or leaseholder must submit the EDR certification pages either:

(A) *As part of the entire EDR.* The owner or leaseholder must submit the completed EDR certification pages as part of the entire EDR and must attest to the accuracy and completion of the EDR by signing and dating the certification pages; or

(B) *As a separate document.* If the owner or leaseholder did not process BSAI crab in 1998, 2001, or 2004, he or she must submit the completed EDR certification pages only, and must attest that he or she meets the conditions exempting him or her from submitting the EDR, by signing and dating the

certification pages, for each year of 1998, 2001, or 2004 that this applies.

(ii) The owner or leaseholder must submit the following information on the certification pages:

(A) *Calendar year of EDR.* Calendar years corresponding to 1998, 2001, or 2004;

(B) *SFCP information.* SFCP name, company name, USCG documentation number, ADF&G processor code, Crab Processor Permit number, crab LLP license number(s), estimated market value of vessel and equipment, and replacement value of vessel and equipment.

(C) *Owner information.* Owner name, title, and business telephone number.

facsimile number, and e-mail address (if available).

(D) *Designated representative.* Any owner or leaseholder may appoint a designated representative, who is an individual for responding to questions on the EDR, and must ensure that the designated representative complies with the regulations in this part. The designated representative is the primary contact person for the DCA on issues relating to data required in the EDR.

(E) *Person completing this report.* (1) Indicate whether the person completing this report is the owner, leaseholder, or designated representative;

(2) If the owner is the person completing this report, check the correct

box. The information provided above does not need to be repeated here; and

(3) Name of person, title, business telephone number, facsimile number, and e-mail address (if available).

(5) EDR. The owner or leaseholder must record the following information on an EDR.

(i) BSAI crab production. CR fishery code (see Table 1 to this part); number of crab processing days, dates covered (beginning and ending day, month, and year); raw pounds purchased, product code, process code, crab size, crab grade, box size, finished pounds, and whether custom processed (Yes or No).

(ii) Crab processing labor costs. CR fishery code, average number of crab positions, total man-hours, and total labor payment.

(iii) BSAI Crab crew residence identification. Location of residence and the number of employees that reside in each location as follows:

(A) If Alaska, enter primary city of residence.

(B) If state other than Alaska, enter primary state of residence.

(C) If country other than United States, enter primary country of residence.

(iv) BSAI crab custom processing done for you. CR fishery code, raw pounds supplied to custom processors, raw pounds purchased from custom processors, product code, process code,

crab size, crab grade, box size, finished pounds, and processing fee.

(v) Raw crab purchases from delivering vessels. CR fishery code, crab size, crab grade, raw pounds purchased, and gross payment.

(vi) Annual BSAI crab sales. Record the following information on crab sales to affiliated entities and to unaffiliated entities: species code, product code, process code, crab size, crab grade, box size, finished pounds, and gross revenue.

(vii) BSAI crab-specific vessel data. Total of fisheries taxes which include the Alaska fisheries business tax, SMAA taxes, and other local sales tax on raw fish; processing and packaging materials, equipment, and supplies; food and provisions; other costs for direct crab labor; insurance deductible fees; re-packing costs; broker fees and promotions for BSAI crab sales (by CR fishery code); observer costs (by CR fishery code); freight costs for supplies to the vessel; freight and handling costs for processed crab products from the vessel; product storage; waste disposal; and other crab-specific costs (specify).

(viii) Vessel-specific costs. Record the total for each category. If the reported total expense should not be attributed solely to BSAI crab operations, please place an "X" in the PRORATE OVER ALL ACTIVITIES column. The analyst

will prorate this amount over all vessel activities: fuel, electricity, lubrication and hydraulic fluids; improvements for vessel and equipment; R&M for vessel and equipment; number of employees and salaries for foremen, managers and other employees not included in direct labor costs; other vessel overhead expenses; and other vessel-specific costs (specify).

(ix) BSAI crab custom processing performed for others. CR fishery code, product code, process code, whether OUR CRAB or THEIR CRAB, and processing revenue.

(x) Prorating information. Enter the totals for the calendar year for the vessel in all fisheries for each of the following categories: processing days, revenue, pounds processed, and processing labor costs.

(f) Stationary floating crab processor (SFCP) annual EDR—(1) Requirement. On or before May 1 of each year, beginning with Year 2005, any owner or leaseholder of an SFCP that processed crab from a CR fishery must submit to the DCA, at the address provided on the form, an EDR for annual data for the previous year.

(2) Instructions. Instructions for submitting an SFCP annual EDR and certification page are specified in the following table:

If you are ...	And ...	You must complete and submit ...
(i) The SFCP owner	(A) You processed BSAI crab in the SFCP described at paragraph (f)(3)(ii)(B) of this section during this calendar year.	Entire EDR
	(B) No one processed BSAI crab in the SFCP described at paragraph (f)(3)(ii)(B) of this section during this calendar year.	EDR certification pages
	(C) You leased all of your IPQ to another party and processed no BSAI crab in the SFCP described at paragraph (f)(3)(ii)(B) of this section during this calendar year.	(1) EDR certification pages (2) Provide the name, address, and telephone number of the person to whom you leased the IPQ during this calendar year.
	(D) You leased a portion of your IPQ to another party, but processed some BSAI crab in the SFCP described at paragraph (f)(3)(ii)(B) of this section during this calendar year.	(1) Entire EDR (2) Provide the name, address, and telephone number of the person to whom you leased the IPQ during this calendar year.
(ii) The leaseholder described in paragraph (f)(1) of this section	You operated the SFCP described at paragraph (f)(3)(ii)(B) of this section and processed some BSAI crab during this calendar year.	Entire EDR

(3) EDR certification pages. (i) The owner or leaseholder must submit the EDR certification pages either:

(A) As part of the entire EDR. The owner or leaseholder must submit the completed EDR certification pages as part of the entire EDR and must attest

to the accuracy and completion of the EDR by signing and dating the certification pages; or

(B) As a separate document. The owner or leaseholder must submit the completed EDR certification pages only, and must attest that they meet the

conditions exempting them from submitting the EDR, by signing and dating the certification pages (see paragraph (e)(2) of this section).

(ii) The owner or leaseholder must submit the following information on the certification pages:

(A) *Calendar year of EDR.* Calendar year of the reporting year;

(B) *SFCP information.* SFCP name, company name, USCG documentation number, ADF&G processor code, Crab Processor Permit number, crab LLP license number(s), estimated market value of vessel and equipment, and replacement value of vessel and equipment.

(C) *Owner information.* Owner name, title, and business telephone number, facsimile number, and e-mail address (if available).

(D) *Designated representative.* Any owner or leaseholder may appoint a designated representative who is an individual for responding to questions on the EDR and must ensure that the designated representative complies with the regulations in this part. The designated representative is the primary contact person for the DCA on issues relating to data required in the EDR.

(E) *Person completing the report.* (1) Indicate whether the person completing this report is the owner, leaseholder, or designated representative;

(2) If the owner is the person completing this report, check the correct box. The information provided above does not need to be repeated here; and

(3) Name of person, title, and business telephone number, facsimile number, and e-mail address (if available).

(4) EDR. The owner or leaseholder must record the following information on an EDR.

(i) *Season interval chart.* Complete a season interval chart by entering the following information: season interval number, number of crab processing days, dates covered (beginning and ending day, month, and year), species code, raw pounds, product code, process code, crab size, crab grade, box size, finished pounds, and whether custom processed (Yes or No).

(ii) *Crab processing labor costs.* Season interval number, average number of crab processing positions, total man-hours, and total processing labor payment.

(iii) *BSAI Crab crew residence identification.* Location of residence and the number of employees that reside in each location as follows:

(A) If Alaska, enter primary city of residence.

(B) If state other than Alaska, enter primary state of residence.

(C) If country other than United States, enter primary country of residence.

(iv) *BSAI crab custom processing done for you.* Season interval number, species code, raw pounds supplied to custom processors, raw pounds purchased from custom processors, product code, process code, crab size, crab grade, box size, finished pounds, and processing fee.

(v) *Raw crab purchases from delivering vessels.* Season interval number, species code, crab size, crab grade, raw pounds purchased, and gross payment.

(vi) *Annual BSAI crab sales.* For affiliated entities and unaffiliated entities enter species code, product code, process code, crab size, crab grade, box size, finished pounds, and gross revenue.

(vii) *BSAI crab-specific vessel costs.* Total of fisheries taxes which includes the Alaska fisheries business tax, SMAA taxes, and other local sales tax on raw fish; processing and packaging materials, equipment and supplies by city and state; food and provisions; other costs for direct crab labor; insurance deductible fees; re-packing costs; broker fees and promotions for BSAI crab sales (by season interval number); observer costs (by season interval number); freight costs for supplies to the vessel; freight and handling costs for processed crab products from the vessel; product storage; waste disposal; and other crab-specific costs (specify).

(viii) *Vessel-specific costs.* Record the total for each category. If the reported total expense should not be attributed solely to BSAI crab operations, please place an "X" in the PRORATE OVER

ALL ACTIVITIES column. The analyst will prorate this amount over all vessel activities: fuel, electricity, lubrication and hydraulic fluids; improvements in vessel, gear and equipment (by city and state); R&M for vessel, gear and equipment (by city and state); number of employees and salaries for foremen, managers and other employees not included in direct labor costs; other vessel overhead expenses; and other vessel-specific costs (specify).

(ix) *BSAI crab custom processing performed for others.* Season interval number, species code, product code, process code, whether OUR CRAB or THEIR CRAB, and processing revenue.

(x) *Prorating information.* Enter the totals for the year for the vessel in all fisheries for each of the following categories: processing days, revenue, pounds processed, and processing labor costs.

(g) *Shoreside processor historical EDR—(1) Requirement.* Any owner or leaseholder of a shoreside processor who processed CR fisheries crab in the calendar years 1998, 2001, or 2004 must submit to the DCA, at the address provided on the form, an EDR for historical data for each of the specified calendar years, if they:

(i) Qualified for or hold QS, PQS, IFQ, or IPQ under this Program;

(ii) Did not qualify for and receive QS, PQS, IFQ, or IPQ, but are participants at any time since January 23, 2004, in the BSAI crab fisheries.

(2) *Time limit.* Any owner or leaseholder of the shoreside processor described in paragraph (g)(4)(ii)(B) of this section must submit the historical EDR to the DCA by (DATE 60 DAYS AFTER THE DATE OF EFFECTIVENESS OF THE FINAL RULE) at the address provided on the form.

(3) *Instructions.* Instructions for submitting a shoreside processor historical EDR and certification page are specified in the following table:

If you were ...	And ...	You must complete and submit ...
(f) The shoreside processor owner described in paragraph (g)(1) of this section	(A) You processed BSAI crab in the plant described at paragraph (g)(4)(ii)(B) of this section during 1998, 2001, or 2004.	Entire EDR for each year that BSAI crab was processed
	(B) No one processed BSAI crab in the plant described at paragraph (g)(4)(ii)(B) of this section during 1998, 2001, or 2004.	EDR certification pages for each year that no one processed BSAI crab.
	(C) You leased your shoreside processor to another party, and processed no BSAI crab in the plant described at paragraph (g)(4)(ii)(E) of this section during 1998, 2001, or 2004.	(1) EDR certification pages (2) Provide the name, address, and telephone number of the person to whom you leased the shoreside processor during 1998, 2001, or 2004.

If you were ...	And ...	You must complete and submit ...
	(D) You leased your shoreside processor for a portion of the time to another party, but processed some BSAI crab in the plant described at paragraph (g)(4)(ii)(B) of this section during 1998, 2001, or 2004.	(1) Entire EDR for each year that BSAI crab was processed. (2) Provide the name, address, and telephone number of the person to whom you leased the shoreside processor during 1998, 2001, or 2004.
(ii) The leaseholder described in paragraph (g)(1) of this section	You operated the plant described at paragraph (g)(4)(ii)(B) of this section and processed some BSAI crab during 1998, 2001, or 2004.	Entire EDR for each year that BSAI crab was processed

(4) *EDR certification pages.* (i) The owner or leaseholder must submit the EDR certification pages either:

(A) *As part of the entire EDR.* The owner or leaseholder must submit the completed EDR certification pages as part of the entire EDR and must attest to the accuracy and completion of the EDR by signing and dating the certification pages; or

(B) *As a separate document.* If the owner or leaseholder did not process BSAI crab in 1998, 2001, or 2004, he or she must submit the completed EDR certification pages only, and must attest that he or she meets the conditions exempting him or her from submitting the EDR, by signing and dating the certification pages for each year of 1998, 2001, or 2004 that this applies;

(ii) *Required information.* The owner or leaseholder must submit the following information on the certification pages:

(A) *Calendar year of EDR.* Calendar years corresponding to 1998, 2001, or 2004;

(B) *Shoreside processor information.* Shoreside processor name, company name, crab processor permit number, ADF&G processor code, physical location of land-based plant (street address, city, state, zip code), borough assessed value of plant and equipment, year assessed, and estimated value of plant and equipment;

(C) *Owner information.* Owner name, title, and business telephone number, facsimile number, and e-mail address (if available);

(D) *Designated representative.* Any owner or leaseholder may appoint a designated representative who is an individual for responding to questions on the EDR and must ensure that the designated representative complies with the regulations in this part. The designated representative is the primary contact person for the DCA on issues relating to data required in the EDR.

(E) *Person completing the report.* (1) Indicate whether the person completing this report is the owner, leaseholder, or designated representative;

(2) If the owner is the person completing the report, check the correct box. The information provided above does not need to be repeated here.

(3) Name of person, title, and business telephone number, facsimile number, and e-mail address (if available).

(5) *EDR.* The owner or leaseholder must record the following information on an EDR.

(i) *BSAI crab production.* CR fishery code (see Table 1 to this part); number of crab processing days, dates covered (beginning and ending day, month, and year); raw pounds purchased, product code, process code, crab size, crab grade, box size, finished pounds, and whether custom processed (Yes or No).

(ii) *Crab processing labor costs.* CR fishery code, average number of crab processing positions, total man-hours, and total processing labor payment.

(iii) *BSAI Crab crew residence identification.* Location of residence and the number of employees that reside in each location as follows:

(A) If Alaska, enter primary city of residence.

(B) If state other than Alaska, enter primary state of residence.

(C) If country other than United States, enter primary country of residence.

(iv) *BSAI crab custom processing done for you.* CR fishery code, raw pounds supplied to custom processors, raw pounds purchased from custom processors, product code, process code, crab size, crab grade, box size, finished pounds, and processing fee.

(v) *Raw crab purchases from delivering vessels.* CR fishery code, crab size, crab grade, raw pounds purchased, and gross payment.

(vi) *Annual BSAI crab sales.* For affiliated entities and unaffiliated entities enter species code, product code, process code, crab size, crab grade, box size, finished pounds, and gross revenue.

(vii) *BSAI crab-specific plant costs.* Total fisheries taxes which include the Alaska fisheries business tax, SMAF taxes, and other local sales tax on raw

fish; processing and packaging materials, equipment and supplies; food and provisions; other costs for direct crab labor; insurance deductible fees; re-packing costs, broker fees and promotions for BSAI crab sales by CR fishery code; observer costs by CR fishery code; freight costs for supplies to the plant; freight and handling costs for processed crab products from the plant; product storage; water, sewer, and waste disposal; and other crab specific costs (specify).

(viii) *Plant-specific costs.* Record the total for each category. If the reported total expense should not be attributed solely to BSAI crab operations, please place an "X" in the PRORATE OVER ALL ACTIVITIES column. The analyst will prorate this amount over all vessel activities: fuel, electricity, lubrication, and hydraulic fluids; improvements in plant, and equipment; R&M for existing plant and equipment; number of employees and salaries for foremen, managers and other employees not included in direct labor costs; other plant overhead expenses; and other plant-specific costs (specify).

(ix) *BSAI crab custom processing done for others.* CR fishery code, product code, process code, whether OUR CRAB or THEIR CRAB, and processing revenue.

(x) *Prorating information.* Enter the totals for this plant, for the year in all fisheries for each of the following categories: processing days, revenue, pounds processed, and processing labor costs.

(h) *Shoreside processor annual EDR—*
(1) *Requirement.* On or before May 1 of each year, beginning with Year 2005, any owner or leaseholder of a shoreside processor that processed crab from a CR fishery must submit to the DCA, at the address provided on the form, an EDR for annual data for the previous year.

(2) *Instructions.* Instructions for submitting a shoreside processor annual EDR and certification page are specified in the following table.

If you are ...	And ...	You must complete and submit ...
(i) The shoreside processor owner	(A) You processed BSAI crab in the plant described at paragraph (h)(3)(ii)(B) of this section during this calendar year.	Entire EDR
	(B) No one processed BSAI crab in the plant described at paragraph (h)(3)(ii)(B) of this section during this calendar year.	EDR certification pages
	(C) You leased all of your IPQ to another party, and processed no BSAI crab in the plant described at paragraph (h)(3)(ii)(B) of this section during this calendar year.	(1) EDR certification pages (2) Provide the name, address, and telephone number of the person to whom you leased the IPQ during this calendar year.
	(D) You leased portions of your IPQ to another party, but processed some BSAI crab in the plant described at paragraph (h)(3)(ii)(B) of this section during this calendar year.	(1) Entire EDR (2) Provide the name, address, and telephone number of the person to whom you leased the IPQ during this calendar year.
(ii) The leaseholder described in paragraph (h)(1) of this section	You operated the plant described at paragraph (h)(3)(ii)(B) of this section and processed some BSAI crab during this calendar year.	Entire EDR

(3) *EDR certification pages.* (i) The owner or leaseholder must submit the EDR certification pages either:

(A) *As part of the entire EDR.* The owner or leaseholder must submit the completed EDR certification pages as part of the entire EDR and must attest to the accuracy and completion of the EDR by signing and dating the certification pages; or

(B) *As a separate document.* The owner or leaseholder must submit the completed EDR certification pages only, and must attest that they meet the conditions exempting them from submitting the EDR, by signing and dating the certification pages.

(ii) The owner or leaseholder must submit the following information on the certification pages:

(A) *Calendar year of EDR.* Calendar year for the reporting year;

(B) *Shoreside processor information.* Shoreside processor name, company name, crab processor permit number, ADF&G processor code, physical location of land-based plant (street address, city, state, zip code), borough assessed value of plant and equipment, estimated value of plant and equipment, and year assessed.

(C) *Owner information.* Owner name, title, and business telephone number, facsimile number, and e-mail address (if available);

(D) *Designated representative.* Any owner or leaseholder may appoint a designated representative who is an individual for responding to questions on the EDR and must ensure that the designated representative complies with the regulations in this part. The designated representative is the primary

contact person for the DCA on issues relating to data required in the EDR.

(E) *Person completing the report.* (1) Indicate whether the person completing this report is the owner, leaseholder, or designated representative;

(2) If the owner is the person completing this report, check the correct box. The information provided above does not need to be repeated here.

(3) Name of person, title, and business telephone number, facsimile number, and e-mail address (if available).

(4) EDR. The owner or leaseholder must record the following information on an EDR.

(i) *Season interval chart.* Complete a season interval chart by entering the following information: season interval number, number of crab processing days, dates covered (beginning and ending day, month, and year), species code, raw pounds, product code, process code, crab size, crab grade, box size, finished pounds, and whether custom processed (Yes or No).

(ii) *Crab processing labor costs.* Season interval number, average number of crab processing positions, total man-hours, and total processing labor payment.

(iii) *BSAI Crab crew residence identification.* Location of residence and the number of employees that reside in each location as follows:

(A) If Alaska, enter primary city of residence.

(B) If state other than Alaska, enter primary state of residence.

(C) If country other than United States, enter primary country of residence.

(iv) *BSAI crab custom processing done for you.* Season interval number:

species code, raw pounds supplied to custom processors, raw pounds purchased from custom processors, product code, process code, crab size, crab grade, box size, finished pounds, and processing fee.

(v) *Raw crab purchases from delivering vessels.* Season interval number, species code, crab size, crab grade, raw pounds purchased, and gross payment.

(vi) *Annual BSAI crab sales.* For affiliated entities and unaffiliated entities enter species code, product code, process code, crab size, crab grade, box size, finished pounds, and gross revenue.

(vii) *BSAI crab-specific plant costs.* Total of fisheries taxes which include the Alaska fisheries business tax, SMAA taxes, and other local sales tax on raw fish; processing and packaging materials, equipment and supplies by city and state; food and provisions; other costs for direct crab labor; insurance deductible fees; re-packing costs; broker fees and promotions for BSAI crab sales by season interval number; observer costs by season interval number; freight costs for supplies to the plant; freight and handling costs for processed crab products from the plant; product storage; water, sewer, and waste disposal; and other crab specific costs (specify).

(viii) *Plant-specific costs.* Record the total for each category. If the reported total expense should not be attributed solely to BSAI crab operations, please place an "X" in the PRORATE OVER ALL ACTIVITIES column. The analyst will prorate this amount over all vessel activities: fuel, electricity, lubrication.

and hydraulic fluids; improvements in plant, and equipment by city and state; R&M for existing plant and equipment by city and state; number of employees and salaries for foremen, managers and other employees not included in direct labor costs; other plant overhead expenses; and other plant-specific costs (specify).

(ix) *BSAI crab custom processing performed for others.* Season interval number, species code, product code, process code, whether OUR CRAB or THEIR CRAB, and processing revenue.

(x) *Prorating information.* Enter the totals for the year for this plant in all fisheries for each of the following categories: processing days, revenue, pounds processed, and processing labor costs.

(i) *Verification of data.* (1) The DCA shall conduct verification of information with the owner or leaseholder.

(2) The owner or leaseholder must respond to inquiries by the DCA within 15 days of the date of issuance of the inquiry.

(3) The owner or leaseholder must provide copies of additional data to facilitate verification by the DCA. The DCA auditor may review and request copies of additional data provided by the owner or leaseholder, including but not limited to: previously audited or reviewed financial statements, worksheets, tax returns, invoices, receipts, and other original documents substantiating the data.

(j) The DCA is authorized to request voluntary submission of economic data specified herein from persons who are not required to submit an EDR under this paragraph (j).

§ 680.7 Prohibitions.

In addition to the general prohibitions specified in § 600.725 of this chapter, it is unlawful for any person to do any of the following:

(a) *Receiving and processing CR crab.*

(1) Process any CR crab that has not been weighed by an RCR on a scale approved by the State in which the RCR is located and that meets the requirements described in § 680.23(f); or onboard a catcher/processor on a scale approved by NMFS as described in § 680.23(e).

(2) Receive CR crab harvested under an IFQ permit in any region other than the region for which the IFQ permit is designated.

(3) Use IPQ on board a vessel outside of the territorial sea or internal waters of the State of Alaska.

(4) Use IPQ in any region other than the region for which the IPQ is designated.

(5) Receive any crab harvested under a Class A IFQ permit in excess of the total amount of unused IPQ held by the RCR.

(6) Receive crab harvested under a Class B IFQ permit on a vessel if that vessel was used to harvest and process any crab in that crab QS fishery during the same crab fishing year.

(7) Receive PQS or IPQ by transfer if you hold Class B IFQ.

(b) *Landing CR crab.* (1) Remove retained and unprocessed CR crab from a vessel at any location other than to an RCR operating under an approved catch monitoring plan as described in § 680.23(g).

(2) Remove any CR crab processed at sea from any vessel before completing a landing report, as defined at § 680.5(f), for all such CR crab onboard.

(3) Resume fishing for CR crab or take CR crab on board a vessel once a landing has commenced and until all CR crab are landed.

(4) Fail to remove all processed crab harvested under a CPO or a CPC IFQ permit to an onshore location within the United States, accessible by road or regularly scheduled air service, and to weigh that crab product on a scale approved by the State in which the crab is weighed.

(5) Fail to remain at a landing site when IFQ crab is being landed and until such time as the landing report for that landing is complete.

(6) Make an IFQ crab landing except by an individual who holds either an IFQ crab permit or a Crab IFQ Hired Master Permit issued under § 680.4 in his or her name.

(7) Fish for or land BSAI crab without the original Federal Crab Vessel Permit issued to a vessel on board that vessel.

(8) Make an IFQ crab landing without the following on board: a copy of the IFQ crab permit to be debited for the landing; and, if applicable, a copy of the Crab IFQ Hired Master Permit issued under § 680.4 in the name of the person making the landing.

(9) For a Crab IFQ Hired Master to make an IFQ crab landing on any vessel other than the vessel named on the Crab IFQ Hired Master Permit.

(c) *Harvest crab.* (1) Harvest any BSAI crab with any vessel not named on a valid Federal Crab Vessel Permit.

(2) Harvest IFQ crab with any vessel that does not use functioning VMS equipment as required by § 680.23.

(3) Harvest on any vessel more IFQ crab than are authorized under § 680.42.

(4) Harvest crab under a CVC or a CPC IFQ permit unless the person named on the IFQ permit is on board that vessel.

(5) Harvest crab under a CPO or CPC permit unless all scales used to weigh

crab, or used by an observer for sampling crab, have passed an inseason scale test according to § 680.23(e)(1).

(d) *Recordkeeping and reporting.* (1) Fail to submit information on any report, application, or statement required under this part.

(2) Submit false information on any report, application, or statement required under this part.

(e) *Permits.* (1) Retain IFQ crab without a valid crab IFQ permit for that fishery on board the vessel.

(2) Retain IFQ crab on a vessel in excess of the total amount of unharvested crab IFQ, for a crab QS fishery that is currently held by all crab IFQ permit holders or Crab IFQ Hired Masters aboard the vessel.

(3) Receive Class B IFQ by transfer if a person holds PQS or IPQ.

(4) Receive Class B IFQ by transfer if you are affiliated with a person who holds PQS or IPQ.

(f) Use IPQ as collateral or otherwise leverage IPQ to acquire an ownership interest in Class B IFQ.

(g) Possess, buy, sell, or transport any crab harvested or landed in violation of any provision of this part.

(h) Violate any other provision under this part.

(i) Conduct any fishing contrary to notification of inseason action closure, or adjustment issued under § 680.22.

§ 680.8 Facilitation of enforcement.

See § 600.730 of this chapter.

§ 680.9 Penalties.

(a) Any person committing, or a fishing vessel used in the commission of, a violation of the Magnuson-Stevens Act, or any regulation issued under the Magnuson-Stevens Act, is subject to the civil and criminal penalty provisions, permit sanctions, and civil forfeiture provisions of the Magnuson-Stevens Act, to part 600 of this chapter, to 15 CFR part 904 (Civil Procedures), and to other applicable law. Penalties include but are not limited to permanent or temporary sanctions to PQS, QS, IPQ, IFQ, or RCR permits.

(b) In the event a holder of any IPQ is found by a court of competent jurisdiction, either in an original action in that court or in a proceeding to enforce or review the findings or orders of any Government agency having jurisdiction under the antitrust laws, to have violated any of the provisions of antitrust laws in the conduct of the licensed activity, the Secretary of Commerce may revoke all or a portion of such IPQ. The antitrust laws of the United States include, but are not limited to, the following Acts:

(1) The Sherman Act, 15 U.S.C. 1-7:

(2) The Wilson Tariff Act, 15 U.S.C. 8-11;

(3) The Clayton Act, 15 U.S.C. 12-27; and

(4) The Federal Trade Commission Act, 15 U.S.C. 12 and 45(a).

Subpart B—Management Measures

§ 680.20 Arbitration System.

(a) *Applicability*—(1) *Arbitration System*. All CVO and CVC QS, PQS, Arbitration IFQ, Class A IFQ holders, and IPQ holders must enter the contracts as prescribed in this section that establish the Arbitration System. Certain parts of the Arbitration System are voluntary for some parties, as specified in this section. All contract provisions will be enforced by parties to those contracts.

(2) *Open negotiation*. At any time prior to the first crab fishing season for that crab fishing year for that crab QS fishery, any holder of uncommitted IFQ may negotiate with any holder of uncommitted IPQ, the price and delivery terms for that season or for future seasons for any uncommitted IFQ and IPQ. QS holders, uncommitted IFQ holders and PQS or IPQ holders may freely contact each other and initiate open negotiations.

(b) *Eligibility for Arbitration System*—(1) *Arbitration Organization*. The following persons are the only persons eligible to join an Arbitration Organization:

- (i) Holders of CVO and CVC QS,
- (ii) Holders of PQS,
- (iii) Holders of Arbitration IFQ,
- (iv) Holders of Class A IFQ affiliated with a PQS or IPQ holder, and
- (v) Holders of IPQ.

(2) *Persons Eligible to Use Negotiation and Binding Arbitration Procedures*. The following persons are the only persons eligible to enter contracts with a Contract Arbitrator to use the negotiation and Binding Arbitration procedures described in paragraph (h) of this section to resolve price and delivery disputes or negotiate remaining contract terms not previously agreed to by IFQ and IPQ holders under other negotiation approaches:

- (i) Holders of Arbitration IFQ; and
- (ii) Holders of IPQ.

(3) *Persons Ineligible to Use Negotiation and Binding Arbitration Procedures*. Holders of IFQ or QS that are affiliated with holders of PQS or IPQ are ineligible to enter contracts with a Contract Arbitrator to use the negotiation and Binding Arbitration procedures described in paragraph (h) of this section to resolve price and delivery disputes or negotiate remaining contract terms not previously agreed to by IFQ

and IPQ holders under other negotiation approaches.

(c) *Preseason requirements for joining an Arbitration Organization*. All holders of CVO and CVC QS, PQS, Arbitration IFQ, Class A IFQ, and IPQ must join and maintain a membership in an Arbitration Organization as specified in paragraph (d) of this section. All holders of QS, PQS, CVO or CVC IFQ, or IPQ must join an Arbitration Organization at the following times:

(1) For QS holders and PQS holders except as provided for in paragraph (c)(3) of this section, not later than May 1 of each year for the crab fishing year that begins on July 1 of that year.

(2) For IFQ holders and IPQ holders, not later than 15 days after the issuance of IFQ and IPQ for that crab QS fishery.

(3) During 2005, QS and PQS holders must join an Arbitration Organization as described in paragraph (d) of this section not later than July 1, 2005.

(d) *Formation process for an Arbitration Organization*. (1) Arbitration Organizations must be formed to select and contract a Market Analyst, Formula Arbitrator, Contract Arbitrator(s), and establish the Arbitration System, including the payment of costs of arbitration, described in this section for each crab QS fishery. All persons defined in paragraph (b)(1) of this section must join an Arbitration Organization.

(i) *Arbitration QS/IFQ Arbitration Organization*. Holders of Arbitration QS and Arbitration IFQ must join an Arbitration QS/IFQ Arbitration Organization. This Arbitration Organization may not have members who are not holders of Arbitration QS or Arbitration IFQ. Arbitration QS holders and Arbitration IFQ holders may join separate Arbitration QS/IFQ Arbitration Organizations. The mechanism for forming an Arbitration Organization is determined by the members of the organization.

(ii) *PQS/IPQ Arbitration Organization*. Holders of PQS or IPQ must join a PQS/IPQ Arbitration Organization. This Arbitration Organization may not have members who are not holders of PQS or IPQ. PQS holders and IPQ holders may join separate PQS/IPQ Arbitration Organizations. The mechanism for forming an Arbitration Organization is determined by the members of the organization.

(iii) *Affiliated QS/IFQ Arbitration Organization*. Holders of CVO QS or Class A IFQ affiliated with a PQS or IPQ holder must join an Affiliated QS/IFQ Arbitration Organization. This Arbitration Organization may not have members who are not holders of QS or

IFQ affiliated with a PQS or IPQ holder. CVO QS holders and Class A IFQ holders may join separate Affiliated QS/IFQ Arbitration Organizations. The mechanism for forming an Arbitration Organization is determined by the members of the organization.

(iv) No person may be a member of more than one Arbitration Organization for a crab QS fishery during a crab fishing year.

(2) Each Arbitration Organization must submit a complete Annual Arbitration Organization report to NMFS. A complete report must include:

- (i) A copy of the business license of the Arbitration Organization;
- (ii) A statement identifying the members of the organization and the amount of Arbitration QS and Arbitration IFQ, Non-Arbitration QS and Non-Arbitration IFQ, or PQS and IPQ held by each member and represented by that Arbitration Organization;
- (iii) QS, PQS, IFQ, and IPQ ownership information on the members of the organization;
- (iv) Management organization information, including:

- (A) The bylaws of the Arbitration Organization;
- (B) A list of key personnel of the management organization including, but not limited to, the board of directors, officers, representatives, and any managers;

(v) The name of the Arbitration Organization, permanent business mailing addresses, name of contact persons and additional contact information of the managing personnel for the Arbitration Organization, resumes of management personnel; and

(vi) A copy of all minutes of any meeting held by the Arbitration Organization or any members of the Arbitration Organization.

(3) An Arbitration Organization, with members who are QS or PQS holders, must submit a complete Annual Arbitration Organization Report to NMFS by electronic mail to the Regional Administrator, National Marine Fisheries Service, or by mail addressed to the Regional Administrator, National Marine Fisheries Service, Post Office Box 21668, Juneau, Alaska 99802 by:

- (i) June 15, 2005 for the crab fishing year beginning on July 1, 2005.
- (ii) May 1 of each subsequent year for the crab fishing year beginning on July 1 of that year.

(4) An Arbitration Organization, with members who are IFQ or IPQ holders, must submit a complete Annual Arbitration Organization Report to NMFS by electronic mail to the Regional Administrator, National Marine

Fisheries Service, or by mail addressed to the Regional Administrator, National Marine Fisheries Service, Post Office Box 21668, Juneau, Alaska 99802 by not later than 15 days after the issuance of IFQ and IPQ for that crab QS fishery.

(e) *Role of Arbitration Organization(s) and annual requirements.* (1) The members of each Arbitration Organization must enter into a contract that specifies the terms and conditions of participation in the organization.

(i) The contract with members of an Arbitration QS/IFQ Arbitration Organization, or a PQS/IPQ Arbitration Organization shall include the terms, conditions, and provisions specified in paragraph (e)(2) of this section.

(ii) The contract with members of an Affiliated QS/IFQ Arbitration Organization shall include the terms, conditions, and provisions in paragraph (e)(3) of this section.

(2) *Provisions for Arbitration QS/IFQ Arbitration Organizations, and PQS/IPQ Arbitration Organizations—(i) Selection of Market Analyst, Formula Arbitrator, and Contract Arbitrator(s).* A provision authorizing the Arbitration Organization to act on behalf of its members in the selection of and contracting with the Market Analyst, Formula Arbitrator, and Contract Arbitrator(s) under paragraph (e)(4) of this section.

(ii) *Agreement to participate in the arbitration process.* A provision authorizing the Arbitration Organization to require its members to use the Lengthy Season Approach, Share Matching Approach, and Binding Arbitration defined under paragraph (h) of this section.

(iii) *Confidentiality of information.* A provision that a member that is a party to a Binding Arbitration proceeding shall sign a confidentiality agreement with the party with whom it is arbitrating stating they will not disclose at any time to any person any information received from the Contract Arbitrator or any other party in the course of the arbitration. That confidentiality agreement shall specify the potential sanctions for violating the agreement.

(iv) *Provision of information to members.* A provision requiring the Arbitration Organization to provide to its members:

(A) A copy of the contracts for the Market Analyst, Formula Arbitrator, and Contract Arbitrator for each fishery in which the member participates;

(B) A provision that requires the Arbitration Organization to deliver the Market Report and the Non-Binding Price Formula for each fishery in which the member participates within 5 days of its release.

(v) *Information release.* (A) A provision requiring that the Arbitration Organization deliver to NMFS any data, information, and documents generated pursuant to this section.

(B) In the case of a PQS/IPQ Arbitration Organization(s),

(1) A provision that requires the Arbitration Organization to provide for the delivery of the names of and contact information for its members who hold uncommitted IPQ, and to identify the regional designations and amounts of such uncommitted IPQ, to any persons that hold uncommitted Arbitration IFQ and prohibits the disclosure of any information received under this provision to any person except those holders of uncommitted Arbitration IFQ. The provision will require that information concerning uncommitted IPQ be updated within 24 hours of a change of any such information, including any commitment of IPQ, and that information be provided to those persons that hold uncommitted Arbitration IFQ. This provision may include a mechanism to provide information to uncommitted Arbitration IFQ holders through a secure website, or through other electronic means;

(2) A provision that requires the Arbitration Organization to arrange for the delivery to all holders of uncommitted Arbitration IFQ the terms of a decision of a Contract Arbitrator in a Binding Arbitration proceeding involving a member that holds uncommitted IPQ within 24 hours of notice of that decision. This provision may include a mechanism to provide information to uncommitted Arbitration IFQ holders through a secure website, or through other electronic means; and

(3) A provision that requires the holders of uncommitted IPQ to provide information concerning such uncommitted IPQ as necessary for the Arbitration Organization to comply with this paragraph and prohibits the disclosure of any such information by a member to any person, except as directed therein.

(vi) *Costs.* A provision that authorizes the Arbitration Organization to enter into a contract with all other arbitration organizations for the payment of the costs of arbitration as specified under this section.

(A) *Payment of costs for arbitration.* (1) The arbitration organizations must establish a contract that requires the payment of all costs of the Market Analyst, Formula Arbitrator, and Contract Arbitrator(s), dissemination of information concerning uncommitted IPQ to holders of uncommitted Arbitration IFQ, and the costs of such persons associated with lengthy season

approach, share matching approach, Binding Arbitration, quality and performance disputes, to be shared equally by all IPQ holders and Arbitration IFQ holders and Class A IFQ holders.

(2) These costs shall be shared based on the amount of IPQ or IFQ held by each person.

(3) These costs shall be divided so that the IPQ holders pay 50 percent of the costs and the Arbitration IFQ and Class A IFQ holders pay 50 percent of the costs.

(4) PQS holders shall advance all costs and shall collect the contribution of Class A IFQ holders at landing subject to terms mutually agreed by the arbitration organizations.

(vii) *Negotiation methods.* A provision that prohibits the Arbitration Organization from engaging in any contract negotiations on behalf of its members, except for those necessary to hire the Market Analyst, Formula Arbitrator, and Contract Arbitrator(s).

(viii) *Transfer of QS, PQS, IFQ, or IPQ.* A provision under which members of the Arbitration Organization agree that any transfer of QS, PQS, IFQ or IPQ shall be conditioned on the purchaser of such Arbitration QS, PQS, Arbitration IFQ, or Non-Arbitration Class A IFQ, or IPQ being a member of an Arbitration Organization that satisfies all of the applicable requirements of this section and such purchase being subject to all of provisions of the Arbitration System that apply to the holder of the transferred QS, PQS, IFQ, or IPQ.

(ix) *Enforcement of the contract.* Violations of the contract shall be enforced under civil law.

(3) *Provisions applying to Affiliated QS/IFQ Arbitration Organizations.* The provisions that allow for the provision of information to members, payment of costs, limits on the transfer of QS, PQS, IFQ, and IPQ, and enforcement of the contract as described under paragraphs (e)(iv), (vi), (viii), and (ix) will apply to the contract among members of an Affiliated QS/IFQ Arbitration Organization(s).

(4) *Process for selecting of Market Analyst, Formula Arbitrator, and Contract Arbitrator(s).* (i) For each crab fishing year, QS holders who are members of Arbitration QS/IFQ Arbitration Organization(s) and PQS holders who are members of PQS/IPQ Arbitration Organization(s), by mutual agreement, will select one Market Analyst, one Formula Arbitrator, and Contract Arbitrator(s) for each crab QS fishery. The number of Contract Arbitrators selected for each fishery will be subject to the mutual agreement of those arbitration organizations. The

selection of the Market Analyst and the Formula Arbitrator must occur in time to ensure the Market Report and non-binding price formula are produced within the time line established in paragraph (e)(4)(ii).

(ii) The arbitration organizations representing Arbitration QS holders or PQS holders in a crab fishery shall establish by mutual agreement the contractual obligations of the Market Analyst, Formula Arbitrator, and Contract Arbitrator(s) for each fishery, which shall provide that the Market Report and Non-Binding Price Formula are produced not later than 50 days prior to the first crab fishing season for that crab QS fishery in that crab fishing year except as provided in paragraph (e)(6) of this section. The contractual obligations of the Market Analyst, the Formula Arbitrator and Contract Arbitrators will be enforced by the parties to the contract.

(iii) The same person may be chosen for the positions of Market Analyst and Formula Arbitrator for a fishery.

(iv) A person selected to be a Contract Arbitrator may not be the Market Analyst or Formula Arbitrator, and shall not be in the employ or otherwise associated with the Market Analyst or Formula Arbitrator, for that fishery.

(5) *Notification to NMFS.* Not later than June 1 for that crab fishing year, except as provided in paragraph (e)(6) of this section, the arbitration organizations representing the holders of Arbitration QS and PQS in each fishery shall notify NMFS of the persons selected as the Market Analyst, Formula Arbitrator, and Contract Arbitrator(s) for the fishery by electronic mail addressed to the Regional Administrator, National Marine Fisheries Service, or by mail addressed to the Regional Administrator, National Marine Fisheries Service, Post Office Box 21668, Juneau, Alaska 99802. The arbitration organizations shall include a list of arbitration organizations that mutually agreed to the selection of the Market Analyst, Formula Arbitrator, and Contract Arbitrator(s) and signatures of representatives of those arbitration organizations and a copy of the contract with Market Analyst, the Formula Arbitrator, and each Contract Arbitrator. The notification must include a curriculum vitae and other relevant biographical material for each of these individuals.

(6) *First-year implementation.* During 2005:

(i) Selection of and establishment of the contractual obligations of the Market Analyst, Formula Arbitrator, and Contract Arbitrator(s) as required under

this section shall occur not later than July 30, 2005; and

(ii) The Market Report and Non-Binding Price Formula shall be produced not later than 25 days prior to the first crab fishing season for that crab QS fishery in that crab fishing year as required under this section.

(f) *Roles and standards for the Market Analyst and process for producing the Market Report.* (1) For each crab QS fishery, the Arbitration QS/IPQ Arbitration Organizations and the PQS/IPQ Arbitration Organizations shall establish a contract with the Market Analyst to produce a Market Report for the fishery. The terms of this contract must specify that the Market Analyst must produce a Market Report that shall provide an analysis of the market for products of that fishery.

(2) The contract with the Market Analyst must specify that:

(i) The Market Analyst shall base the Market Report:

(A) On a survey of the market for crab products produced by the fishery.

(B) Information provided by the IPQ and IFQ holders regarding market conditions and expectations.

(iii) To the extent IPQ and IFQ holders provide information requested by the Market Analyst, they must provide such information directly to the Market Analyst and not to any other IPQ holder or IFQ holder, except that IFQ holders that are members of any single crab harvesting cooperative may share such information with other members of the same crab harvesting cooperative who are authorized to participate in the arbitration system.

(iv) The Market Analyst:

(A) May meet with IFQ holders who are members of any single crab harvesting cooperative collectively;

(B) Shall meet with IPQ holders individually

(C) Shall meet with distinct crab harvesting cooperatives individually;

(D) Shall meet with IFQ holders who are not members of the same crab harvesting cooperatives individually.

(v) The information provided to the Market Analyst by IPQ and IFQ holders must be historical information based on activities occurring more than three months prior to the generation of the Market Report.

(vi) The Market Analyst shall keep confidential the identity of the source of any particular information contained in the report. The Market Analyst may note generally the sources from which it gathered information. The report shall:

(A) Include only data that is based on information regarding activities occurring more than three months prior to the generation of the Market Report;

(B) Include only statistics for which there are at least five providers reporting data upon which each statistic is based and for which no single provider's data represents more than 25 percent of a weighted basis of that statistic; and

(C) Sufficiently aggregate any information disseminated in the report such that it would not identify specific price information by an individual provider of information.

(vii) The Market Report shall consider the following factors:

(A) Current ex-vessel prices, including ex-vessel prices received for crab harvested under Class A, Class B, and CVC IFQ permits;

(B) Consumer and wholesale product prices for the processing sector and the participants in the arbitration (recognizing the impact of sales to affiliates on wholesale pricing);

(C) Innovations and developments of the harvesting and processing sectors and the participants in the arbitration (including new product forms);

(D) Efficiency and productivity of the harvesting and processing sectors (recognizing the limitations on efficiency and productivity arising out of the management program structure);

(E) Quality (including quality standards of markets served by the fishery and recognizing the influence of harvest strategies on the quality of landings);

(F) The interest of maintaining financially healthy and stable harvesting and processing sectors;

(G) Safety and expenditures for ensuring adequate safety;

(H) Timing and location of deliveries; and

(I) The cost of harvesting and processing less than the full IFQ or IPQ allocation (underages) to avoid penalties for overharvesting IFQ and a mechanism for reasonably accounting for deadloss.

(viii) There shall only be one annual Market Report for each fishery.

(ix) The Market Analyst shall not issue interim or supplemental reports for each fishery;

(3) The Market Analyst shall not disclose any information to any person not required under this section.

(4) The contract with the Market Analyst must specify that the Market Analyst will provide the Market Report not later than 50 days prior to the first crab fishing season for that crab QS fishery in that crab fishing year to:

(i) Each Arbitration Organization in that fishery;

(ii) NMFS by electronic mail to the Regional Administrator, National Marine Fisheries Service, or addressed to the Regional Administrator, National Marine Fisheries Service, Post Office Box 21668, Juneau, Alaska 99802.

(iii) The Formula Arbitrator and any Contract Arbitrator(s) for the fishery.

(g) *Roles and standards for the Formula Arbitrator.* (1) For each crab QS fishery, the Arbitration QS/IPQ Arbitration Organizations and the PQS/IPQ Arbitration Organizations shall establish a contract with the Formula Arbitrator to develop a Non-Binding Price Formula.

(2) The contract with the Formula Arbitrator must specify that:

(i) The Formula Arbitrator will conduct a single annual fleet-wide analysis of arbitrations to establish a Non-Binding Price Formula under which a fraction of the weighted average first wholesale prices for crab products from the fishery may be used to set an ex vessel price.

(ii) The Non-Binding Price Formula shall:

(A) Be based on the historical distribution of first wholesale revenues between fishermen and processors in the aggregate based on arm's length first wholesale prices and ex vessel prices, taking into consideration the size of the harvest in each year; and

(B) Establish a price that preserves the historical division of revenues in the fishery while considering the following:

(1) Current ex-vessel prices, including ex-vessel prices received for crab harvested under Class A, Class B, and CVC IFQ permits;

(2) Consumer and wholesale product prices for the processing sector and the participants in arbitrations (recognizing the impact of sales to affiliates on wholesale pricing);

(3) Innovations and developments of the harvesting and processing sectors and the participants in arbitrations (including new product forms);

(4) Efficiency and productivity of the harvesting and processing sectors (recognizing the limitations on efficiency and productivity arising out of the management program structure);

(5) Quality (including quality standards of markets served by the fishery and recognizing the influence of harvest strategies on the quality of landings);

(6) The interest of maintaining financially healthy and stable harvesting and processing sectors;

(7) Safety and expenditures for ensuring adequate safety;

(8) Timing and location of deliveries; and

(9) The cost of harvesting and processing less than the full IFQ or IPQ allocation (underages) to avoid penalties for overharvesting IFQ and a mechanism for reasonably accounting for deadloss.

(C) Include identification of various relevant factors such as product form, delivery time, and delivery location.

(D) Consider the "highest arbitrated price" for the fishery from the previous crab fishing season, where the "highest arbitrated price" means the highest arbitrated price for arbitrations of IPQ and Arbitration IFQ which represent a minimum of at least 7 percent of the IPQ resulting from the PQS in that fishery. For purposes of this process, the Formula Arbitrator may aggregate up to three arbitration findings to collectively equal a minimum of 7 percent of the IPQ. When arbitration findings are aggregated with 2 or more entities, the lesser of the arbitrated prices of the arbitrated entities included to attain the 7 percent minimum be considered for the highest arbitrated price.

(iii) The Non-Binding Price Formula may rely on any relevant information available to the Formula Arbitrator, including, but not limited to,

(A) Information provided by the QS, PQS, IPQ and IFQ holders in the fishery; and

(B) The Market Report for the fishery.

(iv) The Formula Arbitrator:

(A) May meet with IFQ holders who are members of any single crab harvesting cooperative collectively;

(B) Shall meet with IPQ holders individually

(C) Shall meet with distinct crab harvesting cooperatives individually;

(D) Shall meet with IFQ holders who are not members of the same crab harvesting cooperatives individually.

(v) The Formula Arbitrator may request any relevant information from QS, PQS, IPQ, and IFQ holders in the fishery, but the Formula Arbitrator shall not have subpoena power.

(vi) May obtain information from persons other than QS, PQS, IPQ, and IFQ holders in the fishery, if those persons agree to provide such data. Any information that is provided must be based on activities occurring more than three months prior to the date of submission to the Formula Arbitrator;

(vii) Shall keep confidential the information that is not publicly available and not disclose the identity of the persons providing specific information; and

(viii) The contract with the Formula Arbitrator must specify that the Formula Arbitrator will provide the non-binding price formula not later than 50 days prior to the first crab fishing season for that crab QS fishery in that crab fishing year to:

(A) Each Arbitration Organization in that fishery;

(B) NMFS by electronic mail to the Regional Administrator, National Marine Fisheries Service, or addressed to the Regional Administrator, National

Marine Fisheries Service, Post Office Box 21668, Juneau, Alaska 99802.

(C) The Market Analyst and all Contract Arbitrators in the fishery.

(ix) The Formula Arbitrator shall not disclose any information to any person not required under this section, except as permitted by paragraph (j) of this section.

(h) *Roles and standards for the Contract Arbitrator(s).* (1) For each crab QS fishery, the Arbitration QS/IPQ Arbitration Organizations and PQS/IPQ Arbitration Organizations shall establish a contract with all Contract Arbitrators in that fishery that specifies that each Contract Arbitrator may be selected to resolve a dispute concerning the terms of delivery, price, or other factors in the fishery.

(2) *Selection of Contract Arbitrators.* The contract with the Contract Arbitrator shall specify the means by which the Contract Arbitrator will be selected to resolve specific disputes. This contract must specify that for any dispute for which the Contract Arbitrator is selected, that the Contract Arbitrator will comply with the last best offer arbitration method as set forth in this section.

(3) *Negotiation and Binding Arbitration Procedure.* The contract with the Contract Arbitrator(s) shall specify the following approaches for negotiation and Binding Arbitration among members of the Arbitration Organizations:

(i) *Restrictions on collective negotiation.* An IFQ and IPQ holder may negotiate individually. Groups of IFQ holders may negotiate collectively with an IPQ holder only under the following provisions:

(A) Members of a crab harvesting cooperative may participate collectively with other members of the same crab harvesting cooperative in Binding Arbitration except as otherwise provided under this section.

(B) Members of different crab harvesting cooperatives shall not participate collectively.

(C) IPQ holders shall not participate collectively. Only one IPQ holder can enter into Binding Arbitration with any IFQ holder or IFQ holder(s).

(D) An Arbitration Organization cannot negotiate on behalf of a member. This shall not prohibit the members of an Arbitration IFQ Arbitration Organization from negotiation as a crab harvesting cooperative under the FCMA.

(ii) *Open negotiations.* At any time prior to the date of the first crab fishing seas on a crab fishing year for that crab QS fishery, any holder of Arbitration QS or uncommitted IFQ may negotiate with any holder of PQS or uncommitted IPQ.

the price and delivery terms for that season for any uncommitted IFQ and IPQ.

(A) Arbitration QS or Arbitration IFQ holders and PQS or IPQ holders may freely contact each other and initiate open negotiations;

(B) If Arbitration QS or Arbitration IFQ holders and PQS or IPQ holders do not reach an agreement on price, delivery terms, or other terms, a party to the contract may initiate Binding Arbitration in accordance with the procedures specified in this section in order to resolve disputes in those price, delivery terms, or other terms.

(iii) *Lengthy season approach.* (A) Prior to the date of the first crab fishing season for that crab QS fishery in that crab fishing year an IPQ holder and one or more holders of Arbitration IFQ may choose to adopt a Lengthy Season approach.

(B) A Lengthy Season approach allows an IPQ holder and an Arbitration IFQ holder to agree to postpone negotiation of specific contract terms until a time during the crab fishing year as agreed upon by the Arbitration IFQ holder and IPQ holder participating in the negotiation. The Lengthy Season approach allows the Arbitration IFQ holders and IPQ holder involved in the negotiation to postpone Binding Arbitration, if necessary, until a time during the crab fishing year. If the parties reach a final agreement on the contract terms, Binding Arbitration is not necessary.

(C) If an IPQ holder and one or more Arbitration IFQ holder(s) are unable to reach an agreement on whether to adopt a Lengthy Season approach, they may agree to request a Binding Arbitration or mediation to assist the parties in determining whether to adopt a Lengthy Season approach. The parties may request a Contract Arbitrator to act as a mediator. If the mediation proves unsuccessful, the parties enter Binding Arbitration to determine whether to adopt a lengthy season approach.

(1) Binding Arbitration may begin immediately with the same Contract Arbitrator.

(2) If the Contract Arbitrator serves as a mediator in an unsuccessful mediation, either party may request another Contract Arbitrator for the Binding Arbitration.

(iv) *Share Matching.* (A) At any time after the issuance of IFQ and IPQ for a crab QS fishery but not earlier than 25 days prior to the first crab fishing season for a crab QS fishery in the crab fishing year, holders of uncommitted Arbitration IFQ may choose to commit the delivery of harvests of crab to be made with that uncommitted

Arbitration IFQ to a holder of uncommitted IPQ.

(B) To commit Arbitration IFQ, the holder of uncommitted IFQ must offer an amount of Arbitration IFQ not less than 50 percent of the Arbitration IFQ holder's total uncommitted Arbitration IFQ.

(C) Any holder of uncommitted IPQ must accept all proposed Arbitration IFQ commitments, up to the amount of its uncommitted IPQ. The commitment of IPQ will take place on receipt of notice from the holder of uncommitted Arbitration IFQ of the intention to commit that IFQ.

(D) After matching, an Arbitration IFQ holder and an IPQ holder may either decide to enter Binding Arbitration or, with the consent of both the Arbitration IFQ holder and IPQ holder, enter mediation to reach agreement on contract terms. The Arbitration IFQ holder and IPQ holder may request a Contract Arbitrator to act as a mediator to facilitate an agreement.

(1) If the mediation proves unsuccessful, Binding Arbitration may begin immediately with the same Contract Arbitrator.

(2) If the Contract Arbitrator serves as a mediator in an unsuccessful mediation, either party may request another Contract Arbitrator for the Binding Arbitration.

(v) *Initiation of Binding Arbitration.* Except for the Lengthy Season approach, at any point more than 15 days prior to the date of the first crab fishing season for a crab QS fishery an Arbitration IFQ holder or IPQ holder may initiate a Binding Arbitration. Binding Arbitration is initiated after the Arbitration IFQ holder notifies an IPQ holder and the Contract Arbitrator(s), or the IPQ holder has notified the Arbitration IFQ holder and the Contract Arbitrator(s). Binding Arbitration may be initiated to resolve price, terms of delivery, and other disputes arising from:

(A) Open Negotiation among Arbitration IFQ holders and IPQ holders;

(B) Lengthy Season Approach;

(C) Share Matching; or

(D) Performance Disputes.

(vi) *Joining a Binding Arbitration Proceeding.* Any Arbitration IFQ holder may join a Binding Arbitration proceeding as a party by providing notice to the IPQ holder and the Contract Arbitrator(s).

(vii) *Arbitration Schedule Meeting.* The Contract Arbitrator shall meet with all parties to a Binding Arbitration proceeding as soon as possible once a Binding Arbitration proceeding has been initiated for the sole purpose of

establishing a schedule for the Binding Arbitration. This schedule shall include the date by which the IPQ holder and Arbitration IFQ holder(s) must submit their last best offer and any supporting materials, and any additional meetings or mediation if agreed to by all parties. This meeting will discuss the schedule of the Binding Arbitration proceedings and not address terms of last best offers.

(viii) *Terms of Last Best Offers.* The Contract Arbitrator will meet with the parties to the Binding Arbitration proceeding to determine the matters that must be included in the last best offer, which may include a fixed price or a price over a time period specified by the parties, a method for adjusting prices over a crab fishing year, or an advance price paid at the time of delivery.

(ix) *Submission of Last Best Offers.* The parties to a Binding Arbitration proceeding shall each submit to the Contract Arbitrator(s) a last best offer defining all the terms specified for inclusion in a last best offer by the Contract Arbitrator. An Arbitration IFQ holder that is a crab harvesting cooperative may submit a last best offer that defines terms for the delivery of crab harvested by members of that crab harvesting cooperative with IFQ held by the cooperative. An Arbitration IFQ holder that is not a crab harvesting cooperative may submit a last best offer that defines the term of delivery of crab harvested with IFQ held by that person. The IPQ holder that is a party to the proceeding shall submit a single offer that defines terms for delivery of crab harvested with all IFQ that are subject to the proceedings.

(x) *Arbitration Decisions.* The Contract Arbitrator(s) shall decide among each offer received from an Arbitration IFQ holder and the offer received from the IPQ holder. Each arbitration decision shall result in a binding contract between the IPQ holder and the Arbitration IFQ holder defined by the terms of the offer selected by Contract Arbitrator(s).

(xi) *Announcement of Decisions.* (A) If last best offers are submitted at least 15 days before the first crab fishing season for that crab fishing year for that crab QS fishery, arbitration decisions shall be issued no later than 10 days before the first crab fishing season for that crab fishing year for that crab QS fishery. Otherwise, the Contract Arbitrator will notify the parties of the arbitration decision within 5 days of the parties submitting their last best offers.

(B) The Contract Arbitrator will notify the parties by providing each Arbitration IFQ holder and IPQ holder that is a party to the Binding Arbitration proceeding, a copy of any decision. The

decision is binding on the parties to the Binding Arbitration proceeding.

(4) *Basis for the Arbitration Decision.* The contract with the Contract Arbitrator shall specify that the Contract Arbitrator will be subject to the following provisions when deciding which last best offer to select:

(i) The Contract Arbitrator's decision shall:

(A) Be based on the historical distribution of first wholesale revenues between fishermen and processors in the aggregate based on arm's length first wholesale prices and ex vessel prices, taking into consideration the size of the harvest in each year; and

(B) Establish a price that preserves the historical division of revenues in the fishery while considering the following:

(1) Current ex-vessel prices, including ex-vessel prices received for crab harvested under Class A, Class B, and CVC IFQ permits;

(2) Consumer and wholesale product prices for the processing sector and the participants in the arbitration (recognizing the impact of sales to affiliates on wholesale pricing);

(3) Innovations and developments of the harvesting and processing sectors and the participants in the arbitration (including new product forms);

(4) Efficiency and productivity of the harvesting and processing sectors (recognizing the limitations on efficiency and productivity arising out of the management program structure);

(5) Quality (including quality standards of markets served by the fishery and recognizing the influence of harvest strategies on the quality of landings);

(6) The interest of maintaining financially healthy and stable harvesting and processing sectors;

(7) Safety and expenditures for ensuring adequate safety;

(8) Timing and location of deliveries; and

(9) The cost of harvesting and processing less than the full IFQ or IPQ allocation (underages) to avoid penalties for overharvesting IFQ and a mechanism for reasonably accounting for deadloss.

(C) Consider the Non-Binding Price Formula established in the fishery by the Formula Arbitrator.

(ii) The Contract Arbitrator's decision may rely on any relevant information available to the Contract Arbitrator, including, but not limited to:

(A) Information provided by the QS, PQS, IPQ and IFQ holders in the fishery regarding the factors identified in paragraph (h)(4)(i) of this section; and

(B) The Market Report for the fishery.

(iii) Each of the Arbitration IFQ holder and the IPQ holder that are party

to the proceeding may provide the Contract Arbitrator with additional information to support its last best offer. The Contract Arbitrator must receive and consider all data submitted by the parties.

(iv) The Contract Arbitrator may request specific information from the Arbitration IFQ holder(s) and IPQ holder that would be useful in reaching a final decision. The Contract Arbitrator will not have subpoena power and it is in the sole discretion of the person from whom information is requested as to whether to provide the requested information.

(5) *Limits on the Release of Data.* The parties to a Binding Arbitration proceeding shall be precluded from full access to the information provided to the Contract Arbitrator.

(i) Arbitration IFQ holders that are party to an arbitration proceeding shall have access only to information provided directly by the IPQ holder to the Contract Arbitrator for that Binding Arbitration proceeding.

(ii) IPQ holders that are party to an arbitration proceeding shall have access only to information provided directly by an Arbitration IFQ holder to the Contract Arbitrator for that Binding Arbitration proceeding.

(iii) The Contract Arbitrator shall keep confidential the information provided by any QS, PQS, IFQ, or IPQ holders in the fishery and not disclose the identity of the persons providing specific information except as provided in paragraph (h)(6) of this section.

(6) *Information Provided to NMFS.*

The contract with the Contract Arbitrator must specify that the Contract Arbitrator provide NMFS with:

(i) A copy of any minutes from any meeting attended by that Contract Arbitrator between or among any PQS or IPQ holders concerning any negotiations under this section.

(ii) Any last-best offers made during the Binding Arbitration process, including all contract details, the names of other participants in the arbitration, and whether the bid was accepted by the Contract Arbitrator; and

(iii) A copy of any information, data, or documents given by the Contract Arbitrator to any person who is not a party to the particular arbitration for which that information was provided. The Contract Arbitrator must identify the arbitration to which those information, data, or documents apply, and the person to whom those information, data, or documents were provided.

(iv) The Contract Arbitrator must provide any information, documents, or data required under this paragraph to

NMFS via mail to the Administrator, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802-1668, or electronically not later than 30 days prior to the end of the crab fishing year for which the open negotiation or arbitration applied.

(7) *Enforcement of Binding Arbitration decisions.* The decision of the Contract Arbitrator for Binding Arbitration shall be enforced among the parties to that arbitration.

(8) *Failure of Contract Arbitrator(s).* Except as provided for in paragraph (h)(6)(v) of this section, the failure of a Contract Arbitrator to perform shall be enforced by the Arbitration Organizations.

(9) *Availability of Terms and Conditions of an Arbitration Decision.* Each party to an Arbitration must make the terms and conditions of an arbitration decision available to that party's Arbitration Organization in order for the Arbitration Organization to make such information available to uncommitted Arbitration IFQ holders that may wish to opt-in to those terms as described in paragraph (h)(10) of this section within 5 days of receiving the request for that information.

(10) *Post Binding Arbitration opt-in.*

(i) An Arbitration IFQ holder with uncommitted IFQ, may opt-in to any contract that results from a completed a Binding Arbitration procedure with any IPQ holder that has uncommitted IPQ.

(A) All the terms from the arbitrated contract will apply.

(B) Once exercised, the opt-in results in a contract that is binding on both the Arbitration IFQ and IPQ holder.

(ii) To initiate the opt-in process, the holder of uncommitted Arbitration IFQ will notify the holder of uncommitted IPQ in writing of its intent to opt-in.

(iii) Holders of uncommitted Arbitration IFQ may opt-in to a contract resulting from a completed Binding Arbitration procedure with a person that holds uncommitted IPQ for that fishery.

(iv) If the IPQ holder and the Arbitration IFQ holder are unable to resolve a dispute regarding whether the opt-in offer is consistent with the original contract from the completed Binding Arbitration procedure, the dispute may be decided by the Contract Arbitrator to the original arbitration that resulted in the contract to which the Arbitration IFQ holder is seeking to opt-in. The Contract Arbitrator will decide only whether the proposed opt-in terms are consistent with the original contract.

(11) *Performance disputes.* If an IPQ holder and an Arbitration IFQ holder are unable to resolve disputes regarding the obligations to perform specific

contract provisions after substantial negotiations or when time is of the essence, the issues of that dispute shall be submitted for Binding Arbitration before a Contract Arbitrator for that fishery.

(i) Binding Arbitration resulting from a performance dispute can occur at any point during or after the crab fishing year. The dispute must be raised by the IPQ holder or the Arbitration IFQ holder. Arbitration of that performance dispute must be initiated prior to the date of the first crab fishing season for the following crab fishing year in that crab QS fishery.

(ii) Performance dispute arbitration shall follow the same procedures described for a Binding Arbitration in paragraph (h) of this section.

(iii) If the arbitration proves unsuccessful or a party fails to abide by the arbitration decision, a party may pursue available contract remedies.

(iv) The costs of arbitrating performance disputes shall be provided from the general fees collected by the arbitration organizations pursuant to paragraph (h) of this section.

(v) The Contract Arbitrator may assign fees to any party bringing frivolous complaints. Any such fees shall be paid by the party and not from the fees collected under paragraph (e)(2)(vi) of this section.

(12) *Quality disputes.* When disputes regarding the quality of the harvested crab arise within the context of an existing contract, the parties may settle the disputes within the context of the arbitration system according to the following:

(i) In cases where the IPQ holder and Arbitration IFQ holder(s) have agreed to a formula-based price for crab but where they cannot reach an agreement on the quality and price of the crab, the IPQ holder and Arbitration IFQ holder(s) will receive their share of the value of the amount of crab delivered based on the provisions of the contract.

(ii) In quality disputes where the Arbitration IFQ holders prefer to use actual ex-vessel price and not a formula-based price and a dispute arises regarding crab quality and price, the dispute should be referred to a mutually agreeable independent quality specialist firm. This independent quality specialist firm will determine the price to be paid to the IPQ holder and IFQ holder(s). The IPQ holder and Arbitration IFQ holder(s) with this quality dispute shall share the cost of hiring the specialist firm and agree to abide by its findings according to the terms of their agreement.

§ 680.21 Crab fishery cooperatives.

This section governs the formation and operation of crab harvesting cooperatives. A crab harvesting cooperative is a group of crab QS holders who have chosen to form a cooperative under the 1934 Fisherman's Collective Marketing Act (15 U.S.C. 521) in order to combine and collectively manage their crab IFQ through a crab cooperative IFQ permit issued by NMFS.

(a) *Types of cooperatives governed under this section.* The regulations in this section apply only to crab harvesting cooperatives that have formed for the purpose of applying for and of fishing under a crab cooperative IFQ fishing permit issued by NMFS.

(b) *Membership requirements.* A crab harvesting cooperative is limited to QS holders who hold any amount of CPO, CVO, CPC, or CVC and who, NMFS has determined, are eligible to receive IFQ.

(1) *Minimum number of members.* Each crab harvesting cooperative must include at least four unique QS holding entities. A unique QS holding entity is a QS holder or group of affiliated QS holders that are not affiliated with any other QS holders or QS holding entities in the cooperative. For the purpose of this paragraph, the term "affiliation" is defined at § 680.2.

(2) *Voluntary nature of membership.* Membership in a crab harvesting cooperative is voluntary. No person may be required to join a crab harvesting cooperative, and no crab harvesting cooperative may be required to accept a member who the cooperative chooses not to accept.

(3) *Limitations on membership in a crab harvesting cooperative.* A QS holder who also holds PQS or IPQ, is affiliated with a person who holds PQS or IPQ, processes Class B IFQ, or is affiliated with a person that processes Class B IFQ is prohibited from joining a crab harvesting cooperative.

(4) *Membership is all or nothing.* Upon joining a cooperative, each QS holder must allow all of his or her QS holdings to be used by the cooperative for conversion to cooperative IFQ.

(5) *Membership in more than one cooperative prohibited.* A QS holder may not hold simultaneous memberships in more than one crab harvesting cooperative.

(c) *Legal and organizational requirements for crab harvesting cooperatives.* A crab harvesting cooperative must meet the following legal and organization requirements before it is eligible to apply for a cooperative IFQ permit:

(1) *Registered business entity.* Each crab harvesting cooperative must be

formed as a partnership, corporation, or other legal business entity that is registered under the laws of one of the 50 states or the District of Columbia.

(2) *Fisherman's Collective Marketing Act of 1934.* Each crab harvesting cooperative must be formed in accordance with the requirements of the Fisherman's Collective Marketing Act of 1934 (15 U.S.C. 521).

(3) *Appointment of a designated representative.* Each crab harvesting cooperative must appoint a designated representative to act on the cooperative's behalf and serve as contact point for NMFS for questions regarding the operation of the cooperative. The designated representative may be a member of the cooperative or some other individual authorized by the cooperative to act on its behalf.

(d) *Application for annual crab harvesting cooperative IFQ permits.* A crab harvesting cooperative IFQ permit is an annual permit issued to a cooperative that establishes an annual catch limit of crab that is based on the collective QS holdings of the members of the cooperative. A crab harvesting cooperative IFQ permit will list the IFQ amount held by the cooperative and identify the members of the cooperative. Each cooperative will be issued a separate IFQ permit for each type of QS held by a member (or members) of the cooperative.

(1) *June 30 application deadline.* Each crab harvesting cooperative annually must submit to and be received by NMFS by June 30, a completed application for annual crab harvesting cooperative IFQ permit, together with the signed annual application for crab IFQ/IPQ permit forms of all the members of the cooperative.

(2) *Contents of application for annual crab harvesting cooperative IFQ permit.* A completed application must contain the following information:

(i) *Cooperative identification.* (A) The cooperative's legal name;

(B) Type of business entity under which the cooperative is organized;

(C) State in which the cooperative is legally registered as a business entity;

(D) Name of the cooperative's designated representative;

(E) Permanent business address, telephone number, facsimile number, and e-mail address (if available) for the cooperative or its designated representative;

(F) Signature of the cooperative's designated representative and the date signed.

(ii) *Members of the cooperative.* Full name and NMFS Person ID number of each member of the cooperative. Attach the completed and signed Annual

Application for Crab IFQ/IPQ Permit for all members of the cooperative;

(iii) *Affiliation declaration.* Indicate (YES or NO) whether any member of the cooperative is affiliated with an entity that holds IPQ or PQS, or that processes IFQ crab (other than a catcher/processor that processes only its own catch). If YES, your cooperative is not eligible to receive a cooperative IFQ permit.

(iv) *Additional documentation.* In order to file a complete application, attach the following documents to this application:

(A) A copy of the business license issued by the state in which the cooperative is registered as a business entity;

(B) A copy of the articles of incorporation or partnership agreement of the cooperative; and

(C) A copy of the cooperative agreement signed by the members of the cooperative (if different from paragraph (d)(3)(iii)(B) of this section).

(4) *Issuance of cooperative IFQ permits.* Upon receipt of a completed Application for an Annual Crab Harvesting Cooperative IFQ Permit that is subsequently approved, NMFS will issue one-year crab harvesting cooperative IFQ permits to the cooperative. The crab harvesting cooperative IFQ permits will list the crab IFQ amounts that are generated by the aggregate QS holdings of all members of the cooperative for each fishery, region, sector, and A/B share categories except that all CVC and CPC QS held by the members of a cooperative will be converted to CVO and CPO IFQ, respectively.

(5) *Appeals.* A cooperative or person who is adversely affected by an initial administrative determination (IAD) that is associated with the issuance of a crab cooperative IFQ permit may appeal the IAD using the appeals procedures described in § 679.43.

(e) *Restrictions on fishing under a crab cooperative IFQ permit.* The following restrictions govern the fishing for IFQ crab under a crab cooperative IFQ permit:

(1) *Maintenance of permit on board.* A copy of a crab cooperative IFQ permit must be maintained on board any vessel that is being used to harvest crab under the permit.

(2) *Persons eligible to harvest crab under a cooperative IFQ permit.* Only the following persons are eligible to harvest crab under a cooperative IFQ permit:

(i) *Cooperative members.* Members of the cooperative to whom the IFQ permit is issued.

(ii) *Hired masters.* Hired masters operating a vessel in which at least a 10

percent ownership share is held by a member of the cooperative to whom the IFQ permit is issued. Cooperatives wishing to employ a hired master must apply for and receive a Crab IFQ Hired Master Permit using the procedures described in § 680.4(f).

(3) *Liability.* Each member of a cooperative is responsible for ensuring that members of the cooperative and Crab IFQ hired masters of the cooperative comply with all regulations applicable to fishing for CR crab.

(f) *Transfers by members of a cooperative.* The following requirements address transfers of QS, IFQ, PQS, and IPQ by members of a cooperative.

(1) *Transfer of QS by members of a cooperative.* A member of a cooperative may buy or sell QS at any time using the transfer procedures described in § 680.41. However, transfers of QS that occur after the June 30 deadline for cooperative IFQ permit applications will not be reflected in the type or amount of IFQ permit issued to the cooperative for the subsequent fishing season.

(2) *Transfer of individually held IFQ by members of a cooperative.* A member of a cooperative may buy or sell individually held IFQ using the transfer procedures described in § 680.41. However a member of a cooperative who holds any amount of IFQ loses the vessel use cap exemption for any vessel used to fish any amount of individually held IFQ.

(3) *Transfer of cooperative IFQ by members of a cooperative.* A member of a cooperative may not buy or sell cooperative IFQ. Cooperative IFQ may only be transferred between two cooperatives.

(4) *Acquisition of PQS and IPQ by members of a cooperative.* A member of a cooperative is prohibited from acquiring any amount of PQS or IPQ during the valid duration of the cooperative IFQ permit.

(g) *Transfers by crab harvesting cooperatives.* The following requirements address transfers of QS, IFQ, PQS, and IPQ by crab harvesting cooperatives that have been issued cooperative IFQ permits.

(1) *Acquisition of QS, PQS, and IPQ prohibited.* A crab harvesting cooperative that has been issued a cooperative IFQ permit is prohibited from acquiring any amount of QS, PQS, or IPQ for the valid duration of the cooperative IFQ permit. A crab harvesting cooperative that acquires any amount of QS, PQS, or IPQ becomes ineligible to receive a crab cooperative IFQ permit.

(2) *Transfer of individually held IFQ.* A crab harvesting cooperative may

acquire individually held IFQ using the transfer procedures described in § 680.41. Any individually held IFQ acquired by a crab harvesting cooperative will be converted to cooperative IFQ when the transfer is processed by NMFS.

(3) *Transfer of cooperative IFQ.* Cooperative IFQ may be transferred only between two crab harvesting cooperatives that have been issued cooperative IFQ permits using the transfer procedures described in § 680.41. A crab harvesting cooperative is prohibited from transferring any amount of cooperative IFQ to any entity that is not a crab harvesting cooperative operating under a cooperative IFQ permit.

(h) *Inseason changes to cooperative membership.* The following requirements address inseason changes to cooperative membership.

(1) *Eligible membership changes.* A crab harvesting cooperative may add a new member if that person becomes eligible to join the cooperative through the acquisition of any amount of the QS upon which the cooperative's annual IFQ permit was based provided that the person acquiring the QS in question has been determined by NMFS to be eligible to hold IFQ. Likewise, a crab harvesting cooperative may remove a member if that person no longer holds any of the QS upon which the cooperative's annual IFQ permit was based.

(2) *Inseason membership changes are voluntary.* A crab harvesting cooperative is not required to add or remove members during the fishing season to reflect inseason transfers of QS. Each cooperative is free to establish its own process for deciding whether or not to admit new members or to remove existing members during the fishing season to reflect changes in the ownership of QS. No cooperative is required to admit a new QS holder that the cooperative chooses not to admit, regardless of whether the person in question has acquired any amount of QS upon which the cooperative's annual IFQ is based. If a cooperative chooses to make inseason membership changes, then it must comply with § 680.21(h)(3).

(3) *Application for an inseason change in cooperative membership.* A crab harvesting cooperative must notify NMFS of any inseason changes to cooperative membership by submitting a revised Application for an Annual Crab Harvesting Cooperative IFQ Permit together with any revised supporting documents that are required to be submitted with the application. The revised Application for an Annual Crab Harvesting Cooperative IFQ Permit must be accompanied by a cover letter that

indicates the revisions that have been made. Upon approval of the membership change, NMFS will issue a revised annual cooperative IFQ permit that reflects the change in membership. A new member may not fish on behalf of a cooperative except as a crab IFQ hired master until NMFS issues a revised annual cooperative IFQ permit that reflects the change in membership.

(4) *Successors-in-interest.* If a member of a cooperative dies (in the case of an individual) or dissolves (in the case of a business entity), the QS held by that person will be transferred to the legal successor-in-interest. However, the cooperative IFQs generated by that person's QS holdings remain under the control of the cooperative for the valid duration of the cooperative IFQ permit. Each cooperative is free to establish its own internal procedures for admitting a successor-in-interest during the fishing season to reflect the transfer of QS due to the death of or dissolution of a QS holder. These regulations do not require any cooperative to admit a successor-in-interest that the cooperative chooses not to admit. If a cooperative chooses to admit the successor-in-interest for membership, then the cooperative must comply with § 680.21(h)(3).

§ 680.22 Sideboard protections for GOA groundfish fisheries.

The regulations in this section restrict the owners of vessels with a history of participation in the Bering Sea snow crab (*C. opilio*) fishery from using the increased flexibility provided by the CR Program to expand their level of participation in GOA groundfish fisheries. These restrictions, commonly known as "sideboards," limit directed fishing for GOA Pacific cod by such vessels to their aggregate historical levels and prohibit directed fishing in the GOA for all other groundfish species except sablefish.

(a) *Vessels and LLP licenses subject to sideboard restrictions.* The sideboard fishing restrictions described in this section are based on a vessel's fishing history and apply both to the fishing vessel itself and to any LLP license generated by that vessel's fishing history. The criteria used to determine which vessels and LLP licenses are subject to GOA groundfish sideboard fishing restrictions are as follows:

(1) *Vessels subject to GOA groundfish sideboard directed fishing closures.* Any vessel that NMFS has determined meets one or both of the following criteria is subject to GOA groundfish sideboard directed fishing closures issued under paragraph (e) of this section.

(i) Any non-AFA vessel that made a legal landing of Bering Sea snow crab (*C. opilio*) between January 1, 1996, and December 31, 2000, that generated any amount of Bering Sea snow crab (*C. opilio*) fishery QS, and

(ii) Any vessel named on an LLP license that was generated in whole or in part by the fishing history of a vessel meeting the criteria in paragraph (a)(1)(i) of this section.

(2) *Vessels prohibited from directed fishing for Pacific cod in the GOA.* Any vessel that NMFS has determined meets either of the following two criteria is prohibited from directed fishing for Pacific cod in the GOA:

(i) Any vessel subject to GOA groundfish sideboard closures under paragraph (a)(1)(i) of this section that landed less than 50 mt (110,231 lb) of groundfish harvested from the GOA between January 1, 1996, and December 31, 2000, and

(ii) Any vessel named on an LLP license that was generated in whole or in part by the fishing history of a vessel meeting the criteria in paragraph (a)(2)(i) of this section.

(3) *Vessels exempt from Pacific cod sideboard closures in the GOA.* Any vessel that NMFS has determined meets one or both of the following criteria is exempt from sideboard directed fishing closures for Pacific cod in the GOA:

(i) Any vessel subject to GOA groundfish closures under paragraph (a)(1)(i) of this section that landed less than 100,000 lb (45,359 kg) of Bering Sea snow crab (*C. opilio*) and more than 500 mt (1,102,311 lb) of Pacific cod from the GOA between January 1, 1996, and December 31, 2000; and

(ii) Any vessel named on an LLP license that was generated in whole or in part by the fishing history of a vessel meeting the criteria in paragraph (a)(3)(i) of this section.

(b) *Notification of affected vessel owners and LLP licence holders.* After NMFS determines which vessels and LLP licenses meet the criteria described in paragraph (a) of this section, NMFS will inform each vessel owner and LLP license holder in writing of the type of sideboard restriction and issue a revised Federal fisheries permit and/or LLP license that displays the restriction on the face of the permit or license.

(c) *Appeals.* A vessel owner or LLP license holder who believes that NMFS has incorrectly identified his or her vessel or LLP license as meeting the criteria for a GOA groundfish sideboard restriction may request reconsideration. All requests for reconsideration must be submitted in writing to the RAM, Division, Alaska Region, NMFS together with any documentation or

evidence supporting the request. If the request for reconsideration is denied, affected persons may appeal using the procedures described at § 680.43.

(d) *Determination of GOA groundfish sideboard ratios.* Sideboard ratios for each GOA groundfish species other than sablefish, species group, season, and area for which annual specifications are made, are established according to the following formulas:

(1) *Pacific cod.* The sideboard ratios for Pacific cod are calculated by dividing the aggregate retained catch of Pacific cod by vessels that are subject to sideboard directed fishing closures under paragraph (a)(1) of this section and that do not meet the criteria in paragraphs (a)(2) or (a)(3) of this section and by the total retained catch of Pacific cod from the GOA by all groundfish vessels between 1996 and 2000.

(2) *Groundfish other than Pacific cod.* The sideboard ratios for groundfish species and species groups other than Pacific cod are calculated by dividing the aggregate landed catch by vessels subject to sideboard directed fishing closures under paragraph (a)(1) of this section by the total landed catch of that species by all groundfish vessels between 1996 and 2000.

(e) *Conversion of sideboard ratios into annual harvest limits.* NMFS will convert sideboard ratios into annual harvest limits according to the following procedures.

(1) *Annual harvest limits.* Annual harvest limits for each groundfish species will be established by multiplying the sideboard ratios calculated under paragraph (d) of this section by the interim and final TACs in each area for which a TAC is specified. If a TAC is further apportioned by season, the sideboard harvest limit also will be apportioned by season in the same ratio as the overall TAC. The resulting harvest limits expressed in metric tons will be published in the annual GOA groundfish harvest specification notices.

(2) *Sideboard directed fishing allowance.* If the Regional Administrator determines that a harvest limit for a species or species group has been or will be reached, the Regional Administrator may establish a sideboard directed fishing allowance for the species or species group applicable only to the group of crab vessels to which the sideboard limit applies.

(3) If the Regional Administrator determines that a harvest limit is insufficient to support a directed fishery for that species or species group, then the Regional Administrator may set the sideboard directed fishing allowance at zero for that species or species group.

(4) *Directed fishing closures.* Upon attainment of a sideboard directed fishing allowance, the Regional Administrator will publish notification in the Federal Register prohibiting directed fishing for the species or species group in the specified subarea, regulatory area, or district. A directed fishing closure effective for the duration of the fishing year or season.

§ 680.23 Equipment and operational requirements.

(a) *Catcher Vessel requirements.* A catcher vessel used to harvest CR crab must:

- (1) Carry and use a VMS as described in paragraph (d) of this section.
- (2) Land all retained crab to an RCR operating under an approved catch monitoring plan as described in paragraph (g) of this section.

(b) *Catcher/Processor requirements.* A catcher/processor used to harvest CR crab must:

- (1) Carry and use a VMS as described in paragraph (d) of this section.
- (2) Weigh all retained crab to be processed on board, in its raw form, on a scale approved by NMFS as described in paragraph (e) of this section.

(3) Land all retained crab not processed on board at an RCR.

(4) Land all product processed on board at a shoreside location in the United States accessible by road or regularly scheduled air service and weigh that product on a scale approved by the State where the product is landed.

(5) Provide an approved observer work area that meets the requirements in paragraph (h) of this section.

(c) *RCR requirements.* An RCR must:

(1) Ensure that all CR crab landings are weighed on a scale approved by the State where the landing takes place.

(2) Ensure that all crab landing and weighing be conducted as specified in an approved crab monitoring plan as described in paragraph (g) of this section, and that a copy of the crab monitoring plan is made available to NMFS personnel or authorized officer upon demand.

(d) *Vessel Monitoring System (VMS) requirements—(1) General requirements.* General VMS requirements concerning the approval and installation of VMS components and the responsibilities of vessel owners and operators are detailed at § 679.28(f)(1) through (5).

(2) *VMS Transmission Requirements.* A vessel's transmitter must be transmitting if:

(i) The vessel is operating in any reporting area (see definitions at § 679.2) off Alaska; and

(ii) The vessel has crab pots or crab pot hauling equipment, or a crab pot launcher onboard; and

(iii) The vessel has received a Federal Crab Vessel Permit at any time during the crab fishing year.

(e) *Scales approved by NMFS.* To be approved by NMFS, a scale used to weigh crab at sea must meet the type evaluation and initial inspection requirements set forth in § 679.28(b)(1) and (2). Once a scale is installed on a vessel and approved by NMFS for use, it must be reinspected annually as described in § 679.28(b)(2) and must be tested daily and meet the maximum permissible error (MPE) requirements described in paragraph (e)(1) of this section.

(1) *At-sea scale tests.* To verify that the scale meets the MPEs specified in this paragraph, the vessel operator must test each scale or scale system used to weigh CR crab one time during each 24-hour period when use of the scale is required. The vessel owner must ensure that these tests are performed in an accurate and timely manner.

(i) *Belt scales.* The MPE for the daily at-sea scale tests is plus or minus 3 percent of the known weight of the test material. The scale must be tested by weighing at least 400 kg (882 lb) of crab or an alternative material supplied by the scale manufacturer on the scale under test. The known weight of the test material must be determined by weighing it on a platform scale approved for use under § 679.28 (b)(7).

(ii) *Automatic hopper scales.* An automatic hopper scale must be tested at its minimum and maximum capacity with approved test weights. Test weights must be placed in the bottom of the hopper unless an alternative testing method is approved by NMFS. The MPE for the daily at-sea scale tests is plus or minus 2 percent of the weight of the approved test weights.

(iii) *Platform scales used for observer sampling.* A platform scale used for observer sampling must be tested at 10, 25, and 50 kg (or 20, 50, and 100 lb if the scale is denominated in pounds) using approved test weights. The MPE for the daily at-sea scale test is plus or minus 0.5 percent if the scale is used to determine the known weight of test material for the purpose of testing a belt scale. If the scale is not used for that purpose, the MPE for the daily at-sea scale test is plus or minus 1 percent.

(iv) *Approved test weights.* Each test weight must have its weight stamped on or otherwise permanently affixed to it. The weight of each test weight must be annually certified by a National Institute of Standards and Technology approved metrology laboratory or approved for

continued use by the NMFS authorized inspector at the time of the annual scale inspection.

(v) *Requirements for all scale tests.*

(A) Notify the observer at least 15 minutes before the time that the test will be conducted, and conduct the test while the observer is present.

(B) Conduct the scale test and record the following information on the at-sea scale test report form:

- (1) Vessel name;
- (2) Month, day, and year of test;
- (3) Time test started to the nearest minute;
- (4) Known weight of test weights;
- (5) Weight of test weights recorded by scale;
- (6) Percent error as determined by subtracting the known weight of the test weights from the weight recorded on the scale, dividing that amount by the known weight of the test weights, and multiplying by 100; and
- (7) Sea conditions at the time of the scale test.

(C) Maintain the test report form on board the vessel until the end of the crab fishing year during which the tests were conducted, and make the report forms available to observers, NMFS personnel, or an authorized officer. In addition, the vessel owner must retain the scale test report forms for 3 years after the end of the crab fishing year during which the tests were performed. All scale test report forms must be signed by the vessel operator.

(2) *Scale maintenance.* The vessel owner must ensure that the vessel operator maintains the scale in proper operating condition throughout its use, that adjustments made to the scale are made so as to bring the performance errors as close as practicable to a zero value, and that no adjustment is made that will cause the scale to weigh inaccurately.

(3) *Printed reports from the scale.* The vessel owner must ensure that the printed reports are provided as required by this paragraph. Printed reports from the scale must be maintained on board the vessel until the end of the year during which the reports were made and be made available to NMFS or NMFS authorized personnel. In addition, the vessel owner must retain printed reports for 3 years after the end of the year during which the printouts were made.

(i) *Reports of catch weight and cumulative weight.* Reports must be printed at least once every 24 hours prior to submitting a CR crab landing report as described in § 680.5. Reports must also be printed before any information stored in the scale computer memory is replaced. Scale

weights must not be adjusted by the scale operator to account for the perceived weight of water, mud, debris, or other materials. Scale printouts must show:

- (A) The vessel name and Federal fisheries or processor permit number;
- (B) The weight of each load in the weighing cycle (hopper scales only);
- (C) The date and time the information was printed;
- (D) The total amount weighed since the last printout was made; and
- (E) The total cumulative weight of all crab or other material weighed on the scale.

(ii) *Printed report from the audit trail.* The printed report must include the information specified in sections 2.3.1.8, 3.3.1.7, and 4.3.1.8 of appendix A to 50 CFR 679. The printed report must be provided to the authorized scale inspector at each scale inspection and must also be printed at any time upon request of NMFS staff or other NMFS-authorized personnel.

(iii) *Platform scales used for observer sampling.* A platform scale used for observer sampling is not required to produce a printed record unless that scale is also used to obtain raw weight for a CR crab landing report.

(4) *Scale installation requirements.* Unless otherwise approved by NMFS, a scale used to obtain raw weight for a CR crab landing report must be installed such that:

- (i) From the location where the observer samples unsorted crab, the observer can ensure that all crab are being weighed;
- (ii) The scale may not be installed in a manner that facilitates bypassing. It must not be possible for the scale inspector and an assistant to bypass the scale with 100 kg (220 lb) of test material in less than 20 seconds.

(f) *Scales approved by the state.* Scale requirements in this paragraph are in addition to those requirements set forth by the State in which the scale is approved, and nothing in this paragraph may be construed to reduce or supersede the authority of the State to regulate, test, or approve scales within the State. Scales used to weigh CR crab that are also required to be approved by the State must meet the following requirements:

(1) *Verification of approval.* The scale must display a valid State sticker indicating that the scale was inspected and approved within the previous 12 months.

(2) *Visibility.* An RCR must ensure that the scale and scale display are visible simultaneously. NMFS personnel or NMFS authorized personnel, including observers, must be

allowed to observe the weighing of crab on the scale and be allowed to read the scale display at all times.

(3) *Printed scale weights.* (i) An RCR must ensure that printouts of the scale weight of each delivery or offload are made available to NMFS personnel or to NMFS authorized personnel, including observers, at the time printouts are generated. An RCR must maintain printouts on site until the end of the fishing year during which the printouts were made and make them available upon request by an authorized officer for 3 years after the end of the fishing year during which the printout was made.

(ii) A scale used to weigh any portion of a landing of CR crab or an offload of CR crab product must produce a printed record for each landing, or portion of each landing, weighed on that scale. The printed record must include:

- (A) The RCR's name;
- (B) The weight of each load in the weighing cycle;
- (C) The total weight of crab in each landing, or portion of the landing that was weighed on that scale.

(D) The date and time the information is printed; and

(E) The name and ADF&G vessel registration number of the vessel making the delivery. The scale operator may write this information on the scale printout in pen at the time of landing.

(4) *Inseason scale testing.* Scales used to weigh CR crab must be tested by RCR personnel when testing is requested by NMFS-staff or by NMFS-authorized personnel.

(i) *Inseason testing criteria.* To pass an inseason test, NMFS staff or NMFS-authorized personnel will verify that the scale display and printed information are clear and easily read under all conditions of normal operation, that weight values are visible on the display until the value is printed, and that the scale does not exceed the maximum permissible errors specified in the following table:

Test Load in Scale Divisions	Maximum Error in Scale Divisions
(A) 0-500	1
(B) 501-2,000	2
(C) 2,001-4,000	3
(D) >4,000	4

(ii) *Test weight requirements.* Scale must be tested with the amount and type of weight specified for each scale type in the following tables under paragraphs (f)(4)(ii)(A) through (f)(4)(ii)(D) of this section.

(A) Automatic hopper 0 to 150 kg (0 to 300 lb) capacity.

Certified Test Weights	Other Test Material
(1) Minimum weight or 10 kg (20 lb), whichever is greater	Minimum
(2) Maximum	Maximum

(B) Automatic hopper > 150 kg (300 lb) capacity.

Certified Test Weights	Other Test Material
(1) Minimum weight or 10 kg (20 lb), whichever is greater	Minimum
(2) 25 percent of maximum of 150 kg (300 lb), whichever is greater	Maximum

(C) Platform, flatbed or hanging scales less than 150 kg (300 lb) capacity.

Certified Test Weights	Other Test Material
(1) 10 kg (20 lb)	Not Acceptable
(2) Midpoint	Not Acceptable
(3) Maximum	Not Acceptable

(D) Platform, flatbed or hanging scales > 150 kg (300 lb) capacity.

Certified Test Weights	Other Test Material
(1) 10 kg (20 lb)	Not Acceptable
(2) 12.5 percent of maximum or 75 kg (150 lb), whichever is greater	50 percent of maximum or 75 kg (150 lb), whichever is greater
(3) 25 percent of maximum or 150 kg (300 lb), whichever is greater	75 percent of maximum or 150 kg (300 lb), whichever is greater

(iii) *Certified test weights.* An RCR must ensure that there are sufficient test weights on-site to test each scale used to weigh CR crab. Each test weight used for inseason scale testing must have its weight stamped on or otherwise permanently affixed to it. The weight of each test weight must be certified by a National Institute of Standards and Technology approved metrology laboratory every 2 years.

(iv) *Other test material.* When permitted in paragraph (f)(4)(ii) of this section, a scale may be tested with test material other than certified test weight:

(g) *Crab Monitoring Plans (CMP).* A CMP is a plan submitted by an RCF to

each location or processing vessel where the RCR wishes to take deliveries of CR crab. The CMP must detail how the RCR will meet the catch monitoring standards detailed in paragraph (g)(5) of this section. An RCR that processes only CR crab harvested under a CPO or CPC IFQ permit is not required to prepare a CMP.

(1) *CMP Approval.* NMFS will approve a CMP if it meets all the performance standards specified in paragraph (g)(5) of this section. The location or vessel identified in the CMP may be inspected by NMFS prior to approval of the CMP to ensure that the location conforms to the elements addressed in the CMP. If NMFS disapproves a CMP, the plant owner or manager may resubmit a revised CMP or file an administrative appeal as set forth under the administrative appeals procedures described in § 679.43.

(2) *Inspection scheduling.* The time and place of a CMP inspection may be arranged by submitting a written request for an inspection to NMFS, Alaska Region. An inspection must be requested no less than 10 working days before the requested inspection date. NMFS staff will conduct CMP inspections in any port located in the United States that can be reached by regularly scheduled commercial air service. The inspection request must include:

(i) Name and signature of the person submitting the application and the date of the application;

(ii) Address, telephone number, facsimile number, and e-mail address (if available) of the person submitting the application; and

(iii) A proposed CMP detailing how the RCR will meet each of the standards in paragraph (g)(5) of this section.

(3) *Approval period.* NMFS will approve a CMP for 1 year if it meets the performance standards specified in paragraph (e)(2) of this section. An owner or manager must notify NMFS in writing if changes are made in plant operations or layout that do not conform to the CMP.

(4) *Changing an approved CMP.* An RCR may change an approved CMP by submitting a CMP addendum to NMFS. Depending on the nature and magnitude of the change requested, NMFS may require a CMP inspection as described in paragraph (g)(2) of this section. A CMP addendum must contain:

(i) Name and signature of the person submitting the addendum;

(ii) Address, telephone number, facsimile number and e-mail address (if available) of the person submitting the addendum; and

(iii) A complete description of the proposed CMP change.

(5) *CMP standards*—(i) *Crab sorting and weighing requirements.* All crab, including crab parts and crab that are dead or otherwise unmarketable, delivered to the RCR must be sorted and weighed by species. The CMP must detail how and where crab are sorted and weighed.

(ii) *Scales used for weighing crab.* The CMP must identify by serial number each scale used to weigh crab and describe the rationale for its use.

(iii) *Scale testing procedures.* Scales identified in the CMP must be accurate within the limits specified in paragraph (f)(4)(i) of this section. For each scale identified in the CMP a testing plan must be developed that:

(A) Describes the procedure the plant will use to test the scale;

(B) Lists the test weights and equipment required to test the scale;

(C) Lists where the test weights and equipment will be stored; and

(D) Lists the names of the personnel responsible for conducting the scale testing.

(iv) *Printed record.* An RCR must ensure that the scale produces a complete and accurate printed record of the weight of each species in a landing. All of the crab in a delivery must be weighed on a scale capable of producing a complete printed record as described in paragraph (e)(3) of this section. A printed record of each landing must be printed before the RCR submits a CR crab landing report.

(v) *Observation area.* Each CMP must designate an observation area. The observation area is a location designated on the CMP where an individual may monitor the offloading and weighing of crab. The observation area must meet the following standards:

(A) *Access to the observation area.* The observation area must be freely accessible to observer, NMFS staff or enforcement aides at any time during the effective period of the CMP.

(B) *Monitoring the offloading and weighing of crab.* From the observation area, an individual must have an unobstructed view or otherwise be able to monitor the entire offload of crab between the first location where crab are removed from the boat and a location where all sorting has taken place and each species has been weighed.

(C) *Other Requirements.* The observation area must be sheltered from the weather and not exposed to unreasonable safety hazards.

(vi) *Plant liaison.* The CMP must designate a plant liaison. The plant liaison is responsible for:

(A) Orienting new observers, NMFS staff and enforcement aides to the plant;

(B) Assisting in the resolution of observer concerns; and

(C) Informing NMFS if changes must be made to the CMP.

(vii) *Drawing to scale of delivery location.* The CMP must be accompanied by a drawing to scale of the delivery location or vessel showing:

(A) Where and how crab are removed from the delivering vessel;

(B) The observation area;

(C) The location of each scale used to weigh crab; and

(D) Each location where crab is sorted.

(viii) *Single geographic location.* All offload and weighing locations detailed in a CMP must be located on the same vessel or in the same geographic location. If a CMP describes facilities for the offloading of vessels at more than one location, it must be possible to see both locations simultaneously.

(h) *Catcher/processor Observer Work Areas.* A crab catcher/processor must provide 2 observer work areas at any time when the vessel is catching or processing CR crab. All of the space and equipment required for the work station must be available to the observer at all times while an observer work area is required. A vessel required to provide observer work areas must:

(1) Provide an observer work area for sampling unsorted crab. The work area must be no less than 6 square meters and not less than 1 meter on each side. The work area must be located within 3 meters of where the vessel crew sort crab and must provide unobstructed access to that crab.

(2) Provide an observer work area for sampling retained crab. The work area must be no less than 1 meter on each side. The work area must be located downstream from the scale used to weigh total catch and upstream from the area where crab are butchered.

(3) The observer work area for sampling retained crab must be provided with a NMFS-approved platform scale located within 5 meters of the work area. Clear and unobstructed passage must be provided between the scale and the observer work area. The scale must be accompanied by approved test weights sufficient to test the scale at 10, 25, and 50 kg (or 25, 50, and 100 lb if scale is denominated in lb). The scale may be used by vessel crew but must be available to the observer at all times.

(4) Both observer work areas must be protected from extreme weather and unreasonable safety hazards.

(5) Vessel crew may use the observer work areas, but the entire area must be

available to the observer whenever the observer is working in the area.

(6) The vessel owner must prepare a diagram, drawn to scale, showing the location of both observer work areas. The diagram must be retained on board the vessel whenever the vessel is harvesting or processing crab quota.

§ 680.30 [Reserved]

Subpart C—Individual Fishing Quota Management Measures

§ 680.40 Quota Share (QS), Processor QS (PQS), Individual Fishing Quota (IFQ), and Individual Processor Quota (IPQ) Issuance.

(a) *Crab QS and Crab QS Fisheries.* (1) With the exception of the WAI golden king crab fishery, the Regional Administrator shall annually apportion 10 percent of the TAC specified by the State of Alaska for each of the fisheries described in Table 1 to this part to the Western Alaska CDQ program. Ten percent of the TAC in the Western Aleutian Islands golden king crab fishery will be allocated to the Adak community entity. The remaining TACs for the crab QS fisheries will be apportioned for use by qualified QS holders in each fishery.

(2) Crab harvested and retained in each crab QS fishery may be harvested and retained only by persons holding the appropriate crab IFQ for that crab QS fishery.

(3) *Official Crab Rationalization Record.* The official crab rationalization record will be used to determine the amount of QS that is to be allocated for each crab QS fishery. The official crab rationalization record is presumed to be correct. An applicant for QS has the burden to prove otherwise. For the purposes of creating the official crab rationalization record the Regional Administrator will presume the following:

(i) An LLP license is presumed to have been used onboard the same vessel

from which that LLP is derived, unless documentation is provided establishing otherwise.

(ii) If more than one person is claiming legal landings or legal processing activities during the same time at the same processing facility or onboard the same vessel, then each person eligible to receive QS or PQS based on those legal landings or legal processing activities will receive any QS or PQS issued divided in equal proportion among all eligible recipients for that time period unless the applicants can provide written documentation establishing an alternative means for distributing the QS or PQS resulting from the activities during that time period.

(b) *QS Sectors and Regional Designations.*—(1) *General.* The Regional Administrator shall initially assign to qualified persons, crab QS that are specific to the crab QS fisheries defined in paragraph (a)(1) of this section. The crab QS amount issued will be based on legal landings made on vessels authorized to participate in those fisheries in four QS sectors:

(i) *Catcher Vessel Owner (CVO) QS* shall be initially issued to qualified persons defined in paragraph (b)(3) of this section based on legal landings of unprocessed crab. CVO QS shall yield annual IFQ designated as defined under paragraph (h)(2) of this section.

(ii) *Catcher Vessel Crew (CVC) QS* shall be initially issued to qualified persons defined in paragraph (b)(3) of this section based on legal landings of unprocessed crab. CVC QS shall yield annual IFQ designated as CVC as defined under paragraph (h)(3) of this section. After July 1, 2008, CVC QS shall yield an annual IFQ of CVC Class A or CVC Class B as defined under paragraph (h)(2) of this section.

(iii) *Catcher/Processor Owner (CPO) QS* shall be initially issued to qualified persons defined in paragraph (b)(3) of

this section based on legal landings of crab that were harvested and processed on the same vessel. CPO QS shall yield annual IFQ designated as CPO as defined under paragraph (h)(4) of this section.

(iv) *Catcher/Processor Crew (CPC) QS* shall be initially issued to qualified persons defined in paragraph (b)(3) of this section based on legal landings of crab that were harvested and processed on the same vessel. CPC QS shall yield annual IFQ designated as CPC as defined under paragraph (h)(5) of this section.

(2) *Regional Designations.* (i) Regional designations apply to:

(A) *North QS* if the legal landings that gave rise to the QS for a crab QS fishery were landed in the Bering Sea subarea north of 56°20' N. lat.; or

(B) *South QS* if the legal landings that gave rise to the QS for a crab QS fishery were not landed in the North Region;

(1) *CVO QS* allocated to the WAI crab QS fishery; and

(2) *CVC QS* for the WAI crab QS fishery prior to July 1, 2008.

(C) *West QS* for a portion of the QS allocated to the WAG crab QS fishery subject to the provisions under § 680.40(c)(4);

(ii) Regional designations do not apply (Undesignated QS) to:

(A) *Crab QS* for the BST crab QS fishery;

(B) *Crab QS* for that portion of the WAG QS fishery not regionally designated for the West region;

(C) *CVC QS* prior to July 1, 2008;

(D) *CPO QS* unless that QS is transferred to the CVO QS sector, in which case the regional designation is made by the recipient of the resulting CVO QS at the time of transfer; and

(E) *CPC QS.*

(iii) The specific regional designations that apply to each of the crab QS fisheries are specified in the following table:

Crab QS Fishery	North Region	South Region	West Region	Undesignated Region
(A) EAG	X	X		
(B) WAG			X	X
(C) BST				X
(D) BSS	X	X		
(E) BBR	X	X		
(F) PIK	X	X		
(G) SMB	X	X		
(H) WAI				

(3) *Qualified person* means, for the purposes of QS issuance, a person, as defined in § 679.2, who at the time of application for QS meets the following criteria for each of the QS sectors:

(i) *CVO QS*. Holds one or more permanent, fully transferable crab LLP licenses and is a citizen of the United States;

(ii) *CPO QS*. (A) Holds one or more permanent, fully transferable crab LLP licenses with a Catcher/Processor designation and is a citizen of the United States;

(B) Harvested and processed at sea any crab species in any BSAI crab fishery during the years 1998 or 1999.

(iii) *CVC QS and CPC QS*. (A) Is an individual who is a citizen of the United States, or his or her successor-in-interest if that individual is deceased;

(B) Has historical participation in the fishery demonstrated by being the individual named on a State of Alaska Interim Use Permit who made at least one legal landing per year for any 3 qualifying years under that permit based on data from fish tickets maintained by the State of Alaska. The qualifying years are described in Column C of Table 7 to this part.

(C) Has recent participation in the fishery demonstrated by being the individual named on a State of Alaska Interim Use Permit who made at least one legal landing under that permit in any 2 of 3 seasons based on data from fish tickets maintained by the State of Alaska. Those seasons are defined in Column D of Table 7 to this part; except that the requirement for recent participation does not apply to be a qualified individual to receive QS if:

(1) The legal landings that qualify the individual for QS in the PIK crab QS fishery were made from a vessel that is less than 60 feet length overall; or

(2) If the individual who is otherwise eligible to receive an initial issuance of QS died while working as part of a harvesting crew in any U.S. commercial fishery.

(4) *Qualification for Initial Allocation of QS*—(i) *Qualifying Year*. The qualifying years for each crab QS fishery are described in Column B of Table 7 to this part.

(ii) *Legal landing of crab* means, for the purpose of initial allocation of QS, crab harvested during the qualifying years specified in Column B of Table 7 to this part and landed in compliance with state and Federal permitting, landing, and reporting regulations in effect at the time of the landing.

(A) Legal landings exclude any deadloss, fishing conducted under a scientific activity permit, or the fishery

conducted under the Western Alaska CDQ program.

(B) Landings made onboard a vessel that gave rise to a crab LLP license or made under the authority of an LLP license are non-severable from the crab LLP license until QS has been issued for those legal landings.

(C) Landings may only be used once for each QS sector for the purposes of allocating QS.

(D) Landings made from vessels which are used for purposes of receiving compensation through the BSAI Crab Capacity Reduction Program may not be used for the allocation of CVO QS or CPO QS.

(E) Legal landings for purposes of allocating QS for a crab QS fishery only include those landings that resulted in the issuance of an LLP license endorsed for that crab QS fishery, or landings that were made in that crab QS fishery under the authority of an LLP license endorsed for that crab QS fishery.

(iii) *Documentation*. Evidence of legal landings shall be limited to State of Alaska fish tickets.

(c) *Calculation of QS allocation*—(1) *General*. (i) For each permanent, fully transferable crab LLP license under which an applicant applies, CVO and CPO QS will be based on legal landings that resulted in the issuance of that license or from legal landings that were made under the authority of that license.

(ii) For each State of Alaska Interim Use Permit under which an applicant applies for CVC QS or CPC QS, the initial allocation of QS will be based on the legal landings that were made under the authority of that permit.

(2) *Computation for Initial Issuance of QS*. (i) Based on the official crab rationalization record the Regional Administrator shall derive the annual harvest denominator (AHD) that represents the amount of legally landed crab in each crab QS fishery in each qualifying year as established in column B of Table 7 to this part.

(ii) The initial QS pool is described in Table 8 to this part.

(iii) A person's initial allocation of QS shall be based on a percentage of the legal landings for the applicable sector in each crab QS fishery:

(A) Associated with crab LLP licenses held by the applicant for CVO or CPO QS; or

(B) Authorized under a State of Alaska Interim Use Permit held by the applicant for CVC or CPC QS.

(iv) As shown in the formulas under this paragraph (c)(2)(iv), the allocation of CVO and CPO QS for each crab QS fishery "F" based on each fully transferable LLP license "L" held by a

qualified person shall be calculated by the Regional Administrator as follows:

(A) Sum legal landings for each qualifying year, as described in Column B of Table 7 to this part, and divide that amount by the AHD for that year as follows:

$$\frac{\sum \text{legal landings}_{ir}}{\text{AHD}_i} \times 100 = \text{Percentage of the AHD}_{ir}$$

(B) In those fisheries where only a subset of the qualifying years are applied, the Regional Administrator will use the years that yield the highest percentages of each AHD as calculated in paragraph (c)(2)(iv)(A) of this section.

(C) Sum the highest percentages of the AHD's for that license as calculated under paragraph (c)(2)(iv)(B) of this section and divide by the number in Column E of Table 7 to this part (Subset of Qualifying Years). This yields the Average Percentage as presented in the following equation:

$$\frac{\sum \text{Percentages of the AHD}_{ir}}{\text{Subset of Qualifying Years}_r} = \text{Average Percentage}_{ir}$$

(D) Divide the Average percentage in paragraph (c)(2)(iv)(C) of this section for a license and fishery by the Sum of all Average Percentages for all licenses for that fishery as presented in the following equation:

$$\frac{\text{Average Percentage}_{ir}}{\sum \text{Average Percentages}_{ir}} = \text{Percentage of the Total Percentages}_{ir}$$

(E) Multiply the Percentage of the Total Percentages in paragraph (c)(2)(iv)(E) of this section by the Initial QS Pool as described in Table 8 to this part. This yields the unadjusted number of QS units derived from a license for a fishery.

(F) Multiply the unadjusted number of QS units in paragraph (c)(2)(iv)(E) of this section by 97 percent. This yields the number of QS units to be allocated.

(G) Determine the percentage of legal landings in the subset of qualifying years associated with a LLP license with a catcher/processor designation that were processed on that vessel and multiply the amount calculated in paragraph (c)(2)(iv)(F) of this section by this percentage. This yields the amount of CPO QS to be allocated.

(H) Determine the percentage of legal landings in the subset of qualifying years associated with a LLP license that were not processed on that vessel and multiply the amount calculated in paragraph (c)(2)(iv)(F) of this section by this percentage. This yields the amount of CVO QS to be allocated.

(I) Determine the percentage of legal landings associated with an LLP license in the subset of qualifying years that were delivered in each region as defined in § 680.40(b)(2). The amount calculated in paragraph (c)(2)(iv)(H) of this section is multiplied by the percentage for each region.

(J) The percentage calculated in paragraph (c)(2)(iv)(I) of this section may be adjusted according to the provisions at paragraphs (c)(3) and (c)(4) of this section.

(v) As shown in the formulas under this paragraph (c)(2)(v), the allocation of CVC and CPC QS for each crab QS fishery "f" based on each State of Alaska Interim Use Permit "I" held by each qualified person shall be calculated by the Regional Administrator as follows:

(A) Sum legal landings for each qualifying year as described in Column C of Table 7 to this part and divide that amount by the AHD for that year using the following equation:

$$\frac{\sum \text{legal landings}_{ir} / \text{AHD}_{ir}}{\text{Percentage of the AHD}_{ir}} \times 100 =$$

(B) In those fisheries where only a subset of the qualifying years are applied, the Regional Administrator will use the years that yield the highest percentages of the AHD as calculated in paragraph (c)(2)(v)(A) of this section.

(C) Sum the highest percentages of the AHDs for that license calculated under paragraph (c)(2)(v)(B) of this section and divide by the number in Column E of Table 7 to this part (Subset of Qualifying Years). This yields the Average Percentage as presented in the following equation:

$$\frac{\sum \text{Percentages of the THD}_{ir} / \text{Subset of Qualifying Years}_{ir}}{\text{Average Percentage}_{ir}} =$$

(D) Divide the Average Percentage in paragraph (c)(2)(v)(C) of this section for a permit and fishery by the Sum of all Average Percentages for all permits for that fishery as presented in the following equation:

$$\frac{\text{Average Percentage}_{ir}}{\sum \text{Average Percentages}_{ir}} = \text{Percentage of the Total Percentages}_{ir}$$

(E) Multiply the Percentage of the Total Percentages in paragraph (c)(2)(v)(D) of this section by the Initial QS Pool as described in Table 8 to this part. This yields the unadjusted number of QS units derived from a permit for a fishery.

(F) Multiply the unadjusted number of QS units in paragraph (c)(2)(v)(E) of this section by 3 percent. This yields the number of QS units to be allocated.

(G) Determine the percentage of legal landings in the subset of qualifying years associated with a permit that were processed on that vessel and multiply the amount calculated in paragraph (c)(2)(v)(F) of this section by this percentage. This yields the amount of CPC QS to be allocated.

(H) Determine the percentage of legal landings in the subset of qualifying years associated with a permit that were not processed on that vessel and multiply the amount calculated in

paragraph (c)(2)(v)(F) of this section by this percentage. This yields the amount of CVC QS to be allocated.

(I) Determine the percentage of legal landings associated with a permit in the subset of qualifying years that were delivered in each region as defined in paragraph (b)(2) of this section. The amount calculated in paragraph (c)(2)(v)(H) of this section is multiplied by the percentage for each region.

(J) The percentage calculated in paragraph (c)(2)(v)(I) of this section may be adjusted according to the provisions at paragraphs (c)(3) and (c)(4) of this section. The amount calculated in paragraph (c)(2)(v)(H) of this section is multiplied by the percentage for each region. These regional QS designations do not apply in the CVC QS sector until July 1, 2008.

(vi) *Sunken vessel provisions.* (A) If a person applies for CVO QS or CPO QS based, in whole or in part, on the activities of a vessel that sank, the Regional Administrator shall presume landings for that vessel for the crab fishing years between the time of vessel loss and the replacement of the vessel under § 679.40(k)(5)(v). These presumed landings shall be equivalent to 50 percent of the average legal landings for the qualifying years established in Column B of Table 7 to this part unaffected by the sinking. If the vessel sank during a qualifying year, the legal landings for that year will not be used as the basis for presumed landings;

(B) If a person applies for CVO QS or CPO QS based, in whole or in part, on the activities of a vessel that sank and:

(1) The person who owned the vessel that sank would have been denied eligibility to replace a sunken vessel under the provisions of Public Law 106-554; and

(2) The vessel that sank was replaced with a newly constructed vessel, with that vessel under construction no later than June 10, 2002. For purposes of this section a vessel is considered under construction once the keel for that vessel has been laid; and

(3) The newly constructed vessel participated in any Bering Sea crab fishery no later than October 31, 2002;

(4) Then the Regional Administrator shall presume landings for that vessel for the crab fishing years between the time of vessel loss and the replacement of the vessel. These presumed landings shall be equivalent to 50 percent of the average legal landings for the qualifying years established in Column E of Table 7 to this part unaffected by the sinking. If the vessel sank during a qualifying year, the legal landings for that year will not be used as the basis for presumed landings;

(vii) *Interim LLP license history exemption.* An applicant for CVO or CPO QS who:

(A) Deployed a vessel in a crab QS fishery under the authority of an interim LLP license;

(B) Transferred a permanent fully transferable LLP license for use in that crab QS fishery to insure that the vessel would remain authorized to participate in the fishery following the invalidation of the interim LLP license; and

(C) Received that permanent fully transferable LLP license by transfer before January 1, 2002, may choose to use as the legal landings which are the basis for QS allocation on his or her Application for Crab QS or PQS either:

(D) The legal landings made on that vessel that gave rise to the interim crab LLP license for that crab QS fishery prior to the transfer of the permanent fully transferable LLP license for use on that vessel; or

(E) The legal landings made on the vessel that gave rise to the permanent fully transferable LLP license and the legal landings made under the authority of that same LLP license in that crab QS fishery prior to January 1, 2002.

(3) *Adjustment of CVO and CVC QS allocation for North and South regional designation.* The Regional Administrator may adjust the regional designation of QS to ensure that it is initially allocated in the same proportion as the regional designation of PQS for that crab QS fishery. A person (p) who would receive QS based on the legal landings in only one region, will receive QS with only that regional designation. A person who would receive QS with more than one regional designation for that crab QS fishery would have his or her QS holdings regionally adjusted on a pro rata basis as follows:

(i) Determine the ratio of the Initial PQS pool in the North and South regions.

(ii) Multiply the Initial QS pool by the ratio of North and South PQS. This will yield the target North QS pool and the target South QS pool.

(iii) Sum the QS for all persons who are eligible to receive North QS. This is the unadjusted North QS pool.

(iv) Repeat the procedure in paragraph (c)(3)(iii) of this section for the South Region. This is the unadjusted South QS pool.

(v) To calculate the amount of North QS available to all persons holding both North and South region QS, subtract the amount of QS for persons receiving North QS only from the unadjusted North QS pool as presented in the following equation:

Unadj. North QS - North QS only = North QS for [North & South] QS holders.

(vi) To calculate the amount of South QS available to all persons holding both North and South region QS, subtract the amount of QS for persons receiving South QS only from the unadjusted South QS pool as presented in the following equation:

Unadj. South QS - South QS only = South QS for [North & South] QS holders.

(vii) Subtract the Unadjusted North QS pool from the Target North QS pool to calculate the number of QS units that will be applied to the North QS pool to adjust the regional designations. This amount is the Adjustment Amount as presented in the following equation:

Unadj. North QS - Target North QS pool = Adjustment Amount

(viii) Divide the Adjustment Amount by the unadjusted North QS pool for North and South QS holders. This yields the regional adjustment factor (RAF) for each person as presented in the following equation:

Adj. Amount / unadjusted North QS pool for [North & South] QS holders = RAF

(ix) For each person who holds both North and South Region QS, the QS adjustment (QS Adj. p) to that person's Unadjusted North QS is expressed in the following equation as:

QS adj. p = Unadjusted North QS p × RAF

(x) If the QS adjustment for person (p) is negative, the QS adjustment for that person is subtracted from that person's unadjusted North QS amount and added to that person's unadjusted South QS. If the QS adjustment for person (p) is positive, the QS adjustment for that person is added to that person's unadjusted North QS amount and subtracted from that person's unadjusted South QS. These adjustments will yield the regional adjustment QS amounts for that person.

(4) *Regional designation of Western Aleutian Islands golden king crab.* Fifty percent of the CVO and CVC QS that is issued in the WAG crab QS fishery will be initially issued with a West regional designation. The West regional designation applies to QS for delivery West of 174° N. longitude. The remaining 50 percent of the CVO and CVC QS initially issued for this fishery is not subject to regional designation (Undesignated QS). A person (p) who would receive QS based on the legal landings in only one region, will receive QS with only that regional designation. A person who would receive QS with more than one regional designation for that crab QS fishery would have his or her QS holdings regionally adjusted on a pro rata basis as follows:

(i) The West QS pool is equal to 50 percent of the initial QS pool.

(ii) The Undesignated QS pool is equal to 50 percent of the initial QS pool.

(iii) Sum the QS for all persons who are eligible to receive West QS. This is the unadjusted West QS pool.

(iv) Repeat the procedure in paragraph (c)(4)(iii) of this section for the Undesignated Region. This is the unadjusted Undesignated QS pool.

(v) To calculate the amount of West QS available to all persons holding both West and Undesignated region QS, subtract the amount of QS for persons receiving West QS only from the unadjusted West QS pool as presented in the following equation:

Unadj. West QS - West QS only = West QS for [West & Undesignated] QS holders

(vi) To calculate the amount of Undesignated QS available to all persons holding both West and Undesignated region QS, subtract the amount of QS for persons receiving Undesignated QS only from the unadjusted Undesignated QS pool as presented in the following equation:

Unadj. Undesignated QS - Undesignated QS only = Undesignated QS for [West & Undesignated] QS holders

(vii) Subtract the Unadjusted West QS pool from the Target West QS pool to calculate the number of QS units that will be applied to the West QS pool to adjust the regional designations. This amount is the Adjustment Amount as presented in the following equation:

Unadj. West QS - Target West QS pool = Adjustment Amount

(viii) Divide the Adjustment Amount by the unadjusted West QS pool for West and Undesignated QS holders. This yields the regional adjustment factor (RAF) for each person as presented in the following equation:

Adj. Factor / unadjusted West QS pool for West & Undesignated QS holders = RAF

(ix) For each person who holds both unadjusted West and Undesignated Region QS, the QS adjustment (QS Adj. p) to that person's Unadjusted West QS is expressed in the following equation as:

QS adj. p = Unadjusted West QS p × RAF

(x) If the QS adjustment for person (p) is negative, the QS adjustment for that person is added to that person's unadjusted West QS amount and subtracted from that person's unadjusted Undesignated QS. If the QS adjustment for person (p) is positive, the QS adjustment for that person is subtracted from that person's unadjusted West QS amount and added to that person's unadjusted Undesignated QS. These adjustments will yield the regional adjustment QS amounts for that person.

(d) *Crab PQS and Crab PQS Fisheries—(1) Genera. The Regional*

Administrator shall initially assign to qualified persons defined in paragraph (d)(3) of this section crab PQS specific to crab QS fisheries defined in paragraph (a)(1) of this section. The crab PQS amount issued will be based on total legal processing of crab made in those crab QS fisheries. PQS shall yield annual IPQ as defined under paragraph (j) of this section.

(2) *Regional Designations.* For each crab QS fishery, PQS shall be initially regionally designated based on the legal processing that gave rise to the PQS as follows:

(i) *North PQS* if the processing that gave rise to the PQS for a crab QS fishery occurred in the Bering Sea subarea north of 56°20' N. lat.; or

(ii) *South PQS* if the processing that gave rise to the PQS for a crab QS fishery did not occur in the North Region, and PQS allocated to the WAI crab QS fishery; or

(iii) *West PQS* for a portion of the PQS allocated to the WAG crab QS fishery subject to the provisions under paragraph (e)(2) of this section; or

(iv) Regional designations do not apply (Undesignated) to:

(A) That portion of the WAG crab QS fishery that is not regionally designated as West Region PQS; and

(B) The BST crab QS fishery.

(v) The specific regional designations that apply to PQS in each of the crab QS fisheries are described in paragraph (b)(2)(iii) of this section.

(3) *Qualified person*, for the purposes of PQS issuance, means a person, as defined at § 679.2, who at the time of application for PQS is a U.S. citizen, or a U.S. corporation, partnership, association, or other entity, and who:

(i) Legally processed any crab QS species established in paragraph (a)(1) of this section during 1998 or 1999 as demonstrated on the official crab rationalization record; or

(ii) Did not legally process any crab QS species during 1998 or 1999 according to the official crab rationalization record, but who:

(A) Processed BSS crab QS species in each crab season for that fishery during the period from 1988 through 1997; and

(B) From January 1, 1996, through June 10, 2002, invested in a processing facility, processing equipment, or a vessel for use in processing operations, including any improvements made to existing facilities with a total expenditure in excess of \$1,000,000; or

(C) Is the person to whom the history of legal processing of crab has been transferred by the express terms of a written contract that clearly and unambiguously provides that such legal processing of crab has been transferred.

This provision would apply only if that applicant for PQS:

(1) Legally processed any crab QS species established in § 680.40(a)(1) during 1998 or 1999, as demonstrated on the official crab rationalization record; or

(2) Received history of crab processing that was legally processed during 1998 or 1999, as demonstrated on the official crab rationalization record.

(iii) Qualified persons, or their successors-in-interest, must exist at the time of application for PQS;

(iv) A former partner of a dissolved partnership or a former shareholder of a dissolved corporation who would otherwise qualify as a person may apply for PQS in proportion to his or her ownership interest in the dissolved partnership or corporation;

(v) Evidence of ownership interest in a dissolved partnership or corporation, association, or other entity shall be limited to corporate documents (e.g., articles of incorporation) or notarized statements signed by each former partner, shareholder or director, and specifying their proportions of interest; and

(vi) A person who has acquired a processing corporation, partnership, or other entity that has a history of legal processing of crab is presumed to have received by transfer all of that history of legal processing of crab unless a clear and unambiguous contract establishes otherwise.

(4) *Qualification for Initial Allocation of PQS*—(i) *Year*. The qualifying years for each crab QS fishery are designated in Table 9 to this part.

(ii) *Ownership interest*. Evidence of ownership interest in a dissolved partnership or corporation, association, or other entity shall be limited to corporate documents (e.g., articles of incorporation) or notarized statements signed by each former partner, shareholder or director, and specifying their proportions of interest.

(iii) *Legal Processing of crab* means, for the purpose of initial allocation of PQS, raw crab pounds processed in the crab QS fisheries designated under paragraph (a)(1) of this section in compliance with state and Federal permitting, landing, and reporting regulations in effect at the time of the landing. Legal processing excludes any deadloss, fishing conducted under a scientific activity permit, or fishing conducted under the Western Alaska CDQ program.

(iv) *Documentation*. Evidence of legal processing shall be limited to State of Alaska fish tickets, except that:

(A) NMFS may use information from a State of Alaska Commercial Operators Annual Report, State of Alaska fishery tax records, or evidence of direct payment from a receiver of crab to a harvester if that information indicates that the receiver of crab differs from the receiver indicated on State of Alaska fish ticket records; however:

(B) Information on State of Alaska fish tickets shall be presumed to be correct for the purpose of determining evidence of legal processing of crab. An applicant will have the burden of proving the validity of information submitted in an application that is inconsistent with the information on the State of Alaska fish ticket. Except that NMFS may use information from a State of Alaska Commercial Operators Annual Report, State of Alaska fishery tax records, or documentation of direct payment from a receiver of crab to a harvester if that information indicated that the receiver of crab differs from the receiver indicated on State of Alaska fish ticket records.

(e) *Calculation of PQS allocation*—(1) *Computation for Initial Issuance of PQS*.

(i) The Regional Administrator shall establish the Total Processing Denominator (TPD) which represents the amount of legally processed raw crab pounds in each crab QS fishery in each qualifying year.

(ii) For each crab QS fishery, the percentage of the initial PQS pool that will be distributed to each qualified person shall be based on their percentage of the TPD according to the following procedure.

(A) Sum the raw crab pounds processed for each person.

(B) Divide the sum calculated in paragraph (e)(1)(ii)(A) of this section by the TPD. Multiply by 100. This yields a person's percentage of the TPD.

(C) Sum the TPD percentages of all persons.

(D) Divide the percentage for a person calculated in paragraph (e)(1)(ii)(B) of this section by the sum calculated in paragraph (e)(1)(ii)(C) of this section for all persons. This yields the average percentage of the TPD for a person.

(E) Multiply the amount calculated in paragraph (e)(1)(ii)(D) of this section by the PQS pool for that crab QS fishery as that amount is defined in Table 8 to this part.

(F) Determine the percentages of legally processed crab that were processed in each region. The percentages calculated in paragraph (e)(1)(ii)(E) of this section are multiplied by the amount determined within each regional designation. Regional designations will apply to the PQS according to the provisions established

in paragraphs (d)(2) and (e)(2) of this section.

(2) *Regional designation of Western Aleutian Islands golden king crab*. (i) Fifty percent of the PQS that is issued in the WAG crab QS fishery will be issued with a West regional designation. The West regional designation applies to PQS for processing west of 174° N. long. The remaining 50 percent of the PQS issued for this fishery is undesignated region PQS.

(ii) If a person owns a crab processing facility that is located in the West region at the time of application, that person will receive West PQS only. If a person applies to receive PQS and does not own a crab processing facility located in the West region at the time of application, then that person will receive West region and Undesignated Region PQS. Expressed algebraically, for any person (p) allocated both West region PQS and undesignated region PQS the formula is as follows:

(A) $PQS_{West} = PQS \times 0.50$

(B) $PQS_{Und.} = PQS \times 0.50$

(C) $PQS_{West} \text{ for } PQS_{West} \text{ \& Und. holders} = PQS_{West} - PQS_{West \text{ only}}$

(D) $PQS_{West} \text{ for Person}_p = PQS_p \times PQS_{West} \text{ for } PQS_{West} \text{ \& Und. holders} / (PQS_{West} \text{ for } PQS_{West} \text{ \& Und. holders} + PQS_{Und.})$

(E) $PQS_{Und.} \text{ for Person}_p = PQS_p \times PQS_{Und.} / (PQS_{Und.} \text{ for } PQS_{West} \text{ \& Und. holders} + PQS_{Und.})$

(iii) For purposes of the allocation of PQS in the WAG crab fishery:

(A) Ownership of a processing facility is defined as:

(1) A sole proprietor; or

(2) A relationship between two or more entities in which a person directly or indirectly owns a 10 percent or greater interest in another, or a third entity directly or indirectly owns a 10 percent or greater interest in both.

(B) A processing facility is a shoreside crab processor or a stationary floating crab processor.

(f) *Application process*—(1) *General*. The Regional Administrator will issue QS and/or PQS to an applicant if an Application for Crab QS or PQS is completed and is submitted by or on behalf of the applicant during the specified application period, and if the applicant meets all criteria for eligibility and allocation as specified at paragraphs (b)(3) and (d)(3) of this section.

(i) The Regional Administrator will send application materials to the person identified by NMFS as an eligible applicant based on the official crab rationalization record. An application form may also be obtained from the internet or requested from the Regional Administrator.

(ii) All Application for Crab QS or PQS may be submitted to mail, P.O. Box 11660, Anchorage, Alaska 99511, facsimile 907-261-7551, or email to crab@alaska.gov.

National Marine Fisheries Service, 709 West 9th Street, Room 420A, Juneau, AK.

(iii) An application that is postmarked, faxed, or hand delivered after the ending date for the application period for the Crab QS Program specified in the *Federal Register* will be denied.

(2) *Contents of application.* A complete Application for Crab QS or PQS must be signed by the applicant, or the individual representing the applicant, and include the following, as applicable:

(i) Type of QS or PQS for which the person is applying.

(A) If applying for CVO QS or CPO QS, answer questions (f)(2)(ii) through (f)(2)(iv) of this section;

(B) If applying for CVC QS or CPC QS, answer questions (f)(2)(ii), (f)(2)(iii) and (f)(2)(v) of this section;

(C) If applying for PQS, answer questions (f)(2)(ii), (f)(2)(iii) and (f)(2)(vi) of this section.

(ii) Applicant information.

(A) The name, permanent business mailing address, business telephone, business facsimile, business e-mail of the applicant;

(B) NMFS Person ID (if applicable);

(C) Tax ID/social security number (SSN);

(D) Indicate (YES or NO) whether applicant is a U.S. citizen; if YES, his or her date of birth;

(E) Indicate (YES or NO) whether applicant is a U.S. corporation, association, or other business entity; if YES, the date of incorporation;

(F) Indicate (YES or NO) whether applicant is deceased; if YES, date of death. A copy of the death certificate must be attached to the application;

(G) Indicate (YES or NO) whether applicant described in paragraph (f)(2)(ii)(E) of this section is no longer in existence; if YES, date of dissolution. Valid evidence of dissolution must be attached to the application;

(iii) Type of crab QS;

(iv) CVO or CPO QS;

(A) For vessels whose catch histories are being claimed for purpose of the crab QS program: include name of the vessel, ADF&G vessel registration number, USCG documentation number, moratorium crab permit number(s) or crab LLP license number(s) held by the applicant and used on that vessel, qualifying years or seasons fished, and dates during which those permits were used on that vessel;

(B) Indicate (YES or NO) whether applicant purchased an LLP crab license and vessel identification if a person purchased an LLP crab license prior to January 1, 2002, for purposes of

remaining in a crab QS fishery. If YES, include LLP crab license number, ADF&G vessel registration number, USCG documentation number, and name of vessel.

(C) Indicate (YES or NO) whether QS is being claimed for a vessel that was lost or destroyed. If YES, include the vessel name, ADF&G registration number, USCG documentation number of the lost or destroyed vessel, and the date the vessel was destroyed or lost;

(D) Indicate (YES or NO) whether the lost or destroyed vessel described in paragraph (f)(2)(iv)(C) of this section was replaced with a newly constructed vessel. If YES, include the vessel name, ADF&G vessel registration number, USCG documentation number of the replacement vessel, date of vessel construction, date of entry into the fishery, and provide documentation of participation by October 31, 2002 by the new vessel in a Bering Sea crab fishery;

(E) Indicate (YES or NO) whether applying for CPO QS. If YES, attach documentation of processing crab onboard a vessel authorized by an LLP crab license in 1998 or 1999, including harvest area, date of landing, and crab species;

(v) CVC or CPC QS.

(A) Indicate (YES or NO) whether applicant has at least one landing in three of the qualifying years for each crab species for which applying for QS (see Table 7 to this part).

(B) Indicate (YES or NO) whether applicant is a recent participant in a crab QS fishery. Recent participation is defined in Table 7 to this part.

(C) In answer to paragraph (f)(2)(v)(B) of this section in YES, enter State of Alaska Interim Use Permit number, name, ADF&G vessel registration number, USCG documentation number of vessel on which harvesting occurred; qualifying years or seasons fished by QS fishery, and the dates during which those permits were used on that vessel;

(D) Indicate (YES or NO) whether a person is applying as the successor-in-interest to an eligible applicant. If YES, attach to the application documentation proving the person's status as a successor-in-interest to and valid evidence of the death of that eligible applicant;

(vi) Processor QS.

(A) Indicate (YES or NO) whether applicant processed any of the crab species included in the Crab QS program (see Table 1 to this part) in 1998 or 1999.

(E) In answer to paragraph (f)(2)(v)(A) of this section: if YES, enter the following information for each processing facility where QS crab was

processed through which applicant is claiming eligibility for BSAI crab PQS:

(1) Facility name and ADF&G processor code;

(2) Qualifying years or seasons by fishery;

(C) If answer to paragraph (f)(2)(vi)(A) of this section is NO, indicate (YES or NO) whether applicant is claiming eligibility under hardship provisions;

(D) If answer to paragraph (f)(2)(vi)(C) is YES, both of the following provisions must apply to a processor to obtain hardship provisions; attach documentation of both to the application:

(1) Processed QS crab in 1998 or 1999, or processed BSS crab between 1988 and 1997; and

(2) Invested a total expenditure of \$1,000,000 for any processing facility, processing equipment, or a vessel for use in processing operations, including any improvements made to existing facilities made from 1996 to 2002;

(E) Indicate (YES or NO) whether applicant has entered into a Community Right of First Refusal (ROFR) contract, pertaining to the transfer of any PQS and/or IPQ issued as a result of this application, with a community. If YES, attach to the application the following:

(1) Copy of signed contract for community ROFR consistent with paragraph (f)(3) of this section;

(2) Contract that the legal processing history and rights to apply for and receive PQS based on that legal processing history have been transferred or retained; and

(3) Any other information deemed necessary by the Regional Administrator.

(F) If applicant is applying to receive WAG PQS, indicate (YES or NO) whether applicant owns a crab processing facility in the West region (see paragraph (b)(2)(iii) of this section);

(vii) *Applicant signature and certification.* Printed name and signature of applicant and date signed. If the application is completed by an authorized representative, then a proof of authorization must accompany the application.

(3) *Contract provisions for community right of first refusal (ROFR) in Application for Crab QS or PQS.* (i) To be complete, an Application for Crab QS or PQS from a person based on legal processing that occurred in an ECC must also include a contract for ROFR that includes the terms listed in paragraph (c) of this section and is signed by the applicant for initial allocation of PQS and the ECC, either designated under 50 CFR 67.100.

(ii) To be complete, an Application for Crab QS or PQS from a person based on legal processing that occurred in the Gulf of Alaska north of a line at 56°20' N. lat. must also include a contract for ROFR that includes the terms listed in paragraph (m) of this section and is signed by the applicant for initial allocation of PQS and the ECC entity designated by the City of Kodiak and Kodiak Island Borough under § 680.41(j)(2).

(4) *Application evaluation.* The Regional Administrator will evaluate Applications for Crab QS and PQS submitted during the specified application period and compare all claims in the application with the information in the official crab rationalization record. Claims in the application that are consistent with information in the official crab rationalization record will be accepted by the Regional Administrator. Inconsistent claims in the Applications for Crab QS or PQS, unless verified by documentation, will not be accepted. An applicant who submits inconsistent claims, or an applicant who fails to submit the information specified in paragraph (f)(2) of this section, will be provided a single 30-day evidentiary period as provided in paragraph (f)(5) of this section to submit the specified information, submit evidence to verify his or her inconsistent claims, or submit a revised application with claims consistent with information in the official crab rationalization record. An applicant who submits claims that are inconsistent with information in the official crab rationalization record has the burden of proving that the submitted claims are correct.

(5) *Additional information or evidence.* The Regional Administrator will evaluate additional information or evidence to support an applicant's inconsistent claims submitted prior to or within the 30-day evidentiary period. If the Regional Administrator determines that the additional information or evidence meets the applicant's burden of proving that the inconsistent claims in his or her application are correct, the official crab rationalization record will be amended and the information will be used in determining whether the applicant is eligible for QS or PQS. However, if the Regional Administrator determines that the additional information or evidence does not meet the applicant's burden of proving that the inconsistent claims in his or her application are correct, the applicant will be notified by an IAD that the applicant did not meet the burden of proof to change the

information in the official crab rationalization record.

(6) *30-day evidentiary period.* The Regional Administrator will specify by letter a single 30-day evidentiary period during which an applicant may provide additional information or evidence to support the claims made in his or her application, or to submit a revised application with claims consistent with information in the official crab rationalization record, if the Regional Administrator determines that the applicant did not meet the burden of proving that the information on the application is correct through evidence provided with the application. Also, an applicant who fails to submit information as specified in paragraphs (b)(3)(iii) and (b)(3)(iv) of this section will have 30 days to provide that information. An applicant will be limited to one 30-day evidentiary period per application. Additional information or evidence, or a revised application, received after the 30-day evidentiary period specified in the letter has expired will not be considered for purposes of the IAD.

(7) *Right of First Refusal (ROFR) Contract Provisions.* If an applicant submits an Application for Crab QS and PQS that does not contain the contract provisions for community ROFR, as specified in paragraphs (f)(2)(vi)(E) and (m) of this section, then the Regional Administrator will not prepare an IAD on unverified claims or issue QS or PQS until such contract provisions have been submitted.

(8) *Initial administrative determinations (IAD).* The Regional Administrator will prepare and send an IAD to the applicant following the expiration of the 30-day evidentiary period if the Regional Administrator determines that the information or evidence provided by the applicant fails to support the applicant's claims and is insufficient to rebut the presumption that the official crab rationalization record is correct, or if the additional information, evidence, or revised application is not provided within the time period specified in the letter that notifies the applicant of his or her 30-day evidentiary period. The IAD will indicate the deficiencies in the application, including any deficiencies with the information, the evidence submitted in support of the information, or the revised application. The IAD will also indicate which claims cannot be approved based on the available information or evidence. An applicant who receives an IAD may appeal pursuant to § 679.45. An applicant who avails himself or herself of the opportunity to appeal an IAD will not

receive crab QS or PQS until after the final resolution of that appeal in the applicant's favor.

(g) *Annual allocation of IFQ.* IFQ is assigned based on the underlying QS. The Regional Administrator shall assign crab IFQs to each person who holds QS and submits a complete Annual Application for Crab IFQ/IPQ Permit as described under § 680.4. IFQ will be assigned to a crab QS fishery with the appropriate regional designation, QS sector, and IFQ class. This amount will represent the maximum amount of crab that may be harvested from the specified crab QS fishery by the person to whom it is assigned during the specified crab fishing year, unless the IFQ assignment is changed by the Regional Administrator because of an approved transfer, unless revoked, suspended, or modified under 15 CFR part 904.

(h) *Calculation of annual IFQ allocation—(1) General.* The annual allocation of IFQ to any person (p) in any crab QS fishery (f) will be based on the TAC of crab for that crab QS fishery less the allocation to the Western Alaska CDQ Program ("CDQ Reserve") and Western Aleutian Islands golden king crab fishery. Expressed algebraically, the annual IFQ allocation formula is as follows:

(i) $IFQ_{TAC_f} = TAC_f - (CDQ\ reserve_f + Allocation\ for\ the\ Western\ Aleutian\ Island\ golden\ king\ crab\ fishery)$

(ii) $IFQ_{gr} = IFQ_{TAC_f} \times (QS_{pr}/QS\ pool_f)$

(2) *Class A/B IFQ.* (i) QS shall yield Class A or Class B IFQ if:

(A) Initially assigned to the CVO QS sector;

(B) Transferred to the CVO QS sector from the CPO QS sector; or

(C) After July 1, 2008, if initially issued to the CVC QS sector.

(3) *Class A IFQ* will be assigned to all eligible recipients.

(4) *Class B IFQ* will be assigned to all eligible recipients except that Class B IFQ will not be issued to:

(i) Any person who holds PQS or IPQ;

(ii) Any person who holds QS and is affiliated with a person who holds PQS or IPQ. Affiliation will be determined based on an annual affidavit by each QS holder submitted as part of the Annual Application to for Crab IFQ/IPQ Permit.

(5) *Class A/B IFQ issuance ratio.* (i) Class A and Class B IFQ shall be assigned on an annual basis such that the total amount of Class A and B IFQ assigned in a crab fishing year in each crab QS fishery for each region will be in a ratio of 90 percent Class A IFQ and 10 percent Class B IFQ.

(ii) The Regional Administrator will determine the amount of Class A and Class B IFQ that is assigned to a person.

eligible to hold IFQ. This is calculated by allocating 90 percent of the IFQ TAC (TAC a) to Class A IFQ. A portion of the IFQ TAC a is allocated to persons eligible to hold only Class A IFQ (TAC a only), the remaining IFQ TAC (TAC r) is allocated for harvest by a person (p) eligible to receive both Class A IFQ and Class B IFQ. Expressed algebraically, for an individual person (p) eligible to hold both Class A and Class B IFQ the annual allocation formula is as follows:

$$(A) TAC_a = IFQ\ TAC \times 0.90$$

$$(B) TAC_r = TAC_a - TAC_a\ \text{only}$$

$$(C) IFQ_{ap} = TAC_r / (IFQ\ TAC - TAC_a\ \text{only}) \times IFQ_a$$

$$(D) IFQ_{bp} = IFQ_p - IFQ_{ap}$$

(6) *CVC IFQ.* (i) QS that is initially allocated to the CVC QS sector shall yield CVC IFQ.

(ii) After July 1, 2008, CVC IFQ will be assigned as CVC Class A and CVC Class B IFQ under the provisions established in paragraph (h)(5)(ii) of this section.

(7) *CPO IFQ.* (i) QS that is initially allocated to the CPO QS sector shall yield CPO IFQ.

(ii) CPO IFQ is not subject to regional designation.

(8) *CPC IFQ.* (i) QS that is initially allocated to the CPC QS sector shall yield CPC IFQ.

(ii) CPC IFQ is not subject to regional designation.

(9) *QS amounts for IFQ calculation.*

For purposes of calculating IFQs for any crab fishing year, the amount of a person's QS and the amount of the QS pool for any crab QS fishery will be the amounts on record with the Alaska Region, NMFS, at the time of calculation.

(i) *Annual allocation of IPQ.* IPQ is assigned based on the underlying PQS. The Regional Administrator shall assign crab IPQs to each person who submits a complete Annual Application for Crab IFQ/IPQ Permit as described under § 680.4. Each assigned IPQ will be specific to a crab QS fishery with the appropriate regional designation. This amount will represent the maximum amount of crab that may be received from the specified crab QS fishery by the person to whom it is assigned during the specified crab fishing year, unless the IPQ assignment is changed by the Regional Administrator because of an approved transfer or unless revoked, suspended, or modified under 15 CFR part 904.

(j) *Calculation of annual IPQ allocation—(1) General.* The annual allocation of TAC to PQS and the resulting IPQ in any crab QS fishery (f) is the Class A IFQ TAC (TAC a). A person's annual IPQ is based on the amount of PQS held by a person (PQS

p) divided by the PQS pool for that crab QS fishery for all PQS holders (PQS pool f). Expressed algebraically, the annual IPQ allocation formula is as follows:

$$IPQ_{pf} = TAC_a \times PQS_{pf} / PQS\ pool_f$$

(2) *PQS amounts for IPQ calculation.*

For purposes of calculating IPQs for any crab fishing year, the amount of a person's PQS and the amount of the PQS pool for any crab PQS fishery will be the amounts on record with the Alaska Region, NMFS, at the time of calculation.

(k) *Timing for Issuance of IFQ or IPQ.* IFQ and IPQ will be issued once the TAC for that crab QS fishery in that crab fishing year has been specified by the State of Alaska. All IFQ and IPQ for all persons will be issued once for a crab fishing year for a crab QS fishery. QS issued after NMFS has issued annual IFQ for a crab QS fishery for a crab fishing year will not result in IFQ for that crab QS fishery for that crab fishing year.

(l) *Harvesting and processing privilege.* QS and PQS allocated or permits issued pursuant to this part do not represent either an absolute right to the resource or any interest that is subject to the "takings" provision of the Fifth Amendment of the U.S. Constitution. Rather, such QS, PQS, or permits represent only a processing privilege that may be revoked or amended pursuant to the Magnuson-Stevens Act and other applicable law.

(m) *Contract terms for community right of first refusal (ROFR).* The contract for ROFR required for the Application for Crab QS or PQS under paragraph (f)(2) of this section must include the following terms:

(1) The ROFR will apply to transfers of:

(i) PQS, and

(ii) IPQ, if more than 20 percent of the IPQ resulting from PQS held by that person that is derived from legal processing that occurred in that ECC is used outside of that ECC in a crab fishing year.

(2) Any proposed sale of PQS to another person, and any associated IPQ or other goods and appurtenances attached to that sale, must be provided to the ECC entity under the exact same terms and agreements for the exercise of ROFR.

(3) If a PQS holder legally uses IPQ outside of the ECC for which those IPQ are designated, than that use of IPQ is exempt from ROFR. If such IPQ is used outside the ECC by the PQS holder for a period of three consecutive crab fishing years, than those PQS and IPQ are forever exempt from ROFR. This

provision only applies if the PQS holder holds the IPQ and uses that IPQ during the three crab fishing year period without transfer or lease to another holder.

(4) If PQS is transferred and the IPQ derived from that PQS is used to process crab within the ECC for which that PQS is designated, ROFR cannot be exercised by the ECC entity while that PQS is used in that ECC. A use of crab in the ECC will exist if the purchaser of the PQS designated for that ECC contracts with the ECC entity to:

(i) Use at least 80 percent of the annual IPQ allocation in the ECC; or

(ii) Grant the community a ROFR on the PQS subject to the same terms and conditions required of the holder of the initial allocation of the PQS.

(5) All terms of any ROFR and contract entered into related to the ROFR will be enforced through civil contract law.

(6) An ECC entity can waive any ROFR. Written proof of any waivers of ROFR must be provided with any proposed transfer of PQS designated for an ECC under § 680.41(j) of this part.

(7) The right of first refusal may be exercised by the ECC entity by providing the PQS holder within 60 days of receipt of a copy of the proposed contract for transfer of PQS:

(i) Notice of the intent to exercise ROFR, and

(ii) Earnest money in the amount of 10 percent of the contract amount or \$500,000 whichever is less.

(8) The ECC entity must perform all of the terms of the contract for the transfer of PQS within the longer of:

(i) One hundred and twenty days of receipt of the contract, or

(ii) In the time specified in the contract.

(9) Except as provided for at § 680.41(j)(5), ROFR applies only to the ECC within which the legal processing that gave rise to the PQS occurred. If the ECC entity chooses not to exercise ROFR on the transfer of PQS, that PQS will no longer be subject to ROFR.

(10) Any due diligence review conducted related to the exercise of a ROFR will be undertaken by a third party bound by a confidentiality agreement that protects any proprietary information from being released or made public.

§ 680.41 Transfer of QS and IFQ.

(a) *General.* (1) Transfer of crab QS, PQS, IFQ, or IPQ means any transaction, approved by NMFS, requiring QS or PQS, or the use thereof in the form of IFQ or IPQ, to pass from one person to another, permanently or for a fixed period of time, except that:

(2) A Crab IFQ Hired Master Permit issued by NMFS in the name of a vessel master employed by a person is not a transfer of crab QS or IFQ;

(3) The use of IFQ assigned to a crab harvesting cooperative and used within that cooperative is not a transfer of IFQ.

(b) *Transfer procedure.* (1) A person must establish eligibility to receive QS, PQS, IFQ, or IPQ by transfer.

(2) A person must submit a complete a transfer application that is subsequently approved by the Regional Administrator.

(i) *Eligibility Applications.* Applications under this paragraph are required to establish eligibility to receive QS, PQS, IFQ, or IPQ by transfer. If a person is an initial issuee of QS an eligibility application is not required to receive QS, PQS, IFQ or IPQ by transfer. If a person is an initial issuee of PQS an eligibility application

is not required to receive PQS or IPQ by transfer.

(A) *Application for Eligibility to Receive QS/IFQ and PQS/IPQ by Transfer.* This application is required to establish a person's eligibility to receive QS, PQS, IFQ, or IPQ by transfer, if the person is not an ECCO.

(B) *Application to Become an ECCO.* This application is required to establish a person's eligibility to receive QS, PQS, IFQ, or IPQ by transfer, if the person is an ECCO.

(ii) *Transfer applications.* An application is required to transfer any amount of QS, PQS, IFQ, or IPQ. Any transfer application will not be approved until the necessary eligibility application in paragraph (b)(1)(i) of this section has been submitted and approved by NMFS:

(A) *Application for Transfer of Crab QS/IFQ or PQS/IPQ.* This application is

required to transfer any amount of QS, PQS, IFQ, or IPQ from an entity that is not an ECCO or a crab harvesting cooperative;

(B) *Application for Transfer of Crab QS/IFQ to or from an ECCO.* This application is required to transfer any amount of QS or IFQ to or from an entity that is an ECCO.

(C) *Application for Inter-cooperative Transfer.* This application is required to transfer any amount of IFQ from an entity that is a crab harvesting cooperative to another crab harvesting cooperative.

(c) *Eligibility to receive QS, PQS, IFQ, or IPQ by transfer.* (1) Any person may apply to receive PQS or IPQ by transfer.

(i) To be eligible to receive QS, PQS, IFQ, or IPQ by transfer, a person must first meet the requirements specified in the following table:

Quota Type	Eligible Person	Eligibility Requirements
(A) PQS	Any person	None.
(B) IPO	Any person	None.
(C) CVO or CPO QS	(1) A person initially issued QS	No other eligibility requirements.
	(2) An individual	who is a U.S. citizen with at least 150 days of sea time as part of a harvesting crew in any U.S. commercial fishery.
	(3) A corporation, partnership, or other entity	with at least one individual member who is a U.S. citizen and who: (i) owns at least 20 percent of the corporation, partnership, or other entity; and (ii) has at least 150 days of sea time as part of a harvesting crew in any U.S. commercial fishery.
	(4) An ECCO	that meets the eligibility requirements described under paragraphs (c)(3) and (c)(4) of this section.
	(5) A CDQ Group	no other eligibility requirements.
(D) CVO or CPO IFQ	(1) All persons eligible for CVO or CPO QS	according to the requirements in paragraph (c)(1)(i)(C)(5) of this section.
	(2) A crab harvesting cooperative	that meets the eligibility requirements under § 680.21.
(E) CVC or CPC QS	(1) An individual initially issued QS	no other eligibility requirements.
	(2) An individual	who is a U.S. citizen with: (i) at least 150 days of sea time as part of a harvesting crew in any U.S. commercial fishery; and (ii) recent participation in the 365 days prior to the transfer.
(F) CVC or CPC IFQ	(1) All eligible persons for CVC or CPC QS	according to the requirements in paragraph (c)(1)(i)(E) of this section.
	(2) A crab harvesting cooperative	that meets the eligibility requirements under § 680.21.

(2) *Application for Eligibility to Receive QS/IFQ and PQS/IPQ by Transfer.* (1) Unless a person received

crab QS by initial issuance, all persons, except non-profits seeking to become an ECCO, applying to receive QS, PQS, IFQ

or IPC, must submit an Application to Eligibility to Receive QS/IFQ or PQS/IPQ by transfer, containing accurate

information, to the Regional Administrator. The Regional Administrator shall provide an Application for Eligibility to Receive QS/IFQ or PQS/IPQ by Transfer to any person on request.

(ii) Contents. A completed Application for Eligibility to Receive QS/IFQ or PQS/IPQ by Transfer must include the following:

(A) Type of QS, IFQ, PQS, or IPQ for which the applicant is seeking eligibility. Indicate type of QS, IFQ, PQS, IPQ for which applicant is seeking eligibility.

(1) If seeking CVO or CPO QS/IFQ, complete paragraphs (c)(2)(i)(B), (c)(2)(ii)(D) if applicable, (c)(2)(ii)(E), and (c)(2)(ii)(F) of this section;

(2) If seeking CVC or CPC QS/IFQ, complete paragraphs (c)(2)(i)(B), (c)(2)(ii)(C), (c)(2)(ii)(E), and (c)(2)(ii)(F) of this section;

(3) If seeking PQS/IPQ, complete paragraphs (c)(3)(iii)(B) and (c)(2)(iii)(F) of this section;

(B) *Applicant information.* (1) Name and NMFS Person ID, date of birth, and social security number or tax ID number;

(2) Permanent business mailing address, business telephone number, business facsimile number, and e-mail address (if available) of the applicant. A temporary business mailing address may be provided in addition to the permanent business mailing address.

(3) Indicate (YES or NO) whether the applicant is a U.S. citizen or U.S. corporation, partnership or other business entity. Applicants for CVO, CPO, CVC or CPC QS (and associated IFQ) must be U.S. Citizens or U.S. Corporations, Partnerships or Other Business Entity. Applicants for PQS (and associated IPQ) are not required to be U.S. Citizens.

(C) *Eligibility for CVC or CPC shares.* Indicate (YES or NO) whether this transfer eligibility certificate (TEC) is intended for a person who wishes to buy CVC or CPC QS/IFQ. If YES, provide evidence of at least one delivery of a crab species in any crab QS fishery in the 365 days prior to submission of this form. Acceptable evidence of such delivery shall be limited to an ADF&G fish ticket imprinted with applicant's State of Alaska permit card and signed by the applicant, an affidavit from the vessel owner, or a signed receipt for an IFQ crab landing on which applicant was acting as the permit holder's crab IFQ hired master

(D) *U.S. Corporations, partnerships or business entities.* (1) Indicate (YES or NO) whether this application is submitted by a CDQ Group. If YES,

complete paragraph (c)(2)(ii)(F) of this section;

(2) Indicate (YES or NO) whether this application is submitted on behalf of a corporation, partnership or other business entity (not including CDQ groups). If YES:

(i) At least one member of the corporation, partnership or other business entity that is applying to receive this TEC must provide evidence of at least 150 days as part of a harvesting crew in any U.S. commercial fishery. Identify the individual owner that meets the criteria and complete paragraph (c)(2)(D) of this section, providing this individual's commercial fishing experience; Name, NMFS person ID, and SSN; and Business mailing address, business telephone number, and business facsimile number;

(ii) If a corporation, partnership, or other business entity, the applicant also must submit documentation showing at least 20 percent interest in the corporation, partnership, or other entity.

(E) *Commercial fishing experience.* (1) Species; enter any targeted species in a U.S. commercial fishery;

(2) Gear Type; enter any gear type used to legally harvest in a U.S. commercial fishery;

(3) Location; enter actual regulatory, statistical, or geographic harvesting location;

(4) Starting date and ending date of claimed fishing period (MMYY);

(5) Number of actual days spent harvesting crab;

(6) Duties performed while directly involved in the harvesting of crab (be specific);

(7) Name and ADF&G vessel registration number or USCG documentation number of the vessel upon which above duties were performed;

(8) Name of vessel owner;

(9) Name of vessel operator;

(10) Reference name. Enter the name of a person (other than applicant) who is able to verify the above experience;

(11) Reference's relationship to applicant;

(12) Reference's business mailing address and telephone number.

(F) *Applicant certification.* (1) Printed name and signature of applicant and date signed;

(2) Notary Public signature, date commission expires, and notary stamp or seal.

(G) Verification that the applicant applying for eligibility to receive crab QS/IFQ or PQS/IPQ by transfer has submitted an EDCI required to be submitted since 8/68/04.

(H) *Applicant certification.* (1) Printed name and signature of applicant and date signed;

transfer on behalf of an ECC must first complete an Application to Become an ECCO (see paragraph (c)(4) of this section).

(3) *Designation of an ECCO.* (i) The appropriate governing body of each ECC must designate a non-profit organization to serve as the ECCO for that ECC. This designation must be submitted by the non-profit organization in its Application to Become an ECCO to transfer and hold QS on the behalf of that ECC.

(ii) If the non-profit entity is approved by NMFS to serve as the ECCO, then the appropriate governing body of the ECC must authorize the transfer of any QS from the ECCO.

(iii) The appropriate governing body for purposes of designating a non-profit organization for the Application to Become an ECCO, or approve the transfer of any QS from an ECCO in each ECC is as follows:

(A) If the ECC is also a community eligible to participate in the Western Alaska CDQ Program, then the CDQ group is the appropriate governing body;

(B) If the ECC is not a CDQ community and is incorporated as a municipality and is not located in a borough, then the municipal government is the appropriate governing body;

(C) If the ECC is not a CDQ community and is incorporated as a municipality and also located in a borough, then the municipality and borough jointly serve as the appropriate governing body and both must agree to designate the same non-profit organization to serve as the ECCO or authorize the transfer of QS from the ECCO; and

(D) If the ECC is not a CDQ community and is not incorporated as a municipality and is in a borough, then the borough in which the ECC is located is the appropriate governing body.

(iv) The appropriate governing body in each ECC may designate only one non-profit organization to serve as the ECCO for that community at any one time.

(4) *Application to Become an ECCO.* Prior to initially receiving QS or IFQ by transfer on behalf of a specific ECC, a non-profit organization that intends to represent that ECC as a ECCO must submit an Application to Become an ECCO and have that application approved by the Regional Administrator.

(i) *Contents of Application—(A) Applicant identification.* (1) Name of the non-profit organization, taxpayer identification number, and NMFS Person ID.

(2) Permanent business mailing address;

(3) Name of contact persons, business phone, business fax, and e-mail address (if available);

(4) Name of community or communities represented by the non-profit organization;

(5) Name of contact person for the governing body of each community represented.

(B) *Required attachments to the application.* (1) The articles of incorporation under the laws of the State of Alaska for that non-profit organization;

(2) A statement indicating the ECC(s) represented by that non-profit organization for purposes of holding QS;

(3) The bylaws of the non-profit organization;

(4) A list of key personnel of the management organization including, but not limited to, the board of directors, officers, representatives, and any managers;

(5) Additional contact information of the managing personnel for the non-profit organization and resumes of management personnel;

(6) A description of how the non-profit organization is qualified to manage QS on behalf of the ECC it is designated to represent, and a demonstration that the non-profit organization has the management skills and technical expertise to manage QS and IFQ; and

(7) A statement describing the procedures that will be used to determine the distribution of IFQ to residents of the ECC represented by that non-profit organization, including; procedures used to solicit requests from residents to lease IFQ, and criteria used to determine the distribution of IFQ leases among qualified community residents and the relative weighting of those criteria.

(C) *Applicant certification.* Printed name of applicant or authorized agent, notarized signature, and date signed, Notary Public signature and date when commission expires, and notary seal or stamp. If authorized agent, proof of authorization to act on behalf of the applicant must be provided with the application.

(d) *Application for Transfer of Crab QS/IFQ or PQS/IPQ—(1) General.* (i) An Application for Transfer of Crab QS/IFQ or PQS/IPQ must be approved by the Regional Administrator before the transferee may use the IFQ or IPQ to harvest or process crab QS species.

(ii) An Application for Transfer of Crab QS/IFQ or PQS/IPQ will not be approved until the Regional Administrator has reviewed the transfer

agreement signed by the parties to the transaction. The Regional Administrator shall provide an Application for Transfer of Crab QS/IFQ or PQS/IPQ to any person on request or on the Internet at <http://www.fakr.noaa.gov/>. Persons who submit an Application for Transfer of Crab QS/IFQ or PQS/IPQ for approval will receive notification of the Regional Administrator's decision to approve or disapprove the application, and if applicable, the reason(s) for disapproval, by mail, unless another communication mode is requested on the application.

(2) *Contents.* This application for transfer must be completed, signed, and notarized by both parties. A complete Application for Transfer of Crab QS/IFQ or PQS/IPQ must include the following information:

(i) *Type of transfer.* (A) Indicate type of transfer requesting;

(B) Indicate (YES or NO) whether this is a transfer of IFQ or IPQ only due to a hardship (medical emergency, etc.). If YES, provide documentation supporting the need for such transfer (doctor's statement, etc.).

(C) If requesting transfer of PQS/IPQ, applications involving the transfer of PQS or IPQ (if applicable) outside the community in which the processing facility resides must include a statement by an authorized representative of that community indicating that the community has been offered the right of first refusal (ROFR) on the sale of the PQS or IPQ under the requirements of this section.

(ii) *Transferor (Seller) information.*

(A) The name and NMFS Person ID of the transferor (person currently holding the QS, PQS, IFQ, or IPQ), social security number or tax ID number;

(B) Permanent business mailing address, business telephone, business facsimile, and business e-mail address, and the transferor may also provide a temporary address for each transaction in addition to the permanent business mailing address;

(iii) *Transferee (Buyer) information.*

(A) The name and NMFS Person ID of the transferee (person receiving QS, PQS or IFQ, IPQ by transfer), social security number or tax ID number;

(B) Permanent business mailing address, business telephone, business facsimile, and business e-mail address, and the transferee may also provide a temporary address for each transaction in addition to the permanent business mailing address.

(iv) *Transfer of QS or PQS and IFQ or IPQ.* Complete the following

information: If QS or PQS and IFQ or IPQ are to be transferred (either of

(A) QS species;

(B) QS type;

(C) Range of serial numbers to be transferred (shown on QS certificate) numbered to and from;

(D) Number of QS units to be transferred;

(E) Transferor (seller) IFQ or IPQ permit number;

(F) Indicate (YES or NO) whether remaining IFQ or IPQ pounds for the current fishing year should be transferred; if NO, specify the number of pounds to be transferred;

(G) If this is a transfer of CPO QS, indicate whether being transferred as CPO QS or CVO QS and PQS;

(H) If CPO QS is being transferred as both CVO QS and PQS, specify number of units of each;

(I) If CPO QS is being transferred as CVO QS, select region for which the QS is designated;

(v) *Transfer of IFQ or IPQ only.*

Complete the following information if transferring IFQ or IPQ only.

(A) QS species;

(B) IFQ/IPQ type;

(C) Range of serial numbers shown on QS certificate, numbered to and from;

(D) Number of IFQ or IPQ pounds to be transferred;

(E) Transferor (seller) IFQ or IPQ permit number; and

(F) Crab fishing year of the transfer.

(vi) *Price paid for the QS, PQS and/or IFQ, IPQ.* The transferor must provide the following information:

(A) Indicate whether (YES or NO) a broker was used for this transaction; if YES, provide dollar amount paid in brokerage fees or percentage of total price;

(B) Provide the total amount paid for the QS/IFQ or PQS/IPQ in this transaction, including all fees;

(C) Provide the price per unit of QS (price divided by QS units) and the price per pound (price divided by IFQ or IPQ pounds) of IFQ or IPQ;

(D) Indicate all reasons that apply for transferring the QS/IFQ or PQS/IPQ.

(vii) *Method of financing for the QS, PQS and/or IFQ, IPQ.* The transferee must provide the following information:

(A) Indicate (YES or NO) whether QS/IFQ or PQS/IPQ purchase will have a lien attached; if YES, provide the name of lien holder;

(B) Indicate one primary source of financing for this transfer;

(C) Indicate the sources used to locate the QS, PQS and/or IFQ, IPQ being transferred.

(D) Indicate the relationship, if any, between the transferor and the transferee.

(E) Indicate (YES or NO) whether at agreement closes to return the QS/IFQ or

PQS/IPQ to the transferor or any other person, or with a condition placed on resale; If YES, explain;

(F) Attach a copy of the terms of agreement for the transfer, the bill of sale for QS or PQS, or lease agreement for IFQ or IPQ.

(G) Indicate whether an EDR was submitted, if required by § 680.6, and

(H) Whether all fees have been paid.

(viii) *Notary information*—(A)

Certification of transferor. (1) Printed name and signature of transferor or authorized agent. If authorized agent, proof of authorization to act on behalf of the transferor must be provided with the application.

(2) Date signed; and

(3) Notary Public signature, date commission expires, and notary stamp or seal.

(B) *Certification of transferee.* (1)

Printed name and signature of transferor or authorized agent. If authorized agent, proof of authorization to act on behalf of the transferee must be provided with the application.

(2) Date signed;

(3) Notary Public signature, date commission expires, and notary stamp or seal;

(C) *Certification of authorized representative of community holding first ROFR.* (1) Printed name and signature of authorized community representative;

(2) Date signed;

(3) Printed name of community; and

(4) Notary Public signature, date commission expires, and notary stamp or seal.

(ix) *Attachments to the application and other conditions to be met.* (A) Indicate whether the person applying to make or receive the QS, PQS, IFQ or IPQ transfer has submitted an EDR if required to do so under § 680.6; and

(B) Whether the person applying to make or receive the QS, PQS, IFQ or IPQ transfer has paid all fees, as required by § 680.44.

(C) A written acknowledgment by an ECC entity for transfer of PQS or IPQ under paragraphs (j)(3) through (j)(5) of this section.

(D) All individuals applying to receive CVC QS or IFQ or CPC QS or IFQ by transfer must submit proof of at least one delivery of a crab QS species in any crab QS fishery in the 365 days prior to submission to NMFS of the Application for Transfer of QS/IFQ or PQS/IPQ. Proof of this landing is:

(1) Signature of the applicant on an ADF&G Fish Ticket; or

(2) An affidavit from the vessel owner attesting to that individual's participation as a member of a fish harvesting crew on board a vessel

during a landing of a crab QS species within the 365 days prior to submission of an Application for Transfer of Crab QS/IFQ or PQS/IPQ.

(e) *Approval criteria for an Application for Transfer of Crab QS/IFQ or PQS/IPQ.* (1) Except as provided in paragraph (i) of this section, an Application for Transfer of QS/IFQ or PQS/IPQ will not be approved until the Regional Administrator has determined that:

(i) The person applying to receive the QS, PQS, IFQ or IPQ meets the requirements of eligibility in paragraph (c) of this section;

(ii) The person applying for transfer and the person applying to receive QS or IFQ/IPQ have their original notarized signatures on the application;

(iii) No fines, civil penalties, or other payments due and owing, or outstanding permit sanctions, resulting from Federal fishery violations involving either party exist;

(iv) The person applying to receive QS, PQS, IFQ or IPQ currently exists;

(v) The transfer would not cause the person applying to receive the QS, PQS, IFQ or IPQ to exceed the use limits in this section;

(vi) The person applying to make or receive the QS, PQS, IFQ or IPQ transfer has paid all IFQ or IPQ fees described under § 680.44; or has timely appealed the IAD of underpayment as described under § 680.44;

(vii) The person applying to make or receive the QS, PQS, IFQ or IPQ transfer has submitted an EDR if required to do so under § 680.6;

(viii) In the case of the transfer of PQS or IPQ from an ECC, that the provisions for ROFR under paragraph (j) of this section have been met;

(ix) In the case of an individual applying to receive CVC QS or IFQ or CPC QS or IFQ, the individual has demonstrated active participation in a crab QS fishery in the 365 days prior to the submission of the application for transfer;

(x) Other pertinent information requested on the application for transfer has been supplied to the satisfaction of the Regional Administrator.

(f) *Application for Transfer of Crab QS/IFQ to or from an ECCO.* (1) An Application for Transfer of Crab QS/IFQ to or from an ECCO must be approved by the Regional Administrator before the transferee may use the IFQ to harvest or process crab QS species

(2) An Application for Transfer of Crab QS/IFQ to or from an ECCO will not be approved until the Regional Administrator has reviewed and approved the transfer agreement (TEC) by the parties to the transfer. The

Regional Administrator shall provide an Application for Transfer of Crab QS/IFQ to or from an ECCO to any person on request or on the Internet at <http://www.fakr.noaa.gov/>. Persons who submit an Application for Transfer of Crab QS/IFQ to or from an ECCO for approval will receive notification of the Regional Administrator's decision to approve or disapprove the application, and if applicable, the reason(s) for disapproval, by mail, unless another communication mode is requested on the application.

(3) *Contents.* A complete Application for Transfer of Crab QS/IFQ to or from an ECCO includes the following:

(i) *General requirements.* (A) This form may only be used if an ECCO is the proposed transferor (seller) or the proposed transferee (buyer) of the QS or IFQ.

(B) The party to whom an ECCO is seeking to transfer the QS/IFQ must hold a Transfer Eligibility Certificate (TEC).

(C) If the ECCO is applying to permanently transfer QS, a representative of the community on whose behalf the QS is held must sign the application.

(D) If authorized representative represents either the transferor or transferee, proof of authorization to act on behalf of transferor or transferee must be attached to the application.

(ii) *Transferor (seller) information.* The name, NMFS Person ID, social security number or Tax ID, permanent business mailing address, business telephone, business facsimile, and business e-mail address of the Transferor (person currently holding the QS or IFQ), and if transferor is an ECCO, the name of ECC represented by the ECCO. The transferor may also provide a temporary address for each transaction in addition to the permanent business mailing address;

(iii) *Transferee (buyer) information.* The name, NMFS Person ID, social security number or Tax ID, permanent business mailing address, business telephone, business facsimile, and business e-mail of the transferee (person receiving QS or IFQ by transfer), and if transferee is an ECCO, name of community (ECC) represented by the ECCO. The transferee may also provide a temporary address for each transaction in addition to the permanent business mailing address;

(iv) *Identification of QS/IFQ to be transferred.* Complete the following information if QS and IFQ are to be transferred together or if transferring separately:

(1) _____

(2) _____

(C) Number of QS or IFQ units to be transferred;

(D) Total QS units;

(E) Number of IFQ pounds;

(F) Range of serial numbers to be transferred (shown on QS certificate) numbered to and from;

(G) Name of community to which QS are currently assigned;

(H) Indicate (YES or NO) whether remaining IFQ pounds for the current fishing year should be transferred; if NO, specify the number of pounds to be transferred;

(v) *Transfer of IFQ only.* (A) IFQ permit number and year of permit; (B) Actual number of IFQ pounds to be transferred.

(vi) *Transferor Information, if an ECCO.* Reason(s) for transfer:

(A) ECCO management and administration;

(B) Fund additional QS purchase;

(C) Participation by community residents;

(D) Dissolution of ECCO; and

(E) Other (please specify).

(vii) *Transferor Information.* The transferor must provide the following information:

(A) Whether (YES or NO) a broker was used for this transaction; If YES, provide dollar amount paid in brokerage fees or percentage of total price;

(B) Provide the total amount paid for the QS/IFQ in this transaction, including all fees;

(C) Provide the price per unit of QS (price divided by QS units) and the price per pound (price divided by IFQ or IPQ pounds) of IFQ or IPQ;

(D) Indicate all reasons that apply for transferring the QS/IFQ.

(viii) *Transferee information.* The transferee must provide the following information:

(A) Indicate (YES or NO) whether QS/IFQ purchase will have a lien attached; if YES, provide the name of lien holder;

(B) Indicate one primary source of financing for this transfer;

(C) Indicate the sources used to locate the QS or IFQ being transferred;

(D) Indicate the relationship, if any, between the transferor and the transferee;

(E) Indicate (YES or NO) whether an agreement exists to return the QS or IFQ to the transferor or any other person, or with a condition placed on resale; If YES, explain;

(F) Attach a copy of the terms of agreement for the transfer, the bill of sale for QS, or lease agreement for IFQ.

(ix) *Certification of transferor.* (A) Printed name and signature of transferor or authorized agent. If authorized agent, proof of authorization to act on behalf of the transferor must be provided with the application.

(B) Date signed;

(C) Notary Public signature, date commission expires, and notary stamp or seal;

(x) *Certification of transferee.* (A) Printed name and signature of transferor or authorized agent. If authorized agent, proof of authorization to act on behalf of the transferee must be provided with the application.

(B) Date signed;

(C) Notary Public signature, date commission expires, and notary stamp or seal;

(xi) *Certification of authorized representative of community.* (A) Printed name, title and signature of authorized community representative;

(B) Date signed;

(C) Printed name of community;

(D) Notary Public signature, date commission expires, and notary stamp or seal;

(4) *Attachments to the application and other conditions to be met.* (i)

Whether the person applying to make or receive the QS, PQS, IFQ or IPQ transfer has submitted an EDR if required to do so under § 680.6;

(ii) Whether the person applying for transfer and the person applying to receive the QS or IFQ/IPQ have paid all fees, as required by § 680.44.

(iii) A copy of the terms of agreement for the transfer, the bill of sale for QS or PQS, or lease agreement for IFQ or IPQ.

(iv) An affirmation that the individual receiving IFQ from an ECCO has been a permanent resident in the ECC for a period of 12 months prior to the submission of the Application for Transfer QS/IFQ to or from an ECCO on whose behalf the ECCO holds QS.

(v) Authorization of the appropriate governing body of an ECC, for any transfer of QS by the ECCO that holds QS on behalf of that ECC.

(g) *Approval criteria for an Application for Transfer of Crab QS/IFQ to or from an ECCO.* In addition to the criteria required for approval under § 680.41(e), the following criteria are also required:

(1) The ECCO applying to receive or transfer crab QS has submitted a complete annual report(s) required by § 680.5;

(2) The ECCO applying to transfer crab QS has provided information on the reasons for the transfer as described in paragraph (e) of this section; and

(3) An individual applying to receive IFQ from an ECCO is a permanent resident of the ECC in whose name the ECCO is holding QS.

(b) *Inter-cooperative transfers.* — (1) *Application for Transfer of QS or IFQ from one cooperative to another cooperative.*

another crab harvesting cooperative. Crab harvesting cooperatives wishing to engage in an inter-cooperative transfer must complete an Application for Inter-cooperative Transfer to transfer crab IFQ between crab harvesting cooperatives.

(ii) *Contents.* A complete application consists of the following items.

(A) *Identification of Transferor (lessor).* The name, NMFS Person ID, date of incorporation, Tax ID, name of crab harvesting cooperative's representative, permanent business mailing address, business telephone, business facsimile, and business e-mail of the crab harvesting cooperative transferor. A temporary mailing address for each transaction may also be provided in addition to the permanent business mailing address.

(B) *Identification of transferee (lessee).* The name, NMFS Person ID, date of incorporation, Tax ID, name of crab harvesting cooperative's representative, permanent business mailing address, business telephone, business facsimile, and business e-mail of the crab harvesting cooperative transferee. A temporary mailing address for each transaction may also be provided in addition to the permanent business mailing address.

(C) *Crab cooperative IFQ to be transferred.* The identification of the crab IFQ being transferred, including the type of crab cooperative IFQ being transferred, crab cooperative permit number, year that permit was issued, whether (YES or NO) all remaining pounds for the current fishing year are to be transferred, if NO, specify number of pounds to be transferred

(D) *Transferor Information.* Indicate whether (YES or NO) a broker was used. If YES, indicate dollar amount paid in brokerage fees or percentage of total price, the total amount being paid and the price per pound.

(E) *Certification of Transferor.* Printed name and signature of transferor or authorized agent and date signed, signature of Notary Public, date commission expires, and notary stamp or seal. If authorized agent, proof of authorization to act on behalf of the transferor must be provided with the application.

(F) *Certification of Transferee.* Printed name and signature of transferee or authorized agent and date signed, signature of Notary Public, date commission expires, and notary stamp or seal. If authorized agent, proof of authorization to act on behalf of the transferee must be provided with the application.

(3) *Application for Transfer of QS or IFQ from one cooperative to another cooperative.* — (i) *Application for Transfer of QS or IFQ from one cooperative to another cooperative.*

(iii) Whether the person applying to make or receive the IFQ transfer has paid all fees, as required by § 680.44.

(iv) Original notarized signatures of both the transferee and transferor or authorized representative.

(2) *Member of a crab harvesting cooperative receiving additional crab QS and/or IFQ by transfer.* A member of a crab harvesting cooperative may receive additional crab QS and/or IFQ by transfer in accordance with transfer and use provisions at §§ 680.41 and 680.42. A member of a crab harvesting cooperative may receive a separate annual IFQ permit or may transfer the IFQ to the members's cooperative.

(3) *Member of a crab harvesting cooperative transferring crab QS to someone outside the cooperative.* A member of a crab harvesting cooperative may transfer any crab QS held by that person to any person qualified to receive crab QS by transfer as provided in this section.

(4) *Member of a crab harvesting cooperative transferring the IFQ resulting from QS to a person outside the cooperative.* Once a person joins a cooperative, that person may not transfer IFQ resulting from that person's QS to anyone outside the cooperative. The cooperative may transfer the IFQ it controls on the behalf of a member of the cooperative to another cooperative if an Application for Inter-cooperative Transfer has been submitted and approved by NMFS.

(i) *QS, PQS, IFQ, or IPQ accounts.* QS, PQS, IFQ, or IPQ accounts affected by a transfer approved by the Regional Administrator will change on the date of approval. Any necessary IFQ or IPQ permits will be sent with the notification of approval if the receiver of the IFQ or IPQ permit has completed an Annual Application for Crab IFQ/IPQ Permit for the current fishing year as required under § 680.4.

(j) *Eligible crab community right of first refusal (ROFR)—(1) Applicability—(i) Exempt Fisheries.* PQS and IPQ issued for the BST, WAG, or WAI crab QS fisheries are exempt from ROFR provisions.

(ii) *Eligible Crab Communities (ECCs).* The ROFR extends to the ECCs and their associated governing bodies. The ROFR may be exercised by the ECC entity representing that ECC.

(2) *Community representation—(i) CDQ Communities.* Any ECC that is also a CDQ community shall designate the CDQ group to which it is a member as the ECC entity in the exercise of any ROFR.

(ii) *Non-CDQ communities.* (A) Any ECC that is a non-CDQ community must designate an ECC entity that will

represent the community in the exercise of ROFR at least 30 days prior to the ending date for the initial application period for the crab QS program specified in the Federal Register.

(B) The ECC entity eligible to exercise the right of first refusal on behalf of an ECC will be identified by the governing body (s) of the ECC. If the ECC is incorporated under the laws of the State of Alaska, then the municipality is the governing body; if the ECC is incorporated and within an incorporated borough, then the municipality and borough are the governing bodies and must agree to designate the same ECC entity; if the ECC is not incorporated and in an incorporated borough, then the borough is the governing body.

(C) Each ECC may designate only one ECC entity to represent that community in the exercise of ROFR at any one time through a statement of support from the governing body of the ECC. That statement of support must be submitted to the Regional Administrator, National Marine Fisheries Service, Post Office Box 21668, Juneau, Alaska 99802, as a resolution from the City Council or other municipal body incorporated under the laws of the State of Alaska for that community at least 3 days prior to the ending date of the initial application period for the crab QS program under § 680.40. The ECC entity eligible to exercise ROFR on behalf of an ECC must be identified in the contract submitted to NMFS as part of the application for PQS under § 680.40(m).

(D) The ECC ROFR is not assignable by the ECC entity.

(3) *Transfer of PQS or IPQ from an ECC.* Any transfer of PQS or IPQ from an ECC will not be approved by NMFS unless the ECC entity representing the ECC is a signatory on the contract submitted under § 680.40(m) and acknowledges in writing to the Regional Administrator that the community does not wish to exercise ROFR.

(4) *Transfer of PQS within an ECC.* Any transfer of PQS within an ECC will not be approved by NMFS unless the ECC entity representing the ECC is a signatory on a contract submitted under § 680.40(m) to exercise ROFR.

(5) *Restrictions on transfer of PQS out of North Gulf of Alaska communities—*

(i) *Applicability.* Any community in the Gulf of Alaska north of a line at 56°20' N. lat.

(ii) *Notification of PQS transfer.* A PQS holder proposing to transfer PQS for use in processing outside any community identified under this paragraph must notify the ECC entity designated by the City of Kodiak and Kodiak Island Borough under paragraph

(j)(2) of this section 30 days prior to the intended transfer of PQS out of the community.

(iii) *ROFR in the North Gulf of Alaska.* The ECC entity designated by the City of Kodiak and Kodiak Island Borough will have the opportunity to exercise ROFR to purchase from a PQS holder any PQS proposed to be transferred for use in processing outside the community identified under paragraph (j)(5)(i) of this section consistent with contract provisions under § 680.40(m).

(k) *Transfer of QS, PQS, IFQ or IPQ with restrictions.* If QS, PQS, IFQ or IPQ must be transferred as a result of a court order, operation of law, or as part of a security agreement, but the person receiving the QS, PQS, IFQ or IPQ by transfer does not meet the eligibility requirements of this section, the Regional Administrator will approve an Application for Transfer of Crab QS/IFQ or PQS/IPQ with restrictions. The Regional Administrator will not assign IFQ or IPQ resulting from the restricted QS or PQS to any person. IFQ or IPQ with restrictions may not be used for harvesting or processing species covered under this program. The QS, PQS, IFQ or IPQ will remain restricted until:

(1) The person who received the QS, PQS, IFQ or IPQ with restrictions meets the eligibility requirements of this section and the Regional Administrator approves an application for eligibility for that person; or

(2) The Regional Administrator approves the application for transfer from the person who received the QS, PQS, IFQ or IPQ with restrictions to a person who meets the requirements of this section.

(l) *Transfer of CVO, CPO, CVC, CPC QS or PQS—(1) General.* PQS or QS may be transferred, with approval of the Regional Administrator, to persons qualified to receive PQS or QS by transfer. However, the Regional Administrator will not approve a transfer of any type of PQS or QS that would cause a person to exceed the maximum amount of PQS or QS allowable under the use limits provided for in § 680.42, except as provided for under § 680.41(k).

(2) *CVO QS.* Notwithstanding QS use limitations under § 680.42, CVO QS may be transferred to any person eligible to receive CVO or CPO QS as defined under paragraph (c) of this section.

(3) *CPO QS.* Persons holding CPO QS may transfer CPO QS as CVO QS and PQS to eligible recipients under the following provisions:

(i) Each unit of CPO QS shall yield 1 unit of CVC QS, and 0.9 units of PQS:

(ii) The CVO QS and PQS derived from the transfer of CPO QS may be transferred separately, except that these shares must receive the same regional designation. The regional designation shall be determined at the time of transfer by the person receiving the CVO QS.

(4) *CVC or CPC QS*. Notwithstanding QS use limitations under § 680.42, CVC or CPC QS may be transferred to any person eligible to receive CVC or CPC QS as defined under paragraph (c) of this section. CVC and CPC QS may only be used in the sector for which it is originally designated.

(m) *Transfer of IFQ or IPQ by Lease—*
(1) *IFQ derived from CVO or CPO QS*. IFQ derived from CVO or CPO QS may be transferred by lease until June 30, 2010. IFQ derived from CVO or CPO QS must be leased:

(i) If the IFQ will be used on a vessel on which the QS holder has less than a 10-percent ownership interest; or
(ii) If the IFQ will be used on a vessel on which the QS holder is not present.

(2) Ownership of a vessel means, for the purposes of this section:

(i) A sole proprietor; or
(ii) A relationship between 2 or more entities in which one directly or indirectly owns a 10 percent or greater interest in a vessel.

(3) *IFQ derived from CVC QS or CPC QS*. (i) IFQ derived from CVC or CPC QS may be transferred by lease only until June 30, 2008 unless the IFQ permit holder demonstrates a hardship.

(ii) In the event of a hardship, as described at paragraph (m)(2)(iii) in this section, a holder of CVC or CPC QS may lease the IFQ derived from this QS for the term of the hardship. However, the holder of CVC or CPC QS may not lease the IFQ under this provision for more than 2 crab fishing years total in any 10 crab fishing year period. Such transfers are valid only during the crab fishing year for which an IFQ permit is issued and the QS holder must re-apply for any subsequent transfers.

(iii) An application for a transfer of IFQ under this provision will not be approved unless the QS holder can demonstrate a hardship by an inability to participate in the crab QS fisheries because:

(A) Of a medical condition of the QS holder. The QS holder is required to provide documentation of the medical condition from a licensed medical doctor who verifies that the QS holder cannot participate in the fishery because of the medical condition;

(B) Of a medical condition involving an individual who requires the QS

holder's care. The QS holder is required to provide documentation of the individual's medical condition from a licensed medical doctor. The QS holder must verify that he or she provides care for that individual and that the QS holder cannot participate in the fishery because of the medical condition of that individual;

(C) Of the total or constructive physical loss of a vessel. The QS holder must provide evidence that the vessel was lost and could not be replaced in time to participate in the fishery for which the person is claiming a hardship.

(4) *IPQ derived from PQS*. IPQ derived from PQS may be leased.

(n) *Survivorship transfer privileges*.

(1) On the death of an individual who holds QS or PQS, the surviving spouse or, in the absence of a surviving spouse, a beneficiary designated pursuant to paragraph (m)(3) of this section, receives all QS, PQS and IFQ or IPQ held by the decedent by right of survivorship, unless a contrary intent was expressed by the decedent in a will. The Regional Administrator will approve an application for transfer to the surviving spouse or designated beneficiary when sufficient evidence has been provided to verify the death of the individual.

(2) A QS or PQS holder may provide the Regional Administrator with the name of the designated beneficiary from the QS or PQS holder's immediate family to receive survivorship transfer privileges in the event of the QS or PQS holder's death and in the absence of a surviving spouse.

(3) The Regional Administrator will approve, for 3 calendar years following the date of the death of an individual, an Application for Transfer of Crab QS/IFQ or PQS/IPQ from the surviving spouse or, in the absence of a surviving spouse, a beneficiary from the QS or PQS holder's immediate family designated pursuant to paragraph (m)(3) of this section to a person eligible to receive IFQ or IPQ under the provisions of this section, notwithstanding the limitations on transfers of IFQ and IPQ in this section and the use limitations under § 680.42.

(o) *Notification of Approval or Disapproval of Applications*. (1) Applicants submitting any application under § 680.41 will be notified by mail of the Regional Administrator's approval of an application. If the Regional Administrator will not approve an application, the notification of disapproval will include:

(i) The disapproved Application for Eligibility to Receive QS/IFQ or PQS/IPQ by Transfer; and

(ii) An explanation why the application was not approved.

(2) *Reasons for disapproval*. Reasons for disapproval of an application include, but are not limited to:

(i) U.S. citizenship, where required;
(ii) Failure to meet minimum requirements for sea time as a member of a harvesting crew;

(iii) An incomplete application;

(iv) An untimely application;

(v) Fines, civil penalties, or other payments due and owing, or outstanding permit sanctions resulting from Federal fishery violations; or

(vi) Fees owed but not paid as assessed under § 680.44.

(3) *Application deadline*. The Regional Administrator will not approve any transfers of QS, PQS, IFQ, or IPQ in any crab QS fishery from August 1 until the date of the issuance of IFQ or IPQ for that crab QS fishery.

§ 680.42 Limitations on use of QS, PQS, IFQ, and IPQ.

(a) *QS, PQS, IFQ and IPQ regional designation and IFQ class*. The QS, PQS, IFQ or IPQ specified for one crab QS fishery may not be used to harvest or process crab in any other crab QS fishery.

(b) *QS and IFQ use caps—*(1) *General*. Separate and distinct QS and IFQ use caps apply to all QS and IFQ categories pertaining to a given crab QS fishery with the following provisions:

(i) A person who receives an initial allocation of QS that exceeds the use cap listed in paragraph (b)(2) of this section are limited to hold no more than that amount. A person will not be issued QS in excess of the use cap established in this section based on QS derived from landings attributed to an LLP license obtained via transfer after June 10, 2002;

(ii) QS and IFQ use caps shall be based on the initial quota share pools used to determine initial allocations of QS;

(iii) Non-individuals holding QS will be required to provide, on an annual basis, ownership information as required in the Annual Application for Crab IFQ/IPQ Permit.

(2) Except for persons who hold PQS, or a CDQ group, a person may not, individually or collectively, hold:

(i) QS in amounts in excess of the amounts specified in the following table, unless that person's QS was received in the initial allocation;

Fishery	CVO/CPO Use Cap in QS Units	CVC/CPC Use Cap in QS Units
(A) 1.0 percent of the initial QS pool for BBR	3,880,000	120,000
(B) 1.0 percent of the initial QS pool for BSS	9,700,000	300,000
(C) 1.0 percent of the initial QS pool for BST	1,940,000	60,000
(D) 2.0 percent of the initial QS pool for PIK	582,000	18,000
(E) 2.0 percent of the initial QS pool for SMB	582,000	18,000
(F) 10.0 percent of the initial QS pool for EAG	970,000	30,000
(G) 10.0 percent of the initial QS pool for WAG	3,880,000	120,000
(H) 10.0 percent of the initial QS pool for WAI	5,820,000	180,000

(ii) Use IFQ in excess of the amount of IFQ that is yielded from the QS caps in paragraph (b)(2)(i) of this section, unless that IFQ is yielded from QS that

was received by that person in the initial allocation of QS for that crab QS fishery.
 (3) A CDQ Group may not:

(i) Hold QS in excess of more than the amounts of QS specified in the following table:

Fishery	CDQ CVO/CPO Use Cap in QS Units
(A) 5.0 percent of the initial QS pool for BBR	19,400,000
(B) 5.0 percent of the initial QS pool for BSS	48,500,000
(C) 5.0 percent of the initial QS pool for BST	9,700,000
(D) 10.0 percent of the initial QS pool for PIK	2,910,000
(E) 10.0 percent of the initial QS pool for SMB	2,910,000
(F) 20.0 percent of the initial QS pool for EAG	1,940,000
(G) 20.0 percent of the initial QS pool for WAG	7,760,000
(H) 20.0 percent of the initial QS pool for WAI	11,640,000

(ii) Use IFQ in excess of the amount of IFQ that is yielded from the QS caps in paragraph (b)(2)(i) of this section, unless that IFQ is yielded from QS that

was received by that person in the initial allocation of QS for that crab QS fishery.

(4) A person who holds PQS may not individually or collectively:
 (i) Hold QS in excess of the amounts specified in the following table:

Fishery	CVO/CPO Use Cap in QS Units	CVC/CPC Use Cap in QS Units
(A) 5.0 percent of the initial QS pool for BBR	19,400,000	600,000
(B) 5.0 percent of the initial QS pool for BSS	48,500,000	1,500,000
(C) 5.0 percent of the initial QS pool for BST	9,700,000	300,000
(D) 5.0 percent of the initial QS pool for PIK	1,455,000	45,000
(E) 5.0 percent of the initial QS pool for SMB	1,455,000	45,000
(F) 5.0 percent of the initial QS pool for EAG	485,000	15,000
(G) 5.0 percent of the initial QS pool for WAG	1,940,000	60,000
(H) 5.0 percent of the initial QS pool for WAI	2,910,000	90,000

(ii) Use IFQ in excess of the amount of IFQ that is yielded from the QS caps in paragraph (b)(2)(i) of this section, unless that IFQ is yielded from QS that was received by that person in the

initial allocation of QS for that crab QS fishery.
 (5) Any person who receives an allocation of QS in excess of the use caps established in paragraph (b) of this

section and who subsequently transfers any QS to another person so that the total amount of QS held by that person is less than the amount of the use caps in this paragraph will be subject to the

use caps established in this paragraph after that transfer.

(6) IFQ that is used by a crab harvesting cooperative is not subject to the use caps in paragraph (b) of this section.

(7) Non-individual persons holding QS will be required to provide, on an annual basis, a list of persons with an ownership interest in the non-individual QS holder. This list of owners shall be provided to the individual level and will include the percentage of ownership held by each individual. This annual submission of information must be submitted as part of the Annual Application to for Crab IFQ/IPQ Permit. A person will be considered to be a holder of QS or IFQ for purposes of applying the QS and IFQ use caps in this paragraph of that person:

(i) Is the sole proprietor of an entity that holds QS or IFQ; or

(ii) Directly or indirectly owns a 10 percent or greater interest in an entity that holds QS or IFQ.

(c) *PQS and IPQ Use Caps.* (1) A person may not:

(i) Hold more than 30 percent of the initial PQS pool in any crab QS fishery unless that person received an initial allocation of PQS in excess of this limit. A person will not be issued PQS in excess of the use caps established in this section based on PQS derived from the transfer of legal processing history after June 10, 2002.

(ii) Use IPQ in excess of the amount of IPQ that is yielded from the PQS caps in paragraph (C)(1)(i) of this section unless that IPQ is yielded from PQS that was received by that person in the initial allocation of PQS for that crab QS fishery.

(2) A person may not use more than 60 percent of the IPQ issued in the BSS crab QS fishery with a North region designation during a crab fishing year.

(3) Non-individual persons holding PQS will be required to provide, on an annual basis, a list of persons with an ownership interest in the non-individual PQS holder. This list of owners shall be provided to the individual level and will include the percentage of ownership held by each individual person. This annual submission of information must be submitted as part of the Annual Application for Crab IFQ/IPQ Permit. A person will be considered to be a holder of PQS for purposes of applying the PQS use caps in this paragraph if that person:

(i) Is the sole proprietor of an entity that holds PQS; or

(ii) Directly or indirectly owns a 10 percent or greater interest in an entity that holds PQS.

(4) The amount of IPQ issued in any crab fishing year shall not exceed:

(i) 175,000,000 raw crab pounds (79,378.6 mt) in the BSS crab QS fishery;

(ii) 20,000,000 raw crab pounds (9,071.8 mt) in the BBR crab QS fishery;

(iii) Any amount of Class A IFQ that is issued in excess of the amount of IPQ in the BSS or BBR crab QS fisheries that is not required to be delivered to an RCR with unused IPQ;

(iv) The amount of Class A IFQ issued in excess of the amount of IPQ issued in the BSS or BBR crab QS fisheries will be issued to all Class A IFQ recipients on a pro rata basis in proportion to the amount of Class A IFQ held by each person.

(5) Before July 1, 2007, IPQ for the BSS, BBR, PIK, SMB, and EAG crab QS fisheries may not be used to process crab outside the ECC in which the PQS from which that IPQ is derived. Except that, before July 1, 2007:

(i) Ten percent of the IPQs that are issued for a crab QS fishery or an amount of IPQ that yields up to 500,000 raw crab pounds (226.7 mt) on an annual basis, whichever is less, may be leased for use in processing crab outside that ECC. The amount of IPQ that is issued on an annual basis for use in that ECC and the amount that may be leased outside that ECC will be established annually and will be divided on a pro rata basis among all IPQ permit holders issued IPQ for use in that ECC for that year;

(ii) IPQ in excess of the amounts specified in paragraph (c)(5)(i) of this section may be used outside the ECC for which that IPQ is designated if an unavoidable circumstance prevents crab processing within that ECC. For purposes of this section, an unavoidable circumstance exists if the specific intent to conduct processing for a crab QS species in that ECC was thwarted by a circumstance that was:

(A) Unavoidable;

(B) Unique to the IPQ permit holder, or to the processing facility used by the IPQ permit holder in that ECC;

(C) Unforeseen and reasonably unforeseeable to the IPQ permit holder;

(D) The circumstance that prevented the IPQ permit holder from processing crab in that ECC actually occurred; and

(E) The IPQ permit holder took all

reasonable steps to prevent the circumstance that prevented the IPQ permit holder from processing crab in that ECC.

(iii) This provision does not exempt any IPQ permit holder from any regional processing requirements that may apply to that IPQ.

(6) Any person harvesting crab under a Class A CVO or CVC IFQ Permit, except as provided under § 680.42(c)(4), must deliver that crab:

(i) Only to RCRs with unused IPQ for the same QS fishery;

(ii) Only to an RCR in the region for which the QS and IFQ is designated.

(7) Any person harvesting crab under a Class B IFQ, CPO IFQ, CVC IFQ, or CPC IFQ permit may deliver that crab to any RCR.

(d) *Vessel limitations.* (1) Except for vessels that participate in a crab harvesting cooperative as described under § 680.20 and under the provisions described in paragraph (d)(4) of this section, no vessel may be used to harvest CVO or CPO IFQ in excess of the following percentages of the TAC for that crab QS fishery for that crab fishing year:

(i) 2.0 percent for BSS;

(ii) 2.0 percent for BBR;

(iii) 2.0 percent for BST;

(iv) 4.0 percent for PIK;

(v) 4.0 percent for SMB;

(vi) 20.0 percent for EAG;

(vii) 20.0 percent for WAG; or

(viii) 20.0 percent for the WAI crab QS fishery west of 179° W. long.

(2) CVC or CPC QS used on a vessel will not be included in determining whether a vessel use cap is met.

(3) An initial allocation of QS that results in an initial issuance of crab QS to a single person and that results in IFQ that is in excess of the vessel use caps described above allows that person to catch and retain crab harvested with that IFQ with a single vessel in excess of the vessel use caps as described in paragraph (e)(1) of this section provided that any transfers of a valid, fully transferable LLP license that resulted in the issuance of QS to that person occurred prior to June 10, 2002. Any subsequent transfers of a valid, fully transferable LLP license that resulted in the issuance of QS, or any transfers of QS to that person would not be exempted from these vessel use caps. However, two or more persons may not catch and retain their IFQ with one vessel in excess of these limitations.

(4) A vessel use cap would not apply to a vessel if all of the IFQ used on that vessel in a crab fishing year is IFQ held by a crab harvesting cooperative. This exemption is forfeited if that vessel is used to harvest crab under an IFQ permit that is not held by a cooperative. The exemption is also forfeited if the vessel is used to harvest crab under an IFQ permit that is not held by a cooperative and the vessel is used to harvest crab under an IFQ permit that is not held by a cooperative.

which their IFQ is being harvested; unless the IFQ resulting from that QS has been leased to a qualified person under § 680.41 or has been converted into crab cooperative IFQ under § 680.21.

(6) A person holding CVO or CPO QS does not have to be aboard the vessel being used to harvest their IFQ if they hold at least a 10 percent ownership interest in the vessel upon which the IFQ is to be harvested and are represented on board the vessel by a crab IFQ hired master employed by that QS holder as authorized under § 680.4.

(7) Ownership of a vessel means, for purposes of this section:

- (i) A sole proprietor; or
- (ii) Directly or indirectly owns a 10 percent or greater interest in an entity that owns a vessel.

§ 680.43 Determinations and appeals.

See § 679.43 of this chapter.

§ 680.44 Cost recovery.

(a) Cost recovery fees—(1)

Responsibility. The person documented on the IFQ, IPQ, CDQ, RCR, Commercial Fisheries Entry Commission (CFEC), or State of Alaska Commissioner's permit as the permit holder at the time of a CR crab landing must comply with the requirements of this section.

(i) Subsequent transfer of IFQ, IPQ, CDQ, or QS does not affect the permit holder's liability for noncompliance with this section.

(ii) Non-renewal of an RCR permit does not affect the permit holder's liability for noncompliance with this section.

(2) **Fee Liability determination.** (i) All CR allocation holders and RCR permit holders will be subject to a fee liability for any CR crab debited from a CR allocation during a crab fishing year.

(ii) Fee liability must be calculated by multiplying the applicable fee percentage by the ex-vessel value of the CR crab received by the RCR at the time of receipt.

(iii) NMFS will provide a summary to all CR allocation and RCR permit holders available through a secure Internet site or on request during the last quarter of the crab fishing year. The summary will explain the fee liability determination including details of raw crab pounds debited from CR allocations by permit, port or port-group, species, date, and prices.

(3) **Fee collection.** (i) All RCRs who receive CR crab are responsible for submitting the cost recovery payment for all CR crab received.

(ii) All RCRs who receive CR crab in a crab fishing year must maintain and submit records for any crab cost

recovery fees collected under the corresponding RCR permit.

(4) **Payment—(i) Payment due date.** An RCR permit holder must submit any crab cost recovery fee liability payment(s) to NMFS at the address provided in paragraph (a)(4)(iii) of this section no later than July 31 of the crab fishing year following the crab fishing year in which the payment for a CR crab landing was made.

(ii) **Payment recipient.** Make payment payable to NMFS.

(iii) **Payment address.** Mail payment and related documents to the Administrator, Alaska Region, NMFS; Attn: Operations, Management, & Information Division (OMI); P.O. Box 21668; Juneau, AK 99802-1668; Facsimile: 907-586-7354. Payments may also be submitted electronically to NMFS via forms available from RAM or on the RAM area of the Alaska Region Home Page at <http://www.fakr.noaa.gov/ram>.

(iv) **Payment method.** Payment must be made in U.S. dollars by personal check drawn on a U.S. bank account, money order, bank certified check, or credit card.

(b) **Ex-vessel value determination and use—(1) General.** An RCR permit holder must use either the ex-vessel value determined for shoreside processors or the ex-vessel value determined for at-sea Catcher/Processors (CP), depending on their activity. Ex-vessel value includes all cash, services, or other goods-in-kind exchanged for CR crab.

(2) **Shoreside Ex-vessel value.** Shoreside processing facilities must use the price paid at the time of purchase as ex-vessel value for the purposes of calculating fee liability. Shoreside processing facilities must include any subsequent repayments as adjustments to the initial calculation of fee liability.

(3) **Catcher/Processor Ex-vessel value—(i) General.** Catcher/processors must use the corresponding CP standard price(s) as published in the Federal Register as ex-vessel value for the purposes of calculating fee liability.

(ii) **Duty to publish list.** As part of the summary described in paragraph (a)(2)(iii) of this section, the Regional Administrator will publish CP standard prices in the Federal Register during the last quarter of each crab fishing year. The CP standard prices will be described in U.S. dollars per raw crab pound, for CR crab debited from CP allocations during the previous crab fishing year.

(iii) **Special cases.** The Regional Administrator may permit a shoreside processor to use a price published in the Federal Register as ex-vessel value for the purposes of calculating fee liability if the processor can demonstrate that

prices published in the Federal Register by NMFS shall apply to all landings made in the same crab fishing year as the CP standard price publication and shall replace any CP standard prices previously provided by NMFS.

(iv) **Determination.** NMFS will calculate the CP standard prices to reflect, as closely as possible, the previous year's average shoreside processor price by fishery and by species, and any variations in reported shoreside ex-vessel values of CR crab. The Regional Administrator will base CP standard prices on the following types of information:

- (A) Landed pounds by CR crab, port-group, and month;
- (B) Total shoreside ex-vessel value by CR crab, port-group, and month; and
- (C) Price adjustments, including retro-payments.

(4) **Fee liability calculation.** All RCRs must base all fee liability calculations on the ex-vessel value that correlates to CR crab that is debited from a CR allocation and recorded in raw crab pounds.

(c) **Crab fee percentage—(1) Default percentage.** The crab fee percentage is 3 percent of the ex-vessel value of crab unless adjusted by the Regional Administrator by publication in the Federal Register in accordance with paragraphs (c)(3) and (c)(4) of this section.

(i) The calculated crab fee percentage will be divided equally between the harvesting and processing sectors.

(ii) Catcher/processors must pay the full crab fee percentage determined by the fee percentage calculation for all CR crab debited from a CR allocation.

(2) **Calculating fee percentage value.** Each year the Regional Administrator will calculate the fee percentage.

(i) **Factors.** In making the calculations the Regional Administrator will consider the following factors:

(A) The catch to which the crab cost recovery fee will apply;

(B) The projected ex-vessel value of that catch;

(C) The costs directly related to the management and enforcement of the Crab Rationalization Program;

(D) The funds available for the Crab Rationalization Program in the Limited Access System Administrative Fund (LASAF);

(E) Nonpayment of fee liabilities.

(ii) **Methodology.** In making the calculation, the Regional Administrator

where:

DPC is the direct program costs for the Crab Rationalization Program for the previous fiscal year.

AB is the projected end of the year LASAF account balance for the Crab Rationalization Program, and

V is the projected ex-vessel value of the catch subject to the crab cost recovery fee liability for the current year, and NPR is the fraction of the fee assessments that is expected to result in nonpayment.

(3) *Adjustments.* During the first quarter of each crab fishing year, the Regional Administrator will consider adjusting the crab fee percentage. Consideration will be based on the calculations described in paragraph (c)(2) of this section.

(4) *Publication.* The Regional Administrator will make any adjustments in the crab fee percentage by publication in the Federal Register.

(5) *Applicable percentage.* The RCR permit holder must use the crab fee percentage in effect at the time a CR crab is debited from a CR allocation to calculate the crab cost recovery fee liability for such CR crab. The RCR permit holder must use the crab fee percentage in effect at the time a CR crab is debited from an CR allocation to calculate the crab cost recovery fee liability for any retro-payments for that CR crab.

(d) *Underpayment of fee liability.* (1) Under § 680.4, an applicant will not receive new IFQ, IPQ, or RCR permits until he or she submits a complete

application. A complete application shall include full payment of an applicant's complete crab cost recovery fee liability as reported by the RCR.

(2) If an RCR fails to submit full payment for crab cost recovery fee liability by the date described in paragraph (a)(4) of this section, the Regional Administrator may:

(i) At any time thereafter send an IAD to the RCR permit holder stating that the RCR permit holder's estimated fee liability, as indicated by his or her own submitted information, is the crab cost recovery fee liability due from the RCR permit holder.

(ii) Disapprove any transfer of IFQ, IPQ, or QS to or from the RCR permit holder in accordance with § 680.41.

(3) If an RCR fails to submit full payment by the application deadline described at § 680.4(e), no IFQ or IPQ permit will be issued to that RCR for that crab fishing year.

(4) Upon final agency action determining that an RCR permit holder has not paid his or her crab cost recovery fee liability, the Regional Administrator may continue to withhold issuance of any new IFQ, IPQ, or RCR permit for any subsequent crab fishing years. If payment is not received by the 30th day after the final agency action, the matter will be referred to the appropriate authorities for purposes of collection.

(e) *Over payment.* Upon issuance of final agency action, any amount

submitted to NMFS in excess of the crab cost recovery fee liability determined to be due by the final agency action will be returned to the RCR permit holder unless the permit holder requests the agency to credit the excess amount against the permit holder's future crab cost recovery fee liability.

(f) *Appeals and requests for reconsideration.* An RCR permit holder who receives an IAD may either appeal the IAD pursuant to § 679.43 or request reconsideration. Within 60 days from the date of issuance of the IAD, the Regional Administrator may undertake reconsideration of the IAD on his or her own initiative. If a request for reconsideration is submitted or the Regional Administrator initiates reconsideration, the 60-day period for appeal under § 679.43 will begin anew upon issuance of the Regional Administrator's reconsidered IAD. The Regional Administrator may undertake only one reconsideration of the IAD, if any. If an RCR permit holder fails to file an appeal of the IAD pursuant to § 679.43 or request reconsideration within the time period provided, the IAD will become the final agency action. In any appeal or reconsideration of an IAD made under this section, an RCR permit holder has the burden of proving his or her claim.

(g) *Fee Submission Form.* An RCR must submit an RCR Permit Holder Fee Submission Form according to § 680.5(e).

TABLE 1 TO PART 680—CRAB RATIONALIZED (CR) FISHERY

Code	CR Fishery	Boundary Description
EAG	Eastern Aleutian Islands golden (brown) king crab (<i>Lithodes aequispinus</i>)	In waters of the EEZ with: (1) <i>an eastern boundary</i> the longitude of Scotch Cap Light (164°44' W. long.) to 53°30' N. lat., then West to 165° W. long. (2) <i>a western boundary</i> of 174° W. long., and (3) <i>a northern boundary</i> of a line from the latitude of Cape Sarichef (54°36' N. lat.) westward to 171° W. long., then north to 55°30' N. lat., then west to 174° W. long.
WAG	Western Aleutian Islands golden (brown) king crab (<i>Lithodes aequispinus</i>)	In waters of the EEZ with: (1) <i>an eastern boundary</i> the longitude 174° W. long., (2) <i>a western boundary</i> the maritime Boundary Agreement Line as that line is described in the text of and depicted in the annex to the Maritime Boundary Agreement between the United States and the Union of Soviet Socialist Republics signed in Washington, June 1, 1990, and as the Maritime Boundary Agreement Line as depicted on NOAA Chart No. 513 (6 th edition, February 23, 1991) and NOAA Chart No. 514 (6 th edition, February 16, 1991), and (3) <i>a northern boundary</i> of a line from the latitude of 55°30' N. lat., then west to the U.S.-Russian Convention line of 1867.

TABLE 1 TO PART 680—CRAB RATIONALIZED (CR) FISHERY—Continued

Code	CR Fishery	Boundary Description
BST	Bering Sea Tanner crab (<i>Chionoecetes bairdi</i>)	In waters of the EEZ east of the maritime Boundary Agreement Line as that line is described in the text of and depicted in the annex to the Maritime Boundary Agreement between the United States and the Union of Soviet Socialist Republics signed in Washington, June 1, 1990, and as the Maritime Boundary Agreement Line as depicted on NOAA Chart No. 513 (6 th edition, February 23, 1991) and NOAA Chart No. 514 (6 th edition, February 16, 1991) to 171° W. long., and then south to 54°30' N. lat. with a southern boundary of 54°36' N. lat.
BSS	Bering Sea Snow crab (<i>Chionoecetes opilio</i>)	In waters of the EEZ east of the maritime Boundary Agreement Line as that line is described in the text of and depicted in the annex to the Maritime Boundary Agreement between the United States and the Union of Soviet Socialist Republics signed in Washington, June 1, 1990, and as the Maritime Boundary Agreement Line as depicted on NOAA Chart No. 513 (6 th edition, February 23, 1991) and NOAA Chart No. 514 (6 th edition, February 16, 1991) to 171° W. long., and then south to 54°30' N. lat. with a southern boundary of 54°36' N.
BBR	Bristol Bay red king crab (<i>Paralithodes camtschaticus</i>)	In waters of the EEZ with: (1) a northern boundary of 58°30' N. lat., (2) a southern boundary of 54°36' N. lat., and (3) a western boundary of 168° W. long. and including all waters of Bristol Bay.
PIK	Pribilof red king and blue king crab (<i>Paralithodes camtschaticus</i> and <i>Paralithodes platypus</i>)	In waters of the EEZ with: (1) a northern boundary of 58°30' N. lat., (2) an eastern boundary of 168° W. long., (3) a southern boundary line from 54°36' N. lat., 168° W. long., to 54°36' N. lat., 171° W. long., to 55°30' N. lat., 171° W. long., to 55°30' N. lat., 173°30' E. lat., and then westward to the maritime Boundary Agreement Line as that line is described in the text of and depicted in the annex to the Maritime Boundary Agreement between the United States and the Union of Soviet Socialist Republics signed in Washington, June 1, 1990, and as the Maritime Boundary Agreement Line as depicted on NOAA Chart No. 513 (6 th edition, February 23, 1991) and NOAA Chart No. 514 (6 th edition, February 16, 1991).
SMB	St. Matthew blue king crab (<i>Paralithodes platypus</i>)	In waters of the EEZ with: (1) a northern boundary of 62° N. lat., (2) a southern boundary of 58°30' N. lat., and (3) a western boundary of the maritime Boundary Agreement Line as that line is described in the text of and depicted in the annex to the Maritime Boundary Agreement between the United States and the Union of Soviet Socialist Republics signed in Washington, June 1, 1990, and as the Maritime Boundary Agreement Line as depicted on NOAA Chart No. 513 (6 th edition, February 23, 1991) and NOAA Chart No. 514 (6 th edition, February 16, 1991).
WAI	Western Aleutian Islands red king crab (<i>Paralithodes camtschaticus</i>)	In waters of the EEZ with: (1) an eastern boundary the longitude 179° W. long., (2) a western boundary of the maritime Boundary Agreement Line as that line is described in the text of and depicted in the annex to the Maritime Boundary Agreement between the United States and the Union of Soviet Socialist Republics signed in Washington, June 1, 1990, and as the Maritime Boundary Agreement Line as depicted on NOAA Chart No. 513 (6 th edition, February 23, 1991) and NOAA Chart No. 514 (6 th edition, February 16, 1991), and (3) a northern boundary of a line from the latitude of 55°30' N. lat., then west to the maritime Boundary Agreement Line as that line is described in the text of and depicted in the annex to the Maritime Boundary Agreement between the United States and the Union of Soviet Socialist Republics signed in Washington, June 1, 1990, and as the Maritime Boundary Agreement Line as depicted on NOAA Chart No. 513 (6 th edition, February 23, 1991) and NOAA Chart No. 514 (6 th edition, February 16, 1991).

TABLE 2 TO PART 680—CRAB SPECIES CODES

Species Code	Species Description
900	Box <i>Lopholithodes mandtii</i>
910	Dungeness <i>Cancer magister</i>
921	Red king crab <i>Paralithodes camtschaticus</i>
922	Blue king crab <i>Paralithodes platypus</i>
923	Golden (brown) king crab <i>Lithodes aequispinus</i>
924	Scarlet king crab <i>Lithodes couesi</i>
931	Tanner crab <i>Chionoecetes bairdi</i>
932	Snow crab <i>Chionoecetes opilio</i>
933	Grooved Tanner crab <i>Chionoecetes tanneri</i>
934	Triangle Tanner crab <i>Chionoecetes angulatus</i>
940	Korean horsehair crab <i>Erimacrus isenbeckii</i>
951	Multispine crab <i>Paralomis multispinus</i>
953	Verrilli crab <i>Paralomis verrilli</i>

TABLE 3A TO PART 680—CRAB DELIVERY CONDITION CODES

(The condition of the fish or shellfish at the point it is weighed and recorded on the ADF&G fish ticket)

Code	Description
01	Whole crab, live
79	Deadloss

TABLE 3B TO PART 680—CRAB DISPOSITION OR PRODUCT CODES

Code	Description
80	Sections
95	Personal use - not sold
97	Other retained product (specify condition)

TABLE 4 TO PART 680—CRAB PROCESS CODES

Process Code	Description
1	Fresh
18	Fresh/vacuum pack
2	Frozen
21	Frozen/block
22	Frozen/shatter pack
28	Frozen/vacuum pack
3	Salted/brined
6	Cooked
7	Live
0	Other (specify)

TABLE 5 TO PART 680—CRAB SIZE

Size Code	Description
1	Standard or large sized crab or crab sections.
2	Smaller size crab or crab sections, e.g., snow crab less than 4 inches.

TABLE 6 TO PART 680—CRAB GRADE

Grade Code	Description
1	Standard or premium quality crab or crab sections.
2	Lower quality product, e.g., dirty shelled crab or a pack that is of lower quality than No. 1 crab.

TABLE 7 TO PART 680—ELIGIBILITY FOR INITIAL ISSUANCE OF CRAB QS BY CRAB QS FISHERY

Column A: Crab QS Fisheries	Column B: Qualifying Years for CVO and CPO QS	Column C: Qualifying Years for CVC and CPC QS	Column D: Recent Participation Seasons for CVC and CPC QS	Column E: Subset of Qualifying Years
<p>For each crab QS fishery the Regional Administrator shall calculate (see § 680.4(c)(2)):</p> <p>1. Eastern Aleutian Islands golden (brown) king crab (EAG)</p>	<p>CVO and CPO QS for any qualified person based on that person's total legal landings of crab in each of the crab QS fisheries for any:</p> <p>5 years of the 5-year base period beginning on:</p> <p>(1) September 1, 1996 through December 25, 1996;</p> <p>(2) September 1, 1997 through November 24, 1997;</p> <p>(3) September 1, 1998 through November 7, 1998;</p> <p>(4) September 1, 1999 through October 25, 1999; and</p> <p>(5) August 15, 2000 through September 24, 2000.</p>	<p>CVC and CPC QS for any qualified person based on that person's legal landings on the State of Alaska fish ticket during:</p> <p>3 years of the 5-year base period beginning on:</p> <p>(1) September 1, 1996 through December 25, 1996;</p> <p>(2) September 1, 1997 through November 24, 1997;</p> <p>(3) September 1, 1998 through November 7, 1998;</p> <p>(4) September 1, 1999 through October 25, 1999; and</p> <p>(5) August 15, 2000 through September 24, 2000.</p>	<p>In addition, each person receiving CVC or CPC QS, must have made at least one landing as recorded on a State of Alaska fish ticket in at least 2 of the last 3 fishing seasons in each of the crab QS areas as those seasons are described below:</p> <p>(1) September 1 1999 through October 25, 1999.</p> <p>(2) August 15, 2000 through September 24, 2000.</p> <p>(3) August 15, 2001 through September 10, 2001.</p>	<p>The maximum number of qualifying years that can be used to calculate QS for each QS fishery are:</p> <p>5 for CVO and CPO QS; and 3 for CVC and CPC QS.</p>
<p>2. Western Aleutian Islands golden (brown) king crab (WAG)</p>	<p>5 years of the 5-year base period beginning on:</p> <p>(1) September 1, 1996 through August 31, 1997;</p> <p>(2) September 1, 1997 through August 31, 1998;</p> <p>(3) September 1, 1998 through August 31, 1999;</p> <p>(4) September 1, 1999 through August 14, 2000; and</p> <p>(5) August 15, 2000 through March 30, 2001.</p>	<p>3 years of the 5-year base period beginning on:</p> <p>(1) September 1, 1996 through August 31, 1997;</p> <p>(2) September 1, 1997 through August 31, 1998;</p> <p>(3) September 1, 1998 through August 31, 1999;</p> <p>(4) September 1, 1999 through August 14, 2000; and</p> <p>(5) August 15, 2000 through March 30, 2001.</p>	<p>(1) September 1 1999 through August 14, 2000.</p> <p>(2) August 15, 2000 through March 28, 2001.</p> <p>(3) August 15 2001 through March 30, 2002.</p>	<p>5 for CVO and CPO QS; and 3 for CVC and CPC QS.</p>

TABLE 7 TO PART 680—ELIGIBILITY FOR INITIAL ISSUANCE OF CRAB QS BY CRAB QS FISHERY—Continued

Column A: Crab QS Fisheries	Column B: Qualifying Years for CVO and CPO QS	Column C: Qualifying Years for CVC and CPC QS	Column D: Recent Participation Seasons for CVC and CPC QS	Column E: Subset of Qualifying Years
3. Bering Sea Tanner crab (BST)	4 years of the 6-year period beginning on: (1) November 15, 1992 through March 31, 1993; (2) November 1, 1993 through November 10, 1993; (3) November 20, 1993 through January 1, 1994; (4) November 1, 1994 through November 21, 1994; (5) November 1, 1995 through November 16, 1995; and (6) November 1, 1996 through November 5, 1996 and November 15, 1996 through November 27, 1996.	3 years of the 6-year period beginning on: (1) November 15, 1992 through March 31, 1993; (2) November 1, 1993 through November 10, 1993; (3) November 20, 1993 through January 1, 1994; (4) November 1, 1994 through November 21, 1994; (5) November 1, 1995 through November 16, 1995; and (6) November 1, 1996 through November 5, 1996 and November 15, 1996 through November 27, 1996.	In any 2 of the last 3 seasons prior to June 10, 2002 in the Eastern Aleutian Island golden (brown) king crab, Western Aleutian Island golden (brown) king crab, Bering Sea <i>C. opilio</i> crab, or Bristol Bay red king crab fisheries.	4 for CVO and CPO QS; and 3 for CVC and CPC QS.
4. Bering Sea snow crab (BSS)	4 years of the 5-year period beginning on: (1) January 15, 1996 through February 29, 1996; (2) January 15, 1997 through March 21, 1997; (3) January 15, 1998 through March 21, 1998; (4) January 15, 1999 through March 22, 1999; and (5) April 1, 2000 through April 8, 2000.	3 years of the 5-year period beginning on: (1) January 15, 1996 through February 29, 1996; (2) January 15, 1997 through March 21, 1997; (3) January 15, 1998 through March 21, 1998; (4) January 15, 1999 through March 22, 1999; and (5) April 1, 2000 through April 8, 2000.	(1) April 1, 2000 through April 8, 2000. (2) January 15, 2001 through February 14, 2001. (3) January 15, 2002 through February 8, 2002.	4 for CVO and CPO QS; and 3 for CVC and CPC QS.
5. Bristol Bay red king crab (BBR)	4 years of the 5-year QS base period beginning on: (1) November 1, 1996 through November 5, 1996; (2) November 1, 1997 through November 5, 1997; (3) November 1, 1998 through November 6, 1998; (4) October 15, 1999 through October 20, 1999; and (5) October 16, 2000 through October 20, 2000.	3 years of the 5-year QS base period beginning on: (1) November 1, 1996 through November 5, 1996; (2) November 1, 1997 through November 5, 1997; (3) November 1, 1998 through November 6, 1998; (4) October 15, 1999 through October 20, 1999; and (5) October 16, 2000 through October 20, 2000.	(1) October 16, 2000 through October 20, 2000. (2) October 15, 2001 through October 18, 2001. (3) October 15, 2002 through October 18, 2002.	4 for CVO and CPO QS; and 3 for CVC and CPC QS.

TABLE 7 TO PART 680—ELIGIBILITY FOR INITIAL ISSUANCE OF CRAB QS BY CRAB QS FISHERY—Continued

Column A: Crab QS Fisheries	Column B: Qualifying Years for CVO and CPO QS	Column C: Qualifying Years for CVC and CPC QS	Column D: Recent Participation Seasons for CVC and CPC QS	Column E: Subset of Qualifying Years
6. Pribilof red king and blue king crab (PIK)	4 years of the 5-year period beginning on: (1) September 15, 1994 through September 21, 1994; (2) September 15, 1995 through September 22, 1995; (3) September 15, 1996 through September 26, 1996; (4) September 15, 1997 through September 29, 1997; and (5) September 15, 1998 through September 28, 1998.	3 years of the 5-year period beginning on: (1) September 15, 1994 through September 21, 1994; (2) September 15, 1995 through September 22, 1995; (3) September 15, 1996 through September 26, 1996; (4) September 15, 1997 through September 29, 1997; and (5) September 15, 1998 through September 28, 1998.	In any 2 of the last 3 seasons prior to June 10, 2002 in the Eastern Aleutian Island golden (brown) king crab, Western Aleutian Island golden (brown) king crab, Bering Sea <i>C. opilio</i> crab, or Bristol Bay red king crab fisheries, except that persons applying for an allocation to receive QS based on legal landings made aboard a vessel less than 60' LOA at the time of harvest are exempt from this requirement.	4 for CVO and CPO QS; and 3 for CVC and CPC QS.
7. St. Matthew blue king crab (SMB)	4 years of the 5-year period beginning on: (1) September 15, 1994 through September 22, 1994; (2) September 15, 1995 through September 20, 1995; (3) September 15, 1996 through September 23, 1996; (4) September 15, 1997 through September 22, 1997; and (5) September 15, 1998 through September 26, 1998.	3 years of the 5-year period beginning on: (1) September 15, 1994 through September 22, 1994; (2) September 15, 1995 through September 20, 1995; (3) September 15, 1996 through September 23, 1996; (4) September 15, 1997 through September 22, 1997; and (5) September 15, 1998 through September 26, 1998.	In any 2 of the last 3 seasons prior to June 10, 2002 in the Eastern Aleutian Island golden (brown) king crab, Western Aleutian Island golden (brown) king crab, Bering Sea <i>C. opilio</i> crab, or Bristol Bay red king crab fisheries.	4 for CVO and CPO QS; and 3 for CVC and CPC QS.
8. Western Aleutian Islands red king crab (WAI)	3 years of the 4-year period beginning on: (1) November 1, 1992 through January 15, 1993; (2) November 1, 1993 through February 15, 1994; (3) November 1, 1994 through November 28, 1994; and (4) November 1, 1995 through February 13, 1996.	3 years of the 4-year period beginning on: (1) November 1, 1992 through January 15, 1993; (2) November 1, 1993 through February 15, 1994; (3) November 1, 1994 through November 28, 1994; and (4) November 1, 1995 through February 13, 1996.	In any 2 of the last 3 seasons prior to June 10, 2002 in the Eastern Aleutian Island golden (brown) king crab, Western Aleutian Island golden (brown) king crab, Bering Sea <i>C. opilio</i> crab, or Bristol Bay red king crab fisheries.	3 for CVO and CPO QS; and 3 for CVC and CPC QS.

TABLE 8 TO PART 680—INITIAL QS AND PQS POOL FOR EACH CRAB QS FISHERY

Crab QS Fishery	Initial QS Pool	Initial PQS Pool
EAG - Eastern Aleutian Islands golden king crab	10,000,000	10,000,000
WAG - Western Aleutian Islands golden (brown) king crab	40,000,000	40,000,000
BST - Bering Sea Tanner crab <i>C. bairdi</i>	200,000,000	200,000,000
BSS - Bering Sea snow crab <i>C. opilio</i>	1,000,000,000	1,000,000,000
BEF - Bristol Bay red king crab	400,000,000	400,000,000

TABLE 8 TO PART 680—INITIAL QS AND PQS POOL FOR EACH CRAB QS FISHERY—Continued

Crab QS Fishery	Initial QS Pool	Initial PQS Pool
PIK - Pribilof Islands red and blue king crab	30,000,000	30,000,000
SMB - St. Matthew blue king crab	30,000,000	30,000,000
WAI - Western Aleutian Islands red king crab	60,000,000	60,000,000

TABLE 9 TO PART 680—ELIGIBILITY FOR INITIAL ISSUANCE OF CRAB PQS BY CRAB QS FISHERY

Column A: For each crab QS fishery the Regional Administrator shall calculate:	Column B: PQS for any qualified person based on that person's total legal processing of crab in each of the crab QS fisheries for any...
Eastern Aleutian Island golden (brown) king crab (EAG)	4 years of the 4-year base period beginning on: (1) September 1, 1996 through December 25, 1996; (2) September 1, 1997 through November 24, 1997; (3) September 1, 1998 through November 7, 1998; and (4) September 1, 1999 through October 25, 1999.
Western Aleutian Island golden (brown) king crab (WAG)	4 years of the 4-year base period beginning on: (1) September 1, 1996 through August 31, 1997; (2) September 1, 1997 through August 31, 1998; (3) September 1, 1998 through August 31, 1999; and (4) September 1, 1999 through August 14, 2000.
Bering Sea <i>C. bairdi</i> crab (BST)	Equivalent to 50 percent of the total legally processed crab in the Bering Sea <i>C. opilio</i> fishery during the qualifying years established for the QS fishery; and 50 percent of the totally legally processed crab in the Bristol Bay red king crab fishery during the qualifying years established for that crab QS fishery.
Bering Sea <i>C. opilio</i> crab (BSS)	3 years of the 3-year period beginning on: (1) January 15, 1997 through March 21, 1997; (2) January 15, 1998 through March 21, 1998; and (3) January 15, 1999 through March 22, 1999.
Bristol Bay red king crab (BBR)	3 years of the 3-year QS base period beginning on: (1) November 1, 1997 through November 5, 1997; (2) November 1, 1998 through November 6, 1998; and (3) October 15, 1999 through October 20, 1999.
Pribilof Islands red and blue king crab (PIK)	3 years of the 3-year period beginning on: (1) September 15, 1996 through September 26, 1996; (2) September 15, 1997 through September 29, 1997; and (3) September 15, 1998 through September 28, 1998.
St. Matthew blue king crab (SMB)	3 years of the 3-year period beginning on: (1) September 15, 1996 through September 23, 1996; (2) September 15, 1997 through September 22, 1997; and (3) September 15, 1998 through September 26, 1998.
Western Aleutian Islands red king crab (WAI)	Equivalent to the total legally processed crab in the Western Aleutian Islands golden (brown) king crab fishery during the qualifying years established for that crab QS fishery.

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