

## **DRAFT FOR FINAL REVIEW**

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

## **Active Participation Requirements for Crab Crew Shares**

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**Abstract:** This Regulatory Impact Review analyzes proposed management measures that would apply exclusively to those who hold crew quota share (or C share) in the Bering Sea and Aleutian Islands Crab Rationalization Program. The action alternatives under consideration would either modify or remove the requirements to demonstrate continued active participation in order for C share holders to receive annual issuance of individual fishing quota and in order to maintain C share quota share. Both action alternatives also consider reissuing all C share quota share that has been revoked by the National Marine Fisheries Service within the period from 2019, through the implementation of this final rule.

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## Acronyms and Abbreviations

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

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

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## Executive Summary

The Bering Sea Aleutian Islands (BSAI) Crab Rationalization (CR) program, implemented on March 2, 2005, established both harvester quota share (QS) and processor quota share (PQS) which are revocable privileges that allow the holder to harvest or process a specific percentage of the annual total allowable catch (TAC) in a CR Program fishery.

When the CR Program was under development, many active captains testified for the inclusion of an allocation specifically for captains with history of participation in the BSAI crab fisheries. Three percent of the harvesting QS was initially allocated to individuals holding State of Alaska Commercial Fisheries Entry Commission Interim Use Permits, generally vessel captains, who met specific historic and recent participation requirements. This is referred to as crew share (or C shares) and includes catcher vessel crew (CVC) shares and catcher processor crew (CPC) shares depending on the type of vessel the history was accrued from.

Both in original CR Program design and reinforced through the subsequent Amendment 31 to the BSAI King and Tanner Crab Fishery Management Plan (80 FR 15891, 03/26/2015), the Council intended that C share benefit ‘at-sea’ participants in the CR Program fisheries. Since June 2018 (three years after implementation of Amendment 31), in order to receive an annual allocation of C share Individual Fishing Quota (IFQ), the regulations require a C share QS holder to have either:

- (1) participated as crew in at least one delivery in a CR Program fishery in the three crab fishing years preceding the crab fishing year for which the holder is applying for IFQ; or
- (2) if the individual was an initial recipient of C shares, participated as crew in at least 30 days of fishing in a commercial fishery managed by the of State of Alaska or a U.S. commercial fishery in Federal waters off Alaska in the three crab fishing years preceding the crab fishing year for which the holder is applying for IFQ (§ 680.40(g)(2)).

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

However, prior to the 2022/23 application period it was identified that the combination of the COVID-19 pandemic (which began to effect fisheries in early 2020) and the unforeseen decline of the Eastern Bering Sea snow crab (*C. opilio*; referred to in this document as BSS) had substantially diminished opportunities for C share holders to participate as crew during the three prior crab years that qualified a C share holder for receiving IFQ in 2022/23. Emergency action was taken by National Marine Fisheries Service (NMFS) to temporarily suspend the active participation requirements for the 2022/23 season, so that no CR Program C share QS was withheld or revoked during the 2022/23 application period, regardless of participation status in the preceding four years. This provided C share holders one additional year to demonstrate active participation for received C share IFQ or maintaining C share QS in 2023/24.

In addition to the request for the emergency rule, in June 2022, the Council also initiated an analysis to analyze potential long-term changes to the C share participation requirements. This action considers modifying or removing the requirements to demonstrate continued active participation in order for C share holders to receive annual issuance of IFQ and in order to maintain C share QS. Proposed action alternatives also consider reissuing all C share QS that has been revoked by NMFS between 2019 through the implementation of this final rule. With several key crab stocks currently at low abundance, the Council’s purpose and need statement highlights the challenges that will likely continue for C share holders in demonstrating active participation when there is diminished opportunity to be active in the CR Program fisheries.

## Purpose and Need

The Council adopted a purpose and need statement in June 2022, and revised this statement in June 2023 as follows:

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The CVC and CPC shares have an active participation requirement to receive annual IFQ and retain QS. The combined impact of the COVID-19 pandemic from 2020 through 2023 and the recent and substantial decline in crab abundance and fishery closures have substantially reduced opportunities for crew to participate in crab fisheries in recent years. The Council is also concerned about future diminished opportunities for crew if crab stocks remain low. Action is needed to modify the active participation requirements to provide opportunity for C share holders to receive annual IFQ and retain QS in periods of low crab abundance.

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## Alternatives

The Council adopted alternatives in June 2022, which were revised in June 2023. No preliminary preferred alternative has been identified at this time.

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Alternative 1 - No action

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

Option 1: Restart the recent participation requirement when the final rule is implemented and reissue all revoked CVC and CPC QS starting in 2019 and until final rule is implemented.

Option 2: Authorize the Regional Administrator to suspend the CVC QS and CPC QS active participation requirement in years when the combined Bristol Bay red king crab (BBR), Bering Sea snow crab (BSS), Western Bering Sea Tanner crab (WBT) and Eastern Bering Sea Tanner crab (EBT) crab combined TAC is below a certain threshold. If the TAC threshold is not met, NMFS would not count this year for C share holders that did not provide evidence of active participation. Threshold options:

Sub-option 1: 25 Mlb

Sub-option 2: 15 Mlb

Sub-option 3: 10 Mlb

Option 3: Revise the eligibility requirements for CVC and CPC QS holders to receive annual IFQ and retain QS holdings to be the same for initial recipients and new entrants.

Alternative 3 - Remove the active participation requirement at §680.40 for existing CVC and CPC QS holders to receive annual IFQ and retain QS. Maintain eligibility requirements at §680.41(c) to receive CVC or CPC QS by transfer. Reissue all revoked CVC and CPC QS starting in 2019 and until final rule is implemented.

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In addition to the proposed alternatives, Section 2.5 includes two recommendations from NMFS to improve the clarity, effectiveness, and enforceability of the active participation requirements should the Council recommend their retention (through Alternative 1 or 2). This includes an expansion to the regulatory language that only exempts an individual holding C share QS in a *single* CR crab fishery, when that CR crab fishery is closed to fishing for an entire crab fishing year. In addition, NMFS recommends amending the regulatory language to clarify that active participation in a CR Program fishery would be demonstrated through participation on a crab *fishing trip*, and not a *delivery* of CR Program crab without participating in the fishing trip. These changes align with the intent as prescribed in Amendment 31 and are further described in Section 2.5.

### Changes to the document from the Initial Review Draft

The following changes have been made to this draft relative to the Initial Review Draft analysis (NPFMC 2023b):

- Updates to the purpose and need and alternatives.
- There were substantial changes to the alternatives from initial review, however many of the concepts included in the current alternative list were considered in the previous draft as they had been highlighted by the Council in an April 2023 motion. Therefore, some of the analytical content has simply been reorganized and some has been expanded based on additional specification in the alternatives. This applies to Section 2 and 3.4.
- Update to Section 1.1. History of this Action at the Council.
- Addition of Section 2.4 Alternatives Considered but not Analyzed Further.
- Addition of Section 2.5 Additional Regulatory Changes Recommended by NMFS.
- Updated Section 3.3.1 to include more recent information on stock status and fishery openings.
- Expansion to Section 3.3.6 to include information from the 2023/24 C share application cycle.
- In Section 3.4 Analysis of Impacts: minor changes to Alternative 1 (Section 3.4.1), wholesale changes for Alternative 2 and 3 (Section 3.4.2 and 3.4.3) in addition to updates to 3.4.4 Additional Monitoring and Enforcement Considerations.
- Updates to Section 3.4.6 Net Benefits to the Nation, Section 4.1 Magnuson-Stevens Act National Standards, and Section 4.2 Section 303(a)(9) Fisheries Impact Statement.
- Updates to Section 5 and 6 on contributors and references.

### Regulatory Impact Review

This analysis considers two mutually exclusive action alternatives which would modify (Alternative 2) or remove (Alternative 3) the C share active participation requirements. Alternative 2 considers way to continue the policy objective of ensuring C share QS are available for those who are actively participating as captains or crew in the fishery, while also providing options to relieve the active participation requirements when there is scarce opportunity to participate (i.e., low TACs/ closed fisheries). Alternative 3 would remove the requirements for demonstrating active participation in order to maintain C shares but would keep the requirements for receiving C share by transfer (i.e., participation as crew in one of the CR Program fisheries in the 365 days prior to the date the transfer). Both alternatives consider reissuing all revoked C share QS starting in 2019 and until final rule is implemented. The proposed actions are expected to have distributional impacts on current C share holders, impacts to the market for C share, and administrative impacts for NMFS in the monitoring and enforcement. A summary of these expected impacts are detailed in Table 1-1.

The analysis notes that the Council's last two sentences of its purpose and need statement appear to focus the need for action around periods of low crab abundance. Alternative 2 would respond to this need through Option 2 by providing exemptions to the active participation requirements in years where the combined BBR, BSS, EBT, and WBT TAC is below a threshold, and/ or through Option 3 by expanding the fisheries that would qualify as evidence of active participation (i.e., including non-crab fisheries). Alternative 3 appears to present a different policy focus for C shares by removing the requirements to demonstrate continued active participation. **If the Council wishes to recommend this alternative, it may consider revising this last sentence of the purpose and need to focus on the reason for the action, even in the event that crab stocks rebound.**

**Table 1-1 Summary of expected impacts from the proposed alternatives**

	Alternative 1: No action	Alternative 2: Modify C share active participation requirements for the withholding and revocation of C share QS			Alternative 3: Remove C share active participation requirements and reissue C share QS
		Option 1. Restart participation requirements and reissue C share QS	Option 2. Suspend the active participation requirements when a combined TAC threshold is not met (Suboptions: 25 Mlb, 15 Mlb, or 10 Mlb)	Option 3. Revise active participation requirements to allow 30 days in any fishery qualify as evidence	
Impacts to current C share holders	<ul style="list-style-type: none"> <li>- Current regulations require demonstration of active participation, transfer of C share QS or could result in revocation, regardless of fisheries TACs.</li> <li>- More C share QS holders may find themselves in a position of needing to transfer their C share or facing revocation due to limited crew opportunities with low TAC/ closed fisheries.</li> </ul>	<ul style="list-style-type: none"> <li>- Will benefit C share holders that had their C share QS revoked between 2019 and the implementation of the final rule.</li> <li>- In 2023/24, notices were issued to 19 people for C share revocation. These individuals (and any others in the years before the rule was implemented) could apply to have their C share reissued.</li> <li>- Active participation accounting restarts for all C share holders. If rule is implemented in Dec 24, reissuance/ restart would occur in 2025/26, no IFQ withheld until 2028/29, and no C share QS revoked until 2029/30.</li> </ul>	<ul style="list-style-type: none"> <li>- Will provide additional flexibility in years where there are low TACs or closed fisheries in the four fisheries that have historically provided the most crew opportunities.</li> <li>- Participation would still count for those that provided evidence.</li> <li>- The more complex the accounting, the more difficult it may be for C share holders to comply with the requirements.</li> <li>- Limited notice before an exemption is determined.</li> </ul>	<ul style="list-style-type: none"> <li>- Would provide non-initial issuee C share holders with an additional outlet to demonstrate active participation (i.e., 30 days in any commercial fishery off of Alaska).</li> <li>- could be particularly advantages in times of low TAC or closed fisheries.</li> </ul>	<ul style="list-style-type: none"> <li>- Will benefit C share holders that had their C share QS revoked between 2019 and the implementation of the final rule.</li> <li>- In 2023/24, notices were issued to 19 people for C share revocation. These individuals (and any others in the years before the rule was implemented) could apply to have their C share reissued.</li> <li>- Removing active participation requirements provides more flexibility for current C share holders to continue to hold QS.</li> </ul>

<p>Impacts to the market for C shares</p>	<ul style="list-style-type: none"> <li>- C shares have historically sold for slightly less per unit than other crab QS.</li> <li>- Currently extremely limited demand due to transfer requirements (must have participated in the CR fisheries in the last 365 days), active participation requirements, low expectation of returns (due to low TAC/ closed fisheries) and limited capital available for investments (due to low TAC/ closed fisheries and hesitant lenders).</li> </ul>	<ul style="list-style-type: none"> <li>- The restart of requirements could delay when a C share holder chooses to sell.</li> <li>- Depending on status of future crab stocks, after this option is implemented and participation requirements are restarted, it may provide an opportunity for the C share market to stabilize prior to C share holders needing to sell.</li> </ul>	<ul style="list-style-type: none"> <li>- Particularly if adopted in combination with Option 1, could allow a market to stabilize prior to C share holders needing to sell.</li> <li>- Additional flexibly in time of closed fisheries/ low TACs may increase the value of C share QS.</li> <li>- Would not require C share holders divest when the combined TAC is below the threshold (when demand is likely very limited).</li> <li>- May incentivize inactive C share holder to divest when a market opportunity arises.</li> </ul>	<ul style="list-style-type: none"> <li>- Additional flexibility may increase the value of the C share QS and add to the demand, but likely not substantially.</li> <li>- Additional flexibility may allow C share holder to hold on to their C share QS longer, rather than choosing to sell.</li> </ul>	<ul style="list-style-type: none"> <li>- Depending on status of future crab stocks, after this option is implemented, it may provide an opportunity for the C share market to stabilize.</li> <li>- Additional flexibility may increase the value of the C share QS and potentially add to demand.</li> <li>- Inactive C share holders less likely to divest.</li> <li>- The market for buyers is still restricted to those that meet the transfer requirements.</li> </ul>
<p>Impacts for monitoring and enforcement</p>	<ul style="list-style-type: none"> <li>- NMFS administration of existing active participation requirements has proved challenging due to multiple factors including the multi-year application cycle, the type of the information submitted, and consideration of the individual QS holdings (whether exemptions apply) adds manual layers to this process.</li> <li>- Monitoring and enforcement is included in CR Program cost recovery.</li> </ul>	<ul style="list-style-type: none"> <li>- Reissuing C share QS would likely require an additional application process.</li> <li>- Restarting the active participation requirements would not likely add to a monitoring or enforcement burden.</li> </ul>	<ul style="list-style-type: none"> <li>- The accounting for exempt years adds administrative complexity.</li> </ul>	<ul style="list-style-type: none"> <li>- Status quo level of monitoring and enforcement.</li> </ul>	<ul style="list-style-type: none"> <li>- Does not add administrative complexity and removes the administrative challenges specific to this type of QS that exist currently.</li> </ul>



# 1 Introduction

This document analyzes proposed management measures that would apply exclusively to those who hold crew quota share (or C share) in the Bering Sea and Aleutian Islands (BSAI) Crab Rationalization Program (CR Program). The action alternatives under consideration would either modify or remove the requirements to demonstrate continued active participation in order for C share holders to receive annual issuance of individual fishing quota (IFQ) and in order to maintain C share quota share (QS). Both action alternatives also consider reissuing all C share QS that has been revoked by National Marine Fisheries Service (NMFS) within the period from 2019, through the implementation of this final rule.

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

## 1.1. History of this Action at the Council

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

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

In addition to the request for the emergency rule, in **June 2022**, the Council also initiated an initial review analysis to analyze potential changes to the C share participation requirements. The purpose and need in the motion lists both the COVID-19 pandemic and the unforeseen decline of the Eastern Bering Sea snow crab (*C. opilio*; referred to in this document as BSS) fishery as the motivation for action.

In **April 2023**, the Council staff requested clarification on the Council's purpose and need for action. Staff also notified the Council of challenges with implementing one of the proposed alternatives given the analytical process and rulemaking timeline necessary before changes could occur. A three-page memo was prepared and presented on this topic in staff tasking (NPFMC 2023a). Specifically, staff requested clarification on whether the need for action still existed given emergency action taken in 2022 and if the need was still focused on years identified for COVID-19 challenges (i.e., 2019/20, 2020/21, and 2021/22) or if the need includes possible future conditions. Staff also emphasized that it is not possible to

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

implement an exemption soon enough to avoid some C shares potentially being withheld or revoked at the start of the 2023/2024 crab fishing year or even the 2024/25 season for C share holder that did not meet C share participation requirements in 2019-2023.

In response, the Council provided clarification on its policy focus for the proposed action.<sup>2</sup> The Council stated an interest in maintaining the concept of active participation for C share QS in the CR Program; however, it requested staff explore ways to provide exemptions from these requirements under recent and future conditions, such as closed fisheries or low crab total allow catch (TACs), where there is less opportunity for C share holders to work as crew on an active CR Program fishing vessel.

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

The Council reviewed an Initial Review Analysis in **June 2023** which included analysis of the concepts identified in **April 2023**. In response, the Council revised its purpose and need statement and amended its alternatives. The Council did not identify a preliminary preferred alternative (PPA) but released the document for final review and requested it return for possible final action once additional changes have been fully analyzed.

## 1.2. Purpose and Need

The Council adopted a purpose and need in **June 2022**, revised in **June 2023** as follows:

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The CVC and CPC shares have an active participation requirement to receive annual IFQ and retain QS. The combined impact of the COVID-19 pandemic from 2020 through 2023 and the recent and substantial decline in crab abundance and fishery closures have substantially reduced opportunities for crew to participate in crab fisheries in recent years. The Council is also concerned about future diminished opportunities for crew if crab stocks remain low. Action is needed to modify the active participation requirements to provide opportunity for C share holders to receive annual IFQ and retain QS in periods of low crab abundance.

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<sup>2</sup> Council motion from April 2023: <https://meetings.npfmc.org/CommentReview/DownloadFile?p=12f682d9-ae47-4cbb-9d8f-6b065183701c.pdf&fileName=E%20Motion%20on%20C%20share%20Crab.pdf>

## 2 Description of Alternatives

The Council adopted alternatives in **June 2022**, which were revised in **June 2023**. No preliminary preferred alternative has been identified at this time.

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Alternative 1 - No action

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

Option 1: Restart the recent participation requirement when the final rule is implemented and reissue all revoked CVC and CPC QS starting in 2019 and until the final rule is implemented.

Option 2: Authorize the Regional Administrator to suspend the CVC QS and CPC QS active participation requirement in years when the combined Bristol Bay red king crab (BBR), Bering Sea snow crab (BSS), Western Bering Sea Tanner crab (WBT) and Eastern Bering Sea Tanner crab (EBT) crab combined TAC is below a certain threshold. If the TAC threshold is not met, NMFS would not count this year for C share holders that did not provide evidence of active participation. Threshold options:

Sub-option 1: 25 Mlb

Sub-option 2: 15 Mlb

Sub-option 3: 10 Mlb

Option 3: Revise the eligibility requirements for CVC and CPC QS holders to receive annual IFQ and retain QS holdings to be the same for initial recipients and new entrants.

Alternative 3 - Remove the active participation requirement at §680.40 for existing CVC and CPC QS holders to receive annual IFQ and retain QS. Maintain eligibility requirements at §680.41(c) to receive CVC or CPC QS by transfer. Reissue all revoked CVC and CPC QS starting in 2019 and until the final rule is implemented.

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The remainder of this section further describes the alternatives under consideration (Section 2.1 through 2.3) as well as describing the alternatives that were previously considered but not moved forward for analysis (Section 2.4).

### 2.1. Alternative 1, No Action

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

### 2.2. Alternative 2, Modify C Share Active Participation Requirements

There are three options listed under **Alternative 2** that could modify the C share active participation requirements. These options are not mutually exclusive, i.e., they could be chosen in combination of one another.

**Option 1** would “restart” the recent participation requirement when the final rule of the present action is implemented. It is assumed that “restarting” the requirements means that whatever year the rule is effective, would become the first year in the three-year rolling requirement to demonstrate active participation in order for a C share holder to receive their allocation of IFQ. For example, if the final rule became effective January 1, 2025, no IFQ would be withheld until the 2028/29 season and no C share QS would be revoked until the 2029/30 season. Additionally, this option would have NMFS Restricted Access Management (RAM) division reissue all QS that had been revoked to the person that held the QS when it was revoked during the period from 2019 to the date this rule becomes effective.

**Option 2 of Alternative 2** would define circumstances under which the NMFS Regional Administrator would be authorized to suspend the C share QS active participation requirements. Specifically, this would occur in years when the combined BBR, BSS, WBT and EBT TAC is below a certain threshold that represents substantially diminished crew opportunities. If the TAC is not above this threshold, NMFS would not count this year for C share holders that did not provide evidence of active participation. If a C share holder *did* provide evidence of active participation in this year it *would* be counted. The analysis evaluates sub-options of 25 Mlb, 15 Mlb, and 10 Mlb as a threshold.

**Option 3 of Alternative 2** proposes expanding the type of active participation that qualifies for meeting the regulatory requirements. Initial recipients of C share QS have broader opportunities to demonstrate active participation through current regulations. In demonstrating active participation, initial recipients can participate as crew in at least 30 days of fishing in any commercial fishery off Alaska *or* they can participate as crew in a BSAI crab trip. Non-initial recipients must participate as crew in a BSAI crab trip. This analysis provides information and consideration for a possible regulatory change to broaden the requirements for non-initial recipients to match that of initial recipients.

### **2.3. Alternative 3, Remove C Share Active Participation Requirements**

**Alternative 3** would remove all requirements to provide a continued demonstration of active participation for existing C share QS holders to receive annual IFQ and retain their QS.

In order to receive C share QS by transfer, this **Alternative 3** would continue to require a demonstration of participation as crew in one of the CR Program fisheries in the 365 days prior to the date the transfer application is submitted to NMFS.

**Alternative 3** would also have NMFS RAM division reissue all QS that had been revoked during the period from 2019 to the point when this final rule becomes effective, similar to **Alternative 2**.

### **2.4. Alternatives Considered but not Analyzed Further**

Other alternatives and concepts were explored in the Initial Review Analysis that have been modified from their original construction or are not included as an explicit alternative here (NPFMC 2023b).

- **Alternative 2, Option 1 in the Initial Review – “Restart the recent participation requirement beginning in 2023/24 fishing years. Do not count 2019/20, 2020/21 2021/22 toward the recent participation requirement.”**

Contrary to what is proposed under Alternative 2, Option 1, it was not possible to implement a regulatory exemption soon enough to prevent some C shares being withheld or revoked for the time period the Council was considering in this alternative. An FMP/ regulatory amendment such as what is proposed requires several steps in the Council process and through rulemaking and it has been estimated that December 2024 would be the earliest timeframe for which implementation of the regulations could occur. If a regulatory amendment package was able to be implemented in December 2024, this package could first affect the active participation requirements in the 2025/26 application cycle.

In response to this challenge, the Council amended its Alternative 2, Option 1 to state that the recent participation requirements would restart when the final rule of this package is implemented and that CVC and CPC QS that is revoked in the interim (between 2019 and implementation of final rule) is reissued to those holders.

- **Alternative 2, Option 2 in the Initial Review – “Give the Regional Administrator the authority to suspend the CVC QS and CPC QS recent participation requirement.”**

The intent of the original Alternative 2, Option 2 was to create a process that was more efficient and responsive to extenuating circumstances that may warrant an exemption from the C share active participation requirements. Council clarification of this option in April 2023 provides examples of times when an exemption from the active participation requirements may be warranted, including in years of low BSAI crab quota where few vessels fish or due to other unforeseen circumstances (e.g., a pandemic) and request the analysis include potential criteria that the Council could select to guide future decisions by the RA to suspend the C share recent participation requirements.

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

The Council considered the additional information provided in the Initial Review Analysis on the specific criteria the RA could use to define years in which the active participation requirements would apply. Based on the guidance received, the Council modified this option into Alternative 2 Option 2 in the current analysis, which includes the consideration of specific TAC thresholds for the BBR, BSS, WBT, and EBT fisheries combined.

- **Additional concept explored in the Initial Review - “Not revoking any CVC or CPC QS associated with a closed fishery.”**

The Initial Review Draft analysis pointed out that if an individual holds C share QS in one fishery that is open and C share QS in a fishery that is closed and has failed to meet the active participation requirements four years in a row, the regulations state, “...the RA will revoke **all** CVC QS and CPC QS held by an individual who has not met the participation requirements set forth in §680.40(m)” (emphasis added; §680.43). This essentially applies a rule of, “if a C share holder can participate anywhere, they must participate.” Therefore, under current regulations a C share holder can have C share QS revoked in a closed fishery.

The Initial Review Analysis highlighted that the Council could consider applying severability to closed fishery C share QS to lower this standard, such that an individual with shares in multiple fisheries who fails to meet participation requirements may have their QS revoked except the QS in fisheries affected by closures. This would still require participation in open fisheries, but without penalizing C share QS in closed fisheries. This concept was not moved forward into an alternative. However, if the Council adopts

Alternative 3 and removes the active participation requirements this would be a moot point. If the Council adopts Alternative 2 Option 2 and identifies a combined TAC thresholds under which active participation requirements would not count, this situation will likely occur more infrequently.

## 2.5. Additional Regulation Changes Recommended by NMFS

NMFS recommends the following regulatory changes for clarity, effectiveness, and enforceability should the Council proceed with Alternative 1 or 2 and retain active participation requirements for C shares. The first regulatory recommendation includes changing the exception to active participation requirements for a closed CR fishery and clarification on how this exception applies if a person holds CVC or CPC QS in more than one CR fishery. In addition, NMFS recommends amending the language at §680.40(g)(2)(i) and (m)(2)(i) to clarify that active participation in a CR Program fishery would be demonstrated through participation on a crab fishing trip, and not a delivery of CR Program crab without participating in the fishing trip. These changes align with the intent as prescribed in Amendment 31.

- **C share QS holders associated with only closed fisheries**

Current regulations have narrow language that provides an exemption from active participation requirements in the case of a closed fishery. Regulations at §680.40(g)(2)(i) and (m)(2)(i) state, “If the individual holds C share QS in a single CR crab fishery and that CR crab fishery is closed to fishing for an entire crab fishing year, NMFS will exclude that crab fishing year when determining whether the individual has satisfied this participation requirement.” However, a C share holder may hold QS in more than a *single* fishery, and it may be the case that both/all of those fisheries are closed to directed fishing in a year. Under a strict letter-of-the-law interpretation this regulation may not provide an exemption from the active participation requirements, despite fitting the spirit and intent of the regulation. The current practice is to exempt C share holders who *only* hold C share QS in closed CR Program fisheries, in fitting with the assumed intent. However, this nuanced point could be clarified in regulations. How this regulation is applied is important as it affects annual allocations, IFQ withholdings, and revocations determinations for C share QS holders.

**Therefore, NMFS recommends a regulatory change clarifying that C share holders are exempt from active participation requirements for closed CR crab fisher(ies), by broadening the regulation to: “if the individual holds C share QS in one or more CR crab fishery(-ies) and all CR fisheries are closed to fishing for an entire fishing year for which the C share holder holds QS in, NMFS will exclude that crab fishing year when determining whether the individual has satisfied this participation requirement ”.** An individual with C share QS in multiple CR crab fisheries must satisfy the participation requirement for any open CR crab fisheries for which they hold C share QS in, unless all of those fisheries are closed.

This clarification would remain aligned with the intent of exemption and current management. This is explained in a hypothetical scenario in Figure 2-1 where C share holders have QS portfolios in BBR, BSS, and SMB fisheries. If QS was reissued and active participation requirements were restarted for the 2025/26 season, this would apply to all C share holders.

For C share holder 1 (who holds only BBR C share QS) when this fishery is closed for a specified crab fishing year that year will be excluded when determining active participation requirements have been met as is currently conducted.

C share holder 2 holds C share QS in BBR/BSS/SMB and is inactive from 2025/26–2029/30. The BSS fishery was closed for the 2026/27 and 2027/28 crab year, while BBR remained open from 2025/26–2029/30, and the SMB fishery continues to remain closed. This individual was not an active participant in 1 of the 3 fisheries that were opened for which they hold QS in. Therefore, this individual’s IFQ would be withheld in 2028/29 and revoked in 2029/30 due to not meeting active participation requirements.

C share holder 3 holds C share QS in BBR/BBS/SMB, is inactive from 2025/26–2029/30. In this different hypothetical scenario all 3 fisheries for which the C share holder holds QS in are closed. These years would be excluded when determining active participation requirements for this QS holder due to all fisheries being closed for which the individual holds QS in.

- **Active participation requirements for C Share holders**

Active participation requirements for annual allocation, withholding, or revocation for C share holders who were not initial recipients of C shares QS, requires that a C share holder must participate as crew in at least one delivery of crab in any CR fishery over a three-year period preceding annual allocation issuance, withholding, and revocation determination of QS. Whereby regulations at §680.2 define “Crew” as any individual, other than fisheries observers, working on a vessel that is engaged in fishing.

The current regulatory language focuses the demonstration of participation around the *delivery* of crab, but does not clearly state the C share holder would need to participate in a crab fishing trip prior to this delivery. Thus, these regulations could be interpreted to allow a C share holder to meet the active participation requirements by participation as crew during a delivery of crab while remaining in port and not actively participating in a fishing trip prior to the delivery. The term “Fishing Trip” is defined at §680.2 as the beginning period of when harvesting of crab has commenced and ending when any processed or unprocessed crab has been offloaded or transferred from that vessel. Modification of this language to focus on a crab ‘fishing trip’ appears to better align with the intent of the active participation requirements as identified under Amendment 31.

**Therefore, NMFS recommends regulatory changes for the active participation requirements such that a C share holder must participate as crew during at least one fishing trip where a delivery of crab is made in any CR fishery over a three-year period preceding annual allocation issuance, withholding, and revocation determinations of QS.**

Crab year	Amend 31 requirements became effective		Beginning July 1, 2018 RAM may withhold IFQ		Beginning July 1, 2019 RAM may revoke QS		Emergency rule- no IFQ withheld no QS revoked		If final rule become effective Dec '24; QS reissued and requirement restart		Beginning July 1, 2028 RAM may withhold IFQ		Beginning July 1, 2029 RAM may revoke QS		
	no SMB	no SMB	no SMB	no SMB	no SMB	no SMB	no BBR	no BBR	no BBR	no BBR	no BSS	no BSS	no BSS	no BSS	
	no SMB	no SMB	no SMB	no SMB	no SMB	no SMB	no BBR	no BBR	no BBR	no BBR	no BSS	no BSS	no BSS	no BSS	
2015/16	2016/17	2017/18	2018/19	2019/20	2020/21	2021/22	2022/23	2023/24	2024/25	2025/26	2026/27	2027/28	2028/29	2029/30	
BBR C share holder 1	A	A	0	A	0	0	0	0	Exempt; 0	A	0	A	Exempt; 0	A	
BBR/BSS/SMB C share holder 2	A	A	A	A	0	0	0	0	QS revoked; 0	Reissued 0	0	0	IFQ withheld; 0	QS revoked; 0	
										no BBR, BSS, SMB					
BBR/BSS/SMB C share holder 3	A	A	A	A	A	0	0	0	IFQ withheld; 0	0	Exempt; 0	Exempt; 0	Exempt; 0	Exempt; 0	Exempt; 0

**Figure 2-1 Hypothetical C share holder scenarios under additional regulation changes recommended by NMFS**

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



### 3 Regulatory Impact Review

The preparation of an RIR is required under Presidential Executive Order (E.O.) 12866 (58 FR 51735, October 4, 1993) as amended through E.O. 14094, April 6, 2023 (88 FR 21879). The requirements for all regulatory actions specified in E.O. 12866 are summarized in the following Statement from the E.O.:

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

E.O. 12866, as amended by E.O. 14094 requires that the Office of Management and Budget review proposed regulatory programs that are considered to be “significant.” A “significant regulatory action” is one that is likely to:

- Have an annual effect on the economy of \$200 million or more (adjusted every 3 years by the Administrator of OIRA for changes in gross domestic product); or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, territorial, or tribal governments or communities;
- Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
- Raise legal or policy issues for which centralized review would meaningfully further the President’s priorities or the principles set forth in this Executive order, as specifically authorized in a timely manner by the Administrator of OIRA in each case.

#### 3.1. Statutory Authority

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

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

## 3.2. Management of the Crab Fisheries

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

### 3.2.1. Crab Rationalization Management

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

One of the main components of the CR Program was in establishing both harvester QS and PQS, which are revocable privileges that allow the holder to harvest or process a specific percentage of the annual TAC in a CR Program fishery. Approximately 97% of the QS (referred to as “owner QS”) in each program fishery (see Figure 3-1) were initially allocated to the License Limitation Program (LLP) license holders based on their catch histories in the fishery. These owner QS were further allocated as catcher vessel owner (CVO) shares and catcher processor owner (CPO) shares, depending on the type of vessel the history was accrued from.

When the CR Program was under development, many active captains testified for the inclusion of an allocation specifically for captains with history of participation in the BSAI crab fisheries. The remaining 3% of the QS (referred to as “C shares” or “crew QS”) were initially allocated to captains (or crew) holding State of Alaska Commercial Fisheries Entry Commission Interim Use Permits, who met specific historic and recent participation requirements in CR Program fisheries. The C shares were also allocated as either catcher vessel crew (CVC) QS or catcher processor crew (CPC) shares, resulting in four different types of harvester QS.

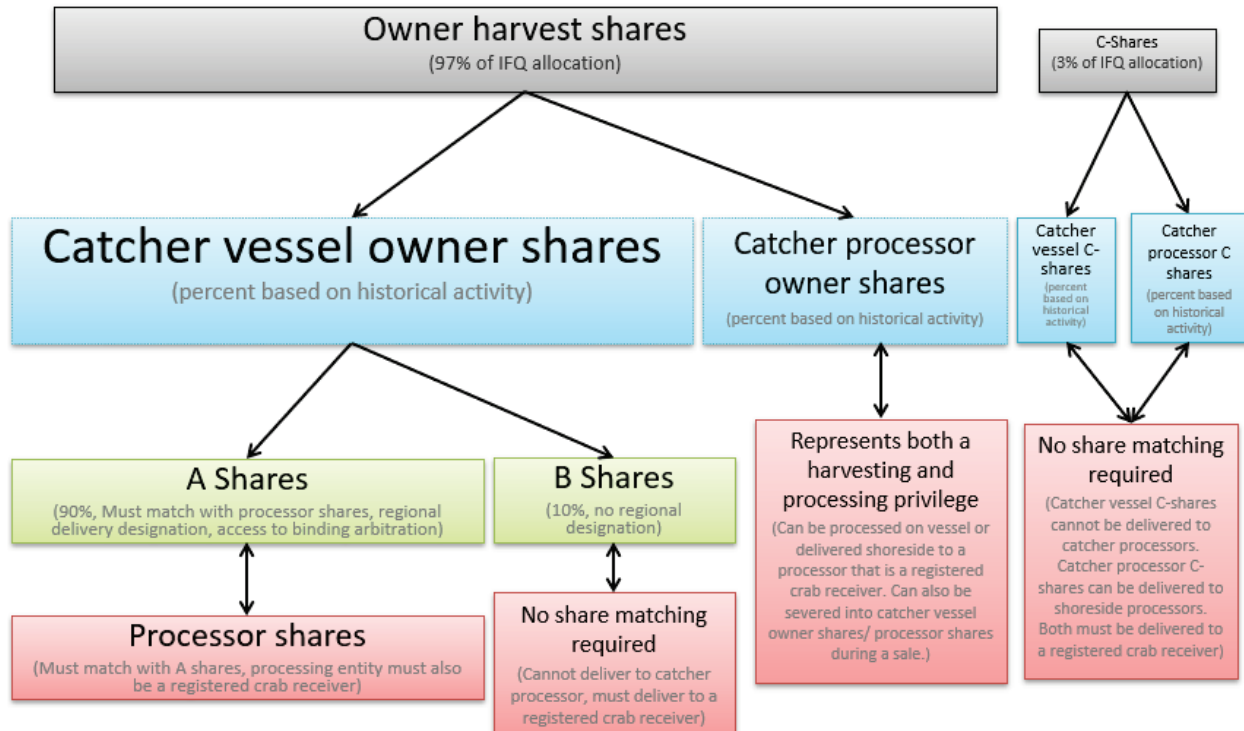
An individual’s QS holdings equates to specific pounds of IFQ which is calculated on an annual basis. The size of each annual IFQ allocation is based on the amount of QS held by a person in relation to the total QS pool in a crab fishery. For example, an individual holding C share QS equaling one percent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

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

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

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



**Figure 3-1 Diagram of quota shares in the CR Program**

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

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

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

Individual use caps are imposed on the use and holdings of harvest shares by any person in order to prevent excessive consolidation of shares under the program. Different caps apply to owner share holdings and C share holdings (see Table 3-1). Individual use caps vary across program fisheries because of different fleet characteristics and the differences in historic dependency of participants on the different fisheries. In addition, any CR Program holdings by CDQ groups, who each represent the interests of one or more BSAI communities, are subject to higher caps. A “grandfather” provision exempted persons who received an initial allocation of QS in excess of the cap.

**Table 3-1 QS use caps for CVO/CPO, CVC/CPC, and CDQ groups**

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

Source: 50 CFR 680.42(a)

The C share use caps are calculated as percent of the initial C share pool, and the C share pool represents 3% of the IFQ allocated in the CR Program. Table 3-2 demonstrates the maximum pounds that would be issued to an individual C share holder, from their C share QS if they held up to the cap. For example, in the 2023/24 year, this would represent 1,162 lb of BBR C share IFQ, 411 lb for EBT, 713 lb for WBT, 20,088 lb for EAG, and 9,774 lb for WAG.

**Table 3-2 CVC/ CPC QS use caps and IFQ use caps for individuals, 2023/24**

Permanent QS Use Caps			2023/2024 Annual IFQ Use Caps
Crab QS Fishery	% of Initial QS Pool for CVC/CPC (QS Units)	CVC/CPC Use Caps (QS Units)	CVC/CPC IFQ Caps (Raw Crab Pounds)
BBR	2% of 12,000,000	240,000	1,162
BSS	2% of 30,000,000	600,000	Undetermined
EBT	2% of 6,000,000	120,000	411
WBT	2% of 6,000,000	120,000	713
PIK	4% of 900,000	36,000	Undetermined
SMB	4% of 900,000	36,000	Undetermined
EAG	20% of 300,000	60,000	20,088
WAG	20% of 1,200,000	240,000	9,774
WAI	20% of 1,800,000	360,000	Undetermined

Source: NMFS RAM, <https://www.fisheries.noaa.gov/sites/default/files/akro/2324ifquotacaps.htm>

### 3.2.2. C Share Requirements Under Amendment 31

When initially establishing C shares, the Council intended that C share benefit ‘at-sea’ participants in the CR Program fisheries. The EIS for the CR Program stated that entry into the crab fisheries could be aided by the 3 percent C share allocation, which in general are required to be fished by the holder of those shares. These shares were expected to sell for a discounted price because of the limitations on their use. In 2008, the Council recommended Amendment 31 to revise the original active participation requirements to

establish more reasonable participation requirements for holders of C shares and new entrants that want to purchase CVC QS, and to ensure that C share holders remain active in the fisheries.

Since Amendment 31 was implemented in 2015 (80 FR 15891, 03/26/2015), each year by June 15, CVC and CPC QS holders submit an Application for Annual Crab IFQ Permit in order to receive IFQ, an exclusive harvest privilege for a portion of the TAC for each CR Program fishery in which the person holds QS. In the application, the CVC QS holder must provide evidence that they meet the participation requirements.

Since June 2018 (three years after implementation of Amendment 31), in order to receive an annual allocation of C share IFQ, the regulations require a C share QS holder to have either:

- (1) participated as crew in at least one delivery in a CR Program fishery in the three crab fishing years preceding the crab fishing year for which the holder is applying for IFQ; or
- (2) if the individual was an initial recipient of C shares, participated as crew in at least 30 days of fishing in a commercial fishery managed by the State of Alaska or a U.S. commercial fishery in Federal waters off Alaska in the three crab fishing years preceding the crab fishing year for which the holder is applying for IFQ (§ 680.40(g)(2)).

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

The regulations include narrow exemptions from these requirements for closed fisheries. As stated in regulations at § 680.40(g)(2)(i), “if the individual holds C share QS in a single CR crab fishery and that CR crab fishery is closed to fishing for an entire crab fishing year, NMFS will exclude that crab fishing year when determining whether the individual has satisfied this participation requirement.” Therefore, for example if a C share holder only holds BBR C shares, active participation has not been counted since the 2020/21 season. However, if a C share holder holds both EBT or WBT C shares (which were open in the 2022/23 season) in addition to C shares from a closed fishery such as BRR, they are still required to meet active participation requirements. Section 3.3.4 demonstrates that most C share holders hold C share QS in multiple fisheries.

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

### **3.2.3. Management Timeline for Crab Fisheries**

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

The EAG and WAG fisheries have traditionally been the first crab fisheries to open, beginning on August 1. The EAG and WAG IFQ/IPQ is issued in August once cost recovery fees have been paid. The SSC/ Council sets the AIG OFL and ABC at the June Council meeting and the State announces TACs shortly

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

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

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

Pounds of crab that are associated with a C share holder's IFQ would be held in reserve by RAM for that holder if they have an appeal pending over their IFQ or QS prior to the time the IFQ is issued. RAM is unable to recalculate and redistribute pounds of IFQ after the crab season opens. Therefore, if an appeals process continues after issuance of IFQ and the C share holder is not able to provide appropriate evidence to their case, this IFQ could be left unharvested. However, if a C share holder is issued a Notice of C Share QS Inactivity for the withholding of IFQ or revocation of QS, they have no evidence to provide, and their appeal is resolved prior to the issuance of IFQ, those pounds of crab may be able to be redistributed to the other C share holders.

To ensure correct issuance of IFQ and IPQ (including the prescribed distribution of Class B IFQ derived from PQS holder affiliations), NMFS does not process any transfers of QS and PQS from the date applications for IFQ and IPQ are due (June 15) until issuance of those IFQ and IPQ (§ 680.41(b)(1)). This

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

means for fisheries that open in October, a C share holder may not have an opportunity to transfer their C share QS after they receive an official Notice of C Share QS Inactivity.

### 3.3. Description of Affected Fisheries

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

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

**BBR** Bristol Bay red king crab

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

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

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

**PIK** Pribilof Islands blue and red king crab

**SMB** Saint Matthew Island blue king crab

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

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

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

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

#### 3.3.1. Fishery Stock Status and TACs

Figure 3-2 demonstrates the years in which CR Program fisheries have been open and the TAC for the years that were open since 2005/06. Not shown in the graphic is the PIK fishery which has been closed since 1999 and the WAI which has been closed since the 2003/04 season. The numeric values in Figure 2 represent the total TAC allocations (in millions of pounds) including both CDQ and IFQ allocations. There were only four of the nine CR Program fisheries open in 2022/23: WAG and EAG as well as EBT and WBT.

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

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

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

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

As demonstrated, the BBR fishery has seen an 87% decline in TAC since the 2007/08 season when it was set at a CR Program peak of 20.38 million lb. The BBR fishery has not been declared to be overfished, however, the ADF&G closed the fishery for the 2021/22 and 2022/23 seasons due to the stock not meeting the thresholds outlined in the state harvest strategy (5 AAC 34.816). This was the first BBR fishery closure since the 1995/96 season. The BBR fishery opened for the 2023/24 season at a TAC of 2.15 million lb where mature female (8.4 million females) and effective spawning biomass (14.5 million lb) thresholds were met in the ADF&G harvest strategy after a 2 year closure. However, overall estimates of stock abundance remain low with minimal recruitment and uncertain future environmental conditions that will limit population growth and increase stock health risk with fishery removals at low population levels (NPFMC 23c, ADF&G 2023). The BBR fishery has traditionally been an important central species for many vessels in the CR Program given the relatively high ex vessel price it yields (Figure 4).

The largest volume of crab is traditionally harvested in the BSS fishery. As a result of the 2021 stock assessment, the Council declared the BSS crab stock overfished on October 19, 2021, and the BSS fishery opened for the 2021/22 season with a sharply reduced TAC. The BSS fishery TAC declined 88% from the 2020/21 season (45 million lb) to 5.6 million lb in the following 2021/22 season. The stock further declined in 2022 and the fishery was subsequently closed by ADF&G for the 2022/23 season. The Council took final action on a preferred alternative rebuilding plan at its February 2023 meeting and the amendment was approved on August 31, 2023. The BSS fishery continues to remain closed for the 2023/24 season due to not meeting the ADF&G harvest strategy threshold for total mature biomass for the second consecutive year. The BSS 2023 stock estimates of legal and commercially preferred males remain at historic lows, while there was a small increase of total male abundance largely driven by small crabs that are several years from recruiting to the fishery (NPFMC 23c, ADF&G 2023).

The Eastern Bering Sea Tanner crab stock has a single ABC and OFL set each year; however, it has been managed in two distinct areas (east and west of 166° W longitude) for TAC-setting purposes since the beginning of the CR Program. The stock is generally cyclical and has gone through cycles of being declared overfished and rebuilt, with fishery closures in 1997 to 2005 and then again between 2010 and 2012. The directed fisheries were both open for the 2013/14 to 2015/16 seasons with a combined TAC of 3.11 million lb in 2013/14, 15.11 million lb in 2014/15, and 19.67 million lb in 2015/16. The total retained catch in 2015/16 (19.64 million lb) was the largest taken in the fishery since 1992/93. In 2016/17, ADF&G determined that mature female biomass did not meet the criteria for opening a fishery according to the regulatory harvest strategy, and the TAC was set at zero. Consequently, there was no directed harvest in 2016/17. In 2017/18 and 2018/19, ADF&G determined that a directed fishery could occur in the area west of 166°W longitude, and 100% of the TAC was taken. In 2019/20, mature male biomass did not meet ADF&G criteria for opening a fishery, and there was no directed fishery harvest. The fishery was open for the 2020/21 and 2021/22 seasons for the area west of 166°W longitude. In 2022/23, both EBT and WBT were opened, for a combined TAC of 2.01 million lb and the 2023/24 were opened for a combined TAC of 2.08 million lb. The WBT and EBT 2023 stock estimates of mature male biomass increased in the west and decreased in the east, while female biomass increased in both areas. The WBT stock showed positive signs of a recruitment event that have not propagated to larger sizes and there remains uncertainty on what may be causing this population bottleneck. Fishery openings for both the WBT and EBT fisheries have historically been episodic with the 2022/23 and 2023/24 seasons being the most recent concurrent openings since 2015/16 (Nichols et al. 2022; NPFMC 23c, ADF&G 2023).

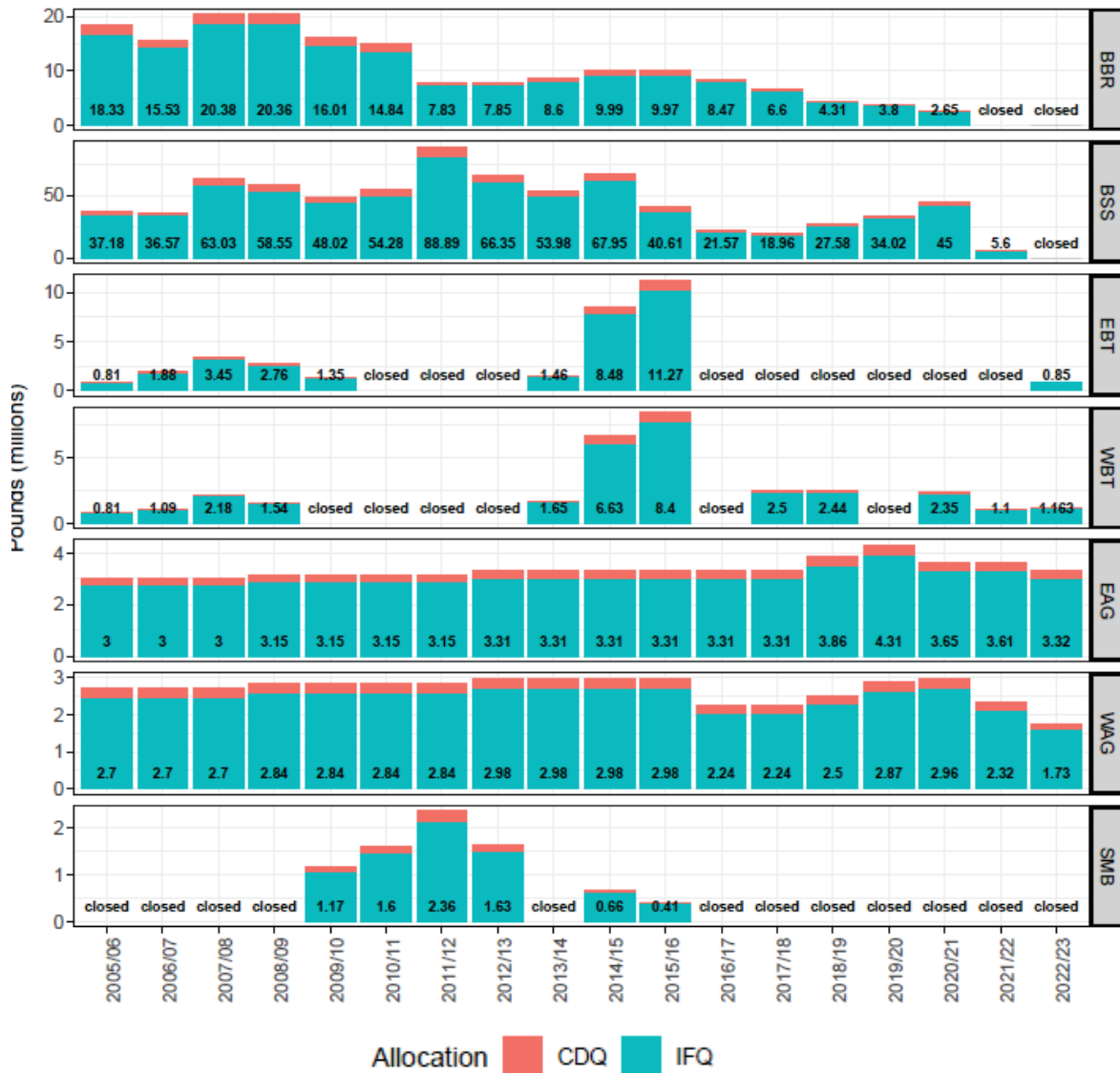
The AIG stock is also managed under one OFL, but with two distinct management areas (east and west of 174° W longitude; EAG and WAG, respectively) for TAC-setting. The WAG and EAG TACs have been relatively stable because, until recently, these fisheries have been managed by the Alaska Board of Fisheries (BOF) under a constant-catch harvest strategy. The BOF intended that the fixed harvest levels in regulation 5 AAC 34.612 would remain stable “until the Aleutian Islands golden king crab stock assessment model and a state regulatory harvest strategy are established”. Establishing a stock assessment for AIG has been challenging as it does not have a fishery-independent bottom trawl survey, thus area-



swept abundance estimates are not available as with other BSAI crab stocks. An AIG stock assessment model was accepted by the Council's Scientific and Statistical Committee (SSC) in October 2016 which is the only crab assessment that relies solely on fishery CPUE as an index of abundance. Since 2019/20, the EAG and WAG TACs have been based on the harvest strategy adopted by the BOF in March 2019, which has led to more variable TACs. The EAG and WAG fishery is the first of the CR fisheries to open during the crab fishing year with a season that occurs from August 1–April 30. For the 2023/24 season EAG opened with a TAC of 3.72 million lb and WAG opened with a TAC of 1.81 million lb.

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

Overall, the BSAI CR crab fisheries are currently in a state of flux with historical and recent closures continuing for a number of fisheries which have been declared overfished or in the process of rebuilding plans (Pribilof Islands blue king crab, SMB, and BSS) and are experiencing variable stock health dynamics impacted by environmental change (BBR, WBT, EBT, and BSS) (Nichols et al. 2022; NPFMC 23c, ADF&G 2023). Of the BSAI CR crab fisheries the WAG and EAG fisheries appear to be the exception which has historically remained stable despite changes occurring in other crab fisheries potentially due to differences in life history and habitat preference for this species (Siddeek et al. 2023).



**Figure 3-2 TAC and management program allocations**

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

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

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

### 3.3.2. Fishery Value and Price

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

During 2021, across all fisheries managed under the BSAI Crab FMP, the total volume of ex-vessel landings was 51 million pounds, a 20% increase from the previous year (Garber-Yonts et al. 2023). Processing sector finished production volume during 2021 was 33 million pounds aggregated over all BSAI crab species and product forms, also increasing 20% from the previous year. Ex-vessel and first-wholesale price records were set across all BSAI crab fisheries that were open to commercial harvest during 2021 (Figure 3-4).<sup>8</sup> The effect of a net increase in production volume across open crab fisheries, combined with changes in market prices, produced an aggregate 36% increase in ex-vessel revenue over all fisheries in 2021, totaling \$297 million for the year, and with aggregate first wholesale revenues increasing by 31% to \$372 million. This is despite the closure of the BBR fishery in the 2021/22 season.

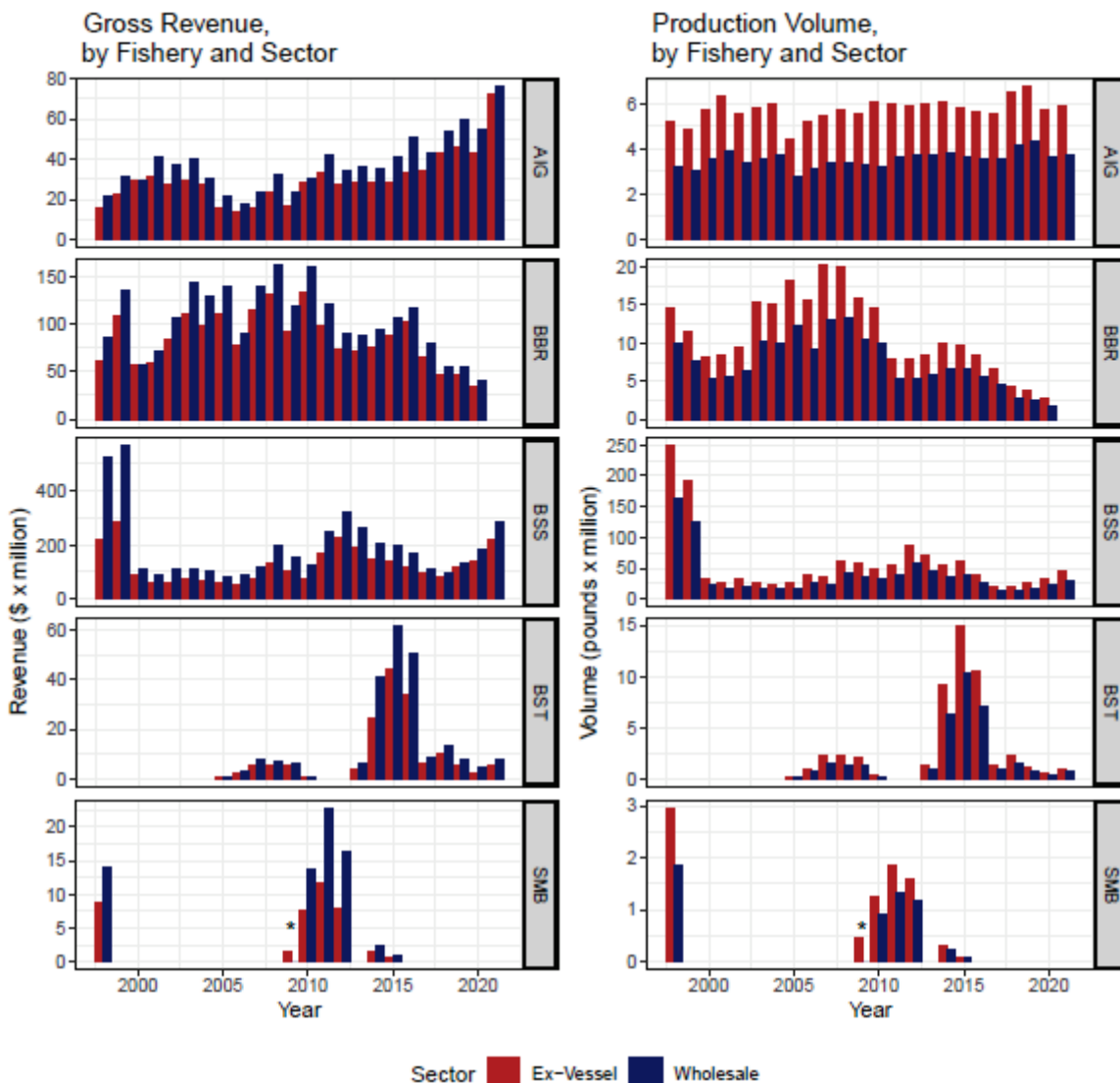
However, Figure 3-3 does not capture the substantial decline in value or volume of harvested crab from 2022 or 2023,<sup>9</sup> which would include impacts from the joint closures of the BBR and BSS fisheries in the 2022/23 season. As the total volume and value for the BBR and BSS commercial fisheries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

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

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

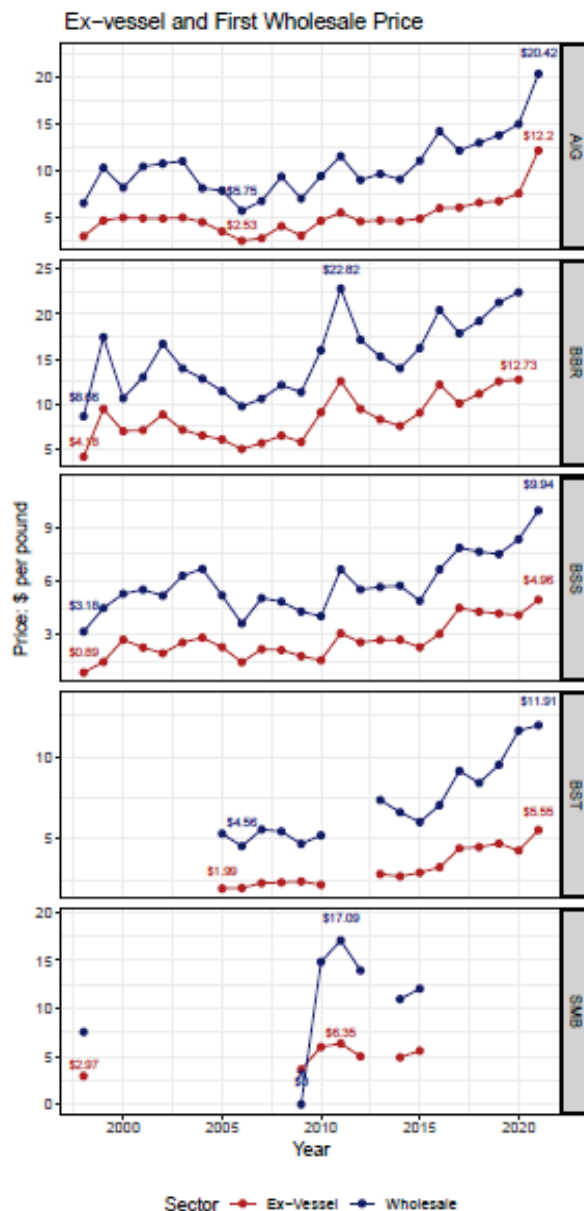
<sup>9</sup> The 2023 value data should be available from ADF&G fish tickets April 2024. Depending on the timeline for analysis, 2022 and 2023 data could be included in an update for future drafts of this analysis.



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

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

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



**Figure 3-4 Ex vessel and first wholesale prices**

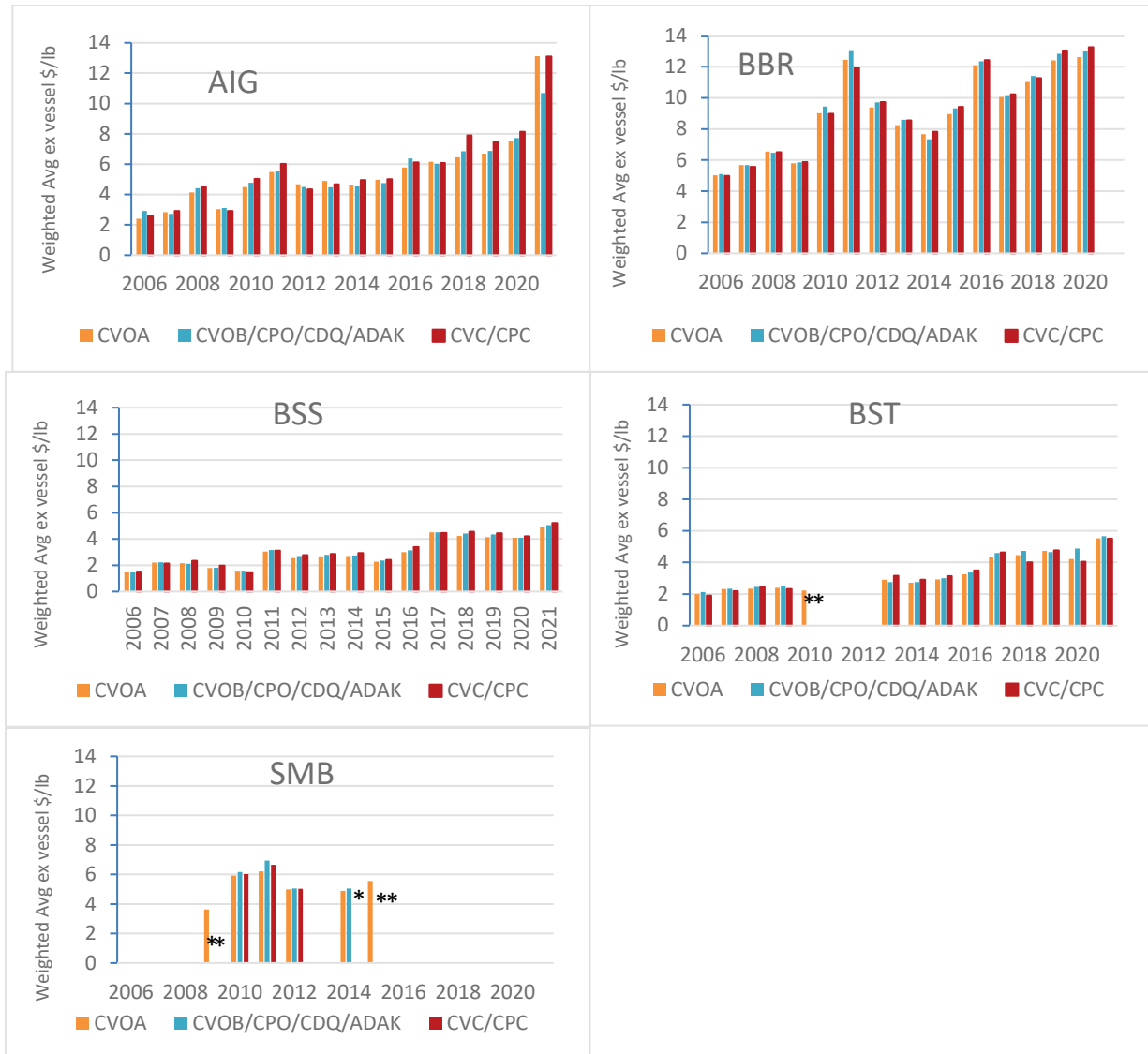
Source: From Figure 3.4 in the Economic SAFE; corresponding with Table 4.4. and 4.6 (Garber-Yonts, et al. 2023)  
 Notes: Data shown by calendar year. Asterisks indicate data were not plotted due to confidentiality. All dollar values are adjusted for inflation to 2021-equivalent value. Note that ex-vessel and first whole prices shown in figure represent weighted mean of values derived from aggregate volume and revenue from calendar year sales reported in crab catcher vessel and processor EDR data. PIK is not included as this fishery has been closed since 1998. WAI is not included as this fishery has been closed since the 2003/04 season.

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

Figure 3-5 demonstrates that subtle price differentials have occurred, most often with C share IFQ and other undesignated types of IFQ (CVO B shares, CPO, CDQ and Adak shares) demonstrating a slight price premium relative to CVO A shares. However, generally, aggregated undesignated types of IFQ ex vessel prices track closely with ex vessel prices received from CVO A shares. Harvesting representatives have reinforced these data, stating that they can sometimes achieve a higher price for their C shares and other undesignated shares, relative to share-matched A shares (J. Jacobsen, 5.5.2023, personal communication). However, this depends on a number of factors such as market conditions and how the harvesting cooperative intends to use their undesignated shares. For instance, undesignated IFQ can be available to round out a delivery if a vessel has a small overage relative to its available A share IFQ. Cooperatives also have more flexibility in aggregating and landing undesignated IFQ remaining at the end of the season, than A share IFQ that is already share-matched. Thus, whether it can generate a higher price than A share IFQ or not, C shares and other undesignated IFQ plays an important role in the efficiency of the harvesting sector.

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



**Figure 3-5 Weighted average ex vessel price (\$/lb) by QS type and fishery**

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

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

### 3.3.3. Vessels and Crew

Table 3-3 demonstrates the number of total active vessels participating in each CR Program fishery. There has been a slow but distinct downward trend in the number of participating vessels since rationalization, but a stark drop from the 2020/21 season to the most recent 2022/23 season. In the 2020/21 season, the BBR, BSS, WBT, EBT, EAG, and WAG fisheries were prosecuted by an active fleet of 65 catcher vessels and two catcher processors. In the 2021/22 season, with the closure of the BRR fishery, the remaining fisheries were prosecuted by 46 catcher vessels and two catcher processors. In the 2022/23 season, with the joint closure of the BRR and BSS fisheries, the four remaining CR fisheries were prosecuted by 22 catcher vessels. In recent years, 1-2 catcher processors have operated in each of the

BBR, BSS, and BST fisheries, with one catcher processor in the WAG fishery in 2012; all other vessels have delivered shoreside.

**Table 3-3 Number of active vessels, 2005/06- 2022/23**

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

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

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

Crab catcher vessels typically employ 5-7 crew members, with 6 being the most common in the BBR, BSS and BST crab fisheries. The AIG fisheries typically employ 7 crew members per vessel (Table 4.13; Garber-Yonts, et al. 2023). Table 3-4 demonstrates the total number of crew positions across fisheries. In this table each crew position in a fishery is counted as a unique position, although when BBR, BSS, and BST fisheries are open many crew members participate in more than one of these fisheries. The percent change column shows the variability that has occurred over time in available crew positions, with a peak in the timeseries presented in 2015 at 1,349 crew positions and 2021 representing less than half of this number (634 positions) due to the closure of the BBR fishery. Again, 2022 and 2023 are not shown, but these years will represent even further reduced crew positions due to the joint closures of the BRR and BSS fisheries.



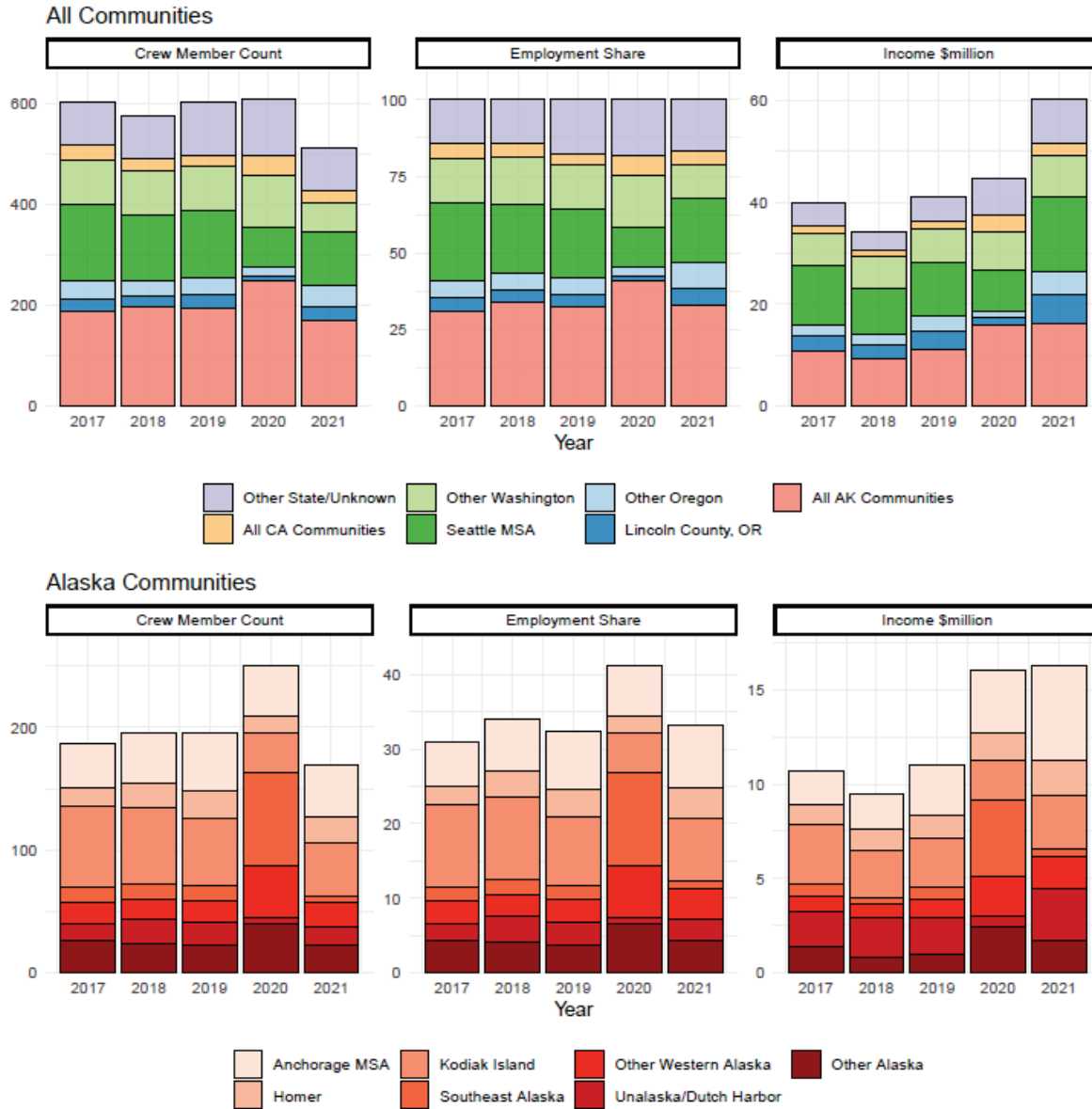
**Table 3-4 Crew positions in the crab harvesting sector**

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

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

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

Figure 3-6 provides a geographical representation of the crew that have been employed and income generated in the CR Program fisheries, from 2017 through 2021. This information is important in understanding recent community connections to the CR fisheries, as well as the distributional impacts that have occurred from closed crab fisheries and the proposed actions. Figure 6 includes counts of individual crew members (including captains) by location of residence, the share (percentage) of total employment attributable to each location of residence, and the estimated amount of crew income flowing to communities/locations. The bottom figures demonstrate geographic distribution for Alaska residents in greater detail. Over the 2017 to 2021 period, Alaska and Washington have alternated between first and second largest state-level source for crab fishing crew members, with Alaska residents averaging a 34% share of crab crew employment over the period, and Washington state residents averaging 35%.



**Figure 3-6 Estimated crew employment and income, by community/ region of residence**

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

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

### 3.3.4. Quota Share Holders

Table 3-5 presents trends on the count of C share holders for both CVC and CPC QS by fishery since the CR Program began and Table 3-6 displays characteristics of recent holdings. The BBR, BSS, EBT and WBT C share QS has been consolidated overtime by qualified individuals. For fisheries that have often

been closed during this period (PIK, SMB, and WAI), the count of C share holders has had very little change. The EAG and WAG fisheries have historically been fairly consolidated both in terms of participating vessels and QS holders (hence a higher QS use cap). These fisheries have seen limited change in C share holdings over the demonstrated time period. Across all species in the last four year has seen little change in number of C share holders, although there have been transactions.

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

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

**Table 3-5 Number of total CVC and CPC QS holders, 2005-2022**

	BBR	BSS	EAG	EBT	PIK	SMB	WAG	WAI	WBT	Total
2005	168	146	11		40	70	9	4		205
2006	156	136	11	156	39	69	9	4	156	214
2007	151	134	11	154	39	68	9	4	154	211
2008	144	131	10	149	39	68	8	4	149	206
2009	141	127	11	150	39	68	8	4	150	207
2010	140	125	10	149	39	68	8	4	149	204
2011	140	125	10	149	39	67	8	4	149	203
2012	137	124	10	148	39	66	8	4	148	202
2013	132	124	10	146	40	66	8	4	146	203
2014	128	121	10	143	39	65	9	4	143	204
2015	127	120	9	141	39	64	9	4	141	203
2016	123	117	9	140	39	65	9	4	140	201
2017	111	109	9	125	39	63	9	4	125	175
2018	109	108	9	122	39	63	9	4	122	172
2019	107	103	9	117	39	63	9	4	117	166
2020	103	96	10	112	39	61	8	4	112	164
2021	102	96	10	110	39	60	8	4	110	162
2022	102	95	10	110	39	60	8	4	110	160
2023	102	95	10	110	39	60	8	4	110	160

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

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

**Table 3-6 C shareholdings by QS type for 2023**

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

Source: NMFS Restricted Access Management QS database sourced through AKFIN

Most C share holders holds C share in more than one CR Program fishery. Table 3-7 demonstrates the overlap of holdings for each two fisheries in 2023. For instance, of the 102 individuals that hold BBR C share QS, 82 of them also hold BSS C share QS. Over 40 individuals hold C share QS in 5 CR Program fisheries (Table 3-8), the most common number of fisheries to be diversified in.

**Table 3-7 Count of individuals holding crab CVC and CPC QS by species, 2023**

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

Source: NMFS Restricted Access Management QS database sourced through AKFIN

**Table 3-8 Number of fisheries that owners hold C share QS in, 2023**

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

Source: NMFS Restricted Access Management QS database sourced through AKFIN

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

Table 3-9 provides the community/ state/ regional distribution of C share QS holders as linked with registered address. In paralleling the information in Figure 3-6 that links crew members to their

communities/ regions of residence, this information is important in understanding recent community connections to the CR fisheries, signally another dimension to distributional impacts that have occurred from closed crab fisheries and the proposed actions. Crab C share holders are primarily located in Washington state, with 29 C share QS residing in the Seattle Metropolitan Statistical Area (MSA). In Alaska, Kodiak is the community with the greatest number of C share holders. The number of C share holders in WA and AK have declined since these QS were first issued, while the number of C share holders in OR has remained relatively consistent and the number of holder in other states has increased.

**Table 3-9 Registered address for CVC and CPC QS holders**

Registered address		Individuals	Total
WA	Seattle MSA	29	73
	Edmonds	10	
	Other WA	34	
AK	Anchorage MSA	13	42
	Homer	6	
	Kodiak	18	
	Other AK	5	
All OR		19	19
All other states		26	26
Total			160

Source: NMFS Restricted Access Management QS database sourced through AKFIN

### 3.3.5. C Share Quota Markets

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

Figure 3-7 illustrates the count of QS transfers that have occurred by share type and fishery (top figures) and the volume of QS units transferred (bottom figures; see Table 3.25 and 3.26 in Garber-Yonts et al. 2023). During the first two years of the CR program, sales of CVC QS represented a large proportion of the number of total QS transfers, though representing a small fraction of the total QS transferred. This makes sense given the number of initial recipients of C shares (e.g., 181 in the BBR fishery) relative to the total owner share initial recipients (e.g., 252 in the BBR fishery) and the fact that C shares represented only 3% of all harvesting QS. Many C share holders received a small amount of CVC, which some recipients chose to aggregate by selling or leasing. Subsequently, the number of CVC QS sales has varied in most years between three and 10 in the BBR fishery and two to 14 in the BSS fishery. However, a notable increase in sale activity occurred in 2017/18, with 17 sales in the BBR fishery, (totaling 9% of the CVC share pool), and 26 sales in the BSS fishery (7% of the share pool), and again in 2019/20 with 12 and 24 CVC sales in BBR and BSS, respectively (7% of the respective pools).

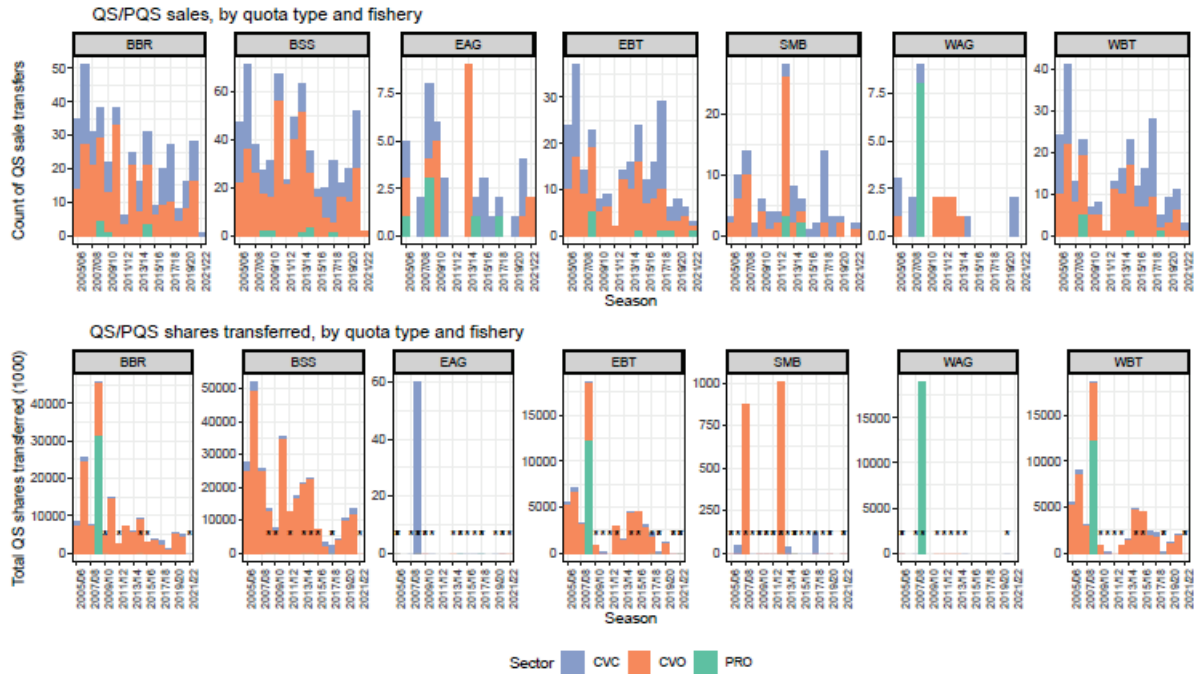


Figure 3.8: QS and PQS sales

**Figure 3-7 QS and PQS sales**

Source: Figure 3.8 in the Economic SAFE (Garber-Yonts, et al. 2023); NMFS Restricted Access Management – Quota transfer data  
Notes: Counts of QS sales are non-confidential, however, number of shares transferred in individual QS sales is confidential information and aggregate QS units sold is suppressed in the figure where fewer than 3 transfers occurred during the reporting year.

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

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

**3.3.6. C Share Active Participation Data**

Since the participation requirements for Crab C share QS holders were implemented in 2015 and started to become constraining on July 1, 2018 (for IFQ withholding) and July 1, 2019 (for revoking C share QS), no CVC or CPC QS had been revoked until 2023/24.

Annually, NMFS reviews documentation submitted in the three or four previous years to evaluate if a specific applicant has met the participation requirements. Documentation of participation is not required to be submitted annually, as participation does not need to be demonstrated every year. In the time period

since 2018, there have been inconsistencies in the annual review of crab crew share recent participation requirements. NMFS electronic records may contain some minor gaps and data anomalies due to inconsistencies in administrative review procedures. As a result, it is possible that a small number of C share holders should have had their annual IFQ withheld or QS revoked in a past year and did not.

In response, NMFS revised the annual procedures for reviewing annual CR Program IFQ/IPQ applications and conducted a thorough review of paper records for the 2023/24 crab fishery year application period that were due June 15, 2023. To aid in this process NMFS requested crew share holders documentation of their most recent participation with their application to ensure that NMFS had the most current data to base decisions on and improve efficiency with application review. Criteria utilized by NMFS that demonstrates meeting the active participation requirement includes affidavit letters and landing information from ADF&G fish tickets. Administration of active participation requirements was particularly burdensome for applicants and RAM in this application period due to efforts to improve administrative workflow and data quality, recent crab fishery closures, and pending QS revocations for the 2023/24 season.

NMFS is required by existing regulations to carry out withholding or revocation actions based on lack of meeting participation requirements. For the 2023/24 season, 27 active participation actions occurred that consisted of 14 participants that applied for annual IFQ and 13 that did not. Of the 14 participants that applied for annual IFQ and did not meet the active participation requirements, 7 IFQ withholdings (will not lose QS this year) and 7 revocations (will lose QS) occurred. The 14 participants that filed a timely application had the opportunity to provide additional qualifying active participation evidence to NMFS during a 30 day evidentiary period, and furthermore are eligible to appeal the agency's during an additional 45 day appeal period explained in Initial Administrative Determination letters sent to affected participants.

Of the remaining 13 participants that did not apply for IFQ by the deadline, 12 are due for revocation of QS, and 1 is a withholding of IFQ. NMFS extended the process for providing for evidentiary and appeal periods related to active participation requirements to these participants as well; however, an additional factor of failure to file an annual application also applies to these individuals.

Overall, for the 2023/24 season 27 out of 168 total C share holders or 16.1% had their QS withheld or revoked for the 2023/24 season.

### **3.4. Analysis of Impacts**

The following is an analysis of impacts for the proposed action, compared to the no action alternative. The types of impacts that are expected include effects on current C share holders, impacts on the C share markets and those seeking to purchase C share QS, and impacts on monitoring and enforcement of active participation requirements. These sections also consider the proposed action in terms of the policy objective for C shares as well as highlighting the application of how each action alternative may be implemented.

In addition to these areas of potential impacts, the proposed action could affect communities associated with C share holders as well as communities associated with active captains and crew that are potential buyers of C shares. These community/ regional connections are displayed in Table 3-9 for C share holders and Figure 3-6 for captains and crew. The proposed action may affect the existing C share holders and the markets for C shares in the ways described below under the analysis of each alternative. This could have community impacts in terms of local spending (induced regional impacts) from revenue generated from landing C share IFQ crab or leasing C share IFQ. These impacts are expected to be minimal, especially in the case of larger metropolitan areas where local spending is influenced by many other factors. Additionally, the impacts described below are expected to be felt unevenly across C share holders depending on their status as active crew and the future opportunities in the fisheries. As highlighted in



Section 3.3.3 and 3.3.4, the majority of C share holders and captains and crew are from Seattle MSA in Washington, Kodiak and Anchorage, Alaska with many other communities in Alaska, Washington, Oregon represented, as well as other states.

None of the proposed actions are expected to affect the conservation of the resource. The fishing methods and footprint of the fishery are not expected to be impacted by the proposed action.

### **3.4.1. Alternative 1, No Action**

Under the no action alternative, regulations for C share would remain as they are described in Section 3.2.2, which require a demonstration of active participation in order to retain crab C shares. In order to receive an annual allocation of C share IFQ, the regulations require a C share QS holder to have either participated as crew in at least one delivery in a CR Program fishery in the three crab fishing years preceding the crab fishing year for which the holder is applying for IFQ or if they are an initial issue, they could also have participated as crew in at least 30 days of fishing in a commercial fishery managed by the of State of Alaska or a U.S. commercial fishery in Federal waters off Alaska in the three preceding crab fishing years. If a C share holder does not receive their annual allocation of IFQ, they may pursue a crew position in that year in order to demonstrate participation (they do not have to fish their own IFQ to demonstrate participation) or consider transferring their C share QS to an individual that qualifies for a transfer of C share.

If the C share holder does not meet the participation requirements for four years in a row or transfer their C share QS to an eligible participant, C share QS will be revoked. If QS is revoked, the C share pool is adjusted so the TAC may still be harvested by the remaining C share holders.<sup>11</sup>

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

As described in Section 3.3.6, under status quo, NMFS issued notices to 27 C share QS holders based on the 2023/24 application period. Of these 27 C share QS holders, 14 QS holders submitted an application for annual IFQ and 13 did not apply for annual IFQ. The IFQ resulting from the QS held by the 14 QS holders that did apply for annual IFQ will be held in reserve by NMFS until the resolution of the 30 day evidentiary period and any subsequent appeals that may be filed. Of these 27 C share QS holders, 19 individuals received notices for IFQ withholdings and revocation and 8 individuals received notices for IFQ withholdings.

Under the no action alternative, there would be no reissuance of the C share QS associated with these revocation. The years of participation included in assessment for the 2023/24 and 2024/25 application cycles do include some of the years where the constraints of the COVID-19 pandemic were creating obstacles to active participation. The Council and NMFS recognized participation constraints caused by the pandemic, and issued the emergency order in 2022, but could not do more within its legal authority. Under the no-action Alternative, these revocations would remain and no further mitigation might occur for COVID-19 impacts on participation in the pandemic period.

Based on updated and improved administrative oversight through NMFS RAM, it is expected more individuals than in the recent past will be in a situation of needing to transfer C shares or being delinquent

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<sup>11</sup> Section 3.2.3 describes whether these IFQ pounds can be redistributed to other C share holders *in that year* depends on whether these cases were settled prior to IFQ issuance. RAM must hold pounds in reserves for pending applications and generally does not redistribute IFQ mid-season.

on active participation requirements. As demonstrated with the recent low TACs and current fishery closures (Figure 2), the limited number of vessels that have been participating in recent years (Table 4), and the number of crew positions which has declined even further than the available data demonstrates (Table 5), there is less opportunity for crab C share holders to serve as active crew on vessels.

Moreover, with closed fisheries and low TACs, there is an extremely limited market for selling C shares to qualified individuals. Regulations for the acquisition of C share requires participation as crew in one of the CR Program fisheries in the 365 days prior to the date the transfer application is submitted to NMFS. Currently, this means only captains or crew that were onboard one of the 22 vessels that were active in the 2022/ 23 year (Table 3-3) are eligible to purchase additional C share QS. Some of these individuals may already be at the QS use cap and some may not be interested in purchasing C share QS. Given the low TACs and closed fisheries, there is currently likely to be low expectations for return on investments as well as limited capital available for investments also due to lack of revenue coming from closed crab fisheries and crab fisheries with low TACs. In addition, lenders may be more reluctant to finance C share QS purchases given the uncertainties around crab stock status and the possibility of revocation if active participation requirements are not upheld. The current lack of interested and eligible buyers, when a C share QS holder needs to either transfer their QS for risk of having it QS revoked, could represent a substantial financial loss for C share holders.

If crab stocks improve, fisheries open, and TACs provide more opportunity, C share markets may somewhat stabilize. However, the requirement to demonstrate active participation, even under these stock fluctuations may continue to constrain the value for this type of QS, as well as lenders' willingness to finance these purchases.

Figure 3-8 demonstrates three hypothetical scenarios for C share holders under the status quo regulations. The crab fishing year spans from July 1 through June 30 of the subsequent year. Amendment 31 instituted the current C share active participation requirements effective May 1, 2015. This meant that no C share IFQ would be withheld until July 1, 2018, after a C share holder had failed to demonstrate active participation for three consecutive years. No C share QS would be revoked until July 1, 2019, after a C share holder had failed to demonstrate active participation for four consecutive years. Also notable in this timeline, the 2021/22 BBR fishery season closed for the first time since 1995/96 and the BSS crab fishery had a significantly reduced TAC that year. Both the BBR fishery and BSS fisheries were closed in the 2022/23 season. The emergency rule explained in Section 1.1, took effect for the 2022/23 season so that no IFQ was withheld and no C share QS was revoked in this application cycle. However, the requirements to demonstrate active participation took effect again in the 2023/24 season and the participation in 2022/23 counted toward the 3-year rolling requirement in order to be issued IFQ.

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

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

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

Crab year	Amend 31 requirements became effective		Beginning July 1, 2018 RAM may withhold IFQ		Beginning July 1, 2019 RAM may revoke QS		no BBR	Emergency rule- no IFQ withheld no QS revoked	no BBR	no BSS						
	2015/16	2016/17	2017/18	2018/19	2019/20	2020/21	2021/22	2022/23	2023/24	2024/25	2025/26	2026/27	2027/28	2028/29	2029/30	
C share holder 1	A	A	0	A	0	0	0	0	QS revoked							
C share holder 2	A	A	A	A	A	0	0	0	IFQ withheld; 0	QS revoked						
C share holder 3	A	A	A	A	A	0	0	0	IFQ withheld; A	0	0	0	IFQ withheld; A	0	A	

**Figure 3-8 Hypothetical C share holder scenarios for status quo**

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

### 3.4.2. Effects of Alternative 2, Modify C Share Active Participation Requirements

**Alternative 2** proposes ways to modify the C share active participation requirements to be more responsive to situations when there are diminished opportunities for crew positions in the BSAI CR Program fisheries. Additionally, this alternative considers an option for restarting and reissuing revoked C share QS. The three options listed under **Alternative 2** are not mutually exclusive.

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

**Option 1** would “restart” the recent participation requirement when the final rule of the present action is implemented. It is assumed that “restarting” the requirements means that whatever year the rule is effective, would become the first year in the three-year rolling requirement to demonstrate active participation in order for a C share holder to receive their allocation of IFQ. This is demonstrated through three examples in Figure 9, which are a continuation of the examples in Figure 8. If, for example, a final rule related to this package became effective December 2024, C share QS could subsequently be reissued to previous holders for use in the 2025/26 application season, a process that is further described under Section 3.4.4. Additionally, in the 2025/26 application season, every C share holder would be issued their IFQ regardless of active participation status. Based on this example timeline, no IFQ would be withheld until the 2028/29 season and no C share QS would be revoked until the 2029/30 application cycle.

For example, in Figure 3-9, The C share holder 1 failed to provide evidence of active participation between the 2019/20 - 2022/23 application cycles and had their C share QS revoked in 2023/24. If this proposed action was implemented in December 2025, this individual would have their C shares reissued in time to apply for IFQ in the 2025/26 application cycle. After this time, they would need to demonstrate active participation at least once between 2025/26 and 2027/28, transfer their QS, or risk having their IFQ withheld in the 2028/29 application cycle – unless another exemption under Alternative 2, Option 2 applied.

C share holder 2 has not demonstrated active participation since the 2019/20 crab year. This individual had their IFQ withheld in 2023/24 and revoked in 2024/25. With the implementation of this proposed action, it would be reissued in 2025 in time for the 2025/26 application cycle. No evidence of active participation was provided; thus, their IFQ was withheld in 2028/29 and revoked in 2029/30.

For C share holder 3, this C share holder was able to be active in the 2023/24 season; therefore, their QS was not revoked and there was no need to reissue. However, without the proposed action, the C share holder in example 3 would have had their IFQ withheld in the 2027/28 application cycle. Since Alternative 2, Option 1 “restarts” the requirements for all C share holders when the proposed action is implemented, this means this individual would be issued IFQ in this year.

This action is intended to benefit those C share holders that had their C share QS revoked from the period between 2019 and implementation of this final rule. This option is focused on C share holders that were unable to demonstrate active participation requirements due to the combined impacts of COVID-19 and the unforeseen decline of BSS. Section 3.3.6 identifies 19 individuals that this may apply to for the 2023/24 season, including 7 individuals that applied for IFQ in this year and 12 individuals that did not. While the Initial Review analysis considered an alternative to “restart the recent participation requirement beginning in 2023/24 fishing years. Do not count 2019/20, 2020/21 2021/22 toward the recent participation requirement.” The timeframe required to implement this option proved impractical. Therefore the Council is considering reissuing C share QS that was revoked in the interim period prior to any regulatory action and restarting the active participation requirement once the new regulations are in place.

In terms of C share market impacts, with the consideration of Alternative 2 Option 1, some individuals may choose not to transfer their C share QS in anticipation of reissuance. Additionally, the flexibility of

having the active participation requirements “restart” could also delay when a current C share holder may choose to sell their C share QS. Depending on the status of future crab stocks, if this option is implemented and participation requirements are restarted, it may provide an opportunity for the C share market to stabilize prior to C share holders needing to sell.

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

Crab year	Amend 31 requirements became effective			Beginning July 1, 2018 RAM may withhold IFQ		Beginning July 1, 2019 RAM may revoke QS		Emergency rule- no IFQ withheld no QS revoked		If final rule become effective Dec '24; QS reissued and requirement restart.			Beginning July 1, 2028 RAM may withhold IFQ		Beginning July 1, 2029 RAM may revoke QS
	2015/16	2016/17	2017/18	2018/19	2019/20	2020/21	2021/22	2022/23	2023/24	2024/25	2025/26	2026/27	2027/28	2028/29	2029/30
C share holder 1	A	A	0	A	0	0	0	0	QS revoked		Reissued; A	0	A	A	0
C share holder 2	A	A	A	A	A	0	0	0	IFQ withheld; 0	QS revoked	Reissued; 0	0	0	IFQ withheld; 0	QS revoked
C share holder 3	A	A	A	A	A	0	0	0	IFQ withheld; A	0	0	0	A	0	A

**Figure 3-9 Hypothetical C share holder scenarios under Alt 2, Option 1**

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

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

**Option 2** of **Alternative 2** would define a TAC threshold that is intended to represent substantially diminished crew opportunities, under which the NMFS RA would be authorized to suspend the C share QS active participation requirements. Specifically, NMFS would not count years when a C share holder does not provide evidence of participation if the combined BBR, BSS, WBT and EBT TAC is below a certain threshold. The analysis evaluates sub-options of 25 Mlb, 15 Mlb, and 10 Mlb as a threshold.

#### Application of Option 2

Under Alternative 2, Option 2, an annual process would be initiated in which the RA would use a combined TAC threshold to identify whether *all* C share holders<sup>12</sup> would be exempt from the active participation requirements in a year. If this threshold is met, in the application cycle for the following year, RAM would issue all C share IFQ regardless of whether active participation evidence was provided for that application or not. If a C share holder *did* provide evidence of active participation in this year it *would* be counted, as it may ensure that their IFQ is not withheld in a future year where the active participation requirements were reinstated. This would be similar to the process that occurred for emergency action in 2022/23.

The combination of Alternative 2, Options 1 and 2 are illustrated using the hypothetical C share holder history in Figure 3-10. The C share holder activity is unchanged from Figure 3-9. In this hypothetical scenario, in both 2024/25 and 2025/26, the combined TACs for BBR, BSS, EBT and WBT are lower than the threshold identified, therefore no C share IFQ is withheld and no C share QS is revoked in the subsequent application cycles (2025/26 and 2026/27, respectively). However, in Figure 3-10 the proposed rule is hypothetically implemented in December 2024 and therefore Option 1 would restart the 3-year rolling requirement to demonstrate active participation at the 2024/25 application cycle. Therefore, no C share IFQ would be withheld until the 2028/29 application cycle and no C share QS would be revoked until 2029/30 after the proposed action is passed, regardless of their evidence of active participation or if the thresholds are met.

As can be seen in hypothetical scenarios in Figure 3-10, despite the exemption in the 2025/26 and 2026/27 application cycle, C share holder 2 still had their IFQ withheld in 2028/29 and their QS revoked in 2029/30 because the previous years (2027/28 and 2028/29, respectively) did not meet the defined TAC thresholds. If the 2028/29 combined BBR, BSS, EBT, and WBT TAC *had* been lower than the threshold, than in 2029/30 C share holder 2 would have had their IFQ issued and they would have at least one additional season to participate as crew in a CR Program fishery or transfer their C share QS. If the 2029/30 combined TAC was above the threshold and they did not transfer QS or provide evidence of participation, then C share holder 3 would have their C share QS revoked in 2030/31.

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<sup>12</sup> It is assumed if this threshold is met, the Council's Alternative 2, Option 2 is intended to apply to all C share holders, rather than only applying to those who hold to BBR, BSS, WBT and EBT C share QS. The Council may wish to clarify this point in the language of Alternative 2, Option 2.

Crab year	Amend 31 requirements became effective			Beginning July 1, 2018 RAM may withhold IFQ		Beginning July 1, 2019 RAM may revoke QS		Emergency rule- no IFQ withheld no QS revoked		If final rule become effective Dec '24; QS reissued and requirement restart			Beginning July 1, 2028 RAM may withhold IFQ		Beginning July 1, 2029 RAM may revoke QS
	2015/16	2016/17	2017/18	2018/19	2019/20	2020/21	2021/22	2022/23	2023/24	2024/25	2025/26	2026/27	2027/28	2028/29	2029/30
C share holder 1	A	A	0	A	0	0	0	0	QS revoked		Reissued; A	0	A	A	0
C share holder 2	A	A	A	A	A	0	0	0	IFQ withheld; 0	QS revoked	Reissued; 0	0	0	IFQ withheld; 0	QS revoked
C share holder 3	A	A	A	A	A	0	0	0	IFQ withheld; A	0	0	0	A	0	A
Is the combined TAC from the previous year below the threshold?											Yes, 2024/25 TAC lower than threshold. No IFQ withheld no QS revoked	Yes, 2025/26 TAC lower than threshold. No IFQ withheld no QS revoked	No, 2026/27 TAC greater than threshold. Participation evidence required.	No, 2026/27 TAC greater than threshold. Participation evidence required.	No, 2026/27 TAC greater than threshold. Participation evidence required.

Figure 3-10 Hypothetical C share holder scenarios under Alt 2, Option 1 AND Option 2

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



### **C Share Holders that hold exclusively EAG, WAG, SMB, PIK and/or WAI C share QS**

The analysts assume that this BBR, BSS, EBT, and WBT combined TAC threshold under Alternative 2 Option 2, would initiate an active participation exemption for *all* C share holders as described in the hypothetical scenarios. Applying fishery-based exemptions to some C share holders while still enforcing the requirements for the few C share holders that hold C share QS exclusively in other fisheries, would add complexity to the already complex system of monitoring and enforcement.

The implication of having a TAC threshold for C share requirements that only includes a sub-sector of the CR Program fisheries, means that C share holders that have C share QS exclusively in other fisheries (EAG, WAG, SMB, PIK and/or WAI) could receive exemptions to the active participation requirements even when their fisheries are not at a low stock status. In recent years, this has been EAG and WAG, while the SMB, PIK, and WAI fisheries have been closed. Thus, this is more a current consideration for the EAG and WAG C share holders.

Section 3.3.4 demonstrates that this represented 10 C share holders for the EAG fishery and 8 C share holders for the WAG fishery in 2023. Many C share holders have a QS for a portfolio of species and Table 3-6 shows some of this overlap. Of the 10 EAG C share holders, 5 of these individuals also have C share QS in either one or all of the BBR, BSS, WBT, and EBT fisheries. Of the 8 WAG C share holders in 2023, 6 of these individuals also have C share QS in either one or all of the BBR, BSS, WBT, and EBT fisheries. Therefore, if the TAC threshold under Alternative 2 Option 2, applies for *all* C share holder active participation requirements as is assumed, based on 2023 holdings, 7 C share holders that do not hold BBR, BSS, WBT, or EBT could still receive active participation exemptions linked to fisheries they do not hold C share QS for.

It is also possible that in the future, there could be diminished crew opportunity in the EAG and WAG fisheries while the combined TAC for BBR, BSS, WBT and EBT is over the threshold and therefore active participation is still required. However, if those EAG/ WAG C share holders were able to demonstrate active participation among the BBR, BSS, WBT or EBT fisheries this would still count towards achieving their active participation requirements.

The SMB, PIK, and WAI fisheries have been closed in recent years. If a C share holder has C share QS exclusively in one or more of these fisheries, the active participation requirements would already not apply to them. However, it is not expected that the proposed Alternative 2 Option 2 would be problematic for SMB, PIK, and WAI C share holders even if these fisheries opened with a small TAC. This option may provide these C share holders with another opportunity for an exemption for C share active participation requirements if the combined BBR, BSS, WBT and EBT TAC is low. If the combined BBR, BSS, WBT and EBT TAC is higher than the threshold, this could mean these C share holder would have more opportunity to crew on a vessel targeting one of these species, which would count towards their active participation regardless of their QS holdings.

### **Thresholds considered for exemptions**

The initial review analysis provided several alternative types of criteria that could be used as a threshold to identify diminished opportunity for crew positions, in which to relieve the active participation requirements. Other options included thresholds based on:

- individual TAC thresholds,
- combined CR Program TAC thresholds across all fisheries,
- when a fishery that is subject to a rebuilding plan,
- when a threshold minimum number of fisheries are open, or
- when a minimum number of vessels are participating in one or more fishery.

The option of having a threshold based on a minimum number of vessels was explored in more depth in the Initial Review analysis by Council request (NPFMC 2023b). Regardless of whether a minimum vessel threshold was defined individually for fisheries or as an aggregate, the challenge with this option is that C share holders would not know pre-season whether they need to participate to meet the requirements, as they would be unlikely to know what number of vessels will be actively participating in that year. In addition, an active participation exemption that is based off of the number of vessels participating may have the perverse incentive of pressuring cooperative managers to consolidate crab IFQ onto fewer vessels than they otherwise may have, particularly if the fishery(ies) were close to the vessel count thresholds. This could have the impact of further reducing available crew positions among active crew members.

A combined TAC across a subset of fisheries: BBR, BSS, EBT, and WBT in particular, was chosen as a threshold for Option 2 because these fisheries have historically been complementary to one another, and they have historically represented most of the crew opportunities in the CR Program fisheries. Joint participation can offset some of the operating costs and allow for more efficient prosecution of a cooperative's IFQ. There has been substantial vessel overlap in BBR, BSS, WBT, and EBT participation when these fisheries are all open. In the past, the adverse impacts from low TAC or fishery closure for one of these fisheries have been mitigated by the ability to participate in the other fisheries. Therefore, for many participants, the cumulative performance of this group of fisheries can more directly represent opportunity than individual fishery performance. In addition, a participation threshold based off of a combined TAC would provide BBR, BSS, EBT, and WBT C share holder some degree of pre-season notice of whether the threshold was met for the BBR, BSS, EBT, and WBT fisheries as these TACs are typically announced around the same time prior to the fisheries opening.

There are some disadvantages to this type of threshold:

- There would not be preseason notice for the EAG and WAG fisheries, which typically open August 1 with the TAC for BBR, BSS, EBT and WBT typically announced in October. C share holders in these fisheries would need to plan as if active participation requirements will apply or consider transferring their C share QS.
- Even for BBR, BSS, EBT and WBT fisheries there would not be a significant period of notice. If a C share holder had been inactive and ADF&G announced TACs greater than the threshold early October, they may have a harder time finding a crew job at that level of notice. Again, C share holders in these fisheries would need to plan as if active participation requirements will apply or consider transferring their C share QS.
- If BBR and BSS crab fisheries in particular remain close or with low TACs for a number of years, even when stocks recover and TACs increase, the fishery may look different. Vessel consolidation could occur even with TACs above the specified threshold considered. This could make it more difficult for C share holders to find crew jobs.
- Alternative 2 Option 2 increases the complexity for accounting for active participation status. This may make it more difficult for C share holders to keep track of their own records of participation and which years have been exempt, which could affect compliance.
- The increased complexity of Alternative 2 Option 2 would increase the annual administrative burden for NMFS RAM division. The status quo of these active participation requirements have proven challenging (as described in Section 3.3.6) given the frequency of required reporting (i.e., C share holders are not required to update their status every year), the nature of the information provided (i.e., this involves review of affidavits and ADF&G fish tickets), and the individual situations with regards to QS holdings (e.g., consideration of closed fisheries, etc). The proposed action of adding exempted years into the accounting adds to this complexity as also noted in Section 3.4.4. Monitoring and enforcement in the CR Program is a part of Cost Recovery. If the

BBR and BSS fisheries remain closed or at a low level for a long time this alternative is not that dissimilar from Alternative 3, except that it has a higher level of administrative complexity.

### Sub-options for threshold consideration

The sub-options under consideration in Option 2 are 25 Mlb, 15 Mlb, and 10 Mlb. Based on historical TACs for the BBR, BSS, EBT, and WBT fisheries, had the proposed option been in place, no exemptions would have been granted to the active participation requirements 2005/06 – 2020/21, but all of the considered thresholds would have provided exemptions from 2021/22 through 2023/24 (Table 3-9).

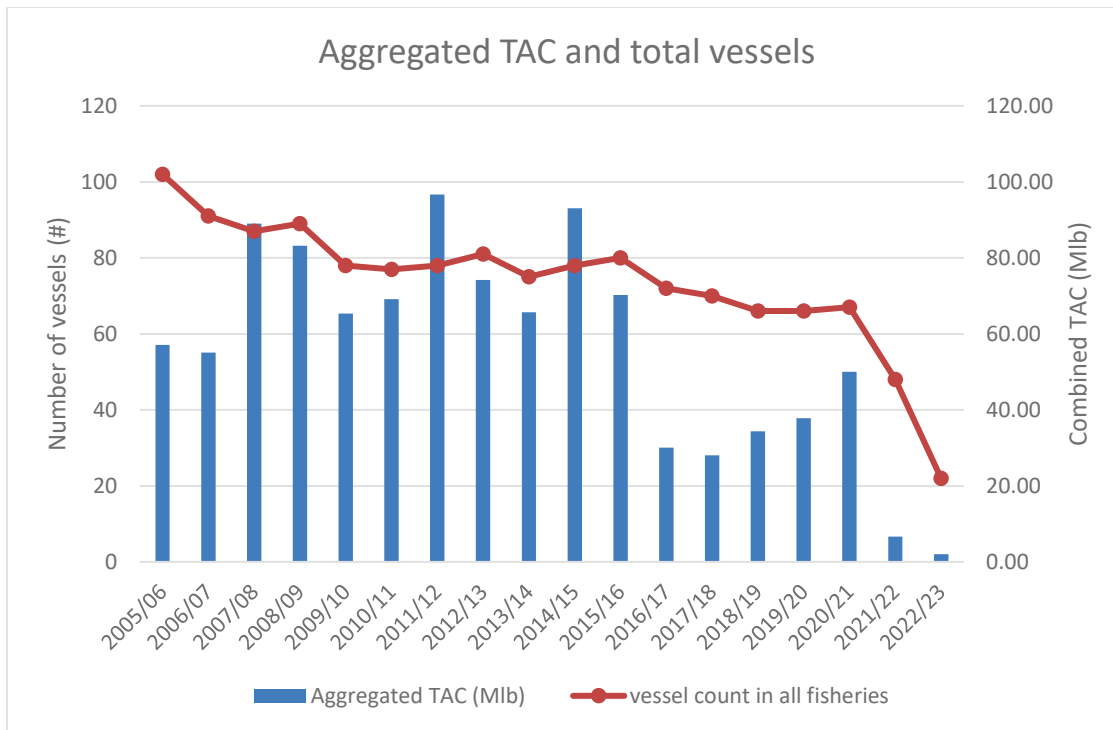
In the two years for which data are available when the TAC was under 25 Mlb (2021/22 – 2022/23), between 22- 48 vessels were active in all CR Program fisheries (Table 3-3). Figure 3-11 illustrates how participating vessel count (including EAG and WAG fisheries) have tracked with the trends in this combined TAC.

**Table 3-10 TAC for BBR, BSS, WBT and EBT and combined TAC relative to the proposed thresholds**

Season	BBR TAC (Mlb)	BSS TAC (Mlb)	WBT TAC (MLB)	EBT TAC (Mlb)	Sum (Mlb)
2005/06	18.33	37.18	1.62	0.00	57.13
2006/07	15.53	36.57	1.09	1.88	55.07
2007/08	20.38	63.03	2.18	3.45	89.04
2008/09	20.36	58.55	1.54	2.76	83.21
2009/10	16.01	48.01	0.00	1.35	65.37
2010/11	14.84	54.28	0.00	0.00	69.12
2011/12	7.83	88.89	0.00	0.00	96.72
2012/13	7.85	66.35	0.00	0.00	74.20
2013/14	8.60	53.98	1.65	1.46	65.69
2014/15	9.99	67.95	6.63	8.48	93.05
2015/16	9.97	40.61	8.40	11.27	70.26
2016/17	8.47	21.57	0.00	0.00	30.04
2017/18	6.60	18.96	2.50	0.00	28.06
2018/19	4.31	27.58	2.44	0.00	34.33
2019/20	3.80	34.00	0.00	0.00	37.80
2020/21	2.65	45.00	2.35	0.00	50.00
2021/22	0.00	5.60	1.10	0.00	6.70
2022/23	0.00	0.00	1.16	0.85	2.01
2023/24	2.15	0.00	1.32	0.76	4.23

Source: Nichols & Shaishnikoff (2022)

Notes: Shaded cell indicates fishery closure. Red text indicates combined TACs that were lower than the proposed thresholds in the sub-options.



**Figure 3-11 Combined TAC for BBR, BSS, WBT and EBT and vessel count in all CR fisheries**

Source: Nichols & Shaishnikoff (2022), vessel counts from ADF&G Fish Tickets, data compiled by AKFIN

Notes: Total vessel count includes vessels that have participated in the EAG and WAG fisheries, however the combined TAC does not include these fisheries.

In terms of market impacts, this option would allow for flexibility in time of closed fisheries and low TACs, which may increase the value for C share QS. In particular, if it was adopted in combination with Alternative 2, Option 1 it may allow for a market for C shares to stabilize prior to C share holders needing to sell. It would not require C share holders to divest when the combined TAC is below the threshold and when demand is likely very limited. However, it would still incentive inactive C share holders to divest when the TAC is above the threshold, when there may be more of a market opportunity for these QS.

In sum, this type of threshold could provide relief from the active participation requirements in years where there is particularly limited crew opportunity, while also continuing to promote the policy stance of making these C share QS available for those who crew on board a CR Program vessel. There are some downsides to using this type of threshold, in particular the complexity that it adds to accounting could both challenge the level of C share holder compliance as well as the time and resources it takes for NMFS RAM division’s monitoring and enforcement.

### 3.4.2.3. Option 3: Expanding What Qualifies as Active Participation

**Option 3** of **Alternative 2** proposes expanding participation requirements for non-initial recipients to match the requirements of initial recipients. In other words, “within the previous three years, participate in a BSAI crab trip OR participate as crew in at least 30 days of fishing in a commercial fishery off Alaska” for all CVC QS and CPC QS. Currently under this provision, recipients of an initial allocation who are employed exclusively in state or federal fisheries outside of the crab fisheries, are not permitted to acquire C share QS, but can maintain eligibility to receive annual C share IFQ allocations for any QS they hold. These provisions were intended to substantially broaden the opportunity of persons formerly engaged in the crab fisheries, which was considered to be a reasonable response to the displacement of persons by fleet contraction that occurred after rationalization.

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

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

The additional flexibility for demonstration of active participation may increase the value of the C share QS and add to the demand, but likely not substantially. Additionally, the flexibility may allow C share holder to hold on to their C share QS longer, rather than choosing to sell.

### **3.4.3. Effects of Alternative 3, Remove C Share Active Participation Requirements**

Alternative 3 proposes removing the active participation requirements for existing CVC and CPC QS holders to receive annual IFQ and retain C share QS. In addition, this alternative would reissue all C share QS that was revoked starting in 2019 until this final rule is implemented. Under this alternative a C share holder would still need to demonstrate active participation by having 150 days of sea time in any U.S. commercial fishery and having participated in at least one crab delivery in a CR fishery in the last 365 days if seeking to receive QS by transfer. Therefore, once an individual has met the eligibility requirements to receive QS by transfer, they will no longer be required to be an onboard participant in the fishery, nor will they need to provide evidence demonstrating their active participation in order to receive annual C share IFQ and retain QS.

#### **The policy focus for C Shares:**

As described in Section 3.2.2, under the original program structure and reinforced through Amendment 31, C share were designed to be available to those who served as active captains and crew in CR Program fisheries. They were also intended to serve as an entry point into ownership in the fishery. When the CR Program was implemented, regulations required the holder of C shares to be onboard the vessel when their C share IFQ was harvested and prohibited holders of C shares from leasing their C share IFQ except in the case of a hardship. However, original regulations also exempted holders of C shares from these two requirements if the holder of C shares joined a crab harvesting cooperative and the holder's C share IFQ was converted to cooperative IFQ.

Amendment 31 modified these requirements. The Council determined that regulations that had intended to keep C share QS holders active in the fisheries were not working due to the exemptions. The Council stated that revisions to the current active participation requirements were necessary to establish reasonable participation requirements for holders of C shares and to ensure that they remain active in the fisheries, while also providing reasonable flexibility for extenuating circumstances (e.g., medical

conditions, military leave, etc.) and with the understanding that not every vessel would be active every year. Concerns were highlighted that the market for C share would be less fluid without active participation requirements. If only active captains and crew would be permitted to hold and receive benefits from C shares, the market for these shares were expected to be more active and fluid.

The analysts note that Amendment 31 did not create the accessible and fluid market for C shares that may have been envisioned. Part of this challenge may have been due to the timeframe under which this action was implemented. Council deliberation on final action occurred in April 2008, the implementation of the final rule occurred March 2015, and the point at which C shares could first be withheld was 2018/19 and first revoked in 2019/20. With emergency action in 2022/23, and subsequent updated and improved monitoring practices it was not until the 2023/24 application cycle when C share QS were first revoked. C share QS transfer activity has been sporadic (Figure 3-7), but there were spikes in the number of transfers in 2017/18 and again in 2019/20. Although transfer data is not yet available for the most recent years, the decline of the BRR and BSS fisheries has likely cut demand for all QS, but in particular C shares which require active participation.

Another aspect of the regulations that may have slowed the market is the opportunity to participate as a ‘ride-along’ crew member, rather than as a captain or working crew member. This is a similar challenge known of active participation requirements in other fisheries (i.e., halibut and sablefish IFQ), in which the full objective of the regulations (encouraging that C share QS is held by captains and crew) may not be met when C share holders are participating as a ride-alongs on a crab fishing trip or even without participating in the fishing trip itself but only delivering crab to the processor as described in Section 2.5. All C share holders at one point worked as either captains or crew on CR Program vessels, but this type of participation creates an opportunity to hold on to C share QS longer than the holder may otherwise, if they have not continued in a position as captain or crew. Aside from the language change proposed in Section 2.5, the distinction between “working crewmember” and “ride-along crewmember” may not be something that could be enforceable through regulations.

Alternative 3 would largely remove the requirement that C share QS must be held by individuals who are actively participating as crew in the CR Program fisheries, and the incentive for individuals to divest their C share QS when no longer actively participating onboard crab vessels. While this may not fit with the current policy focus for this type of harvest privileges described in the CR Program EIS and subsequent Amendment 31, the Council may consider whether working towards this policy continues to be warranted.

Without continued active participation requirements, this type of harvesting privilege becomes more similar to CVO and CPO QS, although it still must be held by an individual (not an LLC, corporation or trust). Additionally, the holders have the flexibility to deliver to any processor without share matching and they are not bound to regional delivery requirements. However, they do not have access to arbitration with these IFQ.

In the Council’s last two sentences of the current purpose and need statement it states, “The Council is also concerned about future diminished opportunities for crew if crab stocks remain low. Action is needed to modify the active participation requirements to provide opportunity for C share holders to receive annual IFQ and retain QS in periods of low crab abundance.” Based on this sentence, it appears the need for modifications to the active participation requirements are focused around periods of low crab abundance. This alternative is not specific to periods of low crab abundance. **Thus, if the Council wishes to recommend this alternative, it may consider revising that last sentence of the purpose and need to focus on the reason for the action, even in the event that crab stocks rebound.**

#### **Market impacts:**

Changing the requirements for active participation could have impacts on the market for C share QS. Depending on the future status of crab stocks, if this option is implemented, it may provide an opportunity

for the C share market to stabilize. On one hand, the lack of participation requirements for a holder after the QS is purchased may increase the value of C shares, as well as enticing additional interest from buyers. An individual could make this investment without also having to commit to long-term participation in the CR Program fisheries. On the other hand, the market for C share will continue to be restricted to those who have participated in the CR Program fisheries in the last 365 days. Therefore, the pool of eligible buyers will inherently be smaller than those that can purchase CVO or CPO shares. Moreover, as described in Section 3.3.4 some current C share holders have reached the use caps for how much C share QS they can hold. This restricted demand could dampen the value relative to CVO or CPO QS.

Additionally, removing the active participation requirements as proposed in Alternative 3 means current C share holders are less likely to try to divest. The design behind the current structure of the requirements, which includes the withholding of IFQ after 3 years without active participation, is intended to provide a signal to the C share holder to choose to be active again or divest their QS.

#### **Administrative complexity:**

Under Alternative 3, NMFS administrative procedures to annually administer IFQ for QS holders would become more efficient, reduce agency costs, and burden due only needing to review QS transfers for eligible participants when they occur. The transfer application review process would still require manual review and judgment by NMFS staff to determine eligibility, however, would be more efficiently administratively due to the reduced volume of applications each year.

#### **3.4.4. Additional Monitoring and Enforcement Considerations**

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

Each action alternative specifies reissuance of revoked CVC and CPC QS starting in 2019 until a final rule is implemented. Revoked QS holders can be grouped into those who have applied recently for IFQ seeking to have their QS reissued and those who have not applied recently for IFQ recently due to opting out of the fishery, being deceased, or other circumstances. Automatic reissuance to all QS holders would create unnecessary administrative burden and increase complexity for those described in the latter group. To minimize administrative impacts with determining reissuance qualifications NMFS would implement the reissuance provision by requiring QS holders to request reissuance on an application form. This could be combined with the next annual QS application cycle after the publication of a final rule to implement this recommendation, as an example, for the 2024/25 season.

Under all action alternatives identified in this analysis, it is important to consider the level of complexity created from additional exemptions and flexibility in the active participation regulations. The more complex the regulations are, and the greater the number and type of individual exemptions, the more challenging these regulations are for the public to comply with and for NMFS to administer. Additionally, modifications to allow for electronic submission of the annual QS application, reissuance application and

automating the review process for these provisions would improve the administrative process for the annual review of this provision. However due to current staffing limitations, and ongoing large scale IT Infrastructure projects, this is unlikely to be a high priority for NMFS in the near future.

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

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

### **3.4.5. Affected Small Entities (Regulatory Flexibility Act Considerations)**

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

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

#### **Identification of Directly Regulated Entities**

The two action alternatives under consideration are fully described in Section 2. These proposed actions would either modify (Alternative 2) or remove (Alternative 3) the requirement to demonstrate continued active participation in order for C share holders to receive annual issuance of IFQ and in order to maintain C share QS. Both action alternatives also consider reissuing all C share QS that has been revoked by NMFS within the period from 2019, through the implementation of this final rule.

These alternatives, as well as the additional options under Alternative 2, would change the federal regulations regarding the active participation requirements for annual allocation, withholding, or revocation for C share QS. In all proposed actions **the directly regulated entities are C share holders**. Under Alternative 2, Option 1 and Alternative 3, C share holders that held CVC or CPC but had it revoked between 2019 and the implementation of the final rule are also included in this count. Therefore, the analysis draws from C share holder data from the beginning of 2023, prior to any revocations.

#### **Count of Small, Directly Regulated Entities**

Under the RFA, businesses that are classified as primarily engaged in commercial fishing are considered small entities if they have combined annual gross receipts not in excess of \$11.0 million for all affiliated



operations worldwide, regardless of the type of fishing operation (81 FR 4469; January 26, 2016). If an individual C share holder has a known affiliations – through a business ownership, vessel ownership or through a cooperative – these thresholds are measured against the small entity threshold based on the total gross revenues of all affiliated parties.

Although all C shares must be held by individuals that can be specifically identified, some C share holders have substantial interests in entities holding vessel owner shares, as well as interests in vessels participating in other fisheries. Since these entities frequently operate under different names, data on gross revenue associated with C share holders and all affiliations is not available at this time. Therefore, all individual entities that hold C shares are believed to be small entities.

Table 3-5 demonstrates the count of C share QS holders overtime. **In 2023, this represented 160 C share holders that are considered to be small entities.**

#### **Impacts to Small, Directly Regulated Entities**

RFA is interested in new regulations that would create a disproportionate adverse impact on entities defined as “small”. In the proposed action, all 160 C share QS holders are considered to be small entities. However, the proposed regulatory changes are all intended to respond to the recent combined impacts of the COVID-19 pandemic and the recent and substantial decline in crab abundance and fishery closures which have substantially reduced opportunities for crew to participate in crab fisheries. The proposed actions also address concerns about future diminished opportunities for crew if crab stocks remain low. Therefore, all proposed actions are intended to provide more flexibility (relative to status quo) for C share holders when there are diminished opportunities for crew positions on CR Program crab vessels. Therefore, this action is expected to benefit C share holders relative to the no action alternative.

#### **3.4.6. Alternatives with Respect to Net Benefit to the Nation**

The Council has not yet identified a PPA at this time. Although both of the action alternatives would have distributional effects on persons holding or interested in holding C shares, neither of these alternatives would noticeably affect production from the CR Program fisheries. As a consequence, choosing either action is not expected to marginally affect the net benefits to the Nation.

## 4 Magnuson-Stevens Act and FMP Considerations

### 4.1. Magnuson-Stevens Act National Standards

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

The Council has not yet identified a PPA at this time. However, this section provides a brief discussion of the two action alternatives with respect to each National Standard.

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

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

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

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

**National Standard 3** — To the extent practicable, an individual stock of fish shall be managed as a unit throughout its range, and interrelated stocks of fish shall be managed as a unit or in close coordination.

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

**National Standard 4** — Conservation and management measures shall not discriminate between residents of different states. If it becomes necessary to allocate or assign fishing privileges among various United States fishermen, such allocation shall be; (A) fair and equitable to all such fishermen, (B) reasonably calculated to promote conservation, and (C) carried out in such a manner that no particular individual, corporation, or other entity acquires an excessive share of such privileges.

*Both Alternative 2 and 3 would treat all participants the same, regardless of their residence.*

*In terms of equitable allocations, C shares were already allocated under the implementation of the CR Program. However, both proposed action alternatives could reissue C share QS to individuals that had their QS revoked during the period from 2019 until the final rule is implemented. This would cover a period of time in which there were abnormally high barriers for participation as crew in the CR Program fisheries, due to the COVID-19 pandemic. The Council and NMFS recognized participation constraints caused by the pandemic, and issued the emergency order in 2022, but could not do more within its legal authority. Under the no-action Alternative, these revocations would remain and no further mitigation might occur for COVID-19 impacts on participation in the pandemic period. Allocation of C shares do not impact conservation measures put in place through the BSAI Crab FMP or the stock assessment and specifications process which determines overfishing limits and acceptable biological catch.*

*The proposed action would not affect the C share use caps, as illustrated in Table 3-2, which are intended to prevent an entity acquiring an excessive share of privileges.*

**National Standard 5** — Conservation and management measures shall, where practicable, consider efficiency in the utilization of fishery resources, except that no such measure shall have economic allocation as its sole purpose.

*The proposed action focuses on the policy choice of whether and how to encourage CR Program C share privileges to reside with active participants, which is a distributional issue. It is not expected that any proposed action would affect the production efficiency in these fisheries.*

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

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

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

*The management action will not duplicate other measures. It is expected to have some impact on costs of management, which will be incurred in implementing these measures.*

**National Standard 8** — Conservation and management measures shall, consistent with the conservation requirements of this Act (including the prevention of overfishing and rebuilding of overfished stocks), take into account the importance of fishery resources to fishing communities by utilizing economic and social data that meet the requirements of National Standard 2, in order to (A) provide for the sustained participation of such communities, and (B) to the extent practicable, minimize adverse economic impacts on such communities.

CR Program captains, crew, and C share holders are connected to communities, particularly in Alaska and the Pacific Northwest. These community/ regional connections are displayed in Table 3-9 for C share holders and Figure 3-6 for captains and crew.

*To the extent the proposed actions allow current C share holders the opportunity to continue to earn revenue from their C share QS or additional captains and crew the opportunity to purchase C share and begin earning revenue, the proposed action could have community impacts in terms of local spending (induced regional impacts) associated with these individuals and this associated revenue. These impacts are expected to be minimal, especially in the case of larger metropolitan areas where regional spending is influenced by many other factors. Overall, it is expected that neither proposed alternative would jeopardize the sustained participation of any community in the fishery.*

**National Standard 9** — Conservation and management measures shall, to the extent practicable, (A) minimize bycatch, and (B) to the extent bycatch cannot be avoided, minimize the mortality of such bycatch.

*Implementing either alternative will have no effect on bycatch.*

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

*Under no action and the proposed Alternative 2, additional individuals may accompany a vessel as 'ride-along' crewmembers in order to meet the active participation requirement. This is an unintended result of the active participation regulations; however extraneous individuals on a vessel may inherently present greater safety considerations. These individuals all have had experience as captain or crew on crab vessel in the past and should understand how to conduct themselves in a safe manner aboard a crab vessel.*

*However, depending on the extent to which this occurs (which is unknown), adopting Alternative 3 may reduce safety risks at sea to a modest degree.*

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

Section 303(a)(9) of the Magnuson-Stevens Act requires that a fishery impact statement be prepared for each FMP or FMP amendment. A fishery impact statement is required to assess, specify, and analyze the likely effects, if any, including the cumulative conservation, economic, and social impacts, of the conservation and management measures on, and possible mitigation measures for (a) participants in the fisheries and fishing communities affected by the plan amendment; (b) participants in the fisheries conducted in adjacent areas under the authority of another Council; and (c) the safety of human life at sea, including whether and to what extent such measures may affect the safety of participants in the fishery.

The RIR prepared for this potential plan amendment constitutes the fishery impact statement. The likely effects of the proposed action are analyzed and described throughout the RIR. The effects on participants in the fisheries and fishing communities are analyzed in Section 3.4. Depending on the extent to which additional individuals accompany crab trip as ‘ride-along’ crewmembers in order to meet the active participation requirement, adopting Alternative 3 may reduce safety risks at sea to a modest degree. Based on the information reported in this section, there is no need to update the Fishery Impact Statement included in the FMP.

The proposed action affects the crab fisheries in the EEZ off Alaska, which are under the jurisdiction of the North Pacific Fishery Management Council. Impacts on participants in fisheries conducted in adjacent areas under the jurisdiction of other regional fishery management councils are not anticipated as a result of this action.

## **4.3. Council’s Ecosystem Vision Statement**

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

### **Ecosystem Approach for the North Pacific Fishery Management Council**

#### **Value Statement**

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

#### **Vision Statement**

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

#### **Implementation Strategy**

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

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

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

## 5 Preparers and Persons Consulted

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