

## **INITIAL/PUBLIC REVIEW DRAFT**

# **Regulatory Impact Review/ Initial Regulatory Flexibility Analysis for Proposed Amendment to the Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs**

# **EXEMPT CUSTOM PROCESSING FROM THE TANNER CRAB INDIVIDUAL PROCESSING QUOTA USE CAPS**

**June 2016**

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**Abstract:** This Regulatory Impact Review/Initial Regulatory Flexibility Analysis analyzes adding Bering Sea Tanner crab to the list of crab fisheries in the Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs (FMP) and Federal regulations for which custom processing arrangements do not count against the IPQ use caps. Due to the consolidation of processors, the few processors available in the Bering Sea region are constrained by IPQ use caps, resulting in more Tanner crab being available for harvest than can be legally processed. This could result in a substantial amount of Tanner crab remaining unharvested. Harvesters, shoreside processors, and communities that participate in these fisheries have limited alternatives to mitigate the resulting negative economic effects. The custom processing exemption would enable fishermen to harvest and deliver Tanner crab to processors able to process that crab.

## List of Acronyms and Abbreviations

'	feet
ADF&G	Alaska Department of Fish and Game
AKFIN	Alaska Fisheries Information Network
BSAI	Bering Sea and Aleutian Islands
CAS	Catch Accounting System
CFR	Code of Federal Regulations
COAR	Commercial Operators Annual Report
Council	North Pacific Fishery Management Council
CP	catcher/processor
CR Program	Crab Rationalization Program
CV	CV
E.O.	Executive Order
EBT	Eastern Bering Sea Tanner crab
EEZ	Exclusive Economic Zone
EIS	Environmental Impact Statement
ESA	Endangered Species Act
FMP	fishery management plan
FONSI	Finding of No Significant Impact
FR	<i>Federal Register</i>
FRFA	Final Regulatory Flexibility Analysis
ft	foot or feet
GHL	guideline harvest level
GOA	Gulf of Alaska
ID	Identification
IFQ	Individual Fishing Quota
IPQ	Individual Processor Quota
IRFA	Initial Regulatory Flexibility Analysis
lb(s)	pound(s)

LLP	license limitation program
LOA	length overall
m	meter or meters
Magnuson-Stevens Act	Magnuson-Stevens Fishery Conservation and Management Act
NAO	NOAA Administrative Order
NEPA	National Environmental Policy Act
NMFS	National Marine Fishery Service
NOAA	National Oceanic and Atmospheric Administration
NPFMC	North Pacific Fishery Management Council
OMB	Office of Management and Budget
PQS	Processor quota share
PSC	prohibited species catch
PPA	Preliminary preferred alternative
PRA	Paperwork Reduction Act
QS	Quota share
RFA	Regulatory Flexibility Act
RIR	Regulatory Impact Review
SAFE	Stock Assessment and Fishery Evaluation
SBA	Small Business Act
Secretary	Secretary of Commerce
TAC	total allowable catch
U.S.	United States
W	West
WBT	Western Bering Sea Tanner crab

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## Executive Summary

This document analyzes the addition of Bering Sea (BS) Tanner crab to the list of crab fisheries in the Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs (FMP) and Federal regulations for which custom processing arrangements do not count against the individual processing quota (IPQ) use caps.

### Purpose and Need

Tanner crab processing facilities have consolidated to the extent that the IPQ use caps are constraining on the ability for the processing sector to process the entire allocation of Tanner crab without exceeding the caps. This then strands the portion of the Tanner crab allocation in excess of the caps from being harvested because sufficient processing facilities relative to the use caps do not exist. In the 2015/2016 Tanner crab season, the gross ex-vessel value for this 10 percent of the Class A IFQ for EBT and WBT crab was estimated at \$3.4 million. Without relief from the restriction, harvesters, processors, and communities would lose the potential benefits from the stranded portion of crab. Management objectives would include providing relief from the processing use caps so that the full Tanner crab allocation could be harvested and processed. (Analyst developed purpose and need statement).

### Alternatives

**Alternative 1.** No Action (Status quo). Existing FMP provisions and regulations would remain and continue to apply EBT and WBT crab that is custom processed to the IPQ use caps.

**Alternative 2.** Add BS Tanner crab to the list of crab fisheries in FMP Chapter 11, section *Clarifications and Expressions of Council Intent*, and § 680.42(b)(7) for which custom processing arrangements do not count against the IPQ use cap.

**Suboption 1:** This custom processing exemption would expire at the end of the [3<sup>rd</sup>, 4<sup>th</sup>, or 5<sup>th</sup>] crab fishing year after the effective date of the regulation. *The new suboption was added to provide the Council the ability to temporarily exempt Tanner crab IPQ use caps for custom processing while also allowing time for a holistic examination of the BSAI crab processing consolidation to determine the long range impacts the proposed exemption (see Section 2.9.2.1).*

## Regulatory Impact Review

### Alternative 1, No Action

Under Alternative 1, custom processing arrangements for BS Tanner crab would continue to count against the 30 percent IPQ use cap. IPQ use caps limit the amount of crab a processor can process in a season to prevent the consolidation of processing activity.

### **Harvesters**

Deliveries to alternative processing facilities would impose a substantial burden and cost on Class A IFQ holders, even though Class A IFQ holders are not responsible for ensuring compliance with IPQ use caps. Transporting EBT or WBT crab to processors outside of the fishing area, such as in Kodiak or Adak, would result in longer trips that would incur increased fuel and operating costs and loss of fishing time. It would also increase the potential for deadloss (death) of crab which becomes increasingly likely the

longer that the crab are held in storage tanks and transported, and which is inconsistent with the Council's conservation objectives for this fishery.

Based on current and past experience with deliveries of Tanner crab and other crab species, stakeholders estimate deadloss to be approximately 5 times greater for delivering in Kodiak than it would be for delivering in the Bering Sea. This is based on the higher deadloss rates for delivering Bristol bay red king crab to Kodiak (approximately 3 times greater) and then taking into account the vulnerability of Tanner crab to extended transit (J. Sullivan, personal communication).

Additionally, stakeholders estimate an additional 6 to 10 days of transit time associated with delivering to Kodiak; which includes an added daily fuel expense of approximately \$2,750 (1100 gallons per day at \$2.50 per gallon) and a daily insurance expense of approximately \$350 (\$50 per crewmember per day at seven crewmembers).

In 2015/2016 Tanner crab season, the gross ex vessel revenue for this 10 percent of the Class A IFQ for EBT and WBT crab was estimated at \$3.4 million, using the 2014 ex-vessel value. Foregone net revenues to the harvesters would be less than this total amount because costs associated with harvesting the IFQ would be avoided. Harvesters would have limited alternatives to mitigate this lost ex-vessel revenue. Harvesters would experience this loss even though harvesters are not subject to the IPQ use caps and are not responsible for ensuring processing operations do not exceed IPQ use caps in accordance with applicable regulations.

## **Processors**

Under the status quo alternative, if there are no unaffiliated processors that are willing to process the remaining 10 percent of Class A IFQ for EBT and WBT crab, harvesters and processors could lose the ex-vessel and first wholesale revenue associated with this 10 percent Class A IFQ. In 2015/2016 Tanner crab season, the gross ex vessel revenue for this 10 percent of the Class A IFQ for EBT and WBT crab was estimated at \$3.4 million, using the 2014 ex-vessel value.

Under the status quo alternative, EBT and WBT IPQ holders who are also operating facilities where Tanner crab are currently processed would lose the potential profit from selling products from the 10 percent Class A IPQ Tanner crab catch. IPQ holders are subject to the IPQ use cap, and IPQ holders are the parties responsible for ensuring processing operations do not cause IPQ use caps to be exceeded in accordance with applicable regulations. The lost gross first wholesale revenue from the 2015/2016 forgone harvest is estimated to be approximately \$4.95 million, using the 2014 first wholesale value and accounting for the ex-vessel value paid to harvesters. Forgone net revenues to the processors would be less than this total amount, because costs associated with crab processing would be avoided.

New processors could receive the Class A IFQ limited under the existing IPQ cap. Entry of new processors capable of processing BS Tanner crab is possible, but barriers to entry exist. Both prior to and since implementation of the CR Program, entry to the processing sector to only operate as a crab processor was very challenging.

There are two potential processing facilities not affiliated with the Maruha-Nichiro Corporation, Trident Seafoods, and Unisea Seafoods, that take other BSAI crab but do not already take Tanner crab. These facilities are assumed to be the facilities that could more easily transition into taking Tanner crab. However, both processors are located some distance from the EBT and WBT grounds in Kodiak and Adak. The location and distance from the fishing grounds of these facilities would have deadloss effects.

One potential avenue for development of new crab processors is to also process groundfish. Processors that also process groundfish are able to keep plants operating for a greater period of time, spreading capital costs across larger scale production. Consequently, entry to the processing sector is affected by a processor's potential to enter groundfish fisheries and secure a portion of that production. However, with groundfish processing fully capitalized, entry opportunities in the crab processing sector are limited.

### **Communities**

Under status quo, no communities would gain additional economic activity and tax revenue from having the 10 percent of Class A IFQ EBT and WBT crab processed in their community. Under the status quo, processors could not further consolidate the processing of Tanner crab due to the use caps.

### **Alternative 2: Custom Processing Use Cap Exemption**

Under Alternative 2, custom processing arrangements for BS Tanner crab would not count against the IPQ use cap. Therefore, with custom processing, there would not be a regulatory limit on the amount of crab a processing facility can process in a season. This would impact harvesters, shoreside processors, and communities that participate in the Tanner crab fisheries.

### **Harvesters**

Under Alternative 2, the custom processing exemption to the IPQ use caps could provide a benefit to IFQ holders, crew, and vessel owners that would otherwise be unable to complete the harvest of EBT and WBT Class A IFQ. Alternative 2 would allow for harvest of most of the EBT and WBT Class A IFQ. Under Alternative 2, all EBT and WBT IPQ crab received under custom processing arrangements at the processing facilities owned by the Maruha-Nichiro Corporation, Trident Seafoods, or Unisea Seafoods would not be counted against the IPQ use cap of the facility or the facility owners. This proposed action would potentially avoid the adverse economic impacts to harvesters created by the lack of adequate processing capacity that would otherwise result if the EBT and WBT crab fisheries could not be fully harvested.

Alternative 2 would allow the consolidation of processing down to a single company or facility. In some cases, harvester operational efficiency could be improved, if processing is consolidated in a location that has access to goods and services that might be desirable during the season. However, harvester operational efficiency could suffer, if a single processor is unable to receive and process landings in a timely manner. Additionally, if processing consolidated to one location, that could affect fishing behavior with respect to where the fishing grounds are and proximity to a processor.

### **Processors**

The extent to which the exemption of custom processing from use caps allows further consolidation in the processing sector depends on whether processors choose to enter custom processing arrangements. The choice to enter those arrangements will depend largely on the benefit to the shareholder arising from using the shares at its own facility or custom processing at a plant unaffiliated with the shareholder. Additionally, the extent of further consolidation of processing activity likely depends on the business decisions that participants make with regard to their participation other fisheries, such as in Bristol Bay red king crab and Bering Sea *opilio*.

Under Alternative 2, there is the potential for further consolidation amongst the processing facilities. With the proposed exemption, there are no regulatory barriers for processing companies to further consolidate processing facilities for Tanner crab. Since EBT and WBT crab are not subject to regionalization or

ROFR, there are no limitations preventing all of the EBT and WBT IPQ crab from being processed by one company at one facility.

Allowing further consolidation in the Tanner crab processing sector may allow increased processor production efficiency. Under the status quo, the cap binds only if custom processing precluded by the cap prevents processor production efficiency gains from being achieved. Processors are unlikely to engage in custom processing under the exemption from the cap, unless they can achieve gains through that consolidation. Further consolidation could also have distributional impacts within the sector.

The likelihood of further consolidation in the Tanner crab fishery processing sector under Alternative 2 is influenced by participants' processing activity in other crab fisheries. None of the current Tanner crab processors only process Tanner crab; all companies and facilities that are active in Tanner crab also process Bristol Bay red king crab and Bering Sea *opilio*. The Bristol Bay red king crab and Bering Sea *opilio* fisheries have also seen consolidation in the processing sector. Crab processing tends to be labor intensive, requiring relatively large crews. The cost of transporting, housing, and provisioning crews to run crab processing lines at a plant can be extensive. Processors that are active in other BSAI crab fisheries may be more likely to maintain their presence in the Tanner crab fisheries to help maintain throughput for the facility.

However, there are other factors, other than processing efficiency, that could influence the extent to which processing would be consolidated under the exemption. Processors must be able to reach an agreement on price of custom processing. In some instances competition within the sector could diminish consolidation, if a processor perceives a benefit from keeping its processing independent. Some processors may wish to attempt to develop new products, which might not be possible (or as advantageous) under custom processing arrangements. Processors may still maintain facilities near harvesting grounds. Maintaining processing facilities near the harvesting grounds may help prevent any deadloss associated with an increase transit time between harvesting grounds and offload. Additionally, having processing facilities close to the fishing grounds can help harvesters maximize their efficiency and prevent the need to spend significant time transiting to and from processing facilities for offload.

The effect of Alternative 2 would differ across processors. Since the exemption is necessary only if a processor would exceed the 30 percent IPQ use cap, a processing company will need to be a large presence in a fishery to benefit from the proposed exemption. Consequently, large processors in a fishery are the primary beneficiaries of this action. Processors that participate in the market where the exemption is being used could be disadvantaged by the exemption. Processors not limited by the cap could find that the exemption constrains their ability to grow, by removing shares from the already limited market. In some instances, small processors that choose to have their shares custom processed could benefit from this action, but that benefit is likely to be relatively small in comparison to the benefits to larger entities that use the exemption to consolidate processing activity beyond the current cap.

## **Communities**

The effects of Alternative 2, on communities and community sustainability are relatively small if minimal further consolidation occurs. Alternative 2 would likely result in an additional BS Tanner crab being delivered to processors at facilities owned by the Maruha-Nichiro Corporation, Trident Seafoods, or Unisea Seafoods in BSAI communities. This would increase economic activity, income generated, and tax revenues in any community that is the recipient of increased processing activity. Therefore, effects of Alternative 2 may be beneficial to communities with processors with EBT and WBT IPQ. However, if facilities further consolidated under this action, companies may suspend crab processing at facilities in particular communities, causing adverse economic impacts. If the effects of Alternative 2 include further



consolidation of the Tanner crab processing sector, this will cause negative impacts on communities that lose Tanner crab processing activity.

The effect of this action on communities will depend on the extent IPQ moves to, away from, or among communities. The potential for the action to result in the movement to or away from communities depends on many factors. This movement among communities would benefit the receiving community and would be a detriment to the community losing the processing activity. Consolidation in communities would only take place to the extent that processing companies can achieve benefits through consolidation.

It is difficult to predict the likelihood of consolidation of Tanner crab processing away from any community in particular because the existing facilities that process Tanner crab also participate in other BSAI crab fisheries, such as Bristol Bay red king and Bering Sea *Opilio* which are large volume fisheries. There are no processing facilities that solely specialize in Tanner crab. Therefore, the effect of a company's decision to suspend Tanner crab processing at a facility depends in part on the extent of other crab processing going on in that facility.

Alternative 2 would have no direct economic effect on any other community because it is not feasible to process the otherwise stranded Class A IFQ in any other community. As noted above, we are not able to predict which specific facility, processor, or community would receive the 10 percent of the EBT and WBT IPQ under this proposed action that would otherwise remain unharvested. Therefore, the economic impacts on a specific community cannot be quantified.

### **Limited Duration Option**

One option the Council may want to consider in conjunction with the proposed action is to limit the duration of the proposed action. Since the implementation of the CR Program in 2005, there has been consolidation amongst the crab processing companies thus reducing the number of processing facilities that are unaffiliated with one another.

The known conditions in the Tanner crab fishery indicate that it is unlikely that a new unaffiliated processor will enter the fishery in the foreseeable future. Other sections of the analysis indicate that it is unlikely that delivering Tanner crab to other unaffiliated processors in Kodiak or Adak would be economically or operationally viable under current and anticipated conditions in the fishery (Section 2.9.1). The Tanner crab fishery has been historically fished concurrently with Bristol Bay red king crab and Bering Sea *opilio* fisheries. The delivery patterns and subsequently the processing of Tanner crab are likely related to the Bristol Bay red king crab and Bering Sea *opilio* fisheries. The analysts assume that processors with PQS would continue to receive IPQ crab at the facilities they own to maximize the throughput of crab and maintain the economic viability of processing operations (e.g., Trident Seafoods would receive Tanner crab in Akutan or Saint Paul, and Unisea would receive IPQ crab at its Unalaska/Dutch Harbor facilities). Therefore, it is reasonable to assume that Tanner crab would continue to be received and processed at multiple facilities in multiple communities.

Nevertheless, the Council could choose to limit the potential risk of additional consolidation by limiting the duration of a Tanner crab custom processing exemption, reviewing processing data prior to the expiration of the exemption, and deciding to maintain, modify, or remove a custom processing exemption at some predetermined future date. A limited duration option would address the immediate need of an exemption for custom processing of Tanner crab IPQ to prevent the stranding of quota, while also providing an opportunity for the Council to examine, on a more holistic approach, the impacts of an exemption on custom processing of Tanner crab IPQ use caps. Providing a temporary exemption of Tanner crab IPQ use caps for custom processing while also allowing time for a holistic examination of the

BSAI crab processor consolidation could be useful in determining the long range impacts of a Tanner crab IPQ use cap exemption for custom processing on the Tanner crab fisheries.

The analysts recommend a minimum of 3 to 5 crab fishing years from the date of implementation for a limited duration exemption. This time frame is likely the minimum amount of time required to observe and assess processing patterns in the fishery, and prepare and develop an analysis and rulemaking necessary to revise, maintain, or remove a custom processing exemption. The analysis suggest that the timeframe be based on crab fishing years so that regulations are effective throughout an entire crab fishing year and do not expire mid-year. For example, if a custom processing exemption were effective on February 1, 2017 and the Council selected a five year duration, the regulation would remain in effective until July 1, 2022 – the end of the 2021/2022 crab fishing year.

### **Management and Enforcement Considerations**

The effects of Alternative 2 on management and enforcement burdens could increase when compared to Alternative 1, status quo. One aspect of exempting custom processing from the Tanner crab IPQ use caps is overseeing these limitations. Exemptions can pose several challenges to managers and enforcement personnel. Correctly applying limits on PQS and IPQ ownership and use requires full knowledge of all indirect holdings of those shares. Ownership of interests in the crab fisheries is often indirect with many persons holding overlapping interests in a variety of different fisheries. These overlapping indirect interests create a complex web that must be fully assessed to ensure compliance with limits on shareholdings. Exempting custom processing from IPQ use caps requires tracking of production at the plant and knowledge of indirect ownership of both shares and plants. These interests in shareholdings and use (which includes ownership of processed products), and processing plants require a multifaceted approach to monitoring use caps in the processing sector. Monitoring of activities and shareholdings in a relatively static environment is extremely challenging; periodic changes in interests of persons, adds to the task of maintaining currency in the monitoring of accounts requiring greater time and staffing investments. Therefore, monitoring and enforcement costs associated with the custom processing exemption to IPQ use caps would likely increase but would not affect management and enforcement associated with the crab fisheries.

### **Net Benefit to the Nation**

Alternative 2 has the potential to have a small positive net benefit for the Nation as compared to Alternative 1 with regard to allowing the full harvest and processing of the Tanner crab TAC. The circumstances that justified the IPQ use caps have changed and the IPQ use caps have unintended consequences with the unforeseen consolidation in processing facility ownership. The constraint was originally justified on economic welfare and distributional grounds, and not by market failure considerations. Therefore, lifting the constraint should relieve a burden on the region's economic activity, and facilitate the overall harvest in this fishery, and, thus, increase the value the Nation receives from the Tanner crab resource. Alternative 2 may result in further consolidation in the Tanner crab processing sector, however, this is difficult to predict due to the interests of existing processing facilities in other BSAI crab fisheries.

# 1 Introduction

This document analyzes the addition of BS Tanner crab to the list of crab fisheries in the FMP and Federal regulations for which custom processing arrangements do not count against the IPQ use caps.

This document is a Regulatory Impact Review/Initial Regulatory Flexibility Analysis (RIR/IRFA). A RIR/IRFA provides the economic benefits and costs of the action alternatives, as well as their distribution (the RIR), and the impacts of the action on directly regulated small entities (the IRFA). This RIR/IRFA addresses the statutory requirements of the Magnuson Stevens Fishery Conservation and Management Act, Presidential Executive Order 12866, and the Regulatory Flexibility Act. An RIR/IRFA is a standard document produced by the Council and NMFS Alaska Region to provide the analytical background for decision-making.

In August 2005, fishing in the BSAI crab fisheries began under the CR Program. The CR Program allocates PQS corresponding to a portion of the harvest QS pool. Under the CR Program, 90 percent of the annual catcher vessel owner harvest share allocation is issued as “Class A” IFQ, which must be delivered to a processor holding unused IPQ.

When the Council recommended the CR Program, it expressed concern about the potential for excessive consolidation of quota share. This concern related to the underlying revocable privilege that allows the holder access to a specific percentage of the TAC: QS and PQS, as well as the temporary consolidation of the resulting annual pounds of IFQ and IPQ. Excessive consolidation could have adverse effects on crab markets, price setting negotiations between harvesters and processors, employment opportunities for harvesting and processing crew, tax revenue to communities in which crab are landed, and other factors. To address this concern, the CR Program limits the amount of QS that a person can hold, the amount of IFQ that a person can use, and the amount of IFQ that can be used onboard a vessel. Similarly, the CR Program limits the amount of PQS that a person can hold, the amount of IPQ that a person can use in one season, and the amount of IPQ that can be processed at a given facility in one season. These limits are commonly referred to as use caps. The IPQ use caps are set at 30 percent, unless an entity was issued more than 30 percent of the PQS pool, in which case the entity was ‘grandfathered’ in above the caps.

At its December 2015 meeting, the Council determined that the unforeseen and recent exit of one processor from Tanner crab processing resulted in a consolidation of processors. As a result of this change in processing operations, the processors currently operating in the Bering Sea region are constrained by IPQ use caps in the Bering Sea (BS) *Chionoecetes bairdi* Tanner crab fisheries. The Tanner crab fisheries include the eastern *C. bairdi* Tanner (EBT) and the Western *C. bairdi* Tanner (WBT), respectively. Based on these conditions, the Council voted to request that NMFS promulgate an emergency rule to temporarily allow a custom processing exemption to the IPQ use caps for the 2015/2016 crab fishing year in the EBT and WBT crab fisheries, respectively.

According to the petition for emergency action submitted to the Council by one of the crab harvesting cooperatives, Inter-Cooperative Exchange (ICE), harvesters had already “share matched” with processors holding available IPQ as required by the regulations, and thus those harvesters reasonably concluded that they would be able to deliver their Class A Tanner crab IFQ under the matched shares. It was only made clear to harvesters after this process was completed that Icicle Seafoods stopped its Tanner crab processing operations and that the only BS processing facilities available for Tanner crab deliveries were constrained by the IPQ use cap. The result is that without the emergency action it would have been likely that 10 percent of the Tanner crab Class A IFQ would have been stranded.

In recommending the emergency rule, the Council recognized that processor consolidation could continue to constrain processors operating in the Tanner crab fisheries after the emergency rule expires. To address this situation, the Council initiated an amendment to the FMP and Federal regulations to add BS Tanner crab to the list of species for which custom processing arrangements do not count against the IPQ use cap.

The Council scheduled initial review for its June 2016 meeting. During the April 2016 meeting, NMFS advised the Council that its current schedule of final action in October or December 2016 does not provide sufficient time for NMFS to complete proposed and final rulemaking to permanently exempt the Tanner crab fisheries from the IPQ use caps for the 2016/2017 Tanner crab fishing season that ends on March 31, 2017. As a result, at the April 2016 meeting, the Council voted to schedule both initial review and final action on permanently exempting the Tanner crab fisheries from IPQ use caps. This schedule may provide an opportunity for, but does not guarantee that, NMFS can complete rulemaking in time to relieve the restriction for the 2016/2017 Tanner crab fishing season.

The analysts have developed the purpose and need (i.e., problem statement and management objectives) and added a suboption for consideration based on the Council developed for the emergency rule, and comments and information received by the public during the development of this analysis. The Council may choose to modify the purpose and need and alternatives as appropriate.

## 2 Regulatory Impact Review

The preparation of an RIR<sup>1</sup> is required under Presidential Executive Order (E.O.) 12866 (58 FR 51735: October 4, 1993). The requirements for all regulatory actions specified in E.O. 12866 are summarized in the following Statement from the E.O.:

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

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

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

### 2.1 Statutory Authority

Under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) (16 USC 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 and fishery management plan 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 BS Tanner crab fishery in the EEZ off Alaska is managed under the FMP. The proposed action under consideration would amend this FMP and Federal regulations at 50 CFR 680. Actions taken to amend FMPs or implement other regulations governing these fisheries must meet the requirements of Federal law and regulations.

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<sup>1</sup>The proposed action has no potential to effect individually or cumulatively on the human environment. The only effects of the action are economic, as analyzed in this RIR/IRFA. As such, it is categorically excluded from the need to prepare an Environmental Assessment.

## 2.2 Purpose and Need

Tanner crab processing facilities have consolidated to the extent that the IPQ use caps are constraining on the ability for the processing sector to process the entire allocation of Tanner crab without exceeding the caps. This then strands the portion of the Tanner crab allocation in excess of the caps from being harvested because sufficient processing facilities relative to the use caps do not exist. In the 2015/2016 Tanner crab season, the gross ex-vessel revenue for this 10 percent of the Class A IFQ for EBT and WBT crab was estimated at \$3.4 million. Without relief from the restriction, harvesters, processors, and communities would lose the potential benefits from the stranded portion of crab. Management objectives would include providing relief from the processing use caps so that the full Tanner crab allocation could be harvested and processed. (Analyst developed purpose and need statement).

## 2.3 Description of Alternatives

**Alternative 1.** No Action (Status quo). Existing FMP provisions and regulations would remain and continue to apply EBT and WBT crab that is custom processed to the IPQ use caps.

**Alternative 2.** Add BS Tanner crab to the list of crab fisheries in FMP Chapter 11, section *Clarifications and Expressions of Council Intent*, and § 680.42(b)(7) for which custom processing arrangements do not count against the IPQ use cap.

**Suboption 1:** This custom processing exemption would expire at the end of the [3<sup>rd</sup>, 4<sup>th</sup>, or 5<sup>th</sup>] crab fishing year after the effective date of the regulation. *The new suboption was added to provide the Council the ability to temporarily exempt Tanner crab IPQ use caps for custom processing while also allowing time for a holistic examination of the BSAI crab processing consolidation to determine the long range impacts the proposed exemption (see Section 2.9.2.1).*

This alternative would modify the FMP and Federal regulations by adding the BS Tanner crab fishery to the list of crab fisheries already exempt from custom processing arrangements. Amendment 27 to the FMP and § 680.42(b)(7) already exempt IPQ crab that are processed under a custom processing arrangement from a person's IPQ use cap for six crab fisheries. In these six crab fisheries, NMFS does not apply any IPQ used at a facility through a custom processing arrangement against the IPQ use cap of the owners of that facility if there is no affiliation between the person whose IPQ crab is processed at that facility and the IPQ holders who own the facility. Affiliation is defined in § 680.2 and generally uses a 10 percent ownership or control benchmark. The existing 30 percent processor use cap for affiliated processors holding IPQ that is processed at their own facility would remain in effect.

Under this alternative, FMP Chapter 11, section *Clarifications and Expressions of Council Intent*, would be amended. Proposed FMP revisions (**in bold**) are as follows—

### 2. Ownership/use cap distinction

\* \* \*

#### Custom Processing Cap Exemption

##### Fisheries and Regions:

Custom processing will be exempt from use caps in the following regions and fisheries:

North region of the Bering Sea C. opilio fishery;

Western Aleutian Islands golden king crab fishery West designated or Undesignated shares processed in the West region;

Western Aleutian Islands red king crab fishery;

Eastern Aleutian Islands golden king crab fishery;

St. Matthew Island blue king crab fishery;  
Pribilof Islands red and blue king crab fishery;  
**Eastern Bering Sea Tanner crab fishery; and**  
**Western Bering Sea Tanner crab fishery.**

If the Council selected the suboption under Alternative 2, the FMP would specify the date that this exemption would expire corresponding to the end of the applicable crab fishing year after the regulation was implemented (e.g., June 30, 2019).

Under this alternative, Federal regulations would be amended to add EBT and WBT IPQ crab to the existing § 680.42(b)(7). Proposed regulatory revisions (**in bold**) are as follows—

§ 680.42(b)(7) Any IPQ crab that is received by an RCR will not be considered use of IPQ by an IPQ holder who has a 10 percent or greater direct or indirect ownership interest in the shoreside crab processor or stationary floating crab processor where that IPQ crab is processed under § 680.7(a)(7) or paragraph (a)(8) of this section if:

(i) That RCR is not affiliated with an IPQ holder who has a 10 percent or greater direct or indirect ownership interest in the shoreside crab processor or stationary floating crab processor where that IPQ crab is processed; and

(ii) The following conditions apply:

(A) The IPQ crab is:

(1) BSS IPQ crab with a North region designation;

(2) EAG IPQ crab;

(3) **EBT IPQ crab;**

(4) PIK IPQ crab;

(5) SMB IPQ crab;

(6) WAG IPQ crab provided that IPQ crab is processed west of 174 degrees west longitude; or

(7) WAI IPQ crab; and **or**

(8) **WBT IPQ crab;** and

\* \* \* \* \*

If the Council selected the suboption, the regulations would specify the date that this exemption would expire corresponding to the end of the applicable crab fishing year after the regulation was implemented (e.g., June 30, 2019).

### **2.3.1 Other Alternative considered but not included**

At its December 2015 meeting, the Council considered alternative ways to provide relief from the IPQ use caps. The suite of potential approaches considered by the Council during the emergency rule review, have been reviewed by the analysts. The issues identified and reasons for not including these alternative approaches continue to be applicable to this purpose and need. Alternative approaches considered included having NMFS convert stranded Tanner crab Class A IFQ into Tanner crab Class B IFQ. Class B IFQ does not accrue to the IPQ use caps when processed and can be delivered to any crab processor without the need for matching IPQ. While this alternative would have provided relief from the IPQ use caps for the 2015/2016 crab fishing year under the emergency rule, harvesters expressed concerns over the impacts this conversion would have on the price harvesters would be paid for delivering Tanner crab Class B IFQ. Class B IFQ is not subject to the CR Program's specific price negotiation provisions under the arbitration system, and therefore harvesters could potentially not receive the same price for the Tanner crab harvested with Class B IFQ as they would have received for the Tanner crab harvested with Class A IFQ. Adjusting the arbitration system regulations to accommodate Class B IFQ would increase the level of complexity in the proposed action and could require a significant amount of time to adjust the

regulations given the complex nature of the price negotiations and relationships developed under the current regulations. For these reasons, the Council did not include converting stranded Tanner crab Class A IFQ into Tanner crab Class B IFQ for further consideration.

In addition, some members of the public have advocated that NMFS adjust the IPQ use caps in the Tanner crab fishery so that the caps are set at a high enough amount (e.g., 35%) so that all of the IPQ Tanner crab could be processed in existing facilities. This alternative approach would be inconsistent with the purpose and need for this action, the process of IPQ cap management applied to all other CR Program fisheries, and would appear to achieve the same short-term result as the custom processing exemption proposed in this action. The analysts recommend that if the Council wishes to consider modifying IPQ use caps, it does so in full consideration of the other CR Program fisheries to ensure that modifying IPQ use caps is considered more holistically. That type of review is outside of the scope identified for this action.

## 2.4 Methodology for analysis of impacts

The evaluation of impacts in this analysis is designed to meet the requirement of E.O. 12866, which dictates that an RIR evaluate the costs and benefits of the alternatives, to include both quantifiable and qualitative considerations. Additionally, the analysis should provide information for decision makers “to maximize net benefits (including potential economic, environment, public health and safety, and other advantages; distributive impacts; and equity), unless a statute requires another regulatory approach.” The costs and benefits of this action with respect to these attributes are described in the sections that follow, comparing the No Action Alternative 1 with the action alternatives. The analyst then provides a qualitative assessment of the net benefit to the Nation of each alternative, compared to no action.

This analysis was prepared using data primarily from—

- **eLandings**, the Interagency Electronic Reporting System for reporting commercial fishery landings in Alaska. eLandings is used to report landings and/or production data for groundfish, IFQ/CDQ halibut and sablefish, IFQ/CDQ crab, and Community of Adak golden king crab. This system is a collaborative effort of the Alaska Department of Fish and Game, the International Pacific Halibut Commission, and NMFS.
- **NMFS official record for PQS holdings and, IPQ issuance, and IPQ use caps.** Reports from the NMFS official record are available on the NMFS Alaska Region web page at [https://alaskafisheries.noaa.gov/permits-licenses?field\\_fishery\\_pm\\_value=BSAI+Crab](https://alaskafisheries.noaa.gov/permits-licenses?field_fishery_pm_value=BSAI+Crab).
- **Commercial Operators Annual Reports (COAR)** that collect harvest and production information broken out by specific criteria such as gear type, area, delivery and product type, and pounds and value. COARs are annually filed by any person or company who received a Fisheries Business License from the Alaska Department of Revenue and an ADF&G Intent to Operate Permit, domestic motherships or catcher processors with a current federal permit issued from NMFS, and any first purchaser or processor of a fishery resource harvested in Alaska state waters or the surrounding Federal waters. COAR information is used to calculate the ex-vessel values and first wholesale values.

Information from these sources represents the best available information for describing the Tanner crab fishery and participants.



## 2.5 Description of Fisheries

This section describes the relevant existing conditions in the BS Tanner crab fisheries. The section begins with a brief description of the management of the fisheries under the CR Program, with a focus on the IPQ use caps and custom processing, followed by description of the harvesting and processing sectors in the fishery, and information on communities that are currently involved in the Tanner crab fisheries that could be affected by this action.

### 2.5.1 Management of the Crab Fisheries

Nine BSAI crab fisheries are managed under the CR Program, which was implemented on March 2, 2005 (70 FR 10174). Under the CR Program, holders of License Limitation Program (LLP) licenses endorsed for a crab fishery were issued QS, which are long term shares, based on their qualifying harvest histories in that crab fishery. As part of the CR Program, NMFS issued four types of QS: catcher vessel owner (CVO) QS was assigned to holders of LLP licenses who delivered their catch onshore or to stationary floating crab processors; catcher/processor vessel owner QS was assigned to LLP holders that harvested and processed their catch at sea; captains and crew onboard catcher/processor vessels were issued catcher/processor crew QS; and captains and crew onboard catcher vessels were issued catcher vessel crew (CVC) QS. Each year, a person who holds QS may receive an exclusive harvest privilege for a portion of the annual TAC, called IFQ. The size of each annual IFQ allocation is based on the amount of QS held in relation to the QS pool in the fishery. For example, a person holding 1 percent of the QS pool would receive IFQ to harvest 1 percent of the annual TAC in the fishery.

NMFS also issued PQS under the CR Program. PQS are long term shares issued to processors. Each year, PQS yields annual IPQ which represent a privilege to receive a certain amount of crab harvested with Class A IFQ. Only a portion of the QS issued yields IFQ that is required to be delivered to a processor with IPQ. QS derived from deliveries made by catcher vessel owners (i.e., CVO QS) is subject to designation as either Class A IFQ or Class B IFQ. Ninety percent of the IFQ derived from CVO QS is designated as Class A IFQ, and the remaining 10 percent of the IFQ is designated as Class B IFQ. Class A IFQ must be matched and delivered to a processor with IPQ. Class B IFQ is not required to be delivered to a specific processor with IPQ. Each year there is a one-to-one match of the total pounds of Class A IFQ with the total pounds of IPQ issued in each crab fishery.

By design, the CR Program is very complex and contains many novel provisions to address issues unique to the BSAI crab fisheries. For this proposed action, the important unique provisions are PQS/IPQ, custom processing arrangements, and the arbitration system (including “share matching”). These provisions were implemented because of the costs and logistical issues associated with processing crab in remote communities in the BS region and the need to maintain regional processing capacity balanced with economic viability for harvesters and processors. These novel provisions and the challenges with harvesting and processing crab in the BSAI that they were designed to address, are detailed in the Environmental Impact Statement (EIS, NMFS 2004) prepared for the CR Program. The Council and NMFS have also modified these provisions over time through various FMP amendments. Additional information on the CR Program and links to the EIS and all subsequent analyses prepared for the CR Program are available on the NMFS Alaska Region Web site.<sup>2</sup>

### 2.5.2 General Background on IPQ Use Caps and Custom Processing

When the Council recommended the CR Program, it expressed concern about the potential for excessive consolidation of PQS, and the resulting annual IPQ. In the RIR developed for the CR Program, it was

<sup>2</sup> <https://alaskafisheries.noaa.gov/fisheries/bsai-crab-rationalization>

noted that “custom processing could create an opportunity for persons to buy crab processing rights without having a plant to actually process crab. These processing share owners could then be allowed to “lease” the rights to process crab to processors with the physical capacity to do so through a custom processing arrangement.” To address this concern, the CR Program limits the amount of PQS that a person can hold, the amount of IPQ that a person can use, and the amount of IPQ that can be processed at a given facility.

The CR Program is designed to minimize the potential that PQS and IPQ use caps could be evaded through the use of corporate affiliations or other legal relationships that would effectively allow a single person to use PQS or IPQ even if they are not the majority owner of that PQS or IPQ. In each of the nine BSAI crab fisheries under the CR Program, a person is limited to holding no more than 30 percent of the PQS initially issued in the fishery and using no more than the amount of IPQ resulting from 30 percent of the initially issued PQS in a given fishery with a limited exemption for persons initially receiving more than 30 percent of the initially issued PQS. However, no person in the EBT or WBT crab fisheries initially received more than 30 percent of the initially issued PQS in these fisheries. Therefore, the limited exemption to exceed 30 percent of the IPQ use cap does not apply to the EBT and WBT crab fisheries in this proposed action.

The CR Program calculates a person’s IPQ use cap by summing the total amount of IPQ that is 1) held by that person, 2) held by other persons who are affiliated with that person through common ownership or control, and 3) any IPQ crab that is custom processed at a facility an IPQ holder owns, with exemptions for specific crab fisheries (see § 680.7(a)(7) and § 680.42(b)(3)). The CR Program calculates the amount of IPQ used at a facility by adding all of the IPQ used by any person, whether custom processed or not, at a facility. The term “affiliation” is defined in regulations at § 680.2, as a relationship between two or more entities in which one directly or indirectly owns or controls a 10 percent or greater interest in, or otherwise controls, both. An entity may be an individual, corporation, association, partnership, joint-stock company, trust, or other type of legal entity.

The amount of IPQ that a person can use may include IPQ crab that are processed under a “custom processing” arrangement. A custom processing arrangement exists when one IPQ holder 1) has a contract with the owners of a processing facility to have his crab processed at that facility, 2) that IPQ holder does not have an ownership interest in the processing facility, and 3) that IPQ holder is not otherwise affiliated with the owners of that crab processing facility. In custom processing arrangements, the IPQ holder contracts with a facility operator to have the IPQ crab processed according to his specifications. Custom processing arrangements typically occur when an IPQ holder does not own an onshore processing facility or cannot economically operate a stationary floating crab processor.

#### **2.5.2.1 Exemptions from the IPQ use caps**

Shortly after implementation of the CR Program, the Council submitted and NMFS approved Amendment 27 to the FMP (74 FR 25449, May 28, 2009, NMFS 2008). The 2006 reauthorization of the Magnuson-Stevens Act included a provision to exempt custom processing in the North region of the Bering Sea *C. opilio* fishery from processing use caps established under the CR Program. Amendment 27 implemented the exemption for *C. opilio* and extended the exemption to the a few other fisheries in addition to *C. opilio* in the North region. Amendment 27 was designed to improve operational efficiencies in crab fisheries with historically low total allowable catches or that occur in more remote regions by exempting certain IPQ crab processed under a custom processing arrangement from applying against the IPQ use cap of the owner of the facility at which IPQ crab are custom processed. Under regulations that implemented Amendment 27 to the FMP, § 680.42(b)(7) exempts IPQ crab processed under a custom processing arrangement from applying to a person’s IPQ use cap in six specific BSAI crab fisheries.

Section 680.42(b)(7)(ii)(A) lists the six BSAI crab fisheries for which the custom processing exemption applies:

- North region of the BS *C. opilio*
- Western AI golden king crab
- Western AI red king crab
- Eastern AI golden king crab
- St. Matthew Island blue king crab, and
- Pribilof Islands red and blue king crab.

The six fisheries were given the exemption because during development of Amendment 27, participants in some of the crab fisheries expressed concerns about the economic viability of their fishing operations and proposed IPQ use cap exemptions for custom processing arrangement similar to those congressionally mandated for the north region BS *C. opilio* fishery. Specifically, participants in crab fisheries with historically low TAC allocations or active in crab fisheries in more remote geographic regions argued that exempting IPQ crab processed under custom processing arrangements from the IPQ use caps for the owners of facilities could improve their operational efficiency. The specific exemptions implemented under Amendment 27 do not apply to IPQ crab processed under custom processing arrangements in the EBT and WBT Tanner crab fisheries.

As explained in the proposed rule for Amendment 27, the Council did not recommend exempting IPQ crab processed under a custom processing arrangement from applying against the IPQ use cap of a facility owner for all crab fisheries. Specifically, IPQ crab that are custom processed at a facility would continue to apply to the use cap of IPQ holders who have a 10 percent or greater direct or indirect ownership interest in the facility when those crab are custom processed in the Bristol Bay red king crab fishery, Bering Sea *C. opilio* crab fishery with a South Region designation, Eastern Bering Sea *C. bairdi* crab fishery, Western Bering Sea *C. bairdi* crab fishery, and Western Aleutian Islands golden king crab fishery if those IPQ crab were processed east of 174° W. long.

The Council's rationale for not providing a custom processing exemption from the IPQ use caps for these fisheries follows. First, Bristol Bay red king crab is assigned a relatively large TAC; 97.3 percent of the IPQ is designated for the South Region, and the Council did not judge that additional opportunities for consolidation were needed to facilitate economically efficient operations among the multiple processors in the South Region. Due to the limited TAC assigned in the North Region, processors could easily consolidate processing operations at a single facility. Second, Bering Sea *C. opilio* crab with a South Region designation also is assigned a relatively large TAC, and the ability to deliver to multiple processors in the South Region reduces the need to exempt custom processing arrangements from the use cap calculation. The Council did not judge that it needed to encourage additional consolidation in the processing operations for this fishery to encourage economically efficient processing. Third, Bering Sea *C. bairdi* crab are not subject to regionalization and therefore the need to exempt custom processing arrangements from the IPQ use cap does not appear necessary because crab can be effectively delivered to any processor with matching IPQ in any location. Fourth, as explained above, exempting Western Aleutian Island golden king crab custom processed east of 174° W. long. is not necessary given the multiple delivery locations available to harvesters delivering east of 174° W. long. Section 2.6.1 provides more details on why Amendment 27 did not apply to the EBT and WBT crab fisheries.

For the six BSAI crab fisheries noted above, the IPQ crab processed under a custom processing arrangement are not included in the calculation for determining the amount of IPQ crab that is used by an IPQ holder or processed at a facility if the person whose IPQ crab is processed does not have a 10 percent

or greater ownership interest in the processing facility. The exemption effectively removes the IPQ use cap so that more than 30 percent of the IPQ could be processed at a facility if there is no affiliation between the person whose IPQ crab is being processed at that facility and the IPQ holders who owns the facility. A person who holds IPQ and who owns a processing facility is credited only with the amount of IPQ crab used by that person, or any affiliates of that person, when calculating IPQ use caps. In sum, Amendment 27 allows processing facility owners who also hold IPQ to be able to use their facility to establish custom processing arrangements with other IPQ holders to process more crab at their facilities than would otherwise be allowed under the IPQ use caps, thereby improving throughput and providing a more economically viable processing facility.

Section 680.42(b)(7)(ii)(B) exempts IPQ crab under custom processing arrangements in the six BSAI crab fisheries described above provided that the facility at which the IPQ crab are custom processed meet specific requirements. For these six BSAI crab fisheries, IPQ crab that are custom processed do not count against the IPQ use cap of persons owning the facility if the facility is in a home rule, first class, or second class city in the State of Alaska on the effective date of regulations implementing Amendment 27 (June 27, 2009) and is either a 1) shoreside crab processor, or 2) a stationary floating crab processor that is moored within a harbor at a dock, docking facility, or other permanent mooring buoy, with specific provisions applicable to the City of Atka. Additional information on the limitations on the facilities to which the custom processing facility requirements apply is found in the preamble to the final rule implementing Amendment 27 (74 FR 25449, May 28, 2009).

Regulations implementing Amendment 27 also provided specific exemptions that modify IPQ use cap calculations for IPQ crab subject to right-of-first-refusal (ROFR) requirements. The ROFR provisions provide certain communities with an option to purchase PQS or IPQ that would otherwise be used outside of the community holding the ROFR.

Amendment 27 established a custom processing exemption (at § 680.42(b)(7)(ii)(C)) for crab PQS that is, or was, subject to ROFR so long as the quota is transferred from the initial recipient and then custom processed in the community to which the current or former quota applies by an RCR that was not the initial recipient of the PQS. This exemption would apply to any fishery with PQS that is subject to ROFR and allows any quota that is custom processed to not contribute to the IPQ cap of the company so long as the quota is processed in the ROFR community-of-origin. The ROFR provisions of the CR Program were modified with Amendment 44 to the FMP (81 FR 1557, January 13, 2016), which was effective on February 12, 2016.

Quota issued for the Tanner crab fishery is not subject to ROFR so Tanner crab IPQ is not eligible for exemption from the IPQ use caps under § 680.42(b)(7)(ii)(C). However, this exemption is available for Bristol Bay red king crab and Bering Sea opilio, the only fisheries besides Tanner that are not eligible from an exemption from IPQ use caps under § 680.42(b)(7)(ii)(A).

An additional exemption to the IPQ use caps was created with Amendment 41 to the FMP at § 680.4(p). Amendment 41 created a process through which fishery participants can apply for an exemption from the regional delivery requirements. If granted, any quota exempted from the regional delivery requirements is also not applied to a company's IPQ use cap. NMFS has not approved any exemptions under § 680.4(p) since Amendment 41 was implemented.

The combination of use cap exemptions has allowed consolidation across the BSAI crab processing sector under the CR Program, as shown in Figure 2.

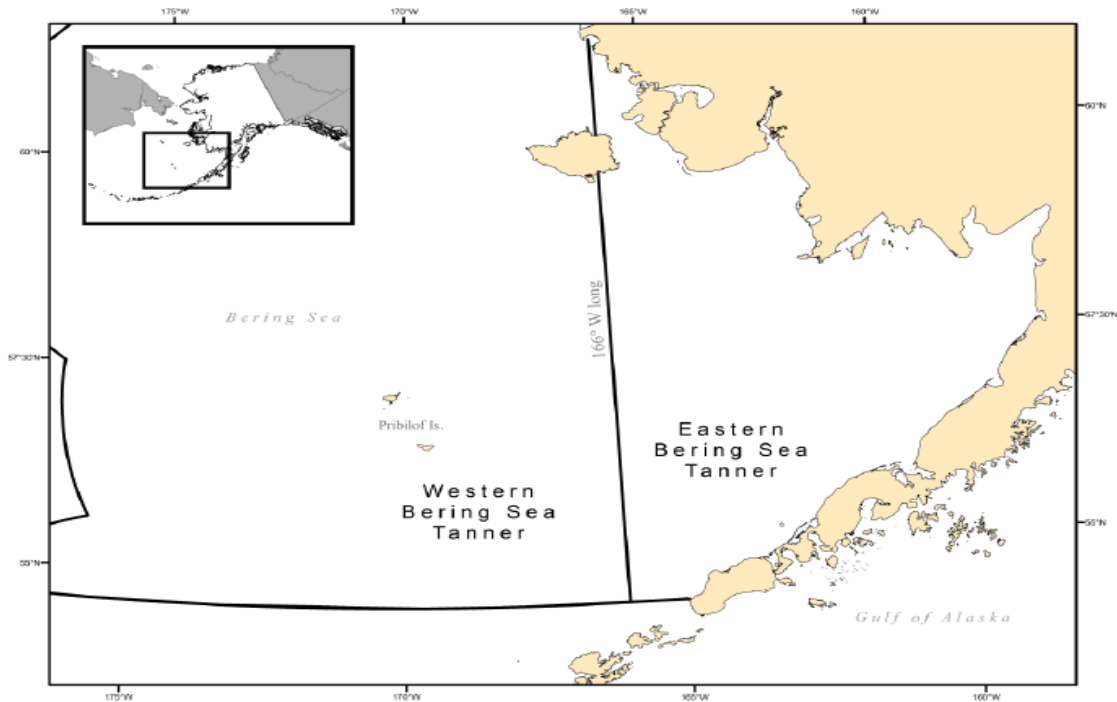
## 2.6 Tanner Crab Fisheries

Tanner crab are managed as two separate fisheries, east and west of 166° W long, and the State of Alaska sets a separate TAC for each area (Figure 2-1). The domestic Tanner crab fishery was closed between 1996/1997 and 2004/2005 as a result of conservation concerns regarding depressed stock status (NMFS, 2015). The fishery reopened in 2005/2006 and the fishery harvested on average 70 percent of the EBT IFQ from 2005/06 through the 2009/2010 seasons and 32 percent of the WBT between 2005/2006 – 2008/2009 (Table 2-1). The number of vessels averaged 24 for EBT and 30 for WBT during this period. For 2010/2011 – 2012/2013 seasons, the State of Alaska closed directed commercial fishing for Tanner crab due to estimated female stock abundance being below thresholds adopted in the state harvest strategy (NMFS, 2015). However, these thresholds were met in the fall of 2013 and the directed fishery was opened in 2013/2014 (NMFS, 2015). Between the 2013/2014 fishing season and the end of the 2015/2016 season, the fisheries harvested on average 100 percent of the EBT IFQ and 84 percent of the WBT. During that same period, the number of vessels that participated averaged 40 in the EBT and 57 in the WBT.

NMFS has issued QS and PQS for the EBT and WBT crab fisheries. Unlike the QS and PQS issued for most other crab fisheries, the QS and PQS issued for the EBT and WBT fisheries are not subject to regional delivery requirements, commonly known as regionalization. Therefore, the Class A IFQ that results from EBT and WBT QS, and the IPQ that results from EBT and WBT PQS are not restricted for delivery and use within specific geographic regions and can be delivered to any registered crab receiver (RCR). RCRs include shoreside processors, catcher/processors, entities holding PQS with custom processing agreements with other shoreside processors, and community development quota groups holding PQS. In addition, the PQS and resulting IPQ issued for the EBT and WBT crab fisheries are not subject to a ROFR provision.

Because the EBT and WBT crab fisheries are not subject to regionalization or ROFR provisions, crab harvested under a Class A IFQ permit in these fisheries can be delivered to a range of processors in a broad geographic area more easily than in crab fisheries subject to regionalization and ROFR provisions. As noted in the RIR for the CR Program, the rationale for exempting the EBT and WBT crab fisheries from regionalization and ROFR provisions was because these fisheries had been and would likely continue to be conducted primarily as a concurrent fishery with the regionalized Bristol Bay red king crab and BS snow crab fisheries, making the regional designation of Tanner crab landings unnecessary. However, the concurrent nature of the Tanner crab fishery was associated with a low TAC in comparison to the TAC of the red king crab and snow crab fisheries. However, currently the TAC for Tanner is significantly higher and this rationale may no longer hold true.

**Figure 2-1 Eastern Bering Sea District Tanner crab fishery management boundary for eastern and western TAC.**



**Table 2-1 Eastern BS and Western BS Tanner IFQ, CDQ, TAC, catch, vessel numbers, and season from 2005/2006 season through the 2015/2016 season**

Fishery	Season	IFQ (lbs)	CDQ (lbs)	TAC (lbs)	Total IFQ harvest (lbs)	% of IFQ harvested	Vessels	Season
Eastern BS Tanner crab	2005 - 2006	closed	closed	closed	closed	closed	closed	closed
	2006 - 2007	1,687,500	187,500	1,875,000	1,267,106	75	37	Oct 15, 2013 - Mar 15, 2014
	2007 - 2008	3,100,500	344,500	3,445,000	1,439,435	46	20	Oct 15, 2013 - Mar 15, 2014
	2008 - 2009	2,486,700	276,300	2,763,000	1,553,584	62	21	Oct 15, 2013 - Mar 15, 2014
	2009 - 2010	1,215,000	135,000	1,350,000	1,189,573	98	17	Oct 15, 2013 - Mar 15, 2014
	2010 - 2011	closed	closed	closed	closed	closed	closed	closed
	2011 - 2012	closed	closed	closed	closed	closed	closed	closed
	2012 - 2013	closed	closed	closed	closed	closed	closed	closed
	2013 - 2014	1,316,700	146,300	1,463,000	1,310,068	99	30	Oct 15, 2013 - Mar 15, 2014
	2014 - 2015	7,632,000	848,000	8,480,000	7,602,659	100	41	Oct 15, 2014 - Mar 15, 2015
2015 - 2016	10,144,800	1,127,200	11,272,000	10,085,983	99	49	Oct 15, 2015 - Mar 15, 2016	
Western BS Tanner crab	2005 - 2006	1,458,000	162,000	1,620,000	952,887	65	43	Oct 15, 2013 - Mar 15, 2014
	2006 - 2007	984,600	109,400	1,094,000	633,910	64	36	Oct 15, 2013 - Mar 15, 2014
	2007 - 2008	1,958,400	217,600	2,176,000	467,136	24	27	Oct 15, 2013 - Mar 15, 2014
	2008 - 2009	1,383,300	153,700	1,537,000	108,368	8	27	Oct 15, 2013 - Mar 15, 2014
	2009 - 2010	closed	closed	closed	closed	closed	closed	closed
	2010 - 2011	closed	closed	closed	closed	closed	closed	closed
	2011 - 2012	closed	closed	closed	closed	closed	closed	closed
	2012 - 2013	closed	closed	closed	closed	closed	closed	closed
	2013 - 2014	1,480,500	164,500	1,645,000	1,202,887	81	58	Oct 15, 2013 - Mar 15, 2014
	2014 - 2015	5,962,500	662,500	6,625,000	4,638,718	78	56	Oct 15, 2014 - Mar 15, 2015
2015 - 2016	7,556,400	839,600	8,396,000	7,040,375	93	56	Oct 15, 2015 - Mar 15, 2016	

Source: NMFS and EBT\_WBT\_VES(03-23)

As noted in Table 2-2, there has been some consolidation in the number of shareholders since implementation of the CR Program in 2005. In 2006, there were 249 QS holders for CVO category, 162

QS holders for CVC, and 24 processor QS holders. In 2015, there were 237 QS holders for CVO, 133 QS holders for CVC, and 15 processor QS holders.

**Table 2-2 Number of CVO, CVC, and processor QS holders for EBT and WBT crab from 2006 through 2015**

Fishery	Season	Catcher vessel owner QS holders	Catcher vessel crew QS holders	Processor QS holders
Eastern BS Tanner crab	2006 - 2007	249	162	24
	2007 - 2008	238	150	24
	2008 - 2009	232	148	27
	2009 - 2010	234	143	22
	2010 - 2011	Closed	Closed	Closed
	2011 - 2012	Closed	Closed	Closed
	2012 - 2013	Closed	Closed	Closed
	2013 - 2014	239	141	22
	2014 - 2015	233	133	19
2015 - 2016	236	133	17	
Western BS Tanner crab	2006 - 2007	249	162	25
	2007 - 2008	238	149	24
	2008 - 2009	233	148	29
	2009 - 2010	Closed	Closed	Closed
	2010 - 2011	Closed	Closed	Closed
	2011 - 2012	Closed	Closed	Closed
	2012 - 2013	Closed	Closed	Closed
	2013 - 2014	240	140	26
	2014 - 2015	234	132	21
2015 - 2016	237	133	15	

Source: QS\_Holders(03-28)

### 2.6.1 IPQ Use Caps and Custom Processing for the BS Tanner Crab Fisheries

Under the CR Program, crab harvested with Class A IFQ, which make up 90 percent of the CVO share allocation, must be delivered to the holder of IPQ. The remaining 10 percent of harvest made with CVO shares (harvest made with Class B IFQ) are open to competition among all processors (including those who do not hold processing shares). Annual allocations arising from C share QS are subject to the same competition that exists for Class B IFQ. Processing QS holdings are substantially more concentrated than either catcher vessel owner or catcher vessel crew QS holdings (Table 2-2). Table 2-3 shows the 2015/2016 PQS holders for Tanner crab and the number of units held. The majority of the PQS is held by entities that operate the facilities that process Tanner crab.

As noted earlier, EBT and WBT IPQ crab that are processed under a custom processing arrangement will still apply against a person's IPQ use cap if that person owns the facility at which those IPQ crab are processed. Effectively, this means that a minimum of at least four persons who are not affiliated with each other must receive EBT or WBT IPQ crab to ensure that no person uses more than the amount of IPQ resulting from 30 percent of the initially issued EBT or WBT PQS. Similarly, at least four facilities that are not affiliated through common ownership (i.e., a 10 percent or greater ownership interest) must be used to receive and process EBT and WBT IPQ crab to ensure that no facility receives more than the amount of IPQ resulting from 30 percent of the initially issued EBT or WBT PQS.

**Table 2-3 PQS Holders for Tanner crab (EBT and WBT) and their PQS units held for 2015/2016.**

<b>PQS Holder</b>	<b>PQS units</b>	<b>Percentage</b>
57 Degrees North, LLC	29,689,974	14.90%
Alyeska Seafoods, Inc.	11,129,843	5.59%
APICDA Joint Ventures, Inc.	7,276,863	3.65%
Peter Pan Seafoods, Inc.	29,575,672	14.85%
RAS II, LLC	18,596,734	9.33%
Trident Seafoods Corporation	51,982,936	25.99%
Unisea, Inc.	24,112,517	12.10%
Westward Seafoods, Inc.	19,294,485	9.69%
Other PQS holders*	7,560,202	3.78%
<b>Total</b>	<b>200,000,000</b>	

\*PQS holders that individually held less than 3 percent of the total PQS pool for EBT and WBT were combined.

Table 2-4 displays the custom processing arrangements in the Tanner crab fisheries. Table 2-5 provides a list of Tanner crab IPQ owners, processing companies, processing facilities, and location of the processing facilities for the 2015.

**Table 2-4 PQS Holders for Tanner crab (EBT and WBT) and their PQS units held for 2015/2016.**

<b>PQS Holder</b>	<b>PQS units</b>	<b>Percentage</b>
57 Degrees North, LLC	29,689,974	14.90%
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Westward Seafoods, Inc.	19,294,485	9.69%
Other PQS holders*	7,560,202	3.78%
<b>Total</b>	<b>200,000,000</b>	

\*PQS holders that individually held less than 3 percent of the total PQS pool for EBT and WBT were combined.



**Table 2-5 Custom processing arrangements in the EBT and WBT fisheries for 2015.**

<b>Fishery</b>	<b>IPQ Owner</b>	<b>Processing Facility</b>	<b>Community</b>	<b>Processing Facility Ownership</b>
EBT	Alyeska Seafoods, Inc.	Alyeska Seafoods	Dutch/Unalaska	Maruha Nichiro Group
	Aleutia, Inc.	Peter Pan Seafoods	King Cove	
	Peter Pan Seafoods, Inc.			
	Alyeska Seafoods, Inc.	Westward Seafoods	Dutch/Unalaska	
	Western Seafoods, Inc.			
	57 Degrees North, LLC	Unisea, Inc.	Dutch/Unalaska	Nissui Global
	Icicle Seafoods, Inc.			
	Royal Aleutian Seafoods, Inc.			
	APICDA Joint Ventures, Inc.	Trident Seafoods Inc.	Akutan	Trident Seafoods Inc.
	Norquest Seafoods, Inc.			
Trident Seafoods Corporation	St. Paul			
Trident Seafoods Corporation				
WBT	Alyeska Seafoods, Inc.	Alyeska Seafoods	Dutch/Unalaska	Maruha Nichiro Group
	Aleutia, Inc.	Peter Pan Seafoods	King Cove	
	Peter Pan Seafoods, Inc.			
	Alyeska Seafoods, Inc.	Westward Seafoods	Dutch/Unalaska	
	Western Seafoods, Inc.			
	57 Degrees North, LLC	Unisea, Inc.	Dutch/Unalaska	Nissui Global
	Icicle Seafoods, Inc.			
	Royal Aleutian Seafoods, Inc.			
	APICDA Joint Ventures, Inc.	Trident Seafoods Inc.	Akutan	Trident Seafoods Inc.
	Trident Seafoods Corporation			
Norquest Seafoods, Inc.	St. Paul			
Trident Seafoods Corporation				

Source: NMFS Restricted Access Management (RAM) Division

When the Council recommended and NMFS implemented Amendment 27 to the FMP, IPQ crab processed under custom processing arrangements for the EBT and WBT crab fisheries were not included in the exemption from calculation against IPQ use caps. The preamble to the proposed rule implementing Amendment 27 explains that the Council did not recommend exempting EBT and WBT IPQ crab processed under a custom processing arrangement from IPQ use caps because “Bering Sea *C. bairdi* crab are not subject to regionalization and therefore the need to exempt custom processing arrangements from the IPQ use cap does not appear necessary because crab can be effectively delivered to any processor with matching IPQ in any location” (73 FR 54351, September 19, 2008).

Since the implementation of Amendment 27, there has been additional consolidation in the BSAI crab processing sector. In the 2006/2007 crab fishing year, there were 5 unique unaffiliated persons (processors) that received EBT crab and 4 that received WBT crab (Table 2-6). During the 2014/2015 crab fishing year, there were only three unique unaffiliated persons (processors) who received EBT crab, and there were four unique unaffiliated persons (processors) who received WBT IPQ crab at their facilities. During the 2015/2016 crab fishing year, there were only three unique unaffiliated persons (processors) who received EBT and WBT IPQ crab at their facilities. These three processors are the

Maruha-Nichiro Corporation, which operates processing facilities under the names of Alyeska Seafoods, Peter Pan Seafoods, and Westward Seafoods; Trident Seafoods; and Unisea Seafoods.

The net effect of this processor consolidation is that there are not at least four unique and unaffiliated processors active in the EBT and WBT crab fisheries in the BS region. Therefore, only 90 percent of the Class A IFQ can be delivered to, and only 90 percent of the IPQ may be used at, facilities owned and operated by Maruha-Nichiro Corporation, Trident Seafoods, and Unisea Seafoods without causing the IPQ use caps to be exceeded. At least 10 percent of the EBT Class A IFQ/IPQ and 10 percent of the WBT Class A IFQ/IPQ must be delivered to processing facilities that are not affiliated with Maruha-Nichiro Corporation, Trident Seafoods, or Unisea Seafoods.

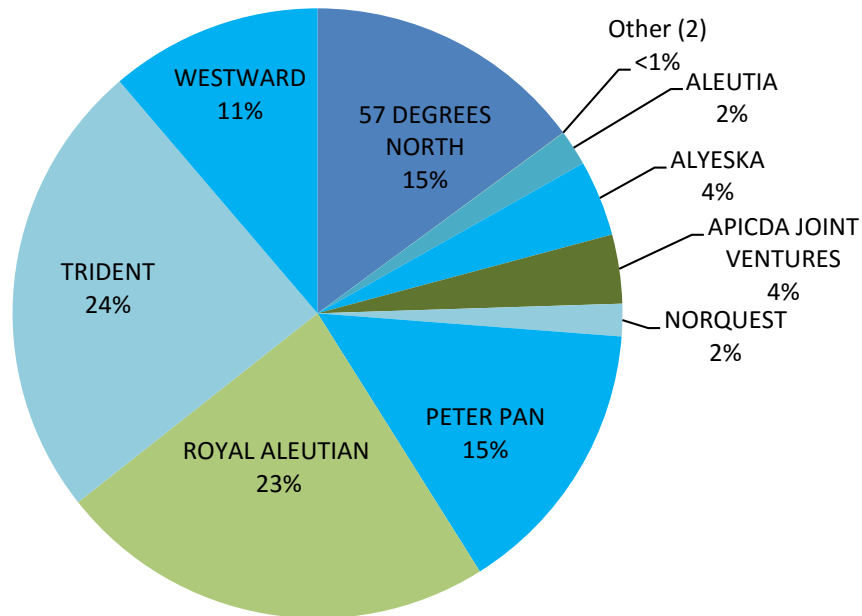
Processor consolidation is not unique to the EBT and WBT crab fisheries. Figure 2-3 shows the facilities that process all BSAI crab and the total percent of BSAI crab processed at each facility. The difficulties with processing crab and the barriers to entry are described in the RIR for Amendment 27 (NMFS 2008). Facilities owned by Maruha-Nichiro Corporation, Trident Seafoods, Unisea Seafoods processed 99 percent of the BSAI crab in 2015. For the other processing facilities that process one percent of the BSAI crab, general information indicates that these processors may focus on supplying live red king crab and golden king crab to specialized markets.

**Table 2-6 Tanner crab processing companies, processing facilities, and communities in 2006/2007 and 2015/2016.**

Crab Fishery	Year	Company Name	Facility	Community
Eastern Tanner Crab	2006/2007	Maruha	Alyeska Seafoods	Dutch/Unalaska
			Westward Seafoods	Dutch/Unalaska
		Nichiro	Peter Pan Seafoods	King Cove
		Nissui Global	Unisea, Inc.	Dutch/Unalaska
		Trident Seafoods Inc.	Trident Seafoods Inc.	Akutan
	Icicle Seafoods	Arctic Star	Processing Vessel	
	2015/2016	Maruha Nichiro Group	Alyeska Seafoods	Dutch/Unalaska
			Peter Pan Seafoods	King Cove
			Westward Seafoods	Dutch/Unalaska
		Nissui Global	Unisea, Inc.	Dutch/Unalaska
Trident Seafoods Inc.		Trident Seafoods Inc.	Akutan St. Paul	
Western Tanner Crab	2006/2007	Maruah	Alyeska Seafoods	Dutch/Unalaska
			Westward Seafoods	Dutch/Unalaska
		Nichiro	Peter Pan Seafoods	King Cove
		Nissui Global	Unisea, Inc.	Dutch/Unalaska
		Trident Seafoods Inc.	Trident Seafoods Inc.	Akutan
	2015/2016	Maruha Nichiro Group	Alyeska Seafoods	Dutch/Unalaska
			Peter Pan Seafoods	King Cove
			Westward Seafoods	Dutch/Unalaska
		Nissui Global	Unisea, Inc.	Dutch/Unalaska
		Trident Seafoods Inc.	Trident Seafoods Inc.	Akutan St. Paul

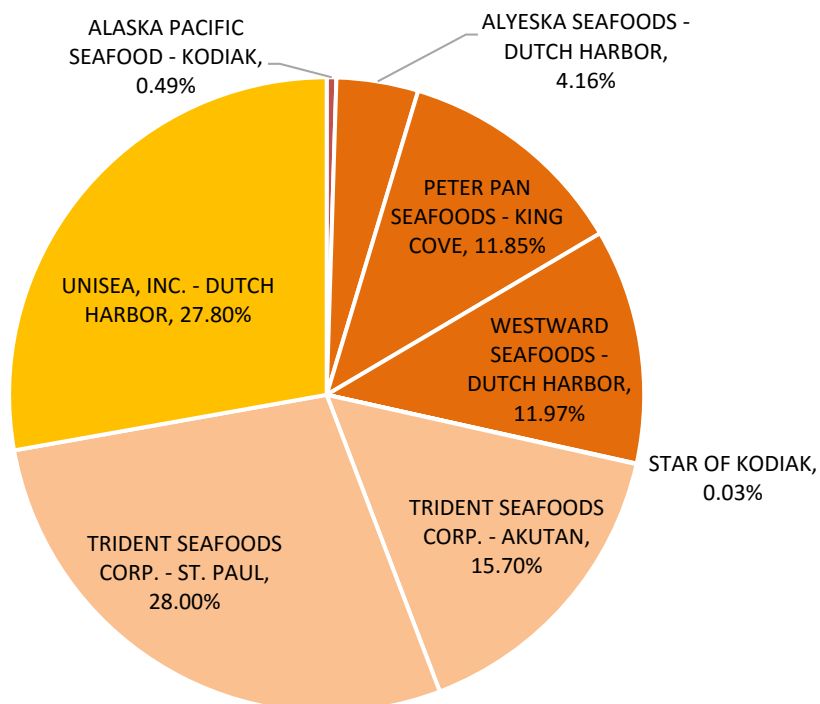
Source: NMFS Restricted Access Management (RAM) Division

**Figure 2-2 Percent of Tanner crab (EBT and WBT) IPQ held by Registered Crab Receivers in 2015/2016.**



Source: NMFS RAM Division

**Figure 2-3 Facilities that process BSAI crab and the percentage of all BSAI crab processed at each facility for the 2015/2016 crab fishing year.**



Source: NMFS RAM Division

## 2.7 Ex-vessel and first wholesale pricing of the BS Tanner Crab Fisheries

Assessing ex-vessel prices under the CR Program is complicated by several factors. The two different catcher vessel owner IFQ types (A shares and B shares) may bring different prices because of the different limitations on use of those shares and the effects of the arbitration program (see Table 9-10 in the 10-year Crab Program Review). The two different types of IFQ that are unrestricted by limits and landing (catcher vessel owner Class B IFQ and C share IFQ) could bring different prices because of the different in negotiating leverage of their holders.

Table 2-7 and Table 2-8 briefly summarize the Tanner crab fishery economic status from 2009 through 2014, from the Crab Economic Status Report (Garber-Yontz and Lee 2015). This represents the most recent and best available data on the Tanner crab fisheries. This type of information is available through the Economic Data Report collection, submitted to NMFS by participants in the fishery on an annual basis. These data depict the economic character of different crab fisheries, by calendar year. For example, Table 2-7 demonstrates a significant change in ex-vessel and first wholesale value of the fishery in 2014 corresponding with a rise in TAC. Total gross ex-vessel EBT and WBT crab revenue has risen from \$4.91 million in 2009 to \$19 million in 2014. An increase in the labor needs required to cover the increasing catch limits, both in the harvesting and processing sectors, are demonstrated in Table 2-8. The reader is referred to the Crab Economic Status Report for more detailed information on the economic status of the Tanner crab fisheries.

This discussion of market conditions draws on the annual *Market Analyst Report on Opilio and Bairdi*, prepared by John Sackton of Seafood Datasearch (Sackton 2015). The key to increasing Tanner crab's acceptance as a unique product, as it was in the 1990s, is to continue to produce enough Tanner crab for customers to generate retail sales programs. Both retailers and some large food service chains have been interested in Tanner crab. Sackton (2015) reports that Tanner crab was able to differentiate as a unique product in the U.S. crab market because Tanner crab landings in 2014/2015 finally reached their potential, with 12.2 million pounds landed. Tanner crab has now achieved a distinct market status, meaning that customers ask specifically for Tanner crab and sellers achieved a price differential between Tanner crab and large snow crab. In September 2015, wholesale prices were reported around \$5.90 to \$6.00 per pound for Tanner crab. There is also a market for large Tanner crab in Japan, which command a better price.

**Table 2-7 Tanner crab harvest and processing sector out-put—production volume, gross revenue, average price, 2009 through 2014**

Year <sup>1</sup>	Harvester Sector: Ex-vessel Statistics				Processing Sector: First Wholesale Statistics		
	Vessels	Landed volume million lbs.	Gross revenue \$million	Average price \$/lbs.	Finished volume million lbs.	Gross revenue \$million	Average price \$/lb
2009	18	2.14	\$4.91	\$2.30	1.39	\$6.19	\$4.46
2010	4	0.37	--	--	--	--	--
2011- 2012	CLOSED						
2013	22	1.19	\$3	\$2.66	0.82	\$6	\$6.82
2014	38	8	\$19	\$2.39	5.47	\$32	\$5.82

Source: Crab Economic Status Report, Garber-Yontz and Lee 2015. Note: See Garber-Yontz and Lee 2015 for details on these data.

<sup>1</sup>Information from Economic Data Reports is compiled by calendar year.

**Table 2-8 Tanner crab fisheries crew and processing sector employment and earnings, 2010 through 2014**

Year <sup>1</sup>	Crew Employment Earnings			Processing Employment and Earnings	
	Crew positions	Crew share payment, total \$million	Captain share payment Total, \$million	Processing labor hours, total 1000 hrs.	Processing labor payment, total \$million
2010	--		--	6.43	\$0.07
2011-2012	CLOSED				
2013	156	\$0.48	\$0.22	16.58	\$0.18
2014	262	\$3.01	\$1.40	122.27	\$1.23

Source: Crab Economic Status Report, Garber-Yontz and Lee 2015. Note: See Garber-Yontz and Lee 2015 for details on these data.

<sup>1</sup>Information from Economic Data Reports is compiled by calendar year.

## 2.8 Communities Profiles

Several communities have historically been home to processors that have taken delivery of crab from the BSAI crab fisheries. The following four communities had processors that took delivery of Tanner crab in 2015/2016: Akutan, Dutch Harbor/Unalaska, King Cove, and St. Paul (see Table 2-6). However, due to limited number of processors that participate in the BS Tanner crab fishery in any one location, data concerning the geographic distribution of processing in the crab fisheries cannot be released.

### Unalaska

The city of Unalaska and the port of Dutch Harbor are about 766 miles southwest of Anchorage and are located on the Islands of Unalaska and Amaknak. The communities are connected by a bridge and are handled as a single community for this profile because of their socioeconomic interdependences. The city of Unalaska became incorporated in 1942 and it encompasses 111.0 square miles of land and 101.3 square miles of water, and had an estimated resident population of 4,768 in 2012. After World War II, the community evolved into the busy and prosperous commercial fishing and seafood processing port, and today it yields the nation's largest volume of landings. The city owns six marine facilities, but fishing vessels are mainly moored at the Robert Storrs, Carl E. Moses boat Harbor, or at Spit Dock. The Carl E. Moses and Robert Storrs Facility consists of 52 and 71 slips, whereas the Spit dock has 2,400 linear feet of dock along with multiple berths for long and short term moorage.

Commercial fishing and seafood processing play a significant role in the economic success of Unalaska. Major varieties of fish processed in Unalaska include king, Tanner and snow crab, pollock, Pacific cod, salmon, herring, halibut, sablefish, turbot, Atka mackerel, and rockfish. As a result, commercial fishing and seafood processing provide a significant number of jobs and income to the community. For example, three of the largest employers in Unalaska are UniSea, Inc., Westward Seafoods, and Alyeska Seafoods, Inc (EDAW, 2005).

Dutch Harbor based processors received a substantial share of the processor share allocation in most crab fisheries under the CR Program. These shares are subject to rights of first refusal of the Dutch Harbor community entity. These shares are unlikely to migrate out of the community because crab processing at most facilities plays an important part in an integrated operation that serves several fisheries.

Residents own 11 federal fishing vessels that were active in 2014. All of these commercial fishing vessels operated exclusively as catcher vessels delivering to shore-side processors or mother-ships, 10 vessels were less than 60 feet in length while all vessels utilized fixed gear. Pacific cod followed by halibut were the main revenue drivers for the fleet. Due to confidentiality the specific activity of the Dutch

Harbor/Unalaska fleet is withheld as is shore-side processing. There were a substantial number of crew permits (160) and commercial fishing permits issued (60).

Unlike many of the crab ports in the region, Unalaska also has extensive support services for the BS fisheries. The support services in Unalaska can support all range of services for any vessel class in the pollock, crab, and other groundfish fisheries. As a result, the support services are heavily dependent upon the success of the groundfish and crab fisheries. To some extent, the fleet services also contribute to the diversification of the Unalaska economy which insulates the community from negative changes in individual fisheries.

### **King Cove**

King Cove is located on the south side of the Alaska Peninsula and is about 605 miles southwest of Anchorage. The city was established in 1911 when Pacific American Fisheries constructed a salmon cannery. The city was incorporated in 1947, and encompasses 25.3 square miles of land and 4.5 square miles of water. In 2012, the resident population was estimated at 963. The community lies on a sand spit, separated by King Cove Lagoon and King Cove, and is surrounded by rugged mountains. The city's economy is solely dependent on commercial fishing and the seafood processing industry. There are two harbors that have moorage for 96 vessels with a maximum length 165 as well as a deep water pier for the state ferry, cruise ships and cargo vessels. The community is home to several large crab vessels, and is also home to Peter Pan Seafoods, the only shore based processor located in the community. The plant processes salmon, king, Tanner, and snow crab, halibut, and groundfish. Although the plant operates year-round, its peak seasons are in the winter and summer, when it employs up to 500 people (Himes-Cornell et al., 2013).

In 2014, King Cove residents owned 17 active federal fishing vessels. All of these commercial fishing vessels operated exclusively as catcher vessels delivering to shore-side processors or mother-ships. These catcher vessels were less than 60 feet in length and deployed fixed gear and trawl gear. The pot fleet of King Cove has 11 vessels followed by halibut (5) and trawl (3). Due to confidentiality the activity of shore-side processing is withheld. King Cove had 114 crewmember licenses issued to 112 permanent Alaska residents. In 2014, 102 commercial fishing permits were issued to King Cove residents and 68 were actively fished, with salmon permits representing the largest number at 39, followed by 18 miscellaneous saltwater finfish permits.

### **Akutan**

Akutan is located in a sheltered harbor on the eastern side of Akutan Island, approximately 736 miles southwest of Anchorage. Akutan Island is part of the Fox Islands group of the eastern Aleutian Islands. The city of Akutan covers 14.0 square miles of land and 4.9 square miles of water. In 2012, the population of Akutan was estimated to be 1,106.

Similar to King Cove and Unalaska, the economy of Akutan is heavily dependent upon the groundfish and crab fisheries in the BSAI and GOA. The community is home to a one of the largest shore based seafood processing plants in the area and is also home to a floating processor. During its peak seasons in the winter and summer it can accommodate as many as 825 employees (Himes-Cornell et al., 2013). Akutan is located approximately 35 nautical miles closer to fishing grounds than Dutch Harbor, offering fishing vessels a savings in time and fuel costs. The community also provides some limited support services to the fishing community. In addition, unique from King Cove and Unalaska, Akutan is a Community Development Quota (CDQ) community.

The vast majority of catch landed in Akutan comes from vessels based outside of the community. Most of those vessels focus primarily on pollock, Pacific cod, and crab. The large shore plant is operated by

Trident Seafoods. The shorebased processor is a multi-species plant, processing primarily pollock, Pacific cod, and crab. Given that the plant is an AFA-qualified plant with its own pollock co-op, pollock is the primary species in terms of labor requirements and economic value. However, the shore plant also accounts for a significant amount of the regional crab processing and also provides for a significant amount of the processing value at the plant (EDAW, 2005). As with plants in Dutch Harbor and King Cove, crab has remained an important part of a diverse operation at the shore plant in Akutan since implementation of the rationalization program.

Akutan residents own 4 federal fishing vessels that were active in 2014. All of these commercial fishing vessels operated exclusively as catcher vessels delivering to shore-side processors or mother-ships, were less than 60 feet in length, and utilized fixed gear. These vessels targeted halibut exclusively. Due to confidentiality the shore-side processing activity is withheld. There were a small amount of crew permits (8) and commercial fishing permits issued (14). The main driver in the community is the large processing facility.

The community is also an eligible CDQ community, which benefits from the allocation of BSAI groundfish and crab TAC to the CDQ program. APICDA, which represents the community of Akutan and 5 other communities, has participated in the crab fishery through purchasing partial ownership in two crab harvesting vessels, the Golden Dawn and the Farwest Leader (EDAW, 2005). In addition, APICDA also has significant investments in both harvesting and processing sectors of the BSAI fisheries.

## **St. Paul**

Saint Paul is the major settlement on Saint Paul Island, and is approximately 755 miles southwest of Anchorage. Saint Paul Island is part of the Pribilofs Islands, a group of islands located in the Bering Sea. Saint Paul covers 40.3 square miles of land. In 2012, the population of Saint Paul was estimated to be 491 individuals.

Unlike King Cove, Akutan, or Unalaska, Saint Paul is primarily dependent upon the processing of snow crab harvested in the North Pacific. The community of St. Paul also participates in the Western Alaska CDQ Program under the Central Bering Sea Fishermen's Association and receives an allocation of crab under that program. Trident Seafoods was founded in 1973, and by the year 2000 was employing 4,000 people annually throughout Alaska and the Pacific Northwest. Trident's Saint Paul operation, which began in 1995, is the largest crab production facility in the world (Himes-Cornell et al., 2013). A number of floating processors have also frequented the area. Icicle, Norquest, Trident, and Stellar Seafoods own floaters that have processed crab in the Pribilof Islands. Other processors also have used floaters to process crab in and around St. Paul over the years. Further description of the processing activity in the Pribilof Islands area cannot be included in the profile due to data confidentiality restrictions.

Saint Paul residents own 14 federal fishing vessels that were active in 2014. Of those 13 were active in the halibut fishery in the Bering Sea and one vessel operated in the jig fishery in the Bering Sea. Halibut was the main stream of revenue. All of these commercial fishing vessels operated exclusively as catcher vessels delivering to shore-side processors or mother-ships, were less than 60 feet in length and utilized fixed gear. Due to confidentiality the activity of the fleet is withheld as is shore-side processing. There were a small amount of crew permits (42) and commercial fishing permits issued (25).

Saint Paul is a primary beneficiary of the North/South regional distribution of shares in the rationalization program. This limitation on landings should ensure that a substantial portion of the processing in the Bering Sea snow crab fishery is undertaken in St. Paul.

## 2.9 Analysis of Impacts

This section presents a discussion of the economic and distributional effects that might be expected to occur as a result of exempting custom processing Tanner crab from the processor use cap. The impetus for the proposed action originated with the Council recognizing the unforeseen exit of one processor from Tanner crab processing that resulted in a consolidation of processors. The remaining processors readily available in the BS region were constrained by IPQ use caps.

The analysts have made a number of assumptions in analyzing the effects of the alternatives. In general, the analysts assume that effects arise from the actions of individual participants in the fisheries, under the incentives created by the alternatives. Predicting these individual actions and their effects is constrained by incomplete information concerning specific business operations and economic considerations made by harvesters and processors in the fisheries, and well-tested models that predict behavior under different market and stock conditions. In addition, exogenous factors, such as stock fluctuations, market dynamics, and macro conditions in the global economy, will influence the response of the participants under each of the alternatives and options.

The effects of the alternatives on the Tanner crab fisheries are also linked to the dynamics of the other CR Program fisheries. The processing companies and plants that participate in the Tanner crab fisheries also participate in the Bristol Bay red king crab and Bering Sea *opilio* fisheries. The business decisions the participants may make with regard to the Tanner crab fisheries are influenced by their involvement and participation in these other large fisheries.

### 2.9.1 Alternative 1, No Action

Under Alternative 1, custom processing arrangements for BS Tanner crab would continue to count against the 30 percent IPQ use cap. IPQ use caps limit the amount of crab a processor can process in a season to prevent the consolidation of processing activity.

The unforeseen exit of one processor from crab processing in the BS region resulted in a consolidation of processors to the extent that the few processors readily available are constrained by IPQ use caps (see Section 2.6 for more detail). This resulted in the remaining processors being constrained by the IPQ use caps to the extent that more IFQ is available for harvest than can be processed by the remaining processors in the BS region.

With the available processors constrained by the IPQ use caps, more crab can be harvested with IFQ than can be processed with IPQ. This resulted in harvesters not being able to fully harvest and deliver all of their Tanner crab to readily available processors. Without a custom processing exemption to the IPQ use cap, 10 percent of the Class A IFQ could not have been processed by the three unaffiliated processors. For the 2015/2016 Tanner crab fishing season, 10 percent of the Class A IFQ was 1,441,810 pounds (see Table 2-9). Harvesters, shoreside processors, and communities that participate in the Tanner crab fisheries have limited options to mitigate the resulting negative economic effects.



**Table 2-9 A and B shares for Eastern and Western BS Tanner crab and 10% of A shares unharvested under Alternative 1 for the 2015/16 season**

Class	Eastern BS Tanner (lbs)	Western BS Tanner (lbs)	Total (lbs)
A Shares	8,263,207	6,154,896	14,418,103
B Shares	918,134	683,872	1,602,006
10% A Shares unharvested under Alt 1	826,321	615,490	1,441,810

Source: NMFS

To process the 10 percent of Class A IFQ for Tanner crab, a unique unaffiliated processor would be necessary. There are very few unaffiliated processors that have the capacity to custom process EBT and WBT. There are two potential processing facilities not affiliated with the Maruha-Nichiro Corporation, Trident Seafoods, and Unisea Seafoods, that could process EBT and WBT crab based on current processors that take other BSAI crab but do not already take Tanner crab. However, both processors are located some distance from the EBT and WBT grounds in Kodiak and Adak.

### Harvesters

Deliveries to alternative processing facilities would impose a substantial burden and cost on Class A IFQ holders, even though Class A IFQ holders are not responsible for ensuring compliance with IPQ use caps. Transporting EBT or WBT crab to processors outside of the fishing area, such as in Kodiak or Adak, would result in longer trips that would incur increased fuel and operating costs and loss of fishing time. It would also increase the potential for deadloss (death) of crab which becomes increasingly likely the longer that the crab are held in storage tanks and transported, and which is inconsistent with the Council's conservation objectives for this fishery.

Based on current and past experience with deliveries of Tanner crab and other crab species, stakeholders estimate deadloss to be approximately 5 times greater for delivering in Kodiak than it would be for delivering in the Bering Sea. This is based on the higher deadloss rates for delivering Bristol bay red king crab to Kodiak (approximately 3 times greater) and then taking into account the vulnerability of Tanner crab to extended transit (J. Sullivan, personal communication).

Additionally, stakeholders estimate an additional 6 to 10 days of transit time associated with delivering to Kodiak; which includes an added daily fuel expense of approximately \$2,750 (1100 gallons per day at \$2.50 per gallon) and a daily insurance expense of approximately \$350 (\$50 per crewmember per day at seven crewmembers).

In 2015/2016 Tanner crab season, the gross ex vessel revenue for this 10 percent of the Class A IFQ for EBT and WBT crab was estimated at \$3.4 million, using the 2014 ex-vessel value shown in Table 2-7. Foregone net revenues to the harvesters would be less than this total amount because costs associated with harvesting the IFQ would be avoided. Harvesters would have limited alternatives to mitigate this lost ex-vessel revenue. Harvesters would experience this loss even though harvesters are not subject to the IPQ use caps and are not responsible for ensuring processing operations do not exceed IPQ use caps in accordance with applicable regulations.

It is not possible to predict which specific harvesters (Class A IFQ holders) would be unable to fully harvest their EBT or WBT crab IFQ under Alternative 1. As noted earlier, Class A IFQ holders share match with IPQ holders, and deliver their crab according to fishing plans that accommodate both the harvester's and the processor's operational needs in a variety of ongoing crab and groundfish (Pacific

cod) fisheries. It is possible that some Class A IFQ holders would be able to fully harvest their EBT and WBT crab allocations under Alternative 1, whereas other Class A IFQ holders may not be able to harvest a majority of their allocations based on established fishing plans with share matched IPQ holders. Given the inability to quantify specific impacts on specific harvesters, economic impacts on specific Class A IFQ holders are likely to differ, and not all Class A IFQ holders will be affected equally. Not all Class A IFQ holders will lose the opportunity to harvest 10 percent of their Class A IFQ. Some harvesters may not lose any harvesting opportunity. It is possible that one or more harvesters could be precluded from delivering any of their Class A IFQ depending on whether or not their shares are matched with IPQ that is unable to be custom processed.

## **Processors**

Under the status quo alternative, if there are no unaffiliated processors that are willing to process the remaining 10 percent of Class A IFQ for EBT and WBT crab, harvesters and processors could lose the ex-vessel and first wholesale revenue associated with this 10 percent Class A IFQ. In 2015/2016 Tanner crab season, the gross ex vessel revenue for this 10 percent of the Class A IFQ for EBT and WBT crab was estimated at \$3.4 million, using the 2014 ex-vessel value shown in Table 2-7.

Under the status quo alternative, EBT and WBT IPQ holders who are also operating facilities where Tanner crab are currently processed would lose the potential profit from selling products from the 10 percent Class A IPQ Tanner crab catch. IPQ holders are subject to the IPQ use cap, and IPQ holders are the parties responsible for ensuring processing operations do not cause IPQ use caps to be exceeded in accordance with applicable regulations. The lost gross first wholesale revenue from the 2015/2016 forgone harvest is estimated to be approximately \$4.95 million, using the 2014 first wholesale value in Table 2-7 and accounting for the ex-vessel value paid to harvesters. Forgone net revenues to the processors would be less than this total amount, because costs associated with crab processing would be avoided.

New processors could receive the Class A IFQ limited under the existing IPQ cap. Entry of new processors capable of processing BS Tanner crab is possible, but barriers to entry exist. Both prior to and since implementation of the CR Program, entry to the processing sector to only operate as a crab processor was very challenging. A new processing facility would need to become equipped with crab lines for crab processing (cleaning, cooking, glazing, and freezing), storage, freezer capacity, and be able to economically accommodate the relatively small amount of the crab that would be processed. As explained in the RIR for Amendment 27, crab processing tends to be labor intensive, requiring relatively large crews. The cost of transporting, housing, and provisioning crews is asserted by IPQ holders to substantially drive up the cost of processing (NMFS 2008).

The economic viability of a new Tanner crab processor is limited. The analysts assume that new processors would have limited ability to attract Tanner crab processing given the fact that existing processors who operate processing plants already hold the majority of Tanner crab PQS (approximately 68 percent according to Table 2-3) that can be processed. Existing PQS holders who also own and operate processing facilities are unlikely to enter into custom processing agreements that would increase their processing costs relative to processing their IPQ crab at plants they operate. In addition, the three major crab processors (i.e., Trident, Nissui, Maruha-Nichiro) own a majority of the PQS in other CR Program fisheries. Therefore, the analysts assume that there are limited opportunities for new processors outside of those currently operating to initiate processing on the relatively small portion of Tanner crab, or other IPQ crab, not associated with the three major processors.

There are two potential processing facilities not affiliated with the Maruha-Nichiro Corporation, Trident Seafoods, and Unisea Seafoods, that take other BSAI crab but do not already take Tanner crab. These

facilities are assumed to be the facilities that could more easily transition into taking Tanner crab. However, both processors are located some distance from the EBT and WBT grounds in Kodiak and Adak. The location and distance from the fishing grounds of these facilities would have deadloss effects. Additionally, the facility in Adak has not in the recent past taken crab for traditional processing. This facility has focused on supplying the live crab market, which requires a different operational set-up than traditional cooking and freezing of sections. The facility in Kodiak takes a small amount of Bristol Bay red king crab every year.

One potential avenue for development of new crab processors is to also process groundfish. Processors that also process groundfish are able to keep plants operating for a greater period of time, spreading capital costs across larger scale production. Consequently, entry to the processing sector is affected by a processor's potential to enter groundfish fisheries and secure a portion of that production. However, with groundfish processing fully capitalized, entry opportunities in the crab processing sector are limited. In addition, to the extent that other management programs (such as the American Fisheries Act (AFA), BSAI Pacific cod sector allocations, and the Amendment 80 program) directly or indirectly limit the ability of processors to enter those fisheries, entry to the crab fisheries is more constrained. Overall, it appears unlikely that existing processors would have access to significant amounts of crab that would provide for a viable crab processing operation.

## **Communities**

Finally, under Alternative 1, no communities would gain additional economic activity and tax revenue from having the 10 percent of Class A IFQ EBT and WBT crab processed in their community. Under the status quo, processors could not further consolidate the processing of Tanner crab due to the use caps. However, this does not necessarily protect communities from the loss of processing activity. A processing company may leave the Tanner crab fishery, and the IPQ it had been processing would be stranded because there would not be available processing capacity under the cap. Additionally, Tanner crab IPQ is not subject to ROFR provisions therefore there is not an opportunity for a ROFR community-of-origin to purchase PQS and make arrangements for the processing of that IPQ.

### **2.9.2 Alternative 2: Custom Processing Use Cap Exemption**

Under Alternative 2, custom processing arrangements for BS Tanner crab would not count against the IPQ use cap. Therefore, with custom processing, there would not be a regulatory limit on the amount of crab a processing facility can process in a season. This would impact harvesters, shoreside processors, and communities that participate in the Tanner crab fisheries.

## **Harvesters**

Under Alternative 2, the custom processing exemption to the IPQ use caps could provide a benefit to IFQ holders, crew, and vessel owners that would otherwise be unable to complete the harvest of EBT and WBT Class A IFQ. Alternative 2 would allow for harvest of most of the EBT and WBT Class A IFQ. Under Alternative 2, all EBT and WBT IPQ crab received under custom processing arrangements at the processing facilities owned by the Maruha-Nichiro Corporation, Trident Seafoods, or Unisea Seafoods would not be counted against the IPQ use cap of the facility or the facility owners. This proposed action would potentially avoid the adverse economic impacts to harvesters created by the lack of adequate processing capacity that would otherwise result if the EBT and WBT crab fisheries could not be fully harvested.

It should be noted that circumstances that are not mitigated by this action may prevent harvesters from fully harvesting the TAC. These include factors such as icing conditions that limit access to the fishing

grounds, or poor catch per unit effort in the fisheries that make it uneconomic to fully harvest Tanner crab. Given past fishery performance, it is possible that the full Tanner crab TAC may not be taken. This proposed action would not affect or alter these other circumstances.

Alternative 2 would allow the consolidation of processing down to a single company or facility. In some cases, harvester operational efficiency could be improved, if processing is consolidated in a location that has access to goods and services that might be desirable during the season. However, harvester operational efficiency could suffer, if a single processor is unable to receive and process landings in a timely manner. Additionally, if processing consolidated to one location, that could affect fishing behavior with respect to where the fishing grounds are and proximity to a processor.

## **Processors**

The extent to which the exemption of custom processing from use caps allows further consolidation in the processing sector depends on whether processors choose to enter custom processing arrangements. The choice to enter those arrangements will depend largely on the benefit to the shareholder arising from using the shares at its own facility or custom processing at a plant unaffiliated with the shareholder. Additionally, the extent of further consolidation of processing activity likely depends on the business decisions that participants make with regard to their participation other fisheries, such as in Bristol Bay red king crab and Bering Sea *opilio*.

One of the potential risks of the proposed action is the potential for further consolidation amongst the processing facilities. With the proposed exemption, there are no regulatory barriers for processing companies to further consolidate processing facilities for Tanner crab. Since EBT and WBT crab are not subject to regionalization or ROFR, there are no limitations preventing all of the EBT and WBT IPQ crab from being processed by one company at one facility. Processor consolidation is not unique to the EBT and WBT crab fisheries. Facilities owned by Maruha-Nichiro Corporation, Trident Seafoods, Unisea Seafoods processed 99 percent of the BSAI crab in 2015. The remaining one percent of BSAI crab processed was processed by other processing facilities not affiliated the Maruha-Nichiro Corporation, Trident Seafoods, Unisea Seafoods, and Icicle Seafoods. These facilities were located in Kodiak and Adak. General information indicates that these processors tend to focus on king crab and supplying live red king crab and golden king crab to specialized markets.

Allowing further consolidation in the Tanner crab processing sector may allow increased processor production efficiency. Under the status quo, the cap binds only if custom processing precluded by the cap prevents processor production efficiency gains from being achieved. Processors are unlikely to engage in custom processing under the exemption from the cap, unless they can achieve gains through that consolidation. Further consolidation could also have distributional impacts within the sector. For example, consolidation of processing at a single facility, beyond the cap, will redistribute landings from other facilities to the processor exceeding the cap. In some cases, the shareholder contracting for custom processing will be the operator of the facility losing the processing activity. In this case, it is difficult to argue that the plant owner suffered any loss from the cap exemption. In other cases, the removal of the cap will be a redistribution of custom processing activity from one plant to another. In this case, the redistribution of activity will have a processing efficiency benefit for both the shareholder and the facility receiving the exemption; however, the movement of custom processing activity that gives rise to those benefits will result in a loss to the facility that loses custom processing.

The likelihood of further consolidation in the Tanner crab fishery processing sector under Alternative 2 is influenced by participants' processing activity in other crab fisheries. None of the current Tanner crab processors only process Tanner crab; all companies and facilities that are active in Tanner crab also process Bristol Bay red king crab and Bering Sea *opilio*. The Bristol Bay red king crab and Bering Sea

*opilio* fisheries have also seen consolidation in the processing sector. These fisheries are processed by Maruha-Nichiro Corporation, Trident Seafoods, and Unisea Seafoods. Additionally, Alaska Pacific Seafoods in Kodiak processes a small portion of the Bristol Bay red king crab quota. Crab processing tends to be labor intensive, requiring relatively large crews. The cost of transporting, housing, and provisioning crews to run crab processing lines at a plant can be extensive. Processors that are active in other BSAI crab fisheries may be more likely to maintain their presence in the Tanner crab fisheries to help maintain throughput for the facility.

However, there are other factors, other than processing efficiency, that could influence the extent to which processing would be consolidated under the exemption. Processors must be able to reach an agreement on price of custom processing. In some instances competition within the sector could diminish consolidation, if a processor perceives a benefit from keeping its processing independent. Some processors may wish to attempt to develop new products, which might not be possible (or as advantageous) under custom processing arrangements. Processors may still maintain facilities near harvesting grounds. Maintaining processing facilities near the harvesting grounds may help prevent any deadloss associated with an increase transit time between harvesting grounds and offload. Additionally, having processing facilities close to the fishing grounds can help harvesters maximize their efficiency and prevent the need to spend significant time transiting to and from processing facilities for offload.

The effect of Alternative 2 would differ across processors. Since the exemption is necessary only if a processor would exceed the 30 percent IPQ use cap, a processing company will need to be a large presence in a fishery to benefit from the proposed exemption. Consequently, large processors in a fishery are the primary beneficiaries of this action. Processors that participate in the market where the exemption is being used could be disadvantaged by the exemption. Processors not limited by the cap could find that the exemption constrains their ability to grow, by removing shares from the already limited market. In some instances, small processors that choose to have their shares custom processed could benefit from this action, but that benefit is likely to be relatively small in comparison to the benefits to larger entities that use the exemption to consolidate processing activity beyond the current cap.

## **Communities**

The effects of Alternative 2, on communities and community sustainability are relatively small if minimal further consolidation occurs. Alternative 2 would likely result in an additional BS Tanner crab being delivered to processors at facilities owned by the Maruha-Nichiro Corporation, Trident Seafoods, or Unisea Seafoods in BSAI communities. This would increase economic activity, income generated, and tax revenues in any community that is the recipient of increased processing activity. Therefore, effects of Alternative 2 may be beneficial to communities with processors with EBT and WBT IPQ. However, if facilities further consolidated under this action, companies may suspend crab processing at facilities in particular communities, causing adverse economic impacts. If the effects of Alternative 2 include further consolidation of the Tanner crab processing sector, this will cause negative impacts on communities that lose Tanner crab processing activity.

The effect of this action on communities will depend on the extent IPQ moves to, away from, or among communities. The potential for the action to result in the movement to or away from communities depends on many factors. This movement among communities would benefit the receiving community and would be a detriment to the community losing the processing activity. Consolidation in communities would only take place to the extent that processing companies can achieve benefits through consolidation.

It is difficult to predict the likelihood of consolidation of Tanner crab processing away from any community in particular because the existing facilities that process Tanner crab also participate in other BSAI crab fisheries, such as Bristol Bay red king and Bering Sea *Opilio* which are large volume fisheries.

There are no processing facilities that solely specialize in Tanner crab. Therefore, the effect of a company's decision to suspend Tanner crab processing at a facility depends in part on the extent of other crab processing going on in that facility.

Alternative 2 would have no direct economic effect on any other community because it is not feasible to process the otherwise stranded Class A IFQ in any other community. As noted above, we are not able to predict which specific facility, processor, or community would receive the 10 percent of the EBT and WBT IPQ under this proposed action that would otherwise remain unharvested. Therefore, the economic impacts on a specific community cannot be quantified.

### **2.9.2.1 Limited Duration Option**

One option the Council may want to consider in conjunction with the proposed action is to limit the duration of the proposed action. As noted in Section 2.5.1, since the implementation of the CR Program in 2005, there has been consolidation amongst the crab processing companies thus reducing the number of processing facilities that are unaffiliated with one another.

The known conditions in the Tanner crab fishery indicate that it is unlikely that a new unaffiliated processor will enter the fishery in the foreseeable future. Other sections of the analysis indicate that it is unlikely that delivering Tanner crab to other unaffiliated processors in Kodiak or Adak would be economically or operationally viable under current and anticipated conditions in the fishery (Section 2.9.1). The Tanner crab fishery has been historically fished concurrently with Bristol Bay red king crab and Bering Sea *opilio* fisheries. The delivery patterns and subsequently the processing of Tanner crab are likely related to the Bristol Bay red king crab and Bering Sea *opilio* fisheries. The analysts assume that processors with PQS would continue to receive IPQ crab at the facilities they own to maximize the throughput of crab and maintain the economic viability of processing operations (e.g., Trident Seafoods would receive Tanner crab in Akutan or Saint Paul, and Unisea would receive IPQ crab at its Unalaska/Dutch Harbor facilities). Therefore, it is reasonable to assume that Tanner crab would continue to be received and processed at multiple facilities in multiple communities.

Nevertheless, the Council could choose to limit the potential risk of additional consolidation by limiting the duration of a Tanner crab custom processing exemption, reviewing processing data prior to the expiration of the exemption, and deciding to maintain, modify, or remove a custom processing exemption at some predetermined future date. A limited duration option would address the immediate need of an exemption for custom processing of Tanner crab IPQ to prevent the stranding of quota, while also providing an opportunity for the Council to examine, on a more holistic approach, the impacts of an exemption on custom processing of Tanner crab IPQ use caps. Providing a temporary exemption of Tanner crab IPQ use caps for custom processing while also allowing time for a holistic examination of the BSAI crab processor consolidation could be useful in determining the long range impacts of a Tanner crab IPQ use cap exemption for custom processing on the Tanner crab fisheries.

The analysts recommend a minimum of 3 to 5 crab fishing years from the date of implementation for a limited duration exemption. This time frame is likely the minimum amount of time required to observe and assess processing patterns in the fishery, and prepare and develop an analysis and rulemaking necessary to revise, maintain, or remove a custom processing exemption. The analysis suggest that the timeframe be based on crab fishing years so that regulations are effective throughout an entire crab fishing year and do not expire mid-year. For example, if a custom processing exemption were effective on February 1, 2017 and the Council selected a five year duration, the regulation would remain in effective until July 1, 2022 – the end of the 2021/2022 crab fishing year.

### **2.9.3 Management and Enforcement Considerations**

The effects of Alternative 2 on management and enforcement burdens could increase when compared to Alternative 1, status quo. One aspect of exempting custom processing from the Tanner crab IPQ use caps is overseeing these limitations. Exemptions can pose several challenges to managers and enforcement personnel. Correctly applying limits on PQS and IPQ ownership and use requires full knowledge of all indirect holdings of those shares. Ownership of interests in the crab fisheries is often indirect with many persons holding overlapping interests in a variety of different fisheries. These overlapping indirect interests create a complex web that must be fully assessed to ensure compliance with limits on shareholdings. Exempting custom processing from IPQ use caps requires tracking of production at the plant and knowledge of indirect ownership of both shares and plants. These interests in shareholdings and use (which includes ownership of processed products), and processing plants require a multifaceted approach to monitoring use caps in the processing sector. Monitoring of activities and shareholdings in a relatively static environment is extremely challenging; periodic changes in interests of persons, adds to the task of maintaining currency in the monitoring of accounts requiring greater time and staffing investments. Therefore, monitoring and enforcement costs associated with the custom processing exemption to IPQ use caps would likely increase but would not affect management and enforcement associated with the crab fisheries.

### **2.9.4 Net Benefit to the Nation**

Alternative 2 has the potential to have a small positive net benefit for the Nation as compared to Alternative 1 with regard to allowing the full harvest and processing of the Tanner crab TAC. The circumstances that justified the IPQ use caps have changed and the IPQ use caps have unintended consequences with the unforeseen consolidation in processing facility ownership. The constraint was originally justified on economic welfare and distributional grounds, and not by market failure considerations. Therefore, lifting the constraint should relieve a burden on the region's economic activity, and facilitate the overall harvest in this fishery, and, thus, increase the value the Nation receives from the Tanner crab resource. Alternative 2 may result in further consolidation in the Tanner crab processing sector, however, this is difficult to predict due to the interests of existing processing facilities in other BSAI crab fisheries.

## 3 Initial Regulatory Flexibility Analysis

### 3.1 Introduction

This Initial Regulatory Flexibility Analysis (IRFA) addresses the statutory requirements of the Regulatory Flexibility Act (RFA) of 1980, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 601-612). This IRFA evaluates the potential adverse economic impacts on small entities directly regulated by the proposed action.

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

The RFA emphasizes predicting significant adverse economic impacts on small entities as a group distinct from other entities, and on the consideration of alternatives that may minimize adverse economic impacts, while still achieving the stated objective of the action. When an agency publishes a proposed rule, it must either ‘certify’ that the action will not have a significant adverse economic impact on a substantial number of small entities, and support that certification with the ‘factual basis’ upon which the decision is based; or it must prepare and make available for public review an IRFA. When an agency publishes a final rule, it must prepare a Final Regulatory Flexibility Analysis, unless, based on public comment, it chooses to certify the action.

In determining the scope, or ‘universe’, of the entities to be considered in an IRFA, NMFS generally includes only those entities that are directly regulated by the proposed action. If the effects of the rule fall primarily on a distinct segment, or portion thereof, of the industry (e.g., user group, gear type, geographic area), that segment would be considered the universe for the purpose of this analysis.

### 3.2 IRFA Requirements

Until the North Pacific Fishery Management Council (Council) makes a final decision on a preferred alternative, a definitive assessment of the proposed management alternatives cannot be conducted. In order to allow the agency to make a certification decision, or to satisfy the requirements of an IRFA of the preferred alternative, this section addresses the requirements for an IRFA. Under 5 U.S.C., section 603(b) of the RFA, each IRFA is required to contain:

- A description of the reasons why action by the agency is being considered;
- A succinct statement of the objectives of, and the legal basis for, the proposed rule;
- A description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply (including a profile of the industry divided into industry segments, if appropriate);
- A description of the projected reporting, record keeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities that will be subject to the requirement and the type of professional skills necessary for preparation of the report or record;
- An identification, to the extent practicable, of all relevant federal rules that may duplicate, overlap, or conflict with the proposed rule;



- A description of any significant alternatives to the proposed rule that accomplish the stated objectives of the proposed action, consistent with applicable statutes, and that would minimize any significant economic impact of the proposed rule on small entities. Consistent with the stated objectives of applicable statutes, the analysis shall discuss significant alternatives, such as:
  1. The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities;
  2. The clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities;
  3. The use of performance rather than design standards;
  4. An exemption from coverage of the rule, or any part thereof, for such small entities.

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

### 3.3 Definition of a Small Entity

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

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

Section 601(3) of the RFA provides that an agency, after consultation with SBA’s Office of Advocacy and after an opportunity for public comment, may establish one or more definitions of “‘small business” which are appropriate to the activities of the agency. In accordance with this provision, NMFS has established a small business size standard for all businesses in the commercial fishing industry, for the purpose of compliance with the RFA only (80 FR 81194, December 29, 2016). A business is considered to be a small business if it is independently owned and operated and not dominant in its field of operation (including its affiliates) and if it has combined annual gross receipts not in excess of \$11.0 million for all its affiliated operations worldwide. The proposed \$11 million standard applies to all businesses classified under the North American Industry Classification System (NAICS) code 11411 for commercial fishing, including all businesses classified as commercial finfish fishing (NAICS 114111), commercial shellfish fishing (NAICS 114112), and other commercial marine fishing (NAICS 114119) businesses.

On January 26, 2016, the SBA issued a final rule revising the small business size standards for several industries, effective February 26, 2016 (81 FR 4469). SBA’s final rule modified the size standard for "seafood product preparation and packaging" (NAICS code 311710) that applies to seafood processors. SBA’s final rule modified the definition of a small entity operating as a seafood processor to include all entities that are independently owned and operated, not dominant in their field of operation, and have a

combined annual employment of fewer than 750 or fewer persons on a full-time, part-time, temporary, or other basis, at all its affiliated operations worldwide. A business that *both harvests and processes* fish (i.e., a catcher/processor) is a small business if it meets the criteria for the applicable fish harvesting operation (i.e., finfish or shellfish). A wholesale business servicing the fishing industry is a small business if it employs 100 or fewer persons on a full-time, part-time, temporary, or other basis, at all its affiliated operations worldwide.

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

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

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

Small organizations. The RFA defines “small organizations” as any not-for-profit enterprise that is independently owned and operated, and is not dominant in its field.

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

### 3.4 Reason for Considering the Proposed Action

A description of the need for this action is included in Section **Error! Reference source not found.** and is not repeated here.

### **3.5 Objectives of Proposed Action and its Legal Basis**

Under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the Secretary of Commerce (NMFS Alaska Regional Office) and the North Pacific Fishery Management Council have the responsibility to prepare fishery management plans and associated regulations for the marine resources found to require conservation and management. NMFS is charged with carrying out the Federal mandates of the Department of Commerce with regard to marine fish, including the publication of Federal regulations. The Alaska Regional Office of NMFS, and Alaska Fisheries Science Center, research, draft, and support the management actions recommended by the Council. The BSAI crab fisheries are managed under the Fishery Management Plan for Bering Sea and Aleutian Islands King and Tanner Crabs. The proposed action represents an amendment, as required, to the fishery management plan, as well as amendments to associated Federal regulations.

The principal objective of the FMP amendment and proposed regulations is to BS Tanner crab to be custom processed (processed on behalf of an IPQ holder) without that crab being applied against the IPQ use caps of facility operators, which is consistent National Standard 5 of the Magnuson-Stevens Act.

### **3.6 Number and Description of Directly Regulated Small Entities**

This section provides estimates of the number of harvesting vessels that are considered small entities. These estimates may overstate the number of small entities (and conversely, understate the number of large entities). The RFA requires a consideration of affiliations between entities for the purpose of assessing if an entity is small. The estimates in do not take into account all affiliations between entities. There is not a strict one-to-one correlation between vessels and entities; many persons and firms are known to have ownership interests in more than one vessel, and many of these vessels with different ownership, are otherwise affiliated with each other. For example, vessels in the American Fisheries Act (AFA) catcher vessel sectors are categorized as “large entities” for the purpose of the RFA under the principles of affiliation, due to their being part of the AFA pollock cooperatives. However, vessels that have other types of affiliation, (i.e., ownership of multiple vessel or affiliation with processors), not tracked in available data, may be misclassified as a small entity.

The entities directly regulated by this action are those entities that process EBT and WBT crab. It does not include entities that harvest Class A IFQ EBT and WBT crab. From 2012 through 2014, there were no processors considered small entities that would have been directly regulated by the proposed action. Processors are considered small entities if they employ fewer than 750 people.

This action would also directly regulate RCRs as all CR Program crab must be received by an RCR. Some RCRs are the same entities that process Tanner crab, and others are those that have their Tanner crab custom processed. In 2015/2016, there were 10 RCRs that received Tanner crab, seven of which are considered large entities due to their affiliations with large seafood processing companies. The remaining three are considered small entities because they are all not-for-profit organizations.

### **3.7 Recordkeeping and Reporting Requirements**

Recordkeeping and reporting of custom processing exemption to IPQ use caps would be relatively minor and unlikely to substantially affect managing the EBT and WBT crab fisheries.

### **3.8 Federal Rules that may Duplicate, Overlap, or Conflict with Proposed Action**

No relevant Federal rules have been identified that would duplicate or overlap with any of the alternatives. Some current Federal regulations would need modification if the Council chose to implement the action alternative. These regulatory changes are described in Section 2.3.

### **3.9 Description of Significant Alternatives to the Proposed Action that Minimize Economic Impacts on Small Entities**

The action alternative will allow the full harvest and processing of the Tanner crab TAC. It is not expected that this action will have negative economic impacts on the small entities directly impacted by this action.

## 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 and Conservation Act (Magnuson-Stevens Act), and a brief discussion of how each alternative is consistent with the National Standards, where applicable. In recommending a preferred alternative, the Council must consider how to balance the national standards.

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

Neither of the alternatives would undermine the current management system that prevents overfishing. Alternative 2 would remove a regulatory constraint and aid participants in the fishery in achieving optimum yield from the fishery by facilitating harvest of the entire Tanner crab TAC.

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

This analysis draws on the best scientific information that is available concerning the Tanner crab fisheries. The most up-to-date information that is available has been provided by the managers of these fisheries and 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.

Both alternatives continue the management of individual stocks as a unit or interrelated stocks as a unit or in close coordination and are consistent with National Standard 3.

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

The alternatives would treat all participants the same, regardless of their residence. Alternative 2 would be implemented without discrimination among participants and is intended to contribute to the fairness and equity of the program by allowing participants to harvest and process their allocations of the TAC.

**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.

Alternative 2 improves efficiency of the fishery by allowing deliveries of Class A IFQ to processors with the capacity to process Tanner crab. The primary purpose of this action is to ensure that existing allocations of Tanner crab are fully utilized. Tanner crab was allocated under the CR Program for a number of reasons including resource conservation and benefits to the harvesters, processors, and communities involved in the BSAI crab 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.

Neither of the alternatives would be expected to affect changes in the availability of BSAI crab resources. Any such changes would be addressed through the annual TAC setting process, which is not affected by the alternatives.

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

Alternative 2 will minimize costs by providing an exemption to a restriction that prevents harvesters and processors from realizing the value of their IFQ and IPQ, respectively. Alternative 2 will not duplicate other actions.

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

Alternative 2 accounts for the importance of fishery resources to fishing communities by providing the opportunity for 10 percent of the Tanner crab Class A IFQ to be processed in regional communities. Alternative 2 may also allow further consolidation of Tanner crab processing, which could represent a loss of economic activity to a community. Under Alternative 1, this crab would remain unharvested and unprocessed.

**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.

Allowing the full harvest of the Tanner crab Class A IFQ under Alternative 2 would result in some bycatch. However, this fishery is subject to measures that minimize bycatch, bycatch is monitored by observers, and managers consider bycatch in setting the TAC for this fishery.

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

Alternative 2 has no direct effect on safety of participants in the fishery. IFQ and IPQ are share matched prior to the season opening, so the proposed action should have no effect on the prosecution of the fishery and therefore the safety of the fishery.

## **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 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/IRFA prepared for this plan amendment constitutes the fishery impact statement. The likely effects of the proposed action are analyzed and described throughout the RIR/IRFA. The effects on participants in the fisheries and fishing communities are analyzed in the RIR/IRFA sections of the analysis (Section 2 and Section 3). The effects of the proposed action on safety of human life at sea are evaluated under National Standard 10, in Section 3. 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 Councils are not anticipated as a result of this action.

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