

Background on the proposed change to the EAG facility use caps¹

The Council has received a number of letters from stakeholders associated with the Eastern Aleutian Islands golden king crab (EAG) fishery. The letters ask for the removal of the EAG facility use cap in order to provide more market opportunity for independent PQS/ IPQ holders. The letters highlight a live crab market opportunity at one particular processor in Dutch Harbor and a desire for crab harvesters and independent PQS holders to have access to this opportunity for the custom processing of their EAG IPQ. However, they have found the current 60% facility use cap to be constraining.

This document provides some background on the existing regulations and the Council's intent in their development. An attachment includes relevant regulatory language.

Original IPQ Use Caps in the CR Program

When the Council recommended the BSAI Crab Rationalization (CR) Program, it expressed concern about the potential for excessive consolidation of both harvesting and processing quota share (PQS). Excessive consolidation could have adverse effects on competitive 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 considered.

As one component to addressing this concern, the CR Program limited the amount of PQS that a person can hold, the amount of individual processing quota (IPQ; i.e., the annual exclusive processing privilege that match with A share harvesting quota) that a person can use, and the amount of IPQ that can be processed at a given facility. These limits are commonly referred to as use caps.

Use caps detailed at **50 CFR 680.42(b)** limited a person to holding no more than 30 percent of the PQS initially issued in the fishery, and to using no more than the amount of IPQ resulting from 30 percent of the PQS initially issued in a given fishery, with a limited exemption for persons receiving more than 30 percent of the initially-issued PQS. Additionally, originally, no processing facility could be used to process more than 30 percent of the IPQ issued for a crab fishery as specified at **§680.7(a)(8)**.

For all CR fisheries, the 30% caps on the *use* of PQS and IPQ originally included 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. Custom processing is defined **§680.2** and means processing of crab by a person undertaken on behalf of another person.

In **§680.2** the term "affiliation" is defined 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, the other entities. An entity may be an individual, corporation, association, partnership, joint-stock company, trust, or other type of legal entity. The CR Program uses the "10-percent rule" to monitor holding and use caps for PQS and IPQ for all CR Program participants as recommended by the Council. Under this attribution method 100% ownership or use of PQS or IPQ to an entity if they hold at least 10 percent equity in the holding entity.

Amendments to Exempt Custom Processing from IPQ Use Caps and Current Proposal

Reauthorization of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) in 2006 included a provision to exempt custom processing in the North region of the Bering Sea *C. opilio* fishery from IPQ use caps established under the CR program. The Council took action to make this change for

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under **Amendment 27** (effective 6/29/09), but under the same amendment package the Council extended the exemption to several other crab fisheries (now cited at **§680.42(b)(7)**), including:

- Western Aleutian Islands golden king crab fishery provided that IPQ crab is processed west of 174° W. long;
- Western Aleutian Islands red king crab fishery
- Eastern Aleutian Islands golden king crab fishery
- St. Matthews blue king crab fishery
- Pribilof red and blue king crab fishery

Effectively, this change means IPQ crab that are custom processed for an unaffiliated IPQ holder (who does not have a 10 percent or greater direct or indirect ownership interest in the shoreside crab processor or stationary floating crab processor) would no longer be counted against the IPQ use cap of the owner of the processing facility. A person who holds IPQ and who owns a processing facility would be credited only with the amount of IPQ crab used by that person, or any affiliates of that person, when calculating IPQ use caps. The exemption is limited to processing that occurs in communities to protect community interests. These exemptions are intended to allow consolidation beyond the caps in fisheries and regions that pose particular economic challenges to processors.

Relatedly, **Amendment 41** (effective 6/14/13) established a process whereby holders of regionally designated individual fishing quota (IFQ) and IPQ in six CR Program fisheries may receive an exemption from regional delivery requirements in the North or South Region in extenuating circumstances. If these circumstances were triggered, this action allowed for additional exemptions for crab that is custom processed from counting towards IPQ use caps. Additionally, the eastern *C. bairdi* Tanner and Western *C. bairdi* Tanner fisheries were added to the list of fisheries that were exempt from custom processing counting towards IPQ use caps through **Amendment 47** (effective 1/19/17).

Through **Amendment 27**, the Council recommended that crab that are custom processed in these fisheries not apply against the IPQ use cap of a processing facility owner because these fisheries historically have relatively small TACs when they are open to fishing, and consolidation of processing at one or a few facilities would improve the economic efficiency of harvesters and processors without having an adverse effect on community interests within the regions where those crab are consolidated. However, processors owning facilities west of 174° W. long. expressed concern about their ability to effectively compete for EAG and WAI specifically, if all of the catch were processed in one facility east of 174° W. long.

Therefore, in addition to exempting custom processing from counting towards the IPQ use caps, **Amendment 27** also created a new **facility use cap** for EAG and WAI that was intended to include custom processing east of 174° W. long. Based on this Council action through **Amendment 27** a prohibition at **§680.7(a)(9)** now states it is unlawful:

For any shoreside crab processor or stationary floating crab processor east of 174 degrees west longitude to use more than 60 percent of the IPQ issued in the EAG or WAI crab QS fisheries, unless that IPQ meets the requirements described in §680.42(b)(8).²

The proposers may be asking for the removal of the prohibition at **§680.7(a)(9)** - or a deletion of the "EAG" in this regulation. The only other fishery this regulation applies to, the Western Aleutian Islands red king crab (WAI) fishery, has been closed for commercial fishing since 2003/04. If this regulation were removed/ amended there would still be regulations at **§680.42(b)** which define the 30% IPQ use caps. However, based on **Amendment 27** and regulations at **§680.42(b)(7)(ii)(A)(2)** EAG IPQ crab that is custom processed (and unaffiliated) will not be counted towards this 30% cap.

² The reference to §680.42(b)(8) is citing the exemption for custom processing under regional delivery requirements.

Attachment: Current Federal Regulations

https://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&SID=564dca20e0dfcbcf7064c842ea76f5cc&rgn=div5&view=text&node=50:13.0.1.1.4&idno=50#se50.13.680_17

50 CFR 680.7 Prohibitions.

In addition to the general prohibitions specified in §600.725 of this chapter, it is unlawful for any person to do any of the following:

...

(a) *Receiving and processing CR crab.*

...

(7) For an IPQ holder to use more IPQ than the maximum amount of IPQ that may be held by that person. Use of IPQ includes all IPQ held by that person, and all IPQ crab that are received by any RCR at any shoreside crab processor or stationary floating crab processor in which that IPQ holder has a 10 percent or greater direct or indirect ownership interest, unless that IPQ crab meets the requirements in §680.42(b)(7) or §680.42(b)(8).

(8) For a shoreside crab processor or stationary floating crab processor, that does not have at least one owner with a 10 percent or greater direct or indirect ownership interest who also holds IPQ in that crab QS fishery, to receive in excess of 30 percent of the IPQ issued for that crab fishery, unless that IPQ meets the requirements described in §680.42(b)(7) or §680.42(b)(8).

(9) For any shoreside crab processor or stationary floating crab processor east of 174 degrees west longitude to use more than 60 percent of the IPQ issued in the EAG or WAI crab QS fisheries, unless that IPQ meets the requirements described in §680.42(b)(8).

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50 CFR 680.42 Limitations on use of QS, PQS, IFQ, and IPQ.

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b) *PQS and IPQ Use Caps.* (1) A person may not:

(i) Hold more than 30 percent of the initial PQS pool in any crab QS fishery unless that person received an initial allocation of PQS in excess of this limit. A person will not be issued PQS in excess of the use caps established in this section based on PQS derived from the transfer of legal processing history after June 10, 2002.

(ii) Use IPQ in excess of the amount of IPQ that results from the PQS caps in paragraph (b)(1)(i) of this section, unless that IPQ is:

(A) Derived from PQS that was received by that person in the initial allocation of PQS for that crab QS fishery, or

(B) Subject to an exemption for that IPQ pursuant to §680.4(p).

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(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 IPQ crab meets the conditions in paragraphs (b)(7)(ii)(A) and (B) of this section or the IPQ crab meets the conditions in paragraph (b)(7)(ii)(C) of this section:

(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;

(7) WAI IPQ crab; or

(8) WBT IPQ crab.

(B) That IPQ crab is processed at:

(1) Any shoreside crab processor located within the boundaries of a home rule, first class, or second class city in the State of Alaska in existence on June 29, 2009; or

(2) Any stationary floating crab processor that is:

(i) Located within the boundaries of a home rule, first class, or second class city in the State of Alaska in existence on June 29, 2009;

(ii) Moored at a dock, docking facility, or at a permanent mooring buoy, unless that stationary floating crab processor is located within the boundaries of the city of Atka in which case that stationary floating crab processor is not required to be moored at a dock, docking facility, or at a permanent mooring buoy; and

(iii) Located within a harbor, unless that stationary floating crab processor is located within the boundaries of the city of Atka on June 29, 2009, in which case that stationary floating crab processor is not required to be located within a harbor.

(C) The IPQ crab is:

(1) Derived from PQS that is, or was, subject to a ROFR as that term is defined at §680.2;

(2) Derived from PQS that has been transferred from the initial recipient of those PQS to another person under the requirements described at §680.41;

(3) Received by an RCR who is not the initial recipient of those PQS; and

(4) Received by an RCR within the boundaries of the ECC for which that PQS and IPQ derived from that PQS is, or was, designated in the ROFR.

(8) Any IPQ crab that is received by an RCR will not be considered use of IPQ by an IPQ holder for the purposes of paragraphs (b)(1) and (b)(2) of this section, if the IPQ is subject to an exemption pursuant to §680.4(p).

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