

C5 Crab Processing Use Caps

Initial Review



Sarah Marrinan, NPFMC

October 2023



Acronyms and terms for reference

PQS = processing quota share, long-term processing privilege (in “units”)

IPQ = individual processing quota, annual issuance of processing opportunity (in pounds), share-match with A share IFQ

Use caps = limit to the amount of a privilege that can be held or used

Leasing PQS= (sale of IPQ) temporary contractual arrangement where the associated risk and responsibility of the IPQ is passed on to the IPQ holder

Custom processing IPQ = contractual arrangement where the IPQ holder contracts with an unaffiliated processor facility to process their crab, but the responsibility and liability remain with the IPQ holder

Affiliation = relationship between entities used for accounting (e.g., use caps); CR Program uses the 10% rule- if an entity has a 10% or greater interest, ownership is 100% attributed to that entity

Regional delivery requirements = some IFQ has a requirement that it is landed in a certain region (North – N of 56°20' N lat; South – not the North region; or West - W of 174° W long)

ROFR = right of first refusal, a provision of the CR Program that provides a representative community entity – that represents a location of historical crab processing – the opportunity to acquire PQS (and other assets) by agreeing to the same terms of a pending transaction



Acronyms page 2, terms described throughout document;
*note these are not necessarily regulatory definitions



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

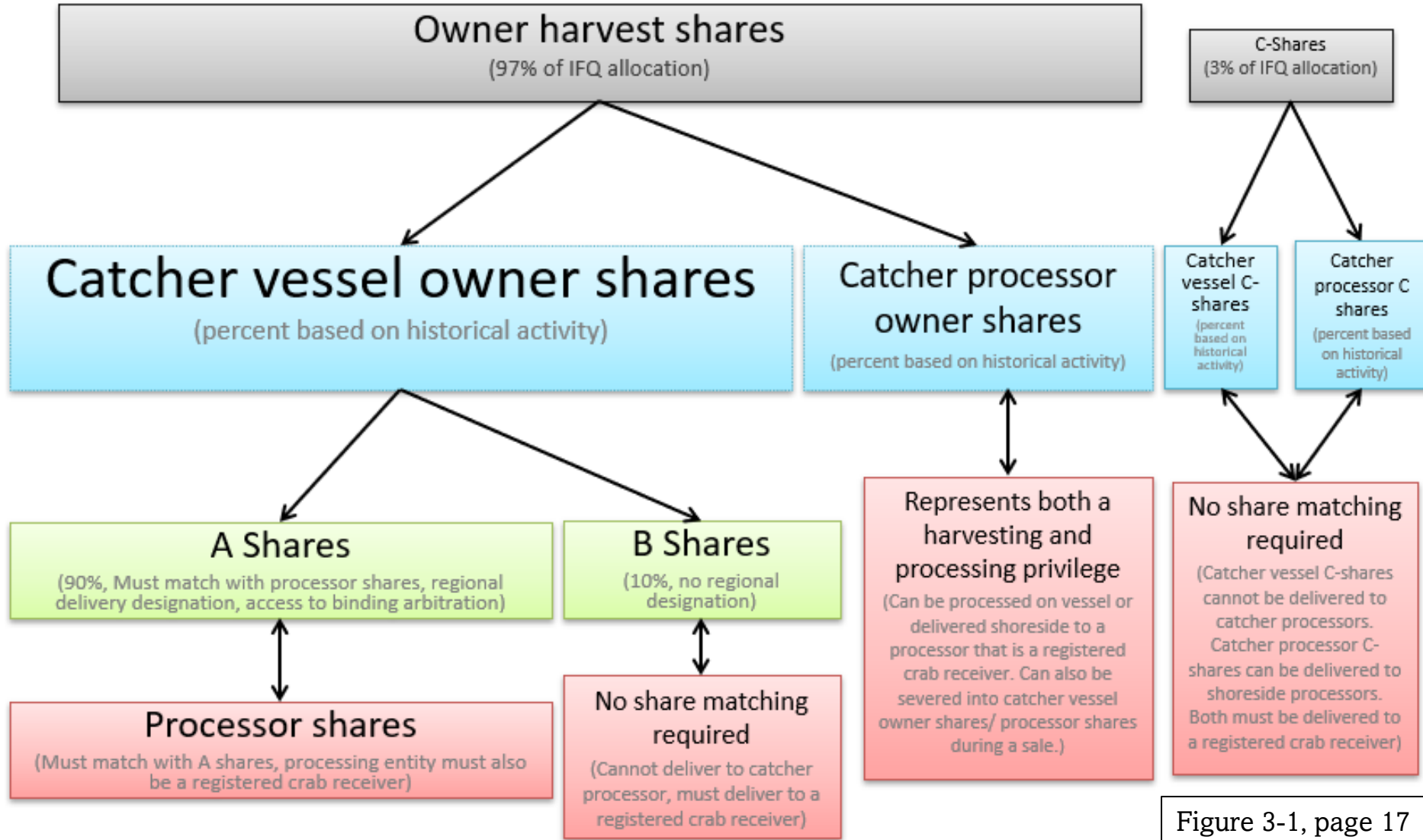


Figure 3-1, page 17

Catcher vessel owner shares

(percent based on historical activity)

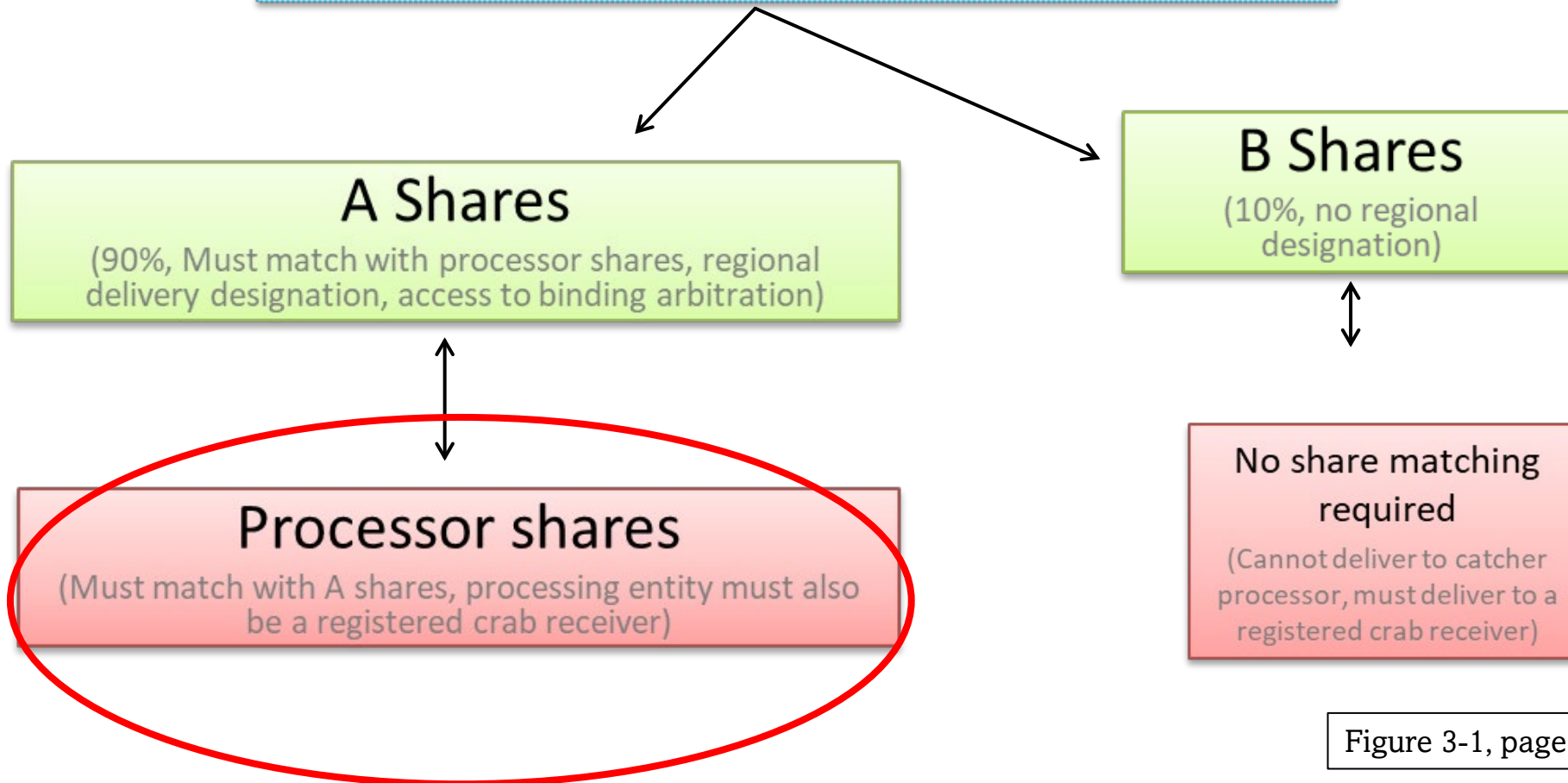


Figure 3-1, page 17



History of action

June 2021

- Council received 5 letters proposing changes to current regulations that prohibit crab processing facilities from using more than 60% of the Eastern Aleutian Islands golden king crab (EAG) IPQ
- The letters explain of a live crab market opportunity with Royal Aleutian Seafood/ UniSea. Unaffiliated IPQ holders and associated harvesters wish to participate in this market; however, this facility is constrained from additional participation by the 60% facility use cap.
- At the June 2021 meeting, the Council also received a proposal to change the start date for both AI golden king crab fisheries (Eastern and Western)
- In response, the Council tasked a discussion paper to cover both issues.

October 2022

- The Council bifurcated these issues and scheduled this facility use cap piece independently.



History of action

February 2023

- Council/AP considered a discussion paper for changing or removing the EAG facility use cap
- Public comment also added an additional request to include exemptions to the PQS/ IPQ use caps for custom processed Bristol Bay red king crab (BBR) and south-designated Bering Sea snow crab (BSS). With the possibility of low future catch limits, the testifier was concerned processing for these species could be constrained.
- Council established a purpose and need statement, 2 action alternatives and requested initial review
 - WAI was added to Alt 2 with EAG, as this is the only other fishery that this regulation applies to (WAI has been closed since (2004/05))
 - WAG was added to Alt 3 with BBR and BSS, as this is the only other fishery that would not be exempt from having custom processed IPQ count towards the PQS/ IPQ use caps



Purpose and need for action

- Significant percent of crab individual processing quota (IPQ) held by people who are not affiliated with a processing facility (i.e., requires custom processing)
- EAG and WAI have a unique cap that limits facilities to processing more than 60% of the IPQ issued for EAG or WAI
 - Action to remove cap could increase market opportunity for EAG
- PQS/ IPQ use caps include any custom processed IPQ for BBR, south-designated BSS and WAG IPQ processed east of 174° W longitude
 - Declines in BSS and BRR could lead to years with small fishery catch limits, which could create production inefficiencies with current caps
 - Action to exempt custom processing from these caps could increase efficiencies and increase the net benefits generated from these species
- Preserve ownership and entity use caps to limit consolidation



Alternatives

Alternative 1. No action.

Alternative 2. Remove the EAG and WAI processing facility use caps at §680.7(a)(9).

Alternative 3. Exempt custom processing of

- BSS IPQ with a south-region designation,
- BBR IPQ, and
- WAG IPQ processed east of 174° W longitude

from the PQS/IPQ and processing facility use caps under the program (add to list of exempted fisheries at §680.42(b)(7)(ii)(A)). Regionalization would still apply.



Regulatory caps on crab processing

Limits to how much PQS a person can hold §680.42(b)(i)

- No more than 30% of the PQS initially issued in the fishery
- Includes affiliations – 10% rule
- Exceptions for PQS holders that received an initial allocation in excess of this amount based on historical processing “grandfathered in” above the use caps

Limits to how much IPQ a person can “use” §680.42(b)(ii) and §680.7(a)(7)

- No more than the amount of IPQ resulting from 30% of the PQS initially issued
- Except if they were “grandfathered in”

Prohibition on how much a shoreside or stationary floating processor can process (even if they don't own IPQ) §680.7(a)(8)

- No more than 30% of the IPQ issued for a crab fishery
- Except if they were “grandfathered in”



Regulatory caps on crab processing

ORIGINALLY, the 30% caps on the *use* of 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.

NOW, there are a number of exemptions to this calculation.



Regulatory caps on crab processing - Amendments

Amendment 27 (effective June 2009)

Exempted customed processed IPQ from the PQS/ IPQ use caps in the following fisheries:

- Bering Sea snow crab with a north region designation
- 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



Regulatory caps on crab processing - Amendments

Amendment 27 (effective June 2009)

Exempted customed processed IPQ from the PQS/ IPQ use caps in the following fisheries:

- Bering Sea snow crab with a north region designation
- 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

→ But also, added new 60% facility use cap to EAG and WAI fisheries for any shoreside or stationary floating processor east of 174° W. long;



Regulatory caps on crab processing - Amendments

Amendment 27 (effective June 2009)

These exemptions for custom processed IPQ only apply for processors operating at either a shore-based or a stationary floating processor facility that are within community boundaries.

In addition, an exemption was included for IPQ crab not counting to PQS/ IPQ use caps if it is or was subject to ROFR

AND

- Has been transferred from the initial recipient to another person
 - Received by an RCR who is not the initial recipient of those PQS, and
 - Received by an RCR within the boundaries of the eligible crab community for which that PQS and IPQ derived from that PQS is, or was, designated in the ROFR.
- This exemption is relevant for BBR and BSS (Table 3-3; page 20)



Regulatory Caps on Crab Processing - Amendments

Amendment 41 (effective June 2013)

- Established process for exempting from regional delivery requirements
- Includes exemption for custom processed IPQ counting toward the PQS/IPQ use caps

Amendment 47 (effective January 2017)

- Added *C. bairdi* fisheries to the list of fisheries for which custom processed IPQ does not count towards PQS/IPQ use caps
 - This leaves BBR, BSS with a south region designation, and WAG crab processed west of 174° W. long as the only fisheries for which custom processed IPQ DOES count toward the PQS/ IPQ use caps
- A discussion paper followed considering other types of options (raise the caps, convert to B shares, and only apply exemptions when the capacity did not exist), but these options did not appear to achieve the intended goal.



Description of affected crab fisheries

- EAG and WAG fisheries
- WAI fishery
- BSS fishery
- BRR fishery

- TAC & harvest
- # of vessels & landings
- Ex vessel price and gross value
- Spatial distribution of harvest
- PQS & IPQ holder information
- # of processing facilities and location



Count of processing entities

EAG

# of:	2019/20	2020/21	2021/22	2022/23
PQS holders	10	10	10	10
IPQ holders	7	8	6	7
facilities	4	4	3	2

WAG

# of:	2019/20	2020/21	2021/22	2022/23
PQS holders	10	10	10	10
IPQ holders	6	7	6	6
facilities	3	4	3	2

BSS

# of:	2019/20	2020/21	2021/22	2022/23
PQS holders	15	14	15	15
IPQ holders	10	10	9	
facilities	6	5	5	

BRR

# of:	2019/20	2020/21	2021/22	2022/23
PQS holders	13	13	13	13
IPQ holders	8	11		
facilities	6	6		



Table 3-8 & 3-9; page 32

Table 3-16, page 38; Table 3-20; page 42



Crab processing communities - profiles

Six communities received deliveries of BBR, BSS, EAG, or WAG between 2015 – 2022:

- Adak
- Akutan
- Dutch Harbor/ Unalaska
- King Cove
- Kodiak, and
- St. Paul



This section used existing sources to provide a consolidated profile for each community.



Alt 1: No action

Represents status quo regulations

- Processing facilities east of 174° W longitude would continue to be prohibited from using more than 60% of the IPQ issued in the EAG and WAI crab fisheries
 - Requires that more than one processor receives deliveries of EAG in order for TAC to be fully processed
 - Some unaffiliated IPQ holders and associated harvesters may not have the opportunity to process their EAG at a facility if it would exceed the cap (such as described in the proposals) – would need to identify a different facility to custom process with
- Custom processed IPQ for south-region BSS, BRR, and WAG processed east of 174° W longitude would continue to count toward the PQS/ IPQ use caps (unless qualified through ROFR exemptions)
- **Consolidation of processors can still occur under status quo**
 - Although use caps can provide market space for another processing facility – it does not guarantee that a processing facility will be available
 - Does not prevent consolidation up to the cap levels
 - Even beyond the caps, if processors choose not to operate harvested crab can be stranded (e.g., *C. bairdi* fisheries)
 - These decisions may be external to the use caps



Effects of Alt 2: Remove EAG and WAI facility use caps

- Would allow additional custom processed IPQ to the facility near the cap
- In recent years, there have been 2-4 processing facilities
- **The current caps are likely influencing the relative distribution of EAG IPQ between processor facilities and not the number of facilities**
- However, if this action is adopted it would not prohibit all EAG IPQ from being landed in 1 facility.
- It is not expected this would be the case in the near-term, as the recently active facilities also hold IPQ and it is expected they would continue to process their own IPQ.
- Overall impacts are highly dependent on external factors
- If the WAI remains closed, this action has no effect for this fishery. If it opens, this action could allow for more efficient deliveries and processing, especially if a TAC is small.



Effects of Alt 2: Remove EAG and WAI facility use caps

Processors

- Increased net benefits and production efficiency at the processor sector level
- Distributional impacts to owners of processing facilities (some may have more IPQ to process, some less)
- Beneficial to unaffiliated IPQ holders by potentially providing more custom processing market opportunities (such as this live market) and more competition for facilities
 - Unless the number of independent active facilities decreases (not expected in the short-term)
- Continued opportunities to enter into the processing market by purchasing or leasing PQS, or accepting deliveries of B or C class IFQ or CDQ crab

Harvesters

- Beneficial to harvesters that share-match with unaffiliated IPQ holders by potentially providing more custom processing market opportunities (such as this live market) and more competition for facilities
 - Unless the number of independent active facilities decreases (not expected in the short-term)

EAG Communities: Dutch Harbor/Unalaska & Akutan

- Consolidation can (and has) already occurred for EAG IPQ
- Recently processing has been in Dutch Harbor/ Unalaska – expected to continue
- Therefore, impacts from the proposed action are expected to be marginal.



Effects of Alt 3: Exempting custom processed IPQ from PQS/ IPQ use caps



Changes

- Would allow processing facility companies to process over the 30% use cap for BBR, south-region BSS, and WAG - with custom processed IPQ not counting towards the caps
- Would align the application of PQS/ IPQ use caps across crab fisheries

The same

- A person's direct and indirect PQS and IPQ holdings would still count towards the PQS/ IPQ use caps
- Regionalization would still apply



Effects of Alt 3: Exempting custom processed IPQ from PQS/ IPQ use caps

Processors

- Increased net benefits and production efficiency at the processor sector level
- Distributional impacts to owners of processing facilities (some may have more IPQ to process, some less)
- Beneficial to unaffiliated IPQ holders by potentially providing more custom processing market opportunities (such as this live market) and more competition for facilities
 - Unless the number of independent active facilities decreases (not expected in the short-term)
- Continued opportunities to enter into the processing market by purchasing or leasing PQS, or accepting deliveries of B or C class IFQ or CDQ crab

Harvesters

- Beneficial to harvesters that share-match with unaffiliated IPQ holders by potentially providing more custom processing market opportunities (such as this live market) and more competition for facilities
 - Unless the number of independent active facilities decreases (not expected in the short-term)

BRR, BSS, & WAG processing communities: Dutch Harbor/Unalaska, King Cove, St. Paul, Kodiak, Akutan, & Adak

- Consolidation and movement of IPQ can already occur under status quo
- Impacts would only be realized to the extent that this action facilitates the movement of shares to – or away from – recent processing communities
- Difficult to predict, but given current consolidation, marginal impacts are expected to be limited



Management and enforcement considerations

- NOAA Office of Law Enforcement (OLE) has consistently identified challenges with monitoring and enforcing PQS/ IPQ use caps.
 - Complex web of entity affiliations
 - Complex regulations with many nuanced exemptions
- Due to this complexity, they are generally monitored and enforced on an ad hoc basis, when issues are suspected.
- Alternative 2 and 3 should reduce the monitoring and enforcement burden.
 - If adopted together, use caps would be consistent across fisheries.
 - And monitoring and enforcement would essentially be at the holder level – PQS and IPQ.



Next Steps

- Consider whether continued action is warranted.
- If warranted, identify a preliminary preferred alternative for consideration at final action.

Questions?

Sarah Marrinan

sarah.marrinan@noaa.gov

