



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
National Marine Fisheries Service
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Agenda B-2: Use Cap Calculations under the BSAI Crab Rationalization Program and CGOA Rockfish Program

Recently, we have received questions about how we administer holding and use caps implemented under our limited access privilege programs. There have been certain situations that arose where a fishery participant requested to transfer cooperative-held harvester privileges to another cooperative, and we were not able to process those transfers due to a use cap. The Central Gulf of Alaska Rockfish Program (RP), BSAI Crab Rationalization (CR) Program, and Amendment 80 Programs are cooperative-based limited access privilege programs that attribute inter-cooperative transfers to individual cooperative member recipients for the purpose of calculating individual use caps. However, under the Amendment 80 Program, there is now only one cooperative, so this provision functionally doesn't apply. **If the Council wishes to receive additional information (beyond the information provided in this paper) about use cap calculations, the Council could request a discussion paper or initiate an action to explore potential changes to how use caps are calculated and verified by NMFS.** Any change to how use caps are calculated and implemented would require programming changes to existing software used to administer these programs and, depending upon the scope of the potential change, could require regulatory changes. For example, the Council may wish to consider alternative methods to calculate "holding" or "use" of cooperative-based harvest shares (CQ under the RP or Cooperative IFQ under the CR Program) or the Council may wish to consider whether it is still necessary to attribute intercooperative transfers to individual cooperative members for the purpose of limiting consolidation to prevent accumulation of excessive harvesting shares under these programs. The following sections explain how NMFS implements the use caps in the RP and the CR Program.

Central Gulf of Alaska Rockfish Program Use Caps:

The current RP use caps are summarized in the following Table.

	Catcher vessel sector	Catcher/processor sector
Eligible rockfish harvester primary species aggregate QS and CQ use cap	4.0 %	40.0 %
Processor primary species, Pacific cod, and sablefish CQ use cap	40.0 %	N/A
Vessel use cap	8.0 % POP CQ	60.0 % rockfish primary species CQ



Previously, with the implementation of the Central Gulf of Alaska Rockfish Pilot Program ([71 FR 67210](#), November 20, 2006) and subsequent implementation of the RP ([76 FR 81248](#), December 27, 2011; [77 FR 2478](#), January 18, 2012; and [77 FR 38013](#), June 26, 2012), NMFS implemented four types of use caps with separate use caps percentages established for the catcher vessel and the catcher/processor sectors:

1. A cap on the amount of quota share (QS) an eligible rockfish harvester can hold ([§ 679.82\(a\)\(2\)](#));
2. A cap on the amount of rockfish primary species cooperative quota (CQ) that a rockfish cooperative can hold ([§ 679.82\(a\)\(3\)](#));
3. A cap on the amount of rockfish primary species CQ that a vessel can harvest ([§ 679.82\(a\)\(4\)](#)); and
4. A limit on the amount of rockfish primary species an eligible rockfish processor can receive and process ([§ 679.82\(a\)\(5\)](#)).

In 2021, NMFS clarified that any transfer of reallocated Rockfish Program incidental catch allowances by NMFS for catcher/processor (C/P) CQ to a catcher vessel (CV) cooperative does not apply when calculating CV use caps, including CV ownership, cooperative CQ, harvester QS, or shoreside processor caps. Use caps are established to limit consolidation ([86 FR 11895](#), March 1, 2021).

In 2024, NMFS amended the RP to remove the CV CQ cap, and revise the processing and harvesting caps ([89 FR 66633](#), August 16, 2024).

Removal of the RP cooperative CQ holding cap allows the formation of larger cooperatives including a larger portion of the harvesters in the program. The changes implemented in 2024 did not completely remove the harvesting cap applicable to CVs (vessel use cap), however the vessel use cap was modified to remove dusky and northern rockfish from the calculation of the 8% cap on CQ use. The CV CQ use cap is now 8% of the Pacific ocean perch aggregate annual CQ.

Regulations at [§ 679.81\(i\)\(5\)](#) specify how NMFS determines “use” for the purpose of CQ use cap calculations and goes on to state that a person’s holdings or use of CQ for CQ use cap calculations is assessed by adding two amounts:

1. All tons of CQ derived from the rockfish QS held by that person and assigned to the rockfish cooperative, and
2. All tons of CQ assigned to that person by the rockfish cooperative from approved transfers.

Due to current use cap calculation methods that apply to inter-cooperative transfers, holding or use of CQ is attributed to a cooperative member at time of coop formation and upon receipt of CQ via inter-cooperative transfer, and CQ use for use cap purposes is not accrued or determined at the time of landing. Separately, a vessel use cap limits the harvest of CQ by individual member vessels. In inter-cooperative transfers, only the recipient’s use cap accounting is affected meaning that overall holding or use attribution only ever increases, and a transferor may then not be able to receive CQ due to having previously met the use cap limit. NMFS currently verifies use cap compliance at the time of cooperative formation and, for transfer recipients, upon assignment of an inter-cooperative transfer of additional CQ to a person when received by

transfer (excluding a CQ transfer from a catcher/processor cooperative to a catcher vessel cooperative). NMFS explained use cap calculations in the proposed rule to implement Amendment 88 to the GOA FMP ([76 FR 52148](#), August 19, 2011). This proposed rule described the calculation occurring at the time a member assigns their QS to a coop, and then again when receiving an inter-coop transfer, but the proposed rule did not address use cap calculations when acting as a transferor.

When a cooperative transfers CQ away from the cooperative, there is no step to subtract CQ from any individual's "CQ held" for the purpose of use cap calculations, however the CQ transfer would be attributed to a cooperative member in the cooperative receiving the transfer. In other words, if all the cooperative members are at or very near the individual CQ use cap, and the cooperative then transfers CQ to a second cooperative, the first cooperative may not be able to later receive CQ by transfer to "return" unharvested CQ back to the cooperative because the first cooperative's members have already "used" their initial CQ by assigning it to their cooperative at the time of application. This results in some level of 'double counting' because CQ is counted toward a use cap for the cooperative member when it's assigned to a cooperative, and, after transfer, it is also simultaneously counted toward the use cap for the receiving cooperative member.

BSAI Crab Rationalization Cooperative Use Caps:

With the implementation of the BSAI Crab Rationalization (CR) Program, NMFS implemented three types of use caps that limit the amount of quota share (QS) and processor quota share (PQS) that a person can hold or use, limit the amount of individual fishing quota (IFQ) and individual processor quota (IPQ) that a person can use as specified in regulations at [§ 680.42](#). These include 1) QS and IFQ use caps; 2) PQS and IPQ use caps, and 3) vessel limitations ([70 FR 10174](#), March 2, 2005).

Individual and collective ownership

Harvester use caps are calculated by adding up all of the QS held or IFQ used by that person and their percentage of direct or indirect ownership in any entity that holds QS or uses IFQ. This is called the "individual and collective" rule and is similar to the way that NMFS calculates use caps in the halibut and sablefish IFQ program. As an example, for an individual who holds 100 pounds of IFQ and has a 5 percent interest in a company that holds 100 pounds of IFQ, the amount of IFQ that person would be considered to hold for use cap calculation is 100 pounds (his personal holdings) plus 5 pounds (5% of 100 pounds - his ownership interest in that company) for a total of 105 pound.

For a corporation, partnership, or other non-individual entity that holds QS or IFQ and also holds PQS or IPQ, NMFS uses a different indirect ownership calculation method - a 10 percent threshold rule. In this case, the use cap is equal to all of the QS or IFQ held by that person and all of the QS or IFQ held by any entity in which that non-individual has a 10 percent or greater direct or indirect ownership interest. As an example, a corporation that holds 100 pounds of IFQ

and has a 15 percent interest in a company that holds 100 pounds of IFQ, would be considered to hold 200 pounds of IFQ for use cap calculation.

Cooperative IFQ and Transfers

The CR Program includes regulations at [§ 680.21](#) that govern the formation and operation of crab harvesting cooperatives. If the Regional Administrator determines that a transfer of IFQ from one cooperative to another would cause the person applying to receive the IFQ to exceed a use limit in § 680.42, NMFS will not approve the transfer.

Regulations at [§ 680.21\(e\)](#) specify the requirements that address transfers of QS, IFQ, PQS, and IPQ by crab harvesting cooperatives that have been issued to crab harvesting cooperative IFQ permits. Regulations at [§ 680.21\(e\)\(3\)](#) governing use caps calculations within crab harvesting cooperatives states that inter-cooperative transfers of IFQ will apply to the individual use caps of crab harvesting cooperative members through the designation of the crab harvesting cooperative members conducting the transfer.

Use cap calculations are conducted at the time of permit issuance (IFQ or cooperative IFQ) or again at when processing a request to receive IFQ or cooperative IFQ by transfer. Similar to the Rockfish Program, IFQ is considered to be “used” for the purpose of use cap calculations prior to harvest and landing, and when a harvesting cooperative transfers cooperative IFQ away from the cooperative, there is no step to subtract the IFQ from any individual’s “use” for the purpose of use cap calculations. In other words, if all the cooperative members are at or very near the IFQ use cap, the cooperative may not later be able to receive IFQ by transfer even after transferring IFQ away from the cooperative. For example, a recent scenario occurred where an inter-cooperative transfer was initiated to essentially ‘swap’ north shares for south shares. In this situation, the use cap was constraining for one cooperative because their members were at or near the cap and could not receive the full amount of the requested transfer, despite no longer holding the amount of cooperative IFQ that had previously accrued toward their use cap.