DRAFT FOR INITIAL REVIEW

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

Modify Certain BSAI Crab Rationalization Arbitration Rules and Clarify When IPQ and PQS Application Withdrawals are Allowed

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Abstract: This Regulatory Impact Review (RIR) analyzes the impacts of regulatory actions to modify the requirements of the BSAI Crab Rationalization Program arbitration rules. These proposed changes are not mutually exclusive and can be adopted in combination with one another. The first proposed change would remove the requirement that the arbitrator can only select a remedy proposed by one side, meaning that it removes the requirement that the arbitrator use the LBO arbitration model. The second proposed change would allow parties to an arbitration proceeding receive a written report from the arbitrator that includes the rationale for the decision and a version of the report that does not contain confidential information to be made publicly available. The third option would remove the requirement that the harvesters and processors generate a Market Report to aid in selecting an ex-vessel price. The fourth option removes the arbitration option for non-performance after a contract has been established. This RIR also analyzes the impacts of a regulatory action to clarify regulations regarding when individual fishing quota and individual processing quota applications can be withdrawn after being accepted as complete by NOAA Fisheries.

For definition of acronyms and abbreviations, see online list: https://www.npfmc.org/library/acronyms

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Executive Summary

This Regulatory Impact Review (RIR) analyzes a proposed regulatory action to modify aspects of the Bering Sea Aleutian Islands (BSAI) Crab Rationalization (CR) Program's arbitration structure and clarify rules regarding withdrawal of applications for individual fishing quota (IFQ) and individual processing quota (IPQ). The proposed action would not change other aspects of the CR Program or management of the BSAI crab fisheries under the authority of the State of Alaska. It is within the authority of the Secretary of Commerce to establish regulations governing the structure of the CR Program.

Purpose and Need

The Council adopted a purpose and need statement in December 2024 as follows:

The Bering Sea and Aleutian Islands (BSAI) Crab Rationalization Program was implemented in 2005. The viability of the BSAI crab fisheries for all participants is significantly affected by challenging global markets; poor marine ecosystem conditions for commercial crab species that have resulted in high annual uncertainty, fishery closures, and low TACs; and the challenging cost structure associated with processing severely reduced volume in remote communities. The original program regulations did not anticipate the level of processor quota shares that would be acquired by entities who do not own processing facilities and thus need to have active processors custom process their crab or the reduction in number of active crab processors that has occurred in recent years. The Council intends to consider limited revisions to the BSAI Crab Rationalization Program arbitration process and the annual individual fishing quota (IFQ) and individual processor quota (IPQ) application process to increase transparency, provide flexibility, and reduce program costs and burdens for participants without changing the overall program structure and objectives.

Alternatives

The Council adopted the alternatives below in December 2024. No preliminary preferred alternative has been identified at this time.

Alternative 1: Status Quo

The No Action alternative would maintain all aspects of the current binding arbitration program structure and not provide further clarification on whether the CR Program allows an IFQ or IPQ application to be withdrawn after NOAA Fisheries Restricted Access Management (RAM) Division has accepted it as complete.

Action alternatives are not mutually exclusive.

Alternative 2: Changes to the regulations governing the arbitration process.

Options are not mutually exclusive.

> **Option 1.** Remove the requirement that the arbitrator can only select a remedy proposed by one side. Allow the arbitrator to select an independent or compromise remedy based on the facts provided in the arbitration.
>
> **Option 2.** Allow parties to receive the arbitrator's written report and rationale, as well as a publicly available report providing key rationale (without including confidential information).
>
> **Option 3.** Remove the requirement for a Market Report.
>
> **Option 4.** Remove the arbitration option for non-performance after a contract has been established to define BSAI crab price, delivery, or other terms.

Alternative 3. IFQ and IPQ application withdrawal: IFQ and IPQ applications can be withdrawn after being accepted by NMFS any time before BSAI crab rationalization species TACs are announced and within

1) **Option 1: 24 hours**
2) **Option 2: 48 hours after the BSAI crab rationalization, species TACs are announced.**

The current regulations are silent on when and if IFQ and IPQ applications may be withdrawn after they have been accepted by RAM as complete. National Oceanic and Atmospheric Administration (NOAA) Fisheries has allowed applications to be withdrawn but noted that if the Council wanted greater clarity on this issue, it could propose specific criteria for application withdrawals. This alternative would clarify whether IFQ and IPQ applications can be withdrawn after being accepted as complete and the timing of the withdrawal. Implementing an option under this alternative would provide greater clarity for NOAA Fisheries, IPQ holders and IFQ holders.

A related question that was raised while discussing this issue at the December 2024 Council meeting was how NOAA Fisheries will manage the fishery if all processing quota share (PQS) holders withdraw their application, no PQS holders apply for IPQ, or too few PQS holders apply for their allocation and would exceed the processing limits.

The proposed actions would not modify other aspects of the CR Program.

Summary of Terms

Terms used in this analysis (may not be formal definitions, see 50 CFR 680 for specific regulatory context)

Anti-trust concerns = Several provisions of the CR Program, including issuance of IPQ and IFQ, publicly announcing a non-binding pricing formula, and circulating a Market Report could only be implemented and comply with antitrust laws if they were conducted within specific parameters. In general, anti-trust concerns have to do with anticompetitive practices, price-fixing and collusion.

Arbitration System = the system established by the contracts required by 50 CFR 680.20, including the process by which the Market Report and Non-Binding Price Formula are produced, the negotiation approaches, the Binding Arbitration process, and fee collection.

Arbitration Organizations = These organizations are parties to the contracts that define and govern the share matching and Arbitration System. They serve an administrative function in this process. NOAA Fisheries will not issue IFQ or IPQ in a program fishery until arbitration organizations representing enough QS and PQS holders to account for at least 50 percent of the A share QS and 50 percent of the PQS issued for a fishery, select the market analyst, formula arbitrator, a pool of contract arbitrators, and notify NOAA Fisheries of their selection. There are three types of Arbitration Organizations: one for PQS and IPQ holders; one for QS and IFQ holders that are affiliated with PQS and IPQ holders; and one for QS and IFQ holders who are not affiliated with a PQS or IPQ holder.

Arbitration IFQ = Class A catcher vessel owner (CVO) IFQ held by a person who is not a holder of PQS or IPQ and who is not affiliated with any holder of PQS or IPQ, and IFQ held by an FCMA cooperative. (50 CFR 680.2) Only holders of arbitration IFQ and holders of IPQ are eligible to use negotiations and Binding Arbitration (50 CFR 680.20(b)(2)).

Binding Arbitration = system designed to resolve contract terms fairly and efficiently if Arbitration IFQ holders and IPQ holders cannot agree regarding contract terms and the enforcement of those terms (processed defined at 50 CFR 680.20(h)(3)(v)), over non-performance (50 CFR 680.20(h)(10)) or quality disputes (50 CFR 680.20(h)(11)). The decision of the Contract Arbitrator for Binding Arbitration will be enforced by the parties to that arbitration.

'LBO' (Last Best Offer) style of arbitration = Also called 'Baseball arbitration'. It requires that both parties submit their proposed outcome. They must also provide evidence supporting their position. That outcome could be the ex-vessel price paid or other disputes (e.g., delivery terms). This structure limits the arbitrator's ability to select an outcome by taking one of two actions: accept the IFQ holder's proposal or accept the IPQ holder's proposal.

Market Report = required element of the arbitration system (50 CFR 680.20(f)(4)(i)). This report includes an analysis of product markets for a specific crab fishery and reports on activities occurring within three months before its generation. The report is intended to provide background information on each crab fishery, the products generated by each fishery, and the position of those products in the marketplace, discuss the historical division of wholesale revenue, and provide methods for predicting wholesale prices before the fishery occurs.

Non-Binding Price Formula Report = intended to serve as a starting point for negotiations between fishermen and processors, or as a starting point for an arbitrator in evaluating offers in an arbitration process based on the historical division of first wholesale prices. It is not binding. The report includes the Price Formula, where the ex-vessel price is the dependent variable in a regression formula.

Formula Arbitrator and Market Analyst = person hired by the Arbitration Organization(s) to produce the Market Report and Non-Binding Price Formula report annually. Can be the same person.

Contract Arbitrator = presides over any binding arbitration proceedings, making a final determination. Selected by the Arbitration Organizations.

Comparison of Alternatives for Decision-making

Alternative 1 is the status quo alternative. If Alternative 1 is selected, the current crab arbitration program structure at 50 CFR 680.20 would be unchanged and the rules for withdrawal of IFQ/IPQ applications would not be clarified.

Current regulations require that the **last best offer (LBO) arbitration method** be used when arbitration is triggered by Arbitration IFQ holders (50 CFR 680.20(h)(2)). LBO arbitration (also known as final-offer or baseball arbitration) requires that both parties submit their proposed outcome and provide evidence supporting the requested outcome. The arbitrator is then required to fully accept the proposal of one party and is not empowered to negotiate an agreement or apply terms outside one party's offer. In IFQ/IPQ arbitration, the issues that an offer must address could include the ex-vessel price paid, other contract terms in dispute (e.g., delivery terms), and other specific matters as the arbitrator requires. The arbitrator is selected from a pool of approved arbitrators, and the arbitrator's decision is final and issued without explanation of its reasoning. Regulations at 50 CFR 680.20(h)(7) state that the decision of the Contract Arbitrator for Binding Arbitration will be enforced by the parties to that arbitration.

When the CR arbitration system was implemented, the LBO system was selected while allowing only IFQ holders to initiate contract arbitration, as a structure to provide greater protection for the IFQ holders that were required to share match. The LBO structure is considered an efficient and often less costly dispute resolution system. This style of arbitration was initially selected as an efficient arbitration system by incentivizing members of the Arbitration Organizations to submit reasonable offers. Harvesters and processors were expected to submit offers that would increase the likelihood of their position being chosen by the arbitrator. If both offers were similar, selecting either would have fewer negative impacts on the side that did not prevail. It was also considered less costly than other forms of arbitration or dispute settlement.

When the current arbitration structure was implemented, it included certain standards to help ensure predictability and fairness for the parties involved. The regulations state that both the Non-Binding Price Formula and the contract arbitrator's decision must be based on the historical distribution of first wholesale revenues using arm's length first wholesale prices and ex-vessel prices. The language also states that the price should preserve the historical division of revenues in the fishery while considering several factors. Discussions with industry members indicate that the arbitrators have relied on the historical division of first wholesale prices without considering changes in the cost structures of the two sectors. If an arbitrator considers additional information, verifying that information is noted as important and a concern.

The regulations do not provide for the parties to the arbitration proceedings to receive **details or rationale for the decision** that was made to select one of the offers. A Contract Arbitrator Report must be submitted to NMFS if any arbitration occurs within a fishery (50 CFR 680.20(h)(6)). This report does not include the arbitrator's reasons for making the determination. When the Council was developing this program, it was concerned with the potential for antitrust violations associated with the release of information that could be used to alter negotiations between harvesters and processors.

Regulations at 50 CFR 680.20(f)(4)(i) state that a **Market Report** for each crab QS fishery must be produced not later than 50 days before the first crab fishing season for that crab QS fishery, unless the Arbitration QS/IFQ Arbitration Organizations and the PQS/IPQ Arbitration Organizations, by mutual agreement, include a provision in the contract with the Market Analyst to establish a different date for production of the Market Report for that crab QS fishery. This report includes an analysis of product markets for a specific crab fishery and reports on activities occurring within three months before its generation. The report is intended to provide background information on each crab fishery, the products generated by each fishery, and the position of those products in the marketplace, discuss the historical division of wholesale revenue, and provide methods for predicting wholesale prices before the fishery occurs.

Regulations at 50 CFR 680.20(h)(10) defines the process for resolving contract **performance disputes** through arbitration and largely matches the process for other arbitrations. It also states that if a party fails to abide by the arbitration decision in the performance dispute, a party to the arbitration may pursue other available contract remedies. Those options could include civil lawsuits.

Regulations at 50 CFR 680.20(h)(11) describe the arbitration system for settling quality disputes. ***The Council may wish to clarify if this proposed action would modify arbitration regulations for quality disputes.*** When the two parties agree to a formula-based price for crab but cannot reach an agreement on the quality and price of the crab, the IPQ holder and the Arbitration IFQ holder(s) will receive their share of the value based on the contract. If the Arbitration IFQ holders prefer to use the actual ex-vessel price and not a formula-based price, and a dispute arises regarding crab quality and price, the dispute should be referred to an independent quality specialist firm to determine the quality of the crab.

With regard to **IFQ and IPQ application withdrawal**, the status quo regulations currently contain no guidance. RAM has considered and granted requests to withdraw previously approved applications for IPQ twice in recent history, both well before TAC issuance. With no regulatory guidance, considerations included rights, privileges, and obligations of an applicant, as well as impacts on the fishery.

Alternative 2 would change the arbitration regulations.

Alternative 2, Option 1 would remove the LBO arbitration structure. Regulations would not specify the type of arbitration used, but parties to arbitrations could agree on the arbitration structure and include that information in the report to NMFS that is required when arbitrations occur in a year. This would allow the arbitrator greater discretion to select the outcome from the issues in dispute, as supported by the available facts and arguments from each side. Possible outcomes could be within the range of proposed offers, independent of the proposed offers, or matching a proposed offer.

Moving to an arbitration structure that allows the arbitrator to select the best outcome independent of the offers submitted by the two parties could increase the cost and duration of arbitration. A decision in that case would be more complex, since it would require the arbitrator to reach an optimal decision, rather than select the better-supported of two possible outcomes. The increased costs of arbitration would be due to the additional information that an arbitrator may require to make the decision. The amount of information exchanged could increase. More information could help to make a party's case, since the arbitrator has more flexibility to select an outcome. It may take longer to consider all the information presented.

Alternative 2, Option 2 would establish regulations allowing IPQ and Arbitration IFQ holders who were parties to that arbitration to receive a written report from the Contract Arbitrator and any rationale for their decision. A second report, available to the public, would exclude confidential information used for the arbitration, but would otherwise include the Contract Arbitrator's decision and key rationale. For example, actual prices would not be disclosed, but how the two prices submitted helped influence the decision might be provided. Both reports would be created for each arbitration.

A primary concern with providing a written report is the potential for antitrust violations by reducing the independence of the information that might be used in price-setting and negotiations across members of each sector. Any antitrust violations are prohibited, and sharing information pertinent to the arbitration could be considered an antitrust violation. For that reason, the final rule implementing the CR Program (69 FR 63200, October 29, 2004) noted that "information sharing among IPQ and IFQ holders, collective negotiations, and release of arbitration results would be limited to minimize the antitrust risks of participants in the Program."

Appendix 1 is a memo from antitrust experts that reviewed the proposed structure of the original CR Program arbitration structure. The main concern with the CR Program structure expressed in that document focused on provisions regarding the exchange of information that would not be permitted in an unregulated, competitive environment. The legal opinion advised that several provisions, including publicly announcing a pricing formula, circulating a Market Report, and providing arbitrators with access

to information from prior arbitration sessions, could be implemented and comply with antitrust laws if they were conducted within limited parameters. This legal opinion is from May 2004.

Other provisions of the CR Program being considered raised antitrust concerns. These include providing both harvesters and processors access to all information provided to their arbitrators, permitting processors to engage in discussions regarding pricing, and the unlimited publication of the arbitration results. To address the possible anticompetitive effects of these provisions, the memo recommended that the harvesters' and processors' access to information during an arbitration be limited to materials submitted directly by the parties. Access to the results of other arbitration sessions should be limited to arbitrators and non-affiliated harvesters that have not committed shares to a processor. As implemented at 50 CFR 680.20(h)(5), parties may only access information that the other party submitted to the arbitrator. Also, the arbitrator must keep information provided by other members of the fishery confidential from the parties and must keep all information received in arbitration confidential as to anyone other than a party, with the exception only for the final result and the report to NMFS under (h)(6).

If the Council wishes to pursue this option, it may be helpful to identify the specific elements (or level of detail) that would be included in a report. A request that includes the elements may allow the analysis of this issue to focus on whether individual pieces of information would trigger antitrust issues.

Alternative 2, Option 3 would remove the requirement that a Market Report be developed for each fishery each year. The intent of the report is to support the Arbitration System. The Market Report is an analysis of the market for products of a specific crab fishery and reports on activities occurring within three months prior to its generation. The information provided for each crab fishery includes the products generated by each fishery, the position of the products in the marketplace, the historical division of wholesale revenue, and methods for predicting wholesale prices before the fishery occurs.

The shared arbitration system costs are outlined in an annual Alaska Crab Processors Arbitration Organization (ACPAO) report submitted to NMFS and the Council by the participants. Arbitration costs are divided equally between the harvesters and processors based on a landings fee structure. The fee applied to landings has ranged between $0.00 and $0.01 per pound, depending on the year and carryover funds available. The 2023/2024 cost of the Market Report and Non-Binding Price Formula was estimated by NMFS in the report to Office of Management and Budget (OMB) at $49,000. The cost is paid equally by harvesters and processors and the harvester portion of the cost is collected through a landings fee. Eliminating the requirement to produce a Market Report for each fishery would eliminate the portion of that cost associated with the production of the Market Report.

Harvester and processor representatives supported removing the requirement for a Market Report at the December 2024 Council meeting. The two parties indicated that sufficient information was available through other published sources to support arbitration hearings. They indicated that removing the Market Report would not have a meaningful impact on the availability or quality of the data used in the arbitration process.

Alternative 2, Option 4 would remove regulations defining arbitration over contract performance. This issue was a concern for persons holding IPQ who did not operate a processing facility. If no processing facilities were available to custom process their share-matched IPQ, they may have limited control over fulfilling a contract.

While arbitration has not been used to settle performance disputes in the CR Program, it reportedly has been used as a bargaining tool to help reach agreements. Removing the regulations would not prohibit the use of arbitration to resolve those disputes; however, the details of the arbitration structure would need to be agreed to by both parties or left to the arbitrator to determine. If agreement could not be reached on using arbitration, the option of a civil trial would be available. Civil trials are often more expensive in terms of time and cost. The cost of a civil trial varies depending on the case's complexity. It is not possible to predict the cost of future civil cases that may be initiated.

Civil trial could also require that judges who are less familiar with the crab fisheries and the relationships between the harvesters and processors than the arbitrators render judgements regarding non-performance. This could increase uncertainty regarding the court's decision.

Alternative 3 would create greater clarity by standardizing the parameters of the IFQ/IPQ application withdrawal process.

This alternative may allow IFQ/IPQ holders to make more informed decisions when they initially apply for IFQ/IPQ. The current lack of guidance could cause them to contact RAM, discuss the possibility of withdrawal, and then wait to see if the request will be approved or denied. Conversely, it may result in a scenario where PQS holders do not apply for IPQ due to the risk of the unknown TACs and the uncertainty in whether they can withdraw an IPQ application. These withdrawals have been allowed in other years; however, decisions to allow withdrawal might not be consistently applied if staff or workloads change, or if other factors change treatment.

Knowing whether IPQ applications may be withdrawn may allow other IPQ holders to better plan for how any IPQ application withdrawals will impact the IPQ they are allocated. While processors would not be allowed to coordinate this activity, knowing that withdrawal is possible under certain conditions may allow strategic plans within a company to be formed.

Arbitration IFQ holders would have more information on how they would be impacted by IPQ holders withdrawing applications. The difference between the time when the TAC is announced and when the season opens is the amount of time RAM would have to determine who has applied for IPQ and IFQ, issue the permits, and publish them on NMFS's website. Using the 2024 Bering Sea Snow (BSS) fishery as an example, the Alaska Department of Fish and Game (ADF&G) announced the TAC on October 4th. The fishery was opened on October 15th. IFQ holders have 5 days to share match after quotas are issued. That year RAM would have had about 5 days to determine the IPQ and IFQ allocations, issue the permits, and publish them on NMFS's website to allow share matching to begin prior to the fishery opening. Sharematch.com website helps facilitate share matching, but decisions may need to be made by IFQ holders in a short time.

The option would also allow IFQ holders to withdraw their application under the same time constraints. Arbitration IFQ holders are assumed to be less likely to withdraw their applications. IFQ can be assigned to a cooperative and leased within cooperatives. Lease rates have been about 50 percent of the ex-vessel value for BSS and 65 percent for BBR (see Section 3.3). Given that leasing crab can generate an income stream with minimal expense, it is assumed that IFQ would be unlikely to withdraw their application. However, if PQS holders withdrew their IPQ applications within the established window and Class A IFQ holders were not satisfied with the available IPQ options for share matching, this amendment would provide them with an opportunity to withdraw their application as well.

Table E-1 Summary of expected advantages, disadvantages, and other considerations from proposed alternatives and options

Proposed Action	Advantages	Disadvantages	Other considerations
Alternative 1 No action, status quo regulations	No change	No change	No change
Alternative 2, Option 1 Remove the 'LBO' structure in binding arbitration	May allow for more compromising solutions.	Likely more extreme offers will be submitted to start negotiations. Could decrease efficiency (takes longer to settle, requires more information), increased costs due to possible increased frequency in use and less efficiency in settlement. If it results in a lower ex-vessel price, this could also decrease harvesting crew shares.	Could have implications for the outcome, but unclear which sector may benefit. An arbitrator might be more likely to consider factors other than the historical distribution of the first wholesale price.
Alternative 2, Option 2 Provide a written explanation for the arbitration outcome	May increase transparency in the process.	Scope would be limited based on anti-trust concerns and confidential data. A detailed explanation could open the door for determinations to be contested, which they are not meant to be in arbitration.	Clarify whether this option would *require* a written explanation or provide an opportunity for it.
Alternative 2, Option 3 Remove the requirement for the Market Report	Both harvesters and processors suggested it might not be necessary in this process. Highlighted access to other available market reports. Would reduce costs.	None highlighted in the analysis	
Alternative 2, Option 4 Remove the option for arbitration for non-performance	None highlighted in the analysis	Limits the options available to both IPQ holders and IFQ holders for settling non-performance disputes to either civil action or if both IPQ holder and IFQ holders agreed, they could still use arbitration A civil action may require persons less familiar with crab fisheries render judgements potentially increasing time and expense, and uncertainty in outcomes.	This option may have been included due to concerns about IPQ holders who custom process and who may not know whether processing facilities will be available for them to fulfill the contract terms made with the IFQ holder they have share-matched with. However, this option does not change their contractual commitment with IFQ holders.
Alternative 3 Clarify the ability to withdraw IFQ or IPQ applications	Would establish formal expectations and increase transparency around IFQ/ IPQ issuance. Would be less likely to be in a situation where PQS holders chose not to apply due to the risk of low TAC and no ability to withdraw, and as a result, miss out on operating in a year with a TAC that could have sustained their operation.	Might result in additional withdrawn IPQ in a given year, which could negatively impact harvesters and communities. However, the likelihood of this occurrence as a result of this Alt is unknown.	

1 Introduction

This Regulatory Impact Review (RIR)[1] evaluates the costs and benefits of regulatory actions to modify the Crab Rationalization (CR) Program by adjusting the arbitration system rules and clearly defining when Individual Fishing Quota (IFQ) and Individual Processing Quota (IPQ) applications that have been accepted by the National Oceanographic and Atmospheric Administration Fisheries (NOAA Fisheries or NMFS) may be withdrawn.

This action would not modify any other aspects of the CR Program. The Secretary of Commerce (SOC) has the authority to establish regulations governing the CR Program. The proposed actions would not alter the components of the Bering Sea Aleutian Islands (BSAI) crab fisheries that the State of Alaska manages.

An RIR assesses the alternatives' benefits and costs, the distribution of impacts, and the identification of small entities that may be affected by them. This RIR addresses the requirements of Presidential Executive Order 12866 and some of the requirements of the Regulatory Flexibility Act. An RIR is a standard document produced by the North Pacific Fishery Management Council (Council or NPFMC) and the National Marine Fisheries Service (NMFS) Alaska Region to provide the analytical background for decision-making.

The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) authorizes the Council to make recommendations to the SOC regarding managing the BSAI crab fisheries. The SOC then decides whether to approve, partially approve, or disapprove the recommended actions.

1.1 Purpose and Need

The Council adopted a purpose and need statement for this action in December 2024 as follows:

The Bering Sea and Aleutian Islands (BSAI) Crab Rationalization Program was implemented in 2005. The viability of the BSAI crab fisheries for all participants is significantly affected by challenging global markets; poor marine ecosystem conditions for commercial crab species that have resulted in high annual uncertainty, fishery closures, and low TACs; and the challenging cost structure associated with processing severely reduced volume in remote communities. The original program regulations did not anticipate the level of processor quota shares that would be acquired by entities who do not own processing facilities and thus need to have active processors custom process their crab or the reduction in number of active crab processors that has occurred in recent years. The Council intends to consider limited revisions to the BSAI Crab Rationalization Program arbitration process and the annual individual fishing quota (IFQ) and individual processor quota (IPQ) application process to increase transparency, provide flexibility, and reduce program costs and burdens for participants without changing the overall program structure and objectives.

1.2 History of this Action

Prior to the CR Program, BSAI crab fisheries had a history of contentious price negotiations. Harvesters often acted collectively to negotiate an ex-vessel price with processors, sometimes resulting in the failure to fish at the start of the fishing season to raise pressure for price concessions. During the development of

[1] This regulatory amendment is a technical change to a fishery management regulation that does not result in a substantial change to fishing location, timing, effort, authorized gear types, or harvest levels. This approach does not adversely impact conservation and management in the commercial BSAI crab fisheries. Therefore, this action is not expected to have a significant impact. This determination is subject to further review and public comment. If this determination is confirmed when a rule is prepared, the proposed action will be categorically excluded from the need to prepare an Environmental Assessment.

the CR Program, participants in both the harvesting and processing sectors were interested in ending that practice, particularly due to concerns that market power could be unbalanced by the rationalization of the fisheries.

However, during the development of the CR Program, both harvesters and processors also expressed concern regarding how changes to management of the fishery would impact market power between the sectors. The proposed system included one-to-one share matching between Class A harvesting IFQ and IPQ (shares are further defined in Section 3.2.1). In this share matching system, the concern of market power imbalance is heightened because the CR Program limits the pool of persons to whom a Class A IFQ holder may sell their catch. The concern is most acute for the last Class A IFQ/IPQ holders from each sector to commit their harvesting or processing shares. This "last person standing" problem, where the last harvesting Class A IFQ holder to contract deliveries would have a single IPQ holder to contract with, could effectively limit any ability to use other processor markets for negotiating leverage.

Based on those concerns and directions from Congress, a binding arbitration system was designed to resolve contract terms fairly and equitably if Class A IFQ holders and IPQ holders cannot agree regarding contract terms and the enforcement of those terms. Additionally, to ensure fair price negotiations and to compensate for complications arising from the creation of the quota share system, the CR Program includes the Arbitration System for the settlement of price disputes between harvesters and processors.

The Proposed Rule for the CR Program states that LBO arbitration is the centerpiece of the Arbitration System (69 FR 63200). The next three paragraphs are taken, with some edits, from that Proposed Rule.

Last best offer (LBO) arbitration would be available to resolve price and delivery disputes arising from open negotiations among Arbitration IFQ holders and IPQ holders, lengthy season approach, share matching or performance disputes. In a LBO arbitration, the parties each would submit a LBO defining all the terms specified for inclusion in a LBO by the Contract Arbitrator. An Arbitration IFQ holder, a crab harvesting cooperative, could submit the LBO that defines the delivery terms for all its members. The Council chose to adopt a LBO arbitration with the intent that it would deter parties from exaggerating their offers in hopes of achieving a more favorable result, and be an efficient and less costly system to resolve disputes.

Prior to the submission of the LBO, the Contract Arbitrator would work with the parties to generate the information the Contract Arbitrator would require for reaching a decision. To minimize antitrust risk, only the parties to the arbitration and the Contract Arbitrators would have access to information provided directly by the parties to the Contract Arbitrator for that particular arbitration. To further preclude antitrust risk, the parties sign a confidentiality agreement stipulating they will not disclose any confidential information generated during the arbitration proceeding.

At its June 2004 meeting, the Council considered the antitrust risks of sharing the arbitration results among IPQ holders or affiliated IFQ holders or Arbitration IFQ holders that already have committed to an IPQ holder. The Council agreed that such information sharing would raise antitrust concerns regarding illicit price stabilization or collusion. To the extent IFQ holders are members of a crab harvesting cooperative under the FCMA, they are allowed to share the information with other members of the same cooperative and set prices with antitrust immunity. Sharing the results of arbitrations with IPQ holders or affiliated IFQ holders or Arbitration IFQ holders that already committed to an IPQ holder and so have no need to opt-in could create serious antitrust risks. If IPQ holders shared the results of completed arbitrations with other processing quota share (PQS) or IPQ holders, they would risk antitrust violations. Without antitrust immunity, sharing current pricing information could facilitate illicit price stabilization or collusion. Also, if IPQ holders shared the results of arbitrations before all arbitrations were completed, an IPQ holder could alter its final offer to the Contract Arbitrator to make it closer to the price in previous arbitrations in a manner similar to what would occur if the IPQ holders coordinated on prices. So, the regulations allow the disclosure of arbitration results only to Arbitration IFQ holders that have not

committed to an IPQ holder so they have access to the real-time results of completed arbitrations for purposes of determining whether to opt-in to a completed contract.

The binding arbitration system continues to be a source of dispute between BSAI crab harvesters and processors. Arbitration IFQ holders have generally supported the current binding arbitration structure; PQS holders have supported modifying it.

The BSAI crab fisheries have undergone several regulatory changes in recent years. These Federal and State management changes are described in section 2.4 of the CR Program review (NPMFC 2024a). None of those changes directly addressed the proposed amendments in this analysis.

In **June 2024** the Council received the 17-year BSAI CR Program Review which comprehensively examined this rationalization program (NPFMC 2024a). After receiving this review, the Council requested that a discussion paper be developed to provide additional information on specific aspects of the program's arbitration components (NPFMC 2024b). This discussion paper was focused on information to help the Council consider whether potential changes to the Program's arbitration system might be prudent. The discussion paper focused on four issues of primary concern, 1) timing of joining an arbitration organization, 2) several details about the requirements of the binding arbitration system, 3) an initial evaluation of whether current regulations allow IPQ/ IFQ holders to withdraw their application for quota any time before issuance, and 4) considering alternative structures under low TAC levels in which binding arbitration would not apply, while still providing stability and protection to both harvesters and processors.

Review of that paper in **December 2024** led the Council to develop the purpose and need for this RIR, as well as the alternatives it wished to consider amending or clarifying.

1.3 Description of Management Area

This action would affect the BSAI area as defined in the Crab FMP. That area is shown in Figure 1-1 and is defined as the EEZ waters south of the Chukchi Sea statistical area as described in 50 CFR part 679, east of the 1990 U.S./Russian maritime boundary line, and extending south of the Aleutian Islands for 200 miles between the convention line and Scotch Cap Light.

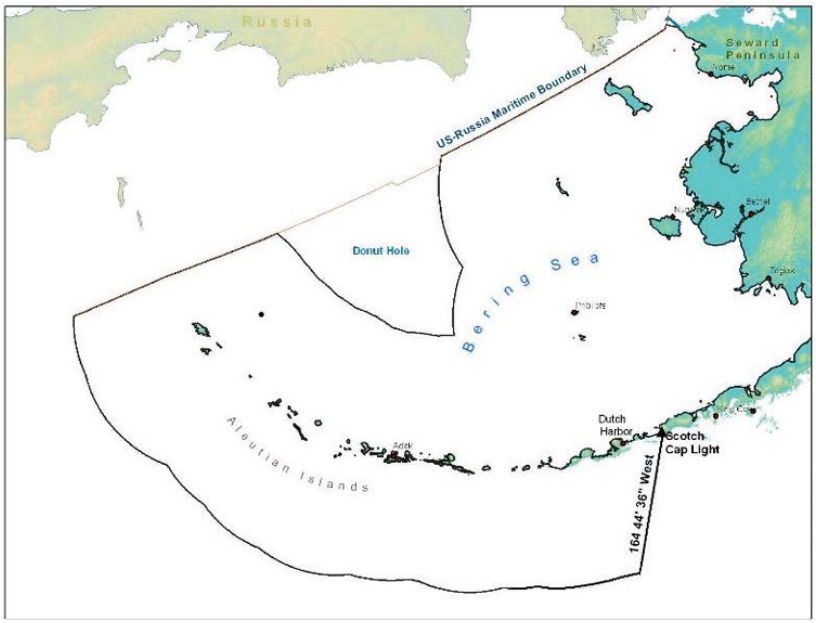


Figure 1-1 BSAI Crab FMP Management Area

Source Crab FMP Figure 3-1

Table 1 to 50 CFR 680 describes each BSAI (Bering Sea and Aleutian Islands) crab management area. Figure 1-2 shows the general locations of BSAI Crab commercial harvests over a recent 5-year period.

The status of the nine CR Program crab fisheries stocks are detailed in the annual SAFE report (NPFMC 2024c). Information on the fisheries is also provided in Section 3.2 of this document.

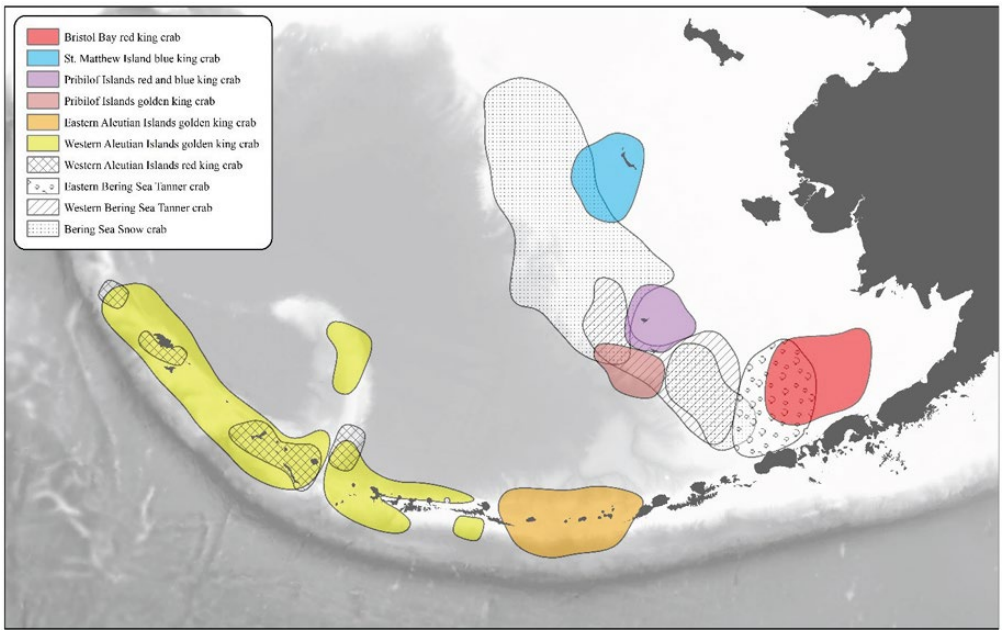


Figure 1-2 Approximate locations of commercial crab harvested in the BSAI

Source: Crab FMP Figure 4-1

2 Alternatives

The Council adopted alternatives in December 2024. In addition to the No Action alternative, the Council selected four options to modify the CR Program arbitration requirements and one alternative to clarify current regulations. No preliminary preferred alternative has been identified.

2.1 Alternative 1, No Action

The No Action alternative would maintain the current binding arbitration program structure. It would also not provide further clarification on whether the CR Program allows an IFQ or IPQ application to be withdrawn after RAM has accepted it as complete, or the requirements or considerations RAM might apply for granting withdrawal, including the time frame of the request.

Regulations for the CR Program Binding Arbitration System are defined at 50 CFR 680.20. Those regulations require using an **LBO arbitration method** (50 CFR 680.20(h)(2)), also commonly referred to as "baseball" arbitration. LBO arbitration requires that both parties submit their proposed outcome on the issues in dispute (such as ex-vessel price paid or delivery terms) and provide evidence supporting the requested outcome. The arbitrator is only empowered to select the better of the two proposed outcomes. Here they must accept the IFQ holder's proposal or accept the IPQ holder's proposal. The arbitrator is not empowered to negotiate an agreement other than the outcome requested by the Class A IFQ holders (Arbitration IFQ holders) or the IPQ holders. The decision of the arbitrator is final and issued without explanation of the rationale.

The regulations do not provide for the **parties to the arbitration proceedings to receive a written report that describes why the decision was made**. A Contract Arbitrator Report must be submitted to NMFS if any arbitration occurs within a fishery (50 CFR 680.20(h)(6)). That report must include:

1. A copy of any minutes from any meeting attended by that Contract Arbitrator between or among any PQS or IPQ holders concerning any negotiations under this section;
2. Any LBOs made during the Binding Arbitration process, including all contract details, the names of other participants in the arbitration, and whether the Contract Arbitrator accepted the bid; and
3. A copy of any information, data, or documents given by the Contract Arbitrator to any person who is not a party to the particular arbitration for which that information was provided. The Contract Arbitrator must identify the arbitration to which the information, data, or documents apply, and the person to whom those information, data, or documents were provided.

That report is not available to arbitration participants or the public because of antitrust and confidentiality issues associated with the information included in that report. The report also does not include the arbitrator's reasoning for making the decision.

Regulations at 50 CFR 680.20(f)(4)(i) states that a **Market Report** for each crab QS fishery must be produced annually, not later than 50 days before the first crab fishing season for that crab QS fishery. The Arbitration QS/IFQ Arbitration Organizations and the PQS/IPQ Arbitration Organizations can establish a different date for production of a fishery's Market Report by including such a provision in the contract with the Market Analyst. The contract with the Market Analyst defines how the information for the report is collected and reported (50 CFR 680.20(f)(2)). This report includes an analysis of product markets for a specific crab fishery and reports on activities occurring within three months before its generation. The purpose of this report is to provide background information on each crab fishery, the products generated by each fishery, and the position of those products in the marketplace, discuss the historical division of wholesale revenue, and provide methods for predicting wholesale prices before the fishery occurs.

Regulations at 50 CFR 680.20(h)(7) state that the decision of the Contract Arbitrator for Binding Arbitration will be enforced by the parties to that arbitration. At 50 CFR 680.20(h)(10) defines the process

for resolving contract **performance disputes** through the arbitration process. It also states that if the parties to the arbitration fail to abide by the arbitration decision, a party to the arbitration may pursue other available contract remedies. Those options could include civil lawsuits. Regulations at 50 CFR 680.20(h)(11) describe the arbitration system for settling quality disputes. When the two parties agree to a formula-based price for crab but cannot reach an agreement on the quality and price of the crab, the IPQ holder and the Arbitration IFQ holder(s) will receive their share of the value based on the contract. If the Arbitration IFQ holders prefer to use the actual ex-vessel price and not a formula-based price, and a dispute arises regarding crab quality and price, the dispute should be referred to an independent quality specialist firm. This independent quality specialist firm will determine the quality of the crab, and that information will be used as the basis for subsequent price determinations. The two parties share the cost of hiring the specialist firm and agree to abide by its findings.

2.2 Alternative 2: Changes to the Regulations Governing the Arbitration Process

Options considered under Alternative 2 and Alternative 3 are not mutually exclusive. Any or all of them may be selected as part of the preliminary preferred alternative.

2.2.1 Option 1. Remove the requirement that the arbitrator can only select a remedy proposed by one side and allow the arbitrator to select an independent or a compromise remedy based on the facts provided in the arbitration

This option would change the fundamental structure of the crab arbitration system by eliminating the requirement to use the LBO arbitration model. The 14 separate references to LBO arbitration in Federal regulations would be amended, including the reference at 50 CFR 680.20(h)(2) that states the Contract Arbitrator will comply with the LBO arbitration method. Regulations may specify the type of arbitration used to establish prices and other contract terms or resolve performance disputes when other negotiation methods fail to reach a compromise agreement. Parties to the arbitration process may agree on the arbitration program structure or the arbitrator would have full latitude to adjudicate. That information would be included in the report to NMFS. Changing the arbitration program model would not change which parties may trigger the arbitration process. Currently, only Arbitration IFQ holders are allowed to initiate arbitration to establish contract terms as stated in regulation at 50 CFR 680.20(h)(3)(v), though either party may initiate performance dispute arbitration or quality dispute resolution. Allowing either party to initiate arbitration without limitations on the arbitration structure is not included in the Council's December 2024 motion. If it were included, it would be expected to change bargaining strategies and likely the frequency of arbitration.

2.2.2 Option 2. Allow parties to receive the arbitrator's written report and rationale, as well as a publicly available report providing key rationale (without including confidential information)

Option 2 would establish regulations allowing IPQ and Arbitration IFQ holders who were parties to that arbitration proceeding to receive a written report from the Contract Arbitrator including rationale for making that decision. The written report could be like the report that must be submitted to NMFS, with the addition of the Contract Arbitrator's rationale. A separate report would be created for each arbitration. A second report, available to the public, would exclude confidential information but include the Contract Arbitrator's decision and key rationale. For example, actual prices would not be disclosed, but how the two prices submitted helped influence the decision or the price formula might be provided. **The Council**

may wish to clarify whether this option would require a written rationale from the Contract arbitrator or provide an opportunity for this to be requested in the contract.

A primary concern with this option is the potential to create antitrust issues. Any antitrust violations are prohibited and the sharing of information pertinent to the arbitration could be considered antitrust violations. For that reason the final rule implementing the CR Program (69 FR 63200, October 29, 2004) noted that "information sharing among IPQ and IFQ holders, collective negotiations, and release of arbitration results would be limited to minimize the antitrust risks of participants in the Program." See Section 3.9.2.2 for analysis of antitrust concerns.

2.2.3 Option 3. Remove the requirement for a Market Report

Option 3 would remove the requirement for annual production of a Market Report. Members of the harvesting and processing sectors feel that the information required to support the arbitration process is available and published in other readily available sources. Eliminating this requirement could reduce industry costs. The regulations in 50 CFR 680.20 reference the Market Report in 17 different places. All those references would either need to be deleted or modified.

2.2.4 Option 4. Remove the arbitration option for non-performance after a contract has been established to define BSAI crab price, delivery, or other terms

This option would remove the requirement that disputes over the parties' obligations to perform specific contract provisions be submitted for arbitration. Unless a new regulation specifies, the parties would have no special remedies or methods for resolution of performance disputes. As with any civil contract dispute over non-performance that cannot be resolved through negotiation, adjudication in civil court using civil contract law, procedures, and interpretations would be the default means of resolution. Parties could still agree to alternative dispute resolution methods such as mediation, non-binding arbitration, and binding arbitration, but any such methods would occur independently, outside the CR Program's arbitration structures and terms in 50 CFR 680.20.

Current regulations 50 CFR 680.20(h)(10) require the use of arbitration to settle performance disputes, and 50 CFR 680.20(h)(11) define the regulations for quality disputes. While both could be considered performance disputes, without additional direction from the Council, it is assumed that only the performance disputes defined under 50 CFR 680.20(h)(10) should be considered under this action. The regulations would then be silent on whether arbitration or civil trials would be used to settle performance disputes.

Selecting this option would also remove regulations that define how the cost to settle performance disputes would be divided and paid. These regulations are at 50 CFR 680.20(e)(2)(v)(A) and state that Arbitration Organizations would share the cost of performance disputes, but it is within the arbitration structure. **The Council may wish to clarify whether the language regarding how costs would be impacted either if both parties agreed to use arbitration to settle the dispute. The Council likely does not have the authority to establish the cost structure of civil lawsuits and the motion does not address this issue.**

2.3 Alternative 3 IFQ and IPQ Application Withdrawal

This alternative would clarify that IFQ and IPQ applications can be withdrawn after being accepted as complete. The timing of the withdrawal would be any time before the BSAI CR Program species TACS are announced and within:

Option 1: 24 hours or

Option 2: 48 hours

after the BSAI CR Program species TACs are announced.

Selecting an option is required and would seek to clarify the rules regarding application withdrawals while ensuring that RAM has adequate time to issue IFQs and IPQs to the remaining applicants. The current regulations are silent on when and if IFQ and IPQ applications may be withdrawn after they have been accepted by RAM as complete. NOAA Fisheries has allowed applications to be withdrawn on two occasions during past years, but applied case-by-case consideration and noted that if the Council wanted greater clarity on this issue, it could propose specific criteria for application withdrawals.

A related question raised while discussing this issue at the December 2024 Council meeting was how NOAA Fisheries would manage the fishery if all PQS holders withdraw their applications, no PQS holders apply for IPQ, or too few PQS holders apply for their allocation and exceed the processing limits. A complete analysis of this issue is not provided in this analysis. However, NOAA Fisheries staff are aware of the issue, and additional information and considerations have been described in Section 3.9.3.3. Generally, the CR Program regulations do not guide how this issue would be resolved if it occurred.

3 Regulatory Impact Review

This Regulatory Impact Review (RIR) examines the benefits and costs as well as the distribution of impacts of a regulatory amendment to modify the CR Program's arbitration structure and to clarify regulations for the withdrawal of IFQ/IPQ applications after they have been accepted by RAM.

Preparing an RIR 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 nevertheless essential to consider. Further, in choosing among alternative regulatory approaches agencies should select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity), unless a statute requires another regulatory approach.*

E.O. 12866 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 result in a rule that may:

- 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, the environment, public health or safety, or State, local, territorial, or tribal governments or communities;
- Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
- Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in E.O. 12866.

3.1 Statutory Authority

The Federal government and the State of Alaska manage BSAI crab fisheries. The FMP for the commercial king and Tanner crab fisheries in the BSAI establishes a State/Federal cooperative management regime that defers BSAI crab management to the State of Alaska (State) with Federal oversight. State regulations are subject to the provisions of the FMP, including its goals and objectives, the Magnuson-Stevens Act National Standards, and other applicable federal laws.

The FMP specifies three categories of management measures for the king and Tanner crab fisheries in the BSAI (Table 3-1). Category 1 measures are fixed in the FMP and require an FMP amendment to change. These measures include all regulations established under the CR Program. Category 2 measures are framework-type measures that the State can change following criteria set out in the FMP. Category 3 measures are under the discretion of the State of Alaska.

Table 3-1 BSAI king and Tanner crab management measures by category

Category 1 (Fixed in the FMP)	Category 2 (Frameworked in the FMP)	Category 3 (Discretion of the State)
Legal Gear	Minimum Size Limits	Reporting Requirements
Permit Requirement	Guideline Harvest Levels/ Total Allowable Catch	Gear Placement and Removal
Federal Observer Requirements	In-season Adjustments	Gear Storage
Limited Access	Districts, Subdistricts, and Sections	Vessel Tank Inspection
Norton Sound Super Exclusive Registration	Fishing Seasons	Gear Modifications
	Sex Restrictions	Bycatch Limits (in Crab Fisheries)
Essential Fish Habitat	Pot Limits	State Observer Requirements
Habitat Areas of Particular Concern	Registration Area	Other
	Closed Waters	

Source: Fishery Management Plan for Bering Sea/Aleutian Islands king and Tanner crabs (NPFMC 2021)

The FMP applies to all Federal crab fisheries in the BSAI. The CR Program covers the following subset of the FMP crab fisheries.

BBR Bristol Bay red king crab (*Paralithodes camtschaticus*)
BSS Bering Sea snow crab (*Chionoecetes opilio)*
EBT Eastern Bering Sea Tanner crab (*C. bairdi)* – East of 166º W
WBT Western Bering Sea Tanner crab – West of 166º W
PIK Pribilof Islands blue (*P. platypus*) and red king crab
SMB Saint Matthew Island blue king crab
WAG Western Aleutian Islands (Adak) golden king crab *(Lithodes aequispinus*) – West of 174º W
EAG Eastern Aleutian Islands (Dutch Harbor) golden king crab – East of 174º W
WAI Western Aleutian Islands (Petrol Bank District) red king crab – West of 179º W

The proposed amendments and clarification only apply to the fisheries managed under the CR Program.

3.2 Description of Fisheries

This analysis section provides background information on the BSAI crab fisheries managed under the CR Program. Information on the biological condition of the BSAI CR Program crab stocks is provided in the most recent Crab SAFE[2] (NPFMC 2024c). Economic information on these fisheries is presented in the Economic SAFE document (NPFMC 2024d). Additional information is provided in the most recent CR Program review (NPFMC 2024a) and the Crab Arbitration discussion paper (2024b). The information in these reports is included in this paper by reference.

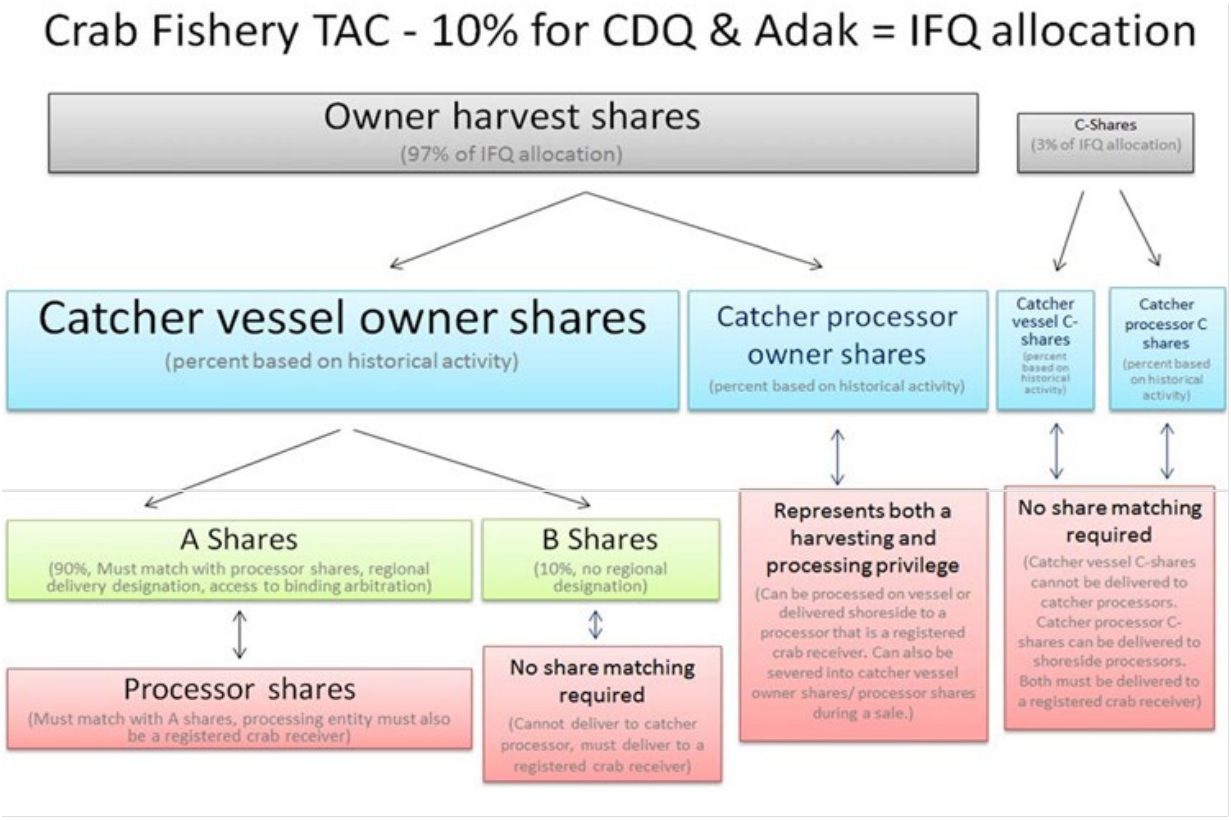
3.2.1 Background on the BSAI CR Program Crab Fisheries

After the TACs are established, deductions are made to provide for the CDQ and Adak development programs as required in regulations. Harvesting quota shares (QS) are issued for each CR Program fishery (Figure 3-1). The corresponding annual allocations, issued in pounds, are IFQ. The annual IFQ allocation

[2] https://www.npfmc.org/fisheries/bsai-crab/

to a person is based on the percentage of the QS pool held by that person, multiplied by the annual IFQ TAC in the fishery. Legal discards are not counted against an IFQ holder's account.

Figure 3-1 Crab TAC allocations under CR Program



Source: 10-year review

Harvesting QS are designated as either catcher vessel owner (CVO) QS or catcher processor owner (CPO) QS. Approximately 97 percent of the QS (referred to as "owner QS") in each program fishery were initially allocated to LLP license holders based on their catch histories in the fishery. The remaining 3 percent of the QS, referred to as "C shares" or "crew QS", were initially allocated to captains based on their catch histories in the fishery. The proposed action in this analysis would not directly affect C shares or IFQ derived from CPO because there is no share-matching requirement for this harvesting quota. These quota are not part of the Arbitration System, although they may be held by people who also hold CVO subject to the Arbitration System.

Two classes of CVO IFQ are issued, with an overall ratio of 90% issued as Class A IFQ and 10% as Class B IFQ. Class B IFQ can be delivered to any processor and thus is not part of the Arbitration System. Crab harvested using Class A IFQ must be delivered to a processor holding unused IPQ. If a CVO QS holder has no affiliation with PQS, they are issued a combination of Class A and Class B IFQ. If a CVO QS holder holds (or are affiliated with) IPQ they will be issued exclusively Class A IFQ up to the amount of IPQ they hold.

Those associated with Class A QS, A Class IFQ, PQS and/or IPQ are eligible to join an arbitration organization and participate in the Arbitration System. However, those eligible to use negotiations and Binding Arbitration procedures are only those that hold Arbitration IFQ and IPQ. Arbitration IFQ is a specific type of Class A IFQ and the focus of this analysis. **Arbitration IFQ is defined as: Class A CVO IFQ held by a person who is not a holder of PQS or IPQ and who is not affiliated with any holder of**

PQS or IPQ. In addition, the IFQ must be held by a Fishermen's Collective Marketing Act of 1934 (FCMA; 15 U.S.C. § 521 et seq.) cooperative.

Table 3-2 shows the IFQ TACs established for CR Program species in recent years. The IFQ TAC excludes the CDQ allocation, but does not further divide the IFQ TAC to show only Class A IFQ.

Table 3-2 IFQ TACs for the Crab Rationalization Program Fisheries (excludes CDQ), 2005 through 2024

Year	BBR	BSS	EAG	EBT	SMB	WAG	WBT
2005	16,496,100	33,465,600	2,700,000		0	2,430,000	1,458,000
2006	13,974,300	32,909,400	2,700,000	1,687,500	0	2,430,000	984,600
2007	18,334,700	56,730,600	2,700,000	3,100,500	0	2,430,000	1,958,400
2008	18,327,600	52,695,000	2,835,000	2,486,700	0	2,551,500	1,383,300
2009	14,408,100	43,215,300	2,835,000	1,215,000	1,050,300	2,551,500	0
2010	13,355,100	48,852,900	2,835,000	0	1,440,000	2,551,500	0
2011	7,050,600	80,004,600	2,835,000	0	2,123,100	2,551,500	0
2012	7,067,700	59,715,000	2,979,000	0	1,467,000	2,682,000	0
2013	7,740,000	48,584,700	2,979,000	1,316,700	0	2,682,000	1,480,500
2014	8,987,400	61,155,000	2,979,000	7,632,000	589,500	2,682,000	5,962,500
2015	8,976,600	36,549,900	2,979,000	10,144,800	369,900	2,682,000	7,556,400
2016	7,622,100	19,413,000	2,979,000	0	0	2,011,500	0
2017	5,940,900	17,064,900	2,979,000	0	0	2,011,500	2,250,180
2018	3,877,200	24,822,900	3,470,400	0	0	2,250,000	2,195,100
2019	3,417,300	30,617,100	3,879,000	0	0	2,583,000	0
2020	2,383,200	40,500,000	3,285,000	0	0	2,664,000	2,113,200
2021	0	5,040,000	3,249,000	0	0	2,088,000	990,000
2022	0	0	2,988,000	1,046,700	0	1,557,000	765,000
2023	1,935,000	0	3,348,000	684,000	0	1,629,000	1,188,000
2024	2,310,000	4,720,000	3,760,000	1,770,000	0	1,120,000	4,500,000

Source: AKFIN and State of Alaska Reports for 2024 (e.g., https://www.adfg.alaska.gov/static/fishing/PDFs/commercial/bering_aleutian/2024_2025_aleutian_gking_crab_tac_review.pdf

3.2.2 The Arbitration System

The Arbitration System[3] is a component of the CR Program that serves several important purposes. Those include the dissemination of market information to facilitate negotiations, the coordination of matching Class A IFQ held by harvesters to IPQ held by processors, and the opportunity to use the binding arbitration process to resolve terms of delivery. Most of the Arbitration System is regulated through private contracts among QS/IFQ holders and PQS/IPQ holders through mandatory Arbitration Organizations. These organizations are parties to the contracts that define and govern the share matching and Arbitration System. NOAA Fisheries will not issue IFQ or IPQ in a program fishery until arbitration organizations representing enough QS and PQS holders to account for at least 50 percent of the A share QS and 50 percent of the PQS issued for a fishery, select the market analyst, formula arbitrator, a pool of contract arbitrators, and notify NOAA Fisheries of their selection. This requirement is intended to ensure that the Arbitration System is in place before the start of the fishery. Arbitration organizations serve an

[3] See 50 CFR 679.20 for a complete description of the regulations describing the arbitration system.

administrative function, allowing shareholders to achieve efficiencies without compromising their competitive position or operational aspects of their businesses.

The Arbitration System begins with the dissemination of information. The two sectors (harvesters and processors) jointly select a "market analyst," who produces a Market Report, and a "formula arbitrator," who develops a price formula specifying an ex-vessel price based on a portion of the first wholesale price. The two sectors (i.e., the Arbitration Organizations) also choose a pool of "contract arbitrators," who preside over any binding arbitration proceedings[4]. The price formula is intended to inform negotiations; the Market Report is intended to provide baseline information and a signal of a reasonable price. When the arbitrator selects a price, (s)he must consider several factors, including current ex-vessel, consumer, and wholesale prices, innovations and developments, efficiency and productivity, quality, and financial health and stability within the fishery. The arbitrator must also identify factors relevant to price determination, including delivery timing and location; however, the arbitrator is not required to consider these factors in setting the ex-vessel price.

Reasons the arbitration program was initially included in the CR Program are described in the 2004 Environmental Impact Statement (NMFS 2004), the Proposed Rule (69 FR 63200), and the Final Rule (70 FR 10174). Reasons cited in those documents include resolving price disputes between harvesters and processors that have delayed fishing, being a cost-effective system to settle disputes, being less time-consuming than alternative dispute resolution methods, and addressing antitrust concerns associated with price negotiations.

3.2.3 Past Arbitrations

A summary of past arbitrations conducted under the CR Program is presented in Table 3-3. Three arbitrations have been reported since the 2012/2013 fishing year. They occurred in the Aleutian Islands golden king crab fishery in 2013/2014 and in the Bering Sea snow crab and Bering Sea Tanner crab fisheries in 2021/2022.

Regulations at 50 CFR 680.20(h)(3)(v) only allow an Arbitration IFQ holder to initiate the Binding Arbitration procedure. The arbitration procedure must start not later than 360 hours (15 days) after NMFS issues IFQ and IPQ for that crab QS fishery in that crab fishing year. Binding Arbitration is initiated after the committed Arbitration IFQ holder notifies a committed IPQ holder and selects a Contract Arbitrator. Limitations on the timing of Binding Arbitration proceedings do not include proceedings that arise due to the lengthy season approach, performance disputes, or quality disputes.

Participants who have used the binding arbitration process have tended to avoid arbitration when possible by relying on the lengthy season approach, whereby parties can agree to delay resolution of specific contract terms until a desired time during the crab fishing year. The lengthy season approach discourages a situation where harvesters refuse to fish until delivery terms and price are negotiated, but selection of this approach also requires agreement between the parties.

[4] This could include contract arbitration and non-performance arbitration. Both of these arbitration types are considered in this RIR.

Table 3-3 Summary of past arbitrations

Season	Number of Proceedings	Fishery	Issue	Outcome
2005/06	2	BSS, BST	Crab costs/ delivery terms	Contract arbitrators selected harvesters' offers.
2006/07	5	BBR, BSS, WBT, WBT	Crab costs/ delivery terms	Contract arbitrators selected harvesters' offers.
2007/08	2	All fisheries	Procedural: clarify specific timing of price dispute resolutions	Lengthy season approach selected; no further arbitration to resolve price, quality, or other disputes.
2008/09	1	BBR	Procedural: Crab costs/ delivery terms	An issue of a processor's use of a two-tier price structure was settled and a price issue was resolved in favor of the harvester.
2009/10	3 (1 dispute)	AIG, BSS	Procedural (golden king crab); Crab costs/ delivery terms	For the golden king crab fishery, arbitrators selected a later lengthy season arbitration filing date. For the snow crab fishery, contract arbitrators selected the processor's offer.
		AIG	Crab costs/ delivery terms	Two post-season crab costs and terms of delivery disputes: one settled outside of arbitration, and arbitrators resolved issues in favor of harvester.
2010/11	1 (2 disputes)	AIG	Crab costs/ delivery terms	Arbitrators selected the processor's offer for WAG crab.
		AIG	Crab costs/ delivery terms	WAG price and terms of delivery dispute settled outside of arbitration.
2011/12	2 disputes (number of proceedings unknown)	AIG	Crab costs/ delivery terms	Outcome unknown
2012/13	0 (reported)			
2013/14	1	AIG	Crab costs/ delivery terms	Arbitrators selected the harvester's offer for WAG.
2014/15	0 (reported)			
2015/16	0 (reported)			
2016/17	0 (reported)			
2017/18	0 (reported)			
2018/19	0 (reported)			
2019/20	0 (reported)			
2020/21	0 (reported)			
2021/22	2	BSS & BST	Crab cost/delivery terms	Arbitrators selected the harvester's offer
2022/23	0 (reported)			
2023/24	0 (reported)			

3.2.4 Entities Assigned IFQ in Most Recent Year

Persons who hold harvest QS assign the IFQ that results from that QS to cooperatives. Cooperatives that were formed in 2024/2025 are shown in Table 3-4 along with the percentage of the total IFQ by class allocated to the cooperative. Arbitration IFQ represents Class A IFQ held by unaffiliated entities that are part of an FMCA cooperative. ICE is the only FCMA cooperative. As noted earlier, there are different rules regarding FCMA and other types of cooperatives' ability to bargain for members and to trigger contract arbitration.

Table 3-4 Percentage of total Class A and Class B IFQ assigned to each cooperative 2024/2025

Quota Class and Cooperative	BBR	BSS	EAG	EBT	WAG	WBT	Grand Total
Class A quota	**90.00%**	**90.00%**	**90.00%**	**90.00%**	**90.00%**	**90.00%**	**90.00%**
ALEUTIAN ISLAND COOPERATIVE	4.16%	4.68%	0.00%	2.33%	0.00%	0.00%	2.00%
ALTERNATIVE CRAB EXCHANGE (ACE)	5.12%	0.00%	0.00%	3.61%	0.00%	0.00%	1.04%
COASTAL VILLAGES CRABBING COOPERATIVE	9.55%	15.13%	0.00%	9.86%	0.00%	0.00%	6.18%
CPH ASSOCIATION	4.06%	4.56%	0.00%	0.38%	0.00%	0.00%	1.76%
DOG BOAT COOPERATIVE	0.00%	0.00%	0.00%	0.00%	3.79%	0.00%	0.14%
INTER-COOPERATIVE EXCHANGE (ICE)	55.63%	55.26%	75.30%	73.82%	86.21%	89.99%	71.46%
R & B COOPERATIVE	4.84%	5.19%	14.70%	0.00%	0.00%	0.00%	5.17%
TRIDENT AFFILIATED CRAB HARVESTING COOPERATIVE	6.64%	5.19%	0.00%	0.00%	0.00%	0.00%	2.23%
Class B quota	**10.00%**	**10.00%**	**10.00%**	**10.00%**	**10.00%**	**10.00%**	**10.00%**
ALEUTIAN ISLAND COOPERATIVE	0.52%	0.36%	0.00%	0.45%	0.00%	0.00%	0.21%
ALTERNATIVE CRAB EXCHANGE (ACE)	0.63%	0.00%	0.00%	0.00%	0.00%	0.00%	0.08%
COASTAL VILLAGES CRABBING COOPERATIVE	0.18%	1.33%	0.00%	1.43%	0.00%	0.89%	0.74%
CPH ASSOCIATION	0.65%	0.53%	0.00%	0.00%	0.00%	0.00%	0.22%
INTER-COOPERATIVE EXCHANGE (ICE)	8.00%	7.26%	8.72%	8.12%	10.00%	9.11%	8.33%
R & B COOPERATIVE	0.00%	0.16%	1.28%	0.00%	0.00%	0.00%	0.32%
TRIDENT AFFILIATED CRAB HARVESTING COOPERATIVE	0.02%	0.36%	0.00%	0.00%	0.00%	0.00%	0.10%
Total	**100.00%**	**100.00%**	**100.00%**	**100.00%**	**100.00%**	**100.00%**	**100.00%**

Source: https://www.fisheries.noaa.gov/sites/default/files/akro/2425cratifqholder.csv

Table 3-5 shows the number of Class A IFQ holders in each cooperative and the total number of unique IFQ holders. At the species level the sum of the cooperative IFQ holders in each cooperative equals the total, indicating that for each species no Class A IFQ holder assigned quota to more than one cooperative.

Table 3-5 Number of unique Class A IFQ holders in each cooperative that formed for 2024/2025

Cooperative	BBR	BSS	EAG	EBT	WAG	WBT	Total
ALASKA KING CRAB HARVESTERS COOPERATIVE	1	1		1	1	1	1
ALEUTIAN ISLAND COOPERATIVE	7	7		7		7	9
ALTERNATIVE CRAB EXCHANGE (ACE)	114	120	2	109	4	110	138
COASTAL VILLAGES CRABBING COOPERATIVE	6	7	1	7	1	7	7
CPH ASSOCIATION	12	20		16		15	22
DOG BOAT COOPERATIVE	10	12	6	10		10	16
INTER-COOPERATIVE EXCHANGE (ICE)	61	73	6	51	2	52	88
R & B COOPERATIVE	7	6	4	3	3	3	8
TRIDENT AFFILIATED CRAB HARVESTING COOPERATIVE	15	11		18		18	19
Total	233	257	19	222	11	223	305

Source: https://www.fisheries.noaa.gov/sites/default/files/akro/2425cratqsunits_with_serial.csv

3.2.5 PQS and IPQ Holdings

Across all fisheries, 27 entities were initially issued PQS for the 2005/2006 season. As in the harvest sector, the concentration of initial allocations of processing privileges varied across fisheries. The Aleutian Islands fisheries, which had the least participation during the qualifying period, were the most concentrated. The BBR, BSS, and BST fisheries, which had the most participants during the qualifying period, were the least concentrated.

3.2.5.1 Regional Designations

The CR Program's design was intended to protect community interests by regionalizing certain fisheries. In most CR Program fisheries, a regional allocation designates all Class A (delivery restricted) harvest shares and all corresponding processing shares limits their use to a specific region. In these CR Program fisheries, regionalized shares are either North or South, with North shares designated for delivery in areas on the Bering Sea north of 56º 20′ north latitude and South shares designated for any other area, including Kodiak and other areas on the Gulf of Alaska. In the WAG (Adak) fishery, the designation is based on an East/West line to accommodate a different distribution of activity in that fishery. Share designations are based on the historic location of the landings and processing that gave rise to the shares.

In the PIK fisheries, most historic processing occurred in the Pribilof Islands, resulting in over two-thirds of the processing allocations in those fisheries being designated for processing in the North region. Most processing in the SMB fishery occurred on floating processors near the fishing grounds in the North region. The BSS crab fishery allocations are split almost evenly between the North and South regions. Less than 5 percent of the BBR PQS is designated for North processing. All qualifying processing in the EAG fishery occurred in the South region, resulting in all processing shares in that fishery (and in the WAI fishery, which was based on the same history) being designated for processing in the South region. All processing allocations for the WAG fishery were split evenly, with half required to be processed in the West region and half undesignated, which can be processed anywhere. BST crab processing shares are also undesignated.

3.2.5.2 Processing Caps

The CR Program established PQS caps that apply individually and collectively to both the PQS holdings of an entity and IPQ used at an affiliated processing plant each fishing year. A processing share cap prevents any person from holding more than 30 percent of the outstanding PQS in any program fishery, unless that person received an initial allocation of PQS more than this limit. In the WAG fishery, the maximum allocation was more than 60 percent of the pool, double the shareholdings cap. This entity was 'grandfathered' based on historical processing. In the EAG fishery, one allocation of approximately 45 percent of the pool was more than one and a half times the cap. Only one other fishery, the SMB fishery, did an initial allocation exceed the cap. In that fishery, slightly greater than 30 percent of the quota was allocated to one processing entity. PQS holdings are structured within various corporate entities, ranging from smaller limited liability partnerships up to large corporations. The underlying distribution of PQS holdings among individual shareholders is somewhat obscured by the complexity of corporate structures under which PQS is held. Currently, PQS is reported to be held by the entities listed in Table 3-6.

Table 3-6 PQS Holders by Fishery in Most Recent Year 2024/2025

PQS Holder	BBR	BSS	EAG	EBT	PIK	SMB	WAG	WAI	WBT
57 DEGREES NORTH LLC	12.3%	17.2%	4.8%	14.9%	13.3%	19.4%	0.0%	0.0%	14.9%
ADAK FISHERIES LLC	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	5.4%	5.4%	0.0%
ALASKA LIVE SHELLFISH	0.1%	0.0%	0.0%	0.0%	0.3%	0.0%	0.5%	0.5%	0.0%
APICDA JOINT VENTURES INC.	1.6%	5.7%	6.9%	3.7%	2.5%	4.3%	30.0%	0.0%	3.7%
ARCTIC SEA HOLDINGS INC	14.6%	8.3%	0.0%	1.9%	0.0%	0.0%	0.0%	0.0%	1.9%
ATXAM CORPORATION	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	17.2%	30.0%	0.0%
B & N FISHERIES COMPANY	0.0%	0.0%	0.0%	0.0%	0.0%	3.5%	0.0%	0.0%	0.0%
BLUE DUTCH LLC	0.7%	0.7%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
COASTAL VILLAGES REGION FUND	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
DEEP CREEK CUSTOM PACKING INC.	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
GKC HOLDINGS LLC	0.0%	0.0%	6.9%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
KODIAK FISHERIES DEVELOPMENT ASSOCIATION	3.5%	0.1%	0.0%	1.8%	0.8%	0.0%	0.0%	0.0%	1.8%
NORQUEST SEAFOODS INC.	0.0%	3.4%	0.0%	1.7%	0.0%	0.0%	0.0%	0.0%	1.7%
NORTH PACIFIC SEAFOODS INC	0.0%	0.0%	0.0%	0.0%	1.0%	0.0%	0.0%	0.0%	0.0%
OCEAN2TABLE ALASKA LLC	0.0%	0.0%	5.7%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
PETER PAN SEAFOODS INC.	12.5%	15.5%	0.0%	14.8%	14.5%	24.2%	0.0%	0.0%	14.8%
RAS II LLC	0.7%	0.2%	0.9%	9.3%	13.9%	8.0%	0.4%	27.1%	9.3%
ROYAL ALEUTIAN SEAFOODS INC.	0.0%	0.0%	45.4%	0.0%	0.0%	0.0%	14.1%	0.0%	0.0%
SANKO FISHERIES LLC	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
STUART DOUGLAS	0.0%	0.0%	0.0%	0.0%	0.1%	0.0%	0.0%	0.0%	0.0%
TRIDENT SEAFOODS CORPORATION	23.2%	25.2%	1.0%	24.4%	25.5%	32.7%	1.0%	1.0%	24.4%
UNISEA INC.	13.5%	10.7%	0.0%	12.1%	18.3%	2.1%	1.4%	2.6%	12.1%
WESTWARD SEAFOODS INC.	17.4%	12.9%	28.4%	15.3%	10.0%	5.8%	30.0%	33.3%	15.3%
WHITTIER JOHN W	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
Total	**100.0%**	**100.0%**	**100.0%**	**100.0%**	**100.0%**	**100.0%**	**100.0%**	**100.0%**	**100.0%**

Source: https://www.fisheries.noaa.gov/sites/default/files/akro/2425cratpqsunitswithserial.csv

3.2.5.3 IPQ Holders in Most Recent Year

IPQ is issued to a subset of the PQS holders as well as entities that lease IPQ based on the application for IPQ (Table 3-7). IPQ holders are primarily entities associated with CDQ/community groups and PQS holders who operate physical processing plants. Persons who do not own a physical plant but hold IPQ rely on other entities to process their crab, typically through custom processing arrangements.

Table 3-7 IPQ Holders by Fishery in Most Recent Year, 2024/2025

IPQ Holder	BBR	BSS	EAG	EBT	WAG	WBT
57 DEGREES NORTH LLC (CBSFA)	225,984	582,852	134,691	268,813		683,420
APICDA JOINT VENTURES INC. (APICDA)	9,863				141,992	
COASTAL VILLAGES CRAB LLC (CVRF)	86,240	142,653				
GKC HOLDINGS LLC (50% NSEDC)			219,566			
KEYPORT LLC	20,202	192,541	354,383	66,539	109,486	169,166
NORQUEST SEAFOODS INC.		115,525				
NORTH PACIFIC SEAFOODS INC (P)		373		99		253
PETER PAN SEAFOOD COMPANY LLC	937					
ROYAL ALEUTIAN SEAFOODS INC.	413,278	514,425	1,275,186	419,992	75,103	1,067,773
TRIDENT SEAFOODS CORPORATION (P)	425,788	854,033	28,648		4,878	
WESTWARD SEAFOODS INC. (P)	550,151	966,661	798,999	543,239	141,754	1,381,113
Grand Total	**1,732,443**	**3,369,063**	**2,811,473**	**1,298,682**	**473,213**	**3,301,725**

Source: https://www.fisheries.noaa.gov/sites/default/files/akro/2425cratipqholder.csv
Note: Royal Aleutian Seafoods Inc. was purchased by Unisea in 2005. Unisea operates the crab processing plant.
Processing capacity = P. Entities that do not operate a physical plant or are owned by a firm that operates a physical plant do not have a P listed by their name.

3.3 Transfers of Quota

The information provided in this section is based on discussions with Dock Street Brokers staff5 and transfer data from the EDR files. The information was first reported in the 2024 CR Program review (NPFMC 2024a), and the reader is referred to that document for additional information. Information is presented to help describe the overall economic health of the fishery for both harvesters and processors.

Market activity (transactional volume) was reported to be stable through 2021 for BSS. Since then, transfers have been "pretty much at a standstill." Given the current market conditions, shareholders have difficulty finding a middle ground for prices because of the TACs (and associated values), although some smaller transactions for BST and BBR have been made.

The closed fisheries make it difficult for buyers and sellers to agree on a price that reflects the long-term profit stream of the fisheries. Two or three stable years of open fisheries to help set the market value may increase sales. As a result, a primary driver of the slow quota market has been the uncertainty created by low TACs and closed fisheries. Closed seasons provide limited information on potential future revenues, so sellers are holding their BSS quota until there are more consistent market signals. Transactions are complicated when there is debt service because the quota currently generating no revenue limits its value as collateral for loans.

Some BBR crab quota has been sold, but at a discounted rate relative to 2020. BSS reached its highest price in 2021, but given current market conditions, the buyers generally feel they overpaid for the quota given current fishery and market conditions. Some of those buyers of BSS in 2021 are reportedly having a difficult time covering the cost of the quota.

Current market conditions have buyers willing to wait to make purchases. The willingness to wait is reinforced by the BSS rebuilding plan, which signals that short-term improvements in the BSS fishery may be limited.

Lease transactions occur within cooperatives so limited information is available for these transactions. However, WBT crab lease rates were relatively high in 2024 (estimated 65 percent lease rate). Because relatively few vessels participate in the fishery, these vessel operators tend to lease a lot of the crab. If

[5] Personal communication with Aaron Overland March 4, 2024

harvesting the quota is difficult because of the TAC relative to CPUE or the number of vessels available in the fishery (quota per vessel) it could increase the risk to the harvesters. For example, the fleet only harvested 62 percent of the WBT 2.1 million lbs. TAC in 2020/21.

Lease rates have been identified as an area of Council concern in the past and cooperatives have asked members to limit lease rates. Markets may drive down lease rates if TACs are higher and there are insufficient vessels to harvest the crab being offered for lease. Dock Street staff noted this type of market change in some sablefish fisheries when lease rates declined from 50 percent to 20 percent of ex-vessel value when the TAC increases outpaced harvesting capacity.

Crab vessel sales and the number of vessels on the market have been impacted by consolidation in the crab fisheries. Holding a vessel that is no longer necessary to fish requires expensive repair and maintenance, so these vessels are often sold, and quota held by the vessel owner is leased through cooperatives. Crab boats that are sold are often repurposed as tenders. The impact of consolidation was an expected outcome of the CR Program as emphasis is placed on quota ownership/use and not investing in greater harvesting capacity.

Crew QS transfers (CVC and CPC) have been impacted by a general lack of qualified buyers who satisfy the 365-day landing requirement. Crew members who meet the requirement often are not fiscally able to buy quota and/or do not think the purchase is an economically viable asset under current conditions. For the crew quota market to improve, it will be important to create a large enough pool of buyers who foresee the purchase to be a viable asset in the long term.

3.3.1 QS Transfers

Figure 3-2 shows the number of harvest QS sales on an annual basis across all CR Program fisheries. The number of transfers was greatest in the years following the first year of the program. Since the 2007/08 fishing year, the annual number of transfers has ranged from 56 to 243, with the lowest and the highest number of transfers in a year both occurring since the last program review. The number of transfers within a year is driven by a variety of factors, which make it difficult to attribute increases or decreases to specific causes or economic conditions.

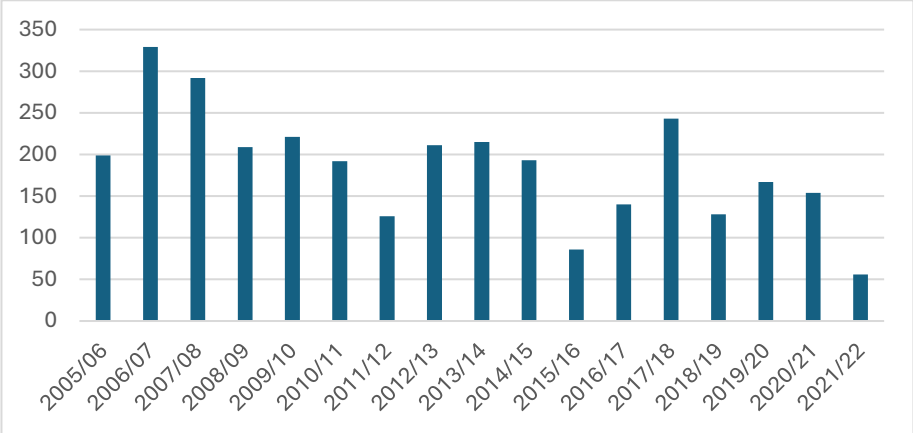


Figure 3-2 Number of Harvest QS Sales 2005/06 through 2021/22

Source: 2024 Crab Economic SAFE

3.3.2 Annual Transfers of IFQ

In the first year of the CR Program, many crab harvesting cooperatives were formed by vessel and QS owner entities. To take advantage of IFQ leasing provisions, the industry began pooling IFQ within larger cooperatives. Since the 2009/10 crab season, virtually all IFQ has been pooled within harvest

cooperatives. That change means that almost all IFQ lease transactions registered with NMFS take place within harvest cooperatives. Beginning with the 2009/10 crab season, the ICE harvest cooperative was formed. For the 2023/24 season, 59 percent of crab IFQ was issued to ICE. The Dog Boat Cooperative was the next largest cooperative, in terms of percentage of total IFQ held, with over 22 percent. All the Dog Boat Cooperative quota was for the EAG and WAG fisheries.

The formation of large cooperatives to facilitate transfers means that almost all quota transfer information is derived from the EDR data. EDR data collection for the 2012 calendar year implemented newly revised data collection protocols under Amendment 42 to the BSAI King and Tanner Crabs FMP (78 FR 36122, June 17, 2013); before the implementation of EDR revisions, data collected regarding EDR lease activity and costs did not differentiate between transfers of quota between independent entities that were priced at competitive market rates from non-arm's length transactions (i.e., those between affiliated entities or other types of non-market transfers characterized by nominal prices or in-kind compensation). For this reason, EDR quota lease data collected for 2005-2011 fisheries are not presented. Data associated with 2012 and later fisheries, use market-rate or negotiated-price transfers (based on EDR instructions). EDRs collect the total pounds purchased and the amount paid, but do not identify the seller or the number of sellers of IFQ or CDQ during the year. Because the EDRs are based on calendar years and not crab fishing seasons (July-June seasonal calendar) the annual data may not be exactly representative of the fishing year data. In general, the percentage of IFQ and CDQ leased has shown a variable but increasing trend over the period, ranging from about 60 percent to 80 percent of the total TAC.

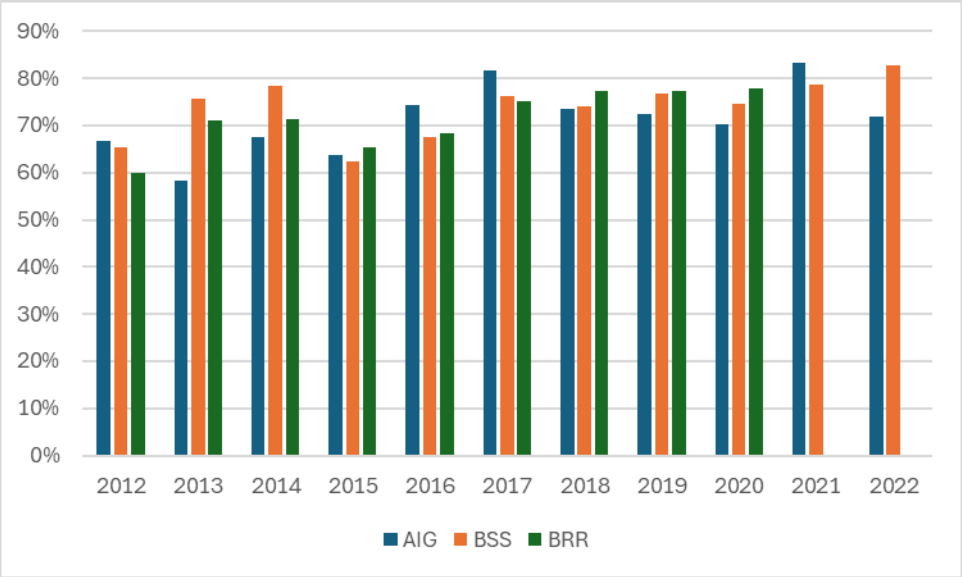


Figure 3-3 Percentage of TAC (CDQ plus IFQ) leased, 2012 through 2022

Source: EDR data as presented in the Crab SAFE and annual TACs.

For lease rates to decline based solely on market forces it is expected that the supply of quota available for lease would need to outpace the demand for leasing quota. For that to occur TAC would need to increase to a level that the available fleet would reach or be close to its harvesting capacity. Rates tend to be high because harvesters are willing to pay to bid up the price unless constrained by external forces (e.g., Council oversite). As of mid-April 2024, using the sablefish fishery for some classes of quota and areas is an example of where lease rates are lower because of the supply and demand impacts on the market. Aleutian Islands class B shares rates were reported as low as $0.75 per pound and in the Bering Sea for C shares rates were as low as $0.50 per pound. For other areas and classes of quota offer rates typically

ranged from $5.00 per pound to $10.00 per pound.6In general, there has been an increase in equity interest in crab QS pools held by CDQ and Non-profit groups7 and trust/estate entities, the increase has predominantly come from a decline in equity held by individuals and non-divisible corporate entities. Holdings by trusts/estates have increased because of the time that has passed since the program was implemented (the greying of the fleet). Meaning that more deaths of QS holders have occurred, and other QS holders have developed estate plans that assign certain assets to trusts for a variety of reasons. Increased holdings by CDQ groups and related entities indicate that groundfish and crab CDQ programs have provided opportunities for groups representing Western Alaskan communities to expand investments and participation in fisheries off their coast. This was an objective of the CDQ program and increasing the CDQ crab allocations from 7.5 percent to 10 percent of CR Program species likely helped facilitate that expansion.

3.3.3 Transfers of PQS

Discussions with Dock Street Brokers' staff indicated that they are typically not involved with PQS sales. It was noted that the pool of buyers and sellers is small and well known. Sales that do occur typically involve buyers and sellers contacting each other directly.

Table 3-8 provides a detailed summary of processing quota transfers that have occurred under the CR Program. In the first two years of the program, a large portion of the IPQ pool was subject to the "cooling off" provision, which required processing to occur in the community of the processing history that led to the allocation of the underlying PQS. Consequently, few changes in the distribution of processing of Class A IFQ/IPQ landings occurred in the first two years of the program. The cooling-off period likely accounts for many transfers occurring in 2008/09 fishing year. Since that season a limited number of processor quota transfers have taken place in the CR Program fisheries. Transfers have not taken place each year, with most transfers being consummated before the 2018/19 fishing season. The limited number of transfers by fishery and year results in the number of units and QS prices being masked to preserve confidential information for most years and fisheries.

Effectively measuring changes in ownership of PQS over time is difficult. That is, movement of PQS may occur through a traditional transfer, in which a PQS transfer application is submitted to NMFS, identifying a quantity of PQS shares being transferred from one PQS-holding entity to an eligible buyer.

[6] https://www.alaskaboat.com/ifqs?t=sablefish

[7] Additional information on the Non-profit groups listed in this table is discussed in Section 8. These are primarily Tribal entities that have purchased QS.

Table 3-8 Transfers of processor quota 2008/09 through 2021/22

Fishery	Year	Transfers (transferors, transferees)	Total units transferred (1,000)	Median units per transfer (1,000)	Median price per QS unit
BBR	2008/09	4(4,3)	31,159.18	4,680.19	0.11
	2009/10	1(1,1)	*	*	*
	2014/15	3(1,1)	*	*	*
BSS	2008/09	2(2,2)	*	*	*
	2009/10	2(1,1)	*	*	*
	2013/14	1(1,1)	*	*	*
	2014/15	3(1,1)	*	*	*
	2017/18	1(1,1)	*	*	*
EAG	2005/06	1(1,1)	*	*	*
	2008/09	3(2,2)	*	*	*
	2014/15	1(1,1)	*	*	*
	2017/18	1(1,1)	*	*	*
WAG	2008/09	8(4,3)	18,921.69	979.27	0.08
EBT	2008/09	5(5,4)	12,152.78	1,645.50	0.05
	2014/15	1(1,1)	*	*	*
	2017/18	1(1,1)	*	*	*
	2018/19	1(1,1)	*	*	*
	2021/22	1(1,1)	*	*	*
WBT	2008/09	5(5,4)	12,152.78	1,645.50	0.00
	2014/15	1(1,1)	*	*	*
	2018/19	1(1,1)	*	*	*
SMB	2012/13	3(2,1)	*	*	*
	2014/15	2(1,1)	*	*	*

Source: Crab Economic SAFE (Table 4.28)

3.3.4 Summary of Leasing and Custom Processing Arrangements

Under the CR Program, a large portion of the processing (and raw crab purchasing) is vested in the holders of processing shares. To achieve efficiencies in processing, many holders of processor shares have used custom processing arrangements to process substantial portions of the landings in the fisheries. Under these arrangements, an IPQ holder/crab buyer contracts for the processing of landings of crab, while retaining all interests and obligations associated with the landed and processed crab. The processor of the crab receives offloaded crab from vessels purchased by the crab buyer and provides processing services as contracted, ultimately passing on the finished product to the crab buyer. The buyer is obligated to pay both the fisherman for the landing and taxes on the landings.

Short-term transfers under leases and custom processing arrangements are the primary means by which PQS holders in the crab fisheries have achieved consolidation under the rationalization program. Custom processing has increased in most fisheries since the program was implemented with the greatest increase in percentage terms in the EAG and WAG fisheries (Figure 3-4). The extent of these leases in all fisheries suggests that some holders of PQS chose not to be active in processing each year, instead leasing their IPQ to realize the benefits of consolidation. In addition to those more traditional leasing transactions, some portion of these leases are believed to achieve efficiencies among active processors. For example, an IPQ holder operating a plant in the North may choose to exchange its South IPQ for another IPQ holder's North IPQ to improve efficiency and consolidate processing of its holdings.

As discussed in the 10-year Review, custom processing arrangements are particularly attractive to IPQ holders who have identified markets for sales and wish to achieve efficiencies in processing. Under these arrangements, the IPQ holder may not own a processing facility but can contract for processing services, maintaining its interest in the crab and processed products. Custom processing relationships are also useful for processing in remote regions, where an IPQ holder may have an obligation to process, and few fully operational shore plants exist. In these areas, a cost-effective means of processing is for IPQ holders to consolidate processing in one or two plants reducing the cost of capital and labor (including the costs of moving crews and supplies to the remote location). Custom processing is also utilized more frequently as more PQS is purchased by entities that do not own processing capacity.

Custom processing relationships are evident in comparing the amount and percent of custom processing in each fishery. In the first year of the program, custom processing of IPQ occurred most prominently in North region of the BSS fishery and in the EAG fishery. Few custom processing arrangements existed in the BBR fishery until the third year of the program, when Dutch Harbor plants entered relationships with several buyers. The most recent year that fishery was open the percentage of crab custom processed was about 40 percent of the total processed. The EAG and WAG fishery have both been above 60 percent custom processing since 2016, with amounts over 80 percent in recent years. In terms of quantity custom processed the BSS is much larger than other fisheries, which is in part due to the historical TAC for that fishery relative to the other fishery TACs.

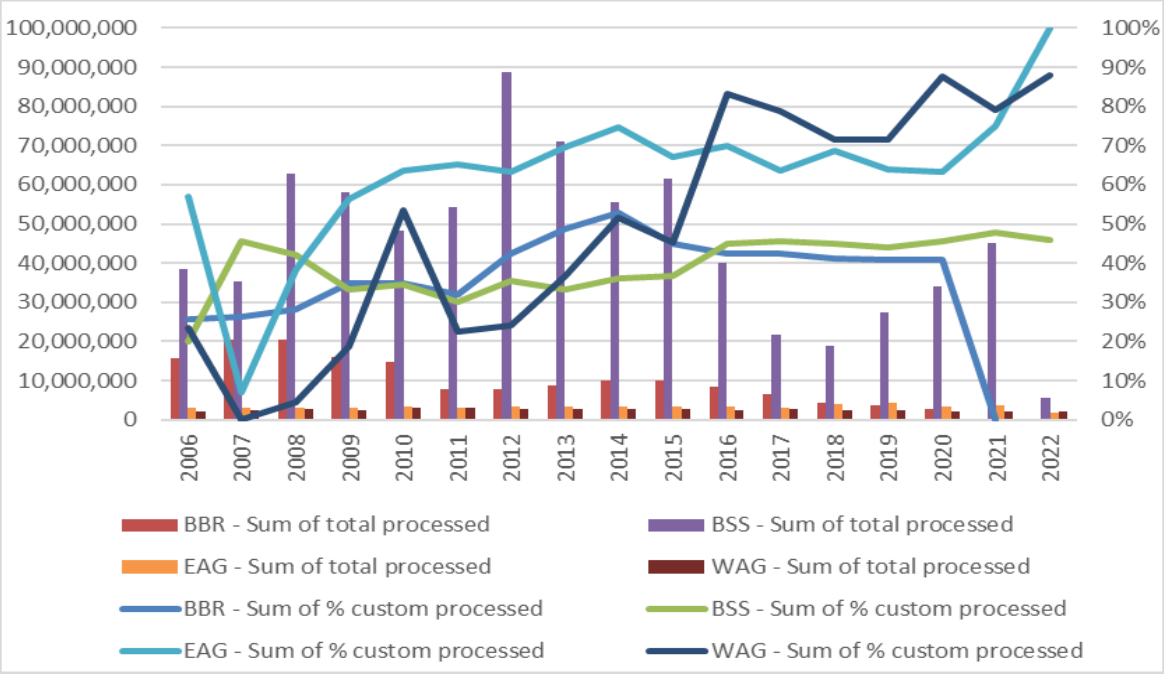


Figure 3-4 Whole pounds processed and percent custom processed by fishery and year

Source: EDR Data provided by AKFIN

3.4 Share Matching

Share matching regulations are established at 50 CFR 680.20(h)(3)(iv). Share matching requires that Class A CVO IFQ shares may only be delivered to a processor with available IPQ. Equal amounts of Class A CVO and IPQ are issued each year for each CR Program crab fishery. Within five days after NMFS issues IFQ and IPQ for a fishery, harvesters and processors may match uncommitted IFQ shares with uncommitted IPQ shares. The holder of uncommitted IFQ that is not a Fishermen's Collective Marketing Act of 1934 (FCMA; 15 U.S.C. § 521 et seq.) cooperative must offer at least 50 percent of the IFQ

holder's total uncommitted CVO A shares or an amount equal to the total amount of uncommitted IPQ available from that processor, whichever is less. If the Class A shareholder is an FCMA cooperative, it must commit at least 25 percent of the holder's total uncommitted Class A IFQ, or an amount of equal to the processor's uncommitted IPQ, whichever is less. After five days, any holder of uncommitted IPQ must accept all commitments to deliver Class A CVO shares, up to the amount of its uncommitted IPQ. The share match is established upon receipt of notice from the IFQ holder. During this period, Class A CVO shareholders have sole discretion over who they will match shares with for delivery.

After matching shares, the IFQ holder and IPQ holder may decide to enter mediation to reach an agreement on contract terms. The IFQ holder and IPQ holder may request a Contract Arbitrator to act as a mediator. If the mediation proves unsuccessful or if mediation is not selected, the IFQ holder may initiate Binding Arbitration. Arbitration may begin immediately with the same Contract Arbitrator. If the Contract Arbitrator serves as a mediator in an unsuccessful mediation, the IFQ holder may request another Contract Arbitrator for the Binding Arbitration.

Throughout the share matching process, holders of uncommitted IPQ must report the amount of uncommitted shares held to holders of uncommitted IFQ (updating that report within 24 hours of any change). To help meet the share matching timeline, the harvester arbitration organization has developed an internet-based system for matching shares—sharematch.com—to facilitate real-time commitment of shares and the timely exchange of information concerning uncommitted shares. This system has benefited participants by creating a single forum for matching uncommitted shares.

Holders of harvest shares that are affiliated with holders of processing shares are required to join an arbitration organization for purposes of facilitating share matching and administration. Due to antitrust concerns, these "affiliated harvesters" are not permitted to join an organization that includes unaffiliated harvesters and cannot use a binding arbitration proceeding to settle delivery terms.

3.5 Communities

A concern of harvesters is the steady decline in the number of active processors in total and the number of communities that have active crab processors. In 2022, eight active processors were reported in the data, the lowest number of active processors over the 2003 through 2022 period. The Council has attempted to address some aspects of this concern by modifying processing caps and excluding custom processing from counting towards the cap. Current market conditions and TACs appear to be the primary drivers of reductions in active processors. It is possible that more processors could exit the fishery, if they are unable to operate profitably. Some harvesters have also expressed frustration regarding the requirements to share match when there are concerns about the financial stability of a processor. During the 2023/24 crab season some harvesters share matched with an IPQ holder and have not been paid for the crab delivered.

Table 3-9 provides information on the 2023/2024 CVO and CPO QS distribution by community of ownership address for communities, CDQ groups, and western Alaska Tribal entities. The table also shows changes in the distribution of QS units among communities, CDQ groups, and western Alaska Tribal entities compared to initial allocations by means of color coding. Green shaded cells indicate higher values than those at initial allocation (2005/2006 fishing season, as shown in the previous table), orange cells indicate values lower than at initial allocation, and blue cells indicate values that are equal to those at initial allocation.

Table 3-9 Crab Fisheries Community Engagement Summary: CV and CP QS Units Distribution, 2023/2024 (with directional change from initial allocation shown)

Community	CVO, CVC, CPO, and CPC QS Ownership Combined		CVO QS Ownership		CVC QS Ownership		CPO QS Ownership		CPC Ownership	
	Unique Owners	Quota Units Held	Unique Owners	Quota Units Held	Unique Owners	Quota Units Held	Unique Owners	Quota Units Held	Unique Owners	Quota Units Held
Kodiak	45	151,216,950	35	144,686,434	16	6,374,111	1	33,960	4	122,445
Anchorage	21	101,393,719	14	57,719,324	9	3,485,607	1	39,993,149	1	195,639
Homer	12	21,683,351	7	18,772,118	6	2,840,531	--	--	1	70,702
Wasilla	6	11,118,774	5	11,102,514	1	16,260	--	--	--	--
Petersburg	3	9,325,732	3	9,325,732	0	0	--	--	--	--
Kenai	2	7,567,618	1	7,549,411	1	18,207	--	--	--	--
Unalaska/Dutch Harbor	5	5,947,205	4	5,766,244	1	180,961	--	--	--	--
Yakutat	1	4,014,849	1	4,014,849	--	--	--	--	--	--
Sand Point	1	216,749	1	208,284	1	8,465	--	--	--	--
King Cove	1	32,053	1	32,053	0	0	--	--	--	--
Seldovia	0	0	0	0	--	--	--	--	--	--
Soldotna	0	0	--	--	0	0	--	--	--	--
Valdez	0	0	--	--	0	0	--	--	--	--
Western AK Tribal Entities	35	76,050,724	35	76,050,724	--	--	--	--	--	--
CDQ - CVRF (ANC)	1	92,839,222	1	79,441,943	--	--	1	13,397,279	--	--
CDQ - YDFDA (ANC)	1	82,630,961	1	53,454,049	--	--	1	29,176,912	--	--
CDQ - CBSFA (SNP)	1	53,245,826	1	40,027,319	--	--	1	13,218,507	--	--
CDQ - NSEDC (ANC)	1	47,395,074	1	38,143,271	--	--	1	9,251,803	--	--
CDQ - BBEDC (DLG)	1	45,686,716	1	45,686,716			--	--		
CDQ - APICDA (JNU)	1	5,167,767	1	5,167,767	--	--	--	--	--	--
Alaska Total	**110**	**715,533,290**	**85**	**597,148,752**	**35**	**12,924,142**	**6**	**105,071,610**	**6**	**388,786**
Seattle MSA	212	855,734,506	160	769,097,333	56	22,426,478	13	63,682,172	5	528,523
Other Washington	35	106,697,419	25	96,579,087	10	3,708,062	3	4,466,098	5	1,944,172
Washington Total	**247**	**962,431,925**	**185**	**865,676,420**	**66**	**26,134,540**	**16**	**68,148,270**	**10**	**2,472,695**
Oregon Total	**44**	**182,277,145**	**27**	**171,828,330**	**20**	**9,860,743**	**2**	**224,816**	**4**	**363,256**
Other U.S. Total	**43**	**109,174,542**	**31**	**102,836,591**	**18**	**4,989,167**	**1**	**937,289**	**4**	**411,495**
Unknown	**3**	**239,843**	--	--	**2**	**59,179**	--	--	**1**	**180,664**
GRAND TOTAL	***447***	***1,969,656,745***	***328***	***1,737,490,093***	***141***	***53,967,771***	***25***	***174,381,985***	***25***	***3,816,896***

Notes: (1) Green shaded cells indicate higher values than those at initial allocation (2005/2006 fishing season), orange cells indicate values lower than at initial allocation, and blue cells indicate values that are equal to those at initial allocation.

(2) Communities that had no initial allocation of quota shares in 2005/2006 and held no quota shares in 2023/2024, including communities that may have held shares in intermmediate years, are not listed in this table.

(3) CDQ groups holdings are attributed to the CDQ groups themselves (and to the Alaska total) rather than the community of ownership address as shown in the data used in for this analysis as CDQ ownership benefits are shared across Alaska regions encompassing multiple communities (except for the CBSFA, which is affiliated with St. Paul only). Community abbreviations shown in parentheses after each CDQ group acronym shows the community of ownership addresss listed in the data used for this analysis, which sometimes, but not always, corresponds to the location of the group's corporate business/adminstrative office (ANC = Anchorage, DLG = Dillingham, JNU = Juneau, SNP = St. Paul).

(4) "Western AK Tribal Entities" are Tribes in the BBEDC and CVRF regions that have some percentage of ownership interest in one or more of the Mariner LLCs that own rationalized BSAI crab fisheries CVO quota shares. As information on ownership percentages by individual LLC by individual Tribal and CDQ entities is not currently available, all Mariner LLC QS holdings are attributed to all involved Tribal entities combined. This overstates ownership interest in these QS holding LLCs by Tribes and understates CDQ ownership interest in these same LLCs, but the combined total for the two involved CDQ groups and the 35 involved Tribal entities is accurate. See text for additional detail.

Source: https://www.fisheries.noaa.gov/sites/default/files/akro/2223cratqsunits.csv

Several trends of change are apparent in the table. First, combined CVO, CVC, CPO, and CPC QS holdings in Alaska have increased and those in Washington have decreased over time. Alaska combined QS unit holdings more than doubled from the initial allocation to 2023/2024. At initial allocation, Alaska accounted for 17 percent and Washington accounted for 70 percent of all CVO, CVC, CPO, and CPC QS share units for all geographies combined. By 2023/2024, Alaska accounted for 36 percent of the total, and Washington accounted for 49 percent of the total.

Second, combined CDQ and Western Alaska Tribal entity CVO and CPO QS holdings have increased over time. At initial allocation CDQ groups held approximately 13 percent of all CVO and CPO QS units

attributed to Alaska. In 2023/2024, CDQ groups and Western Alaska Tribal entities together held approximately 56 percent of all CVO and CPO QS units attributed to Alaska. It is known that this is an understatement of combined CDQ holdings as ownership decomposition information is not available for some of the QS unit holding entities that are, in turn, owned in whole or in part by CDQ groups or their subsidiaries. It is known from a combination of available data and interviews, for example, that in 2023/2024 four of the five unique CVO QS holders attributed to Wasilla are CBSFA-related entities and of the 14 unique CVO QS quota holders attributed to Anchorage two are CVRF related entities and one is an NSEDC related entity, which has resulted in an overstatement of non-CDQ QS holdings in these two communities and an understatement of total combined CDQ and western Alaska Tribal entity holdings.

Third, within Alaska, outside of CDQ groups and Tribal entities, fewer communities are participating in the BSAI rationalized fisheries than were at initial allocation as measured by local ownership address of combined CVO and CVC QS holdings, but there are differences between the holdings of CVO and CVC QS units. Of the nine Alaska communities that had CVO shares at initial allocation, one has retained the same number of QS units (Sand Point), four have seen a decrease QS units held but some have remained in the community (Homer, Petersburg, Yakutat), and in one case all QS units have left the community (Seldovia). Of the five Alaska communities that gained in the number of CVO QS units held (Unalaska/Dutch Harbor Kodiak, Anchorage, Wasilla, and Kenai).

Table 3-10 provides information on average annual total shore-based processor dependency on BSAI rationalized crab (all shore-based processors in the communities that had at least one shore-based processor that accepted BSAI rationalized crab deliveries, not just the shore-based processors that participated in those fisheries). That data is compared to all area and species fishery landings processed by all processors in the community(ies) for the years 2001-2005, 2006-2010, 2011-2015, and 2016-2022, within the constraints of confidentiality restrictions, as measured by first wholesale gross revenue associated with those landings. This table and discussion were taken from the CR Program review (NPFMC 2024a). In recent years the shorebased processing of CR Program crab was centered in Dutch Harbor/Unalaska and Akutan. Some CR Program crab was delivered to Kodiak. Other communities that had shorebased processor during the time considered do not currently have active processors of CR Program. Floating processors are still active in the fisheries, but the numbers have declined, and it is not possible to determine where they operated from the Catch Accounting System data.

Table 3-10 First Wholesale Value Diversification for Communities with Processors of Rationalized Crab, 2001-2022 (2022 real dollars)

Years	Community	Annual Average Number of Processors Participating in Rationalized Crab	Annual Average Number of All Commercial Processors in those Same Communities	Annual Average Rationalized Crab First Wholesale Value (millions 2022 dollars)	Annual Average Total First Wholesale Value from All Areas, Gears, and Species Fisheries for the Community (millions 2022 dollars)	First Wholesale Value of Rationalized Crab as a Percentage of Total Community Wholesale Value Annual Average
2001-2005	Unalaska/Akutan	9.5	10.2	131.5	915.3	14.36%
	Kodiak/King Cove	6.3	11.8	29.4	398.0	7.39%
	Other*	25.8	136.1	112.2	974.5	11.51%
	Total	37.1	158.0	273.0	2287.8	11.93%
2006-2010	Unalaska/Akutan	6.0	9.2	176.7	980.8	18.02%
	Kodiak/King Cove	5.0	14.0	37.3	545.1	6.84%
	Other*	8.4	93.4	116.8	993.2	11.76%
	Total	18.6	116.6	330.8	2519.1	7.75%
2011-2015	Unalaska/Akutan	5.2	10.8	241.4	1104.2	21.86%
	Kodiak/King Cove	3.8	15.0	39.2	625.0	6.28%
	Other*	5.8	141.8	178.8	1923.9	9.30%
	Total	14.6	167.6	459.4	3653.0	12.58%
2016-2022	Unalaska/Akutan	3.9	13.8	178.8	1117.4	16.00%
	Kodiak/King Cove	2.4	11.1	23.9	524.1	4.55%
	Other*	4.0	134.4	85.7	1984.1	4.32%
	Total	10.3	159.3	288.4	3625.6	7.95%

Source: ADFG/CFEC Fish Tickets, data compiled by AKFIN in Comprehensive_FT

* Other includes St. Paul, Adak, Sand Point, Cordova, Kenai, Ninilchik, Nome, Sitka, Wasilla, Floating Catcher Processors, Inshore Floating Processors, Floating Domestic Mothership, Unknown/Missing Value. After 2005, this category includes only St. Paul, Adak, Floating Catcher Processors, and Inshore Floating Processors.

3.6 Vessel Gross Earnings and Operating Costs

The Crab EDR program collects specific information on earnings and expenditures for vessels operating in the CR Program fisheries. Those data are summarized in the annual Crab Economic SAFE document. Due to the Crab EDR collection structure, the data are reported by calendar year and not fishing year. In this section, reported dollar values are adjusted for inflation to 2021-equivalent value.

Fleet-level monetary and percentage statistics are calculated across all vessels that submit an EDR. Data reflect total commercial volume and value across all management programs (LLP/open access, IFQ, CDQ, ACA) inclusive of all harvesting sector production; approximation of ex-vessel sale value of catcher processors and catcher-seller volume is incorporated in revenue total by multiplying volume of retained catch by the weighted average ex-vessel sale price sourced from CV sector EDR data.

Cost information reported in the Crab EDR data collection program does not include all variable costs and fixed cost and capital expenditures are entirely excluded. As a result, estimated gross profit does not account for fixed, overhead, finance/interest, and associated costs and is not a complete measure of net income or economic profit.

A summary of the CR Program fleet's revenue and costs are provided in Table 3-11. Data for the 2013 through 2017 calendar years are shown as the mean value. Data for 2018 through 2022 are the most recent data available. All dollar values are reported in millions of real 2022 dollars. The closures and TAC reductions realized in recent years are first reflected in 2022 data. Changes in the fishery in more recent years are anticipated to impact the cost and revenue in the years 2023 through 2024, which are not currently available.

Table 3-11 Vessel level mean operating costs and revenue residuals for all CR Program fisheries in aggregate, 2018 to 2022.

	2013-2017	2018	2019	2020	2021	2022
All						
Number of active vessels	114	67	67	64	65	51
Pounds landed, millions	657	451	574	667	763	216
Quota pounds leased, thousands (% of landed)	345: (0.41%)	357: (0.79%)	452: (0.79%)	510: (0.77%)	627: (0.82%)	186: (0.86%)
Monetary values in $1000 ($2022)						
Gross ex-vessel revenue	$ 2,174	$ 2,719	$ 3,332	$ 3,629	$ 4,729	$ 1,672
Quota lease cost	(678): (0.23%)	(1,090): (0.4%)	(1,326): (0.4%)	(1,399): (0.39%)	(1,830): (0.39%)	(635): (0.38%)
Gross residual after lease cost	$ 1,502: 0.78%	$ 1,628: 0.6%	$ 2,006: 0.6%	$ 2,229: 0.61%	$ 2,900: 0.61%	$ 1,037: 0.62%
Provisions	(15): (0.01%)	(16): (0.006%)	(17): (0.005%)	(24): (0.007%)	(22): (0.005%)	(15): (0.009%)
Bait	(33): (0.02%)	(39): (0.014%)	(50): (0.015%)	(51): (0.014%)	(47): (0.01%)	(36): (0.021%)
Fuel	(129): (0.06%)	(112): (0.041%)	(123): (0.037%)	(135): (0.037%)	(145): (0.031%)	(132): (0.079%)
Non-labor vessel cost (Total)	(178): (0.09%)	(167): (0.06%)	(191): (0.06%)	(209): (0.06%)	(215): (0.04%)	(183): (0.11%)
Gross residual (non-labor)	$ 1,324: 0.69%	$ 1,461: 0.54%	$ 1,816: 0.54%	$ 2,020: 0.56%	$ 2,685: 0.57%	$ 854: 0.51%
Labor cost	(482): (0.26%)	(537): (0.2%)	(652): (0.2%)	(739): (0.2%)	(961): (0.2%)	(345): (0.21%)
Harvesting cost (Total)	(1,337): (0.58%)	(1,794): (0.66%)	(2,169): (0.65%)	(2,348): (0.65%)	(3,005): (0.64%)	(1,162): (0.7%)
Gross ex-vessel profit	**$ 842: 0.43%**	**$ 924: 0.34%**	**$ 1,164: 0.35%**	**$ 1,281: 0.35%**	**$ 1,724: 0.36%**	**$ 509: 0.3%**

Source: 2024 Crab Economic SAFE, Table 5-23.

3.7 Crew Employment and Remuneration

Information in this section focuses on fishing crew and captain employment and compensation. Consolidation of the crab fleet following rationalization in 2005/06 resulted in fewer vessels fishing and longer fishing seasons (Table 3-12). The number of crew positions was reduced and working conditions changed, resulting in longer periods of active work in the fisheries for fewer crew members and captains. The crew share system typically used to determine crew compensation is substantially determined by the price and market value of landed crab, as well as prices of other factor inputs (i.e. fuel and quota lease costs). Changes in arbitration outcomes due to the proposed amendments could impact crew compensation. The quantity and royalty cost of IFQ leased by a vessel, and how lease costs and other deductible operating and crew-related expenses are treated in crew settlements, have a large effect on vessel earnings and crew earnings, as do supply and demand for these positions. Lease royalty costs are included as an operating cost, and share payments to crew and captain are typically paid on the basis of the gross residual revenue after lease royalty costs, with additional deductions for vessel and personal expenses.

Table 3-12 Crew data pre-CR Program through 2008

Fishery	Year	Number of vessels	Total crew positions	Mean crew size	Mean vessel harvest (pounds)	Mean days at sea	Captain pay ($)		Mean crew pay (excluding captain)	Crewmember pay ($)	
							Mean	Median		Mean	Median
All CR Fisheries	1998	212	1266	6.0	1,017,733	96	117,276	115,785	249,780	40,249	39,744
	2001	211	1251	5.9	199,825	52	61,540	40,973	123,271	19,936	14,625
	2004	235	1395	5.9	192,605	32	73,609	66,613	154,847	25,541	22,138
	2005	169	1007	6.0	320,039	37	78,770	55,911	152,893	25,903	20,264
	2006	101	640	6.3	628,448	68	86,828	75,006	174,865	28,204	26,858
	2007	86	572	6.7	758,928	68	134,958	129,146	283,763	45,274	42,429
	2008	94	632	6.7	1,069,194	90	175,376	175,115	383,915	59,896	56,582

Source: 10-year review Table 5-21, EDR data

The Council raised concerns regarding crew compensation in the 5-Year Review and that concern resulted in subsequent work developing alternatives for regulatory measures to address these concerns. The Council ultimately elected to pursue measures coordinated by and implemented through harvest cooperatives voluntarily (Council motion on C-4(a)-(c), February 2013). This resulted in the ICE harvest cooperative's development of initiatives to encourage QS holders to voluntarily limit the rate of compensation charged for leased crab IFQ (to 50 percent of ex-vessel value for BSS, and 65 percent for BBR) and promote transfers of QS to active crew members and equity owners of active fishing vessels. ICE's initiatives were subsequently adopted by other harvest cooperatives, as demonstrated in cooperative reports submitted to the Council, and EDR lease cost data reported by vessel owners.

3.7.1 Overview of Crew Employment and Compensation Changes

EDR data related to the compensation of crew and captains during calendar years from 2009 through 2022 are presented in this section. Data are presented for CR Program fisheries that have been open to fishing since the last CR Program review. Information focuses on harvest crew positions, crew and captain compensation in dollars, and the percentage of gross share of catcher vessel revenue paid to captains and crew members.

Table 3-13 Crew positions and compensation by CR Program fishery, 2009 through 2022

Fishery/Year	Harvest crew positions	Mean harvest crew positions per vessel	Total harvest crew pay (Millions real 2022 $)	Total captain pay (Millions real 2022 $)	Catcher vessel gross share to crew (median)	Catcher vessel gross share to captain (median)	Catcher vessel gross share to labor (median)
WAG and EAG							
2009	35	7.00	$2.37	$1.40	0.12	0.05	0.18
2010	35	7.00	$3.99	$2.27	0.11	0.05	0.16
2011	36	7.20	$4.99	$2.71	0.12	0.05	0.16
2012	46	7.67	$4.35	$2.24	0.13	0.05	0.18
2013	44	7.33	$4.14	$1.88	0.13	0.05	0.18
2014	35	7.00	$3.99	$1.73	0.13	0.06	0.19
2015	35	7.00	$4.40	$2.01	0.13	0.07	0.19
2016	36	7.20	$5.38	$2.46	0.15	0.06	0.21
2017	36	7.20	$5.50	$2.32	0.16	0.07	0.24
2018	37	7.40	$6.03	$2.81	0.15	0.07	0.22
2019	37	7.40	$7.42	$2.70	0.15	0.06	0.21
2020	35	7.00	$8.78	$2.95	0.16	0.06	0.23
2021	37	7.30	$11.27	$4.35	0.16	0.06	0.21
2022	36	7.20	$6.08	$2.46	0.16	0.06	0.21
Mean	37.1	7.21	$5.62	$2.45	0.14	0.06	0.20
BSS							
2009	536	6.96	$16.23	$7.19	0.15	0.07	0.22
2010	444	6.53	$11.70	$5.25	0.15	0.07	0.22
2011	453	6.66	$25.01	$11.19	0.14	0.07	0.21
2012	502	6.97	$33.81	$15.22	0.14	0.07	0.21
2013	481	6.77	$27.40	$12.47	0.13	0.06	0.2
2014	480	6.86	$21.75	$9.76	0.13	0.06	0.2
2015	491	7.01	$20.61	$9.33	0.13	0.06	0.2
2016	463	6.81	$17.58	$7.85	0.13	0.06	0.2
2017	441	7.00	$14.60	$6.19	0.14	0.07	0.2
2018	436	6.92	$11.66	$5.00	0.14	0.07	0.2
2019	428	7.02	$16.61	$7.18	0.13	0.07	0.2
2020	417	7.07	$20.22	$8.89	0.14	0.07	0.21
2021	448	7.22	$32.25	$13.49	0.14	0.06	0.19
2022	298	7.08	$4.95	$2.16	0.13	0.06	0.19
Mean	451.3	6.92	$19.60	$8.66	0.14	0.07	0.20
EBT and WBT							
2009	102	7.29	$0.67	$0.41	0.15	0.07	0.21
2010	21	5.25	$0.16	$0.09	0.18	0.1	0.28
2013	156	7.09	$0.55	$0.26	0.17	0.08	0.24
2014	279	6.80	$3.79	$1.76	0.15	0.07	0.21
2015	365	6.63	$7.23	$3.36	0.15	0.07	0.23
2016	296	6.42	$5.85	$2.67	0.17	0.08	0.24
2017	100	6.25	$1.14	$0.51	0.15	0.07	0.22
2018	211	7.03	$1.61	$0.69	0.15	0.07	0.22
2019	139	7.69	$1.04	$0.47	0.16	0.07	0.23
2020	163	6.52	$0.43	$0.18	0.15	0.07	0.22
2021	149	7.45	$0.93	$0.94	0.14	0.07	0.22
2022	142	6.76	$1.14	$0.60	0.15	0.06	0.22
Mean	198.0	6.78	$3.40	$1.58	0.15	0.07	0.23
BBR							
2009	443	6.33	$11.91	$5.64	0.12	0.06	0.2
2010	422	6.48	$16.43	$7.82	0.12	0.06	0.18
2011	413	6.66	$13.41	$6.22	0.13	0.07	0.19
2012	428	6.68	$9.99	$4.50	0.14	0.06	0.2
2013	418	6.63	$9.32	$4.44	0.12	0.06	0.18
2014	422	6.70	$9.48	$4.37	0.12	0.06	0.18
2015	441	6.89	$11.17	$5.24	0.11	0.06	0.17
2016	423	6.71	$13.59	$5.88	0.13	0.06	0.19
2017	419	6.86	$8.35	$3.79	0.12	0.06	0.18
2018	365	6.64	$5.74	$2.64	0.12	0.05	0.17
2019	370	6.61	$5.58	$2.56	0.10	0.05	0.15
2020	333	7.09	$3.95	$1.82	0.10	0.05	0.15
Mean	408.1	6.69	$9.91	$4.58	0.12	0.06	0.18

Crew pay per vessel day has also been considered as a method to measure crew and captain compensation. Data in Figure 1.2 in the 2024 Economic SAFE shows that the weighted average of crew shares declined in 2022, similar in scale to the decline in production efficiency achieved by active vessels during 2022.

Table 3-14 shows daily employee compensation by crab fishery from 2018 through 2022 (the most recent year these data are available). Data through 2022 for crew and captains share payments are reported in the 2024 Crab Economic SAFE by fishery in Table 5.16. Figure 1.2 in the 2024 Economic SAFE shows that the weighted average of crew shares declined in 2022, similar in scale to the decline in production efficiency achieved by active vessels during 2022.

Table 3-14 Average Crab Industry Employee Compensation per day, 2018 through 2022

Fishery/Employee	2018	2019	2020	2021	2022	Average
AIG						
Processing Employee	$164	$172	$201	$209	$222	$194
Vessel Captain	$4,277	$4,154	$3,928	$5,337	$3,315	$4,202
Vessel Crew	$1,434	$1,784	$1,949	$2,195	$1,322	$1,737
BBR						
Processing Employee	$169	$171	$201			$180
Vessel Captain	$4,217	$3,541	$3,840			$3,866
Vessel Crew	$1,626	$1,376	$1,368			$1,457
BSS						
Processing Employee	$167	$176	$200	$207	$220	$194
Vessel Captain		$2,646	$2,365	$2,829	$2,081	$2,480
Vessel Crew		$1,017	$886	$1,087	$784	$944
BST						
Processing Employee	$159	$174	$204	$197	$223	$191
Vessel Captain	$1,369				$1,198	$1,283
Vessel Crew	$530				$395	$462

Source: AKFIN summary of EDR data

3.8 Processor Markets and Prices

3.8.1 Wholesale Crab Markets for King and Snow Crab

The king crab and snow crab imports and exports are provided in Figure 3-5 and Figure 3-6 with a breakout by country the U.S. sold to or bought from during the years 1998 through 2023. It is possible that some of the substantial increase in king crab imports during 2021 was the result of buyers preparing for the anticipated Russian ban on imports and the snow crab increase was due to the low TACs in the U.S. and high catch limits in Canada.

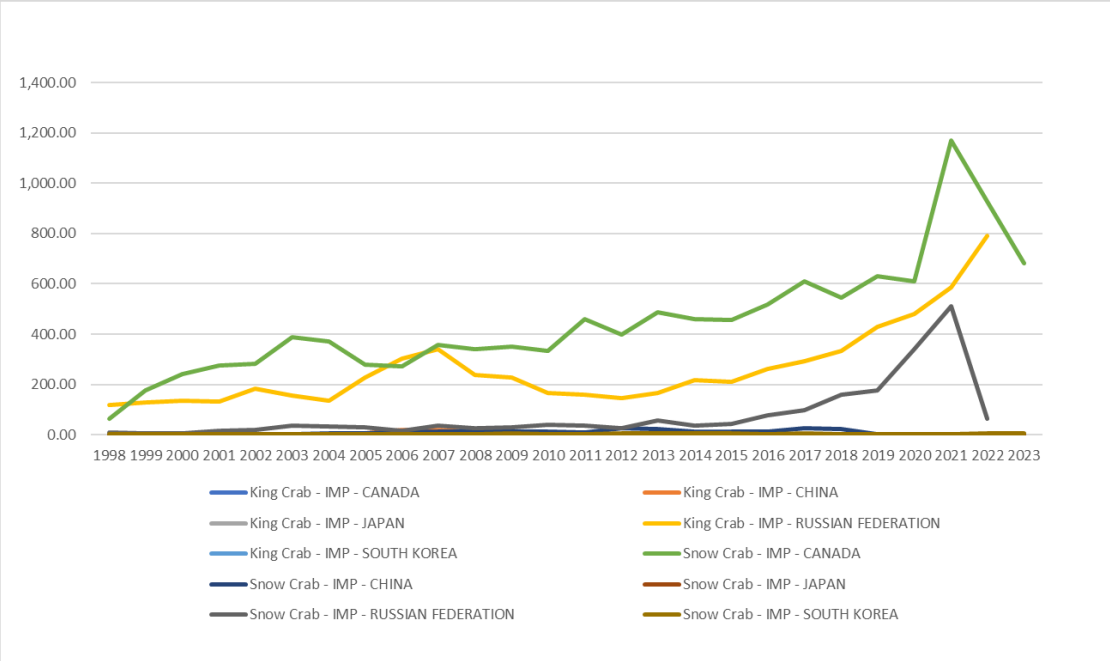


Figure 3-5 U.S. Imports of King Crab and Snow Crab, 1998 through 2023

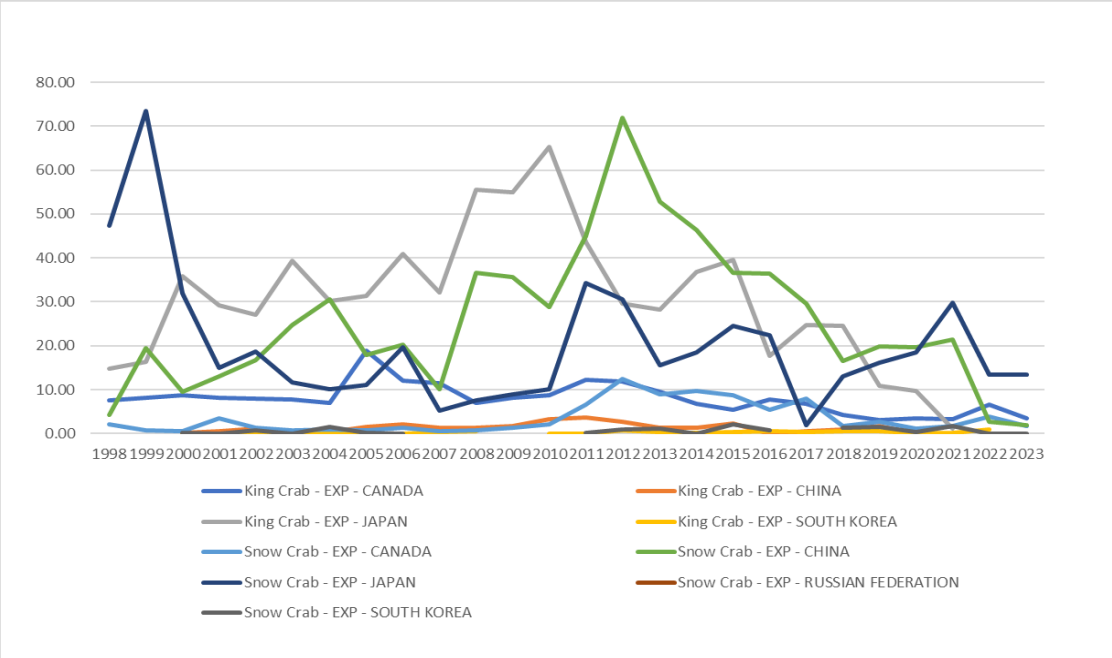


Figure 3-6 U.S. Exports of King Crab and Snow Crab, 1998 through 2023

3.8.2 Ratio of Ex-vessel to First Wholesale Price

Prices paid to harvesters are a substantial component of processors' costs. Figure 3-7 shows the ex-vessel price and revenue as a percentage of first wholesale price and revenue. It also shows the ratio of whole crab weight purchased relative to the first wholesale pounds sold. That ratio accounts for the weight lost from turning whole crab into frozen sections or other products produced. It also is reflected in the ratio of

ex-vessel to first wholesale revenues being greater than the ratio of ex-vessel price to first wholesale price, although, in general, they follow a similar trend.

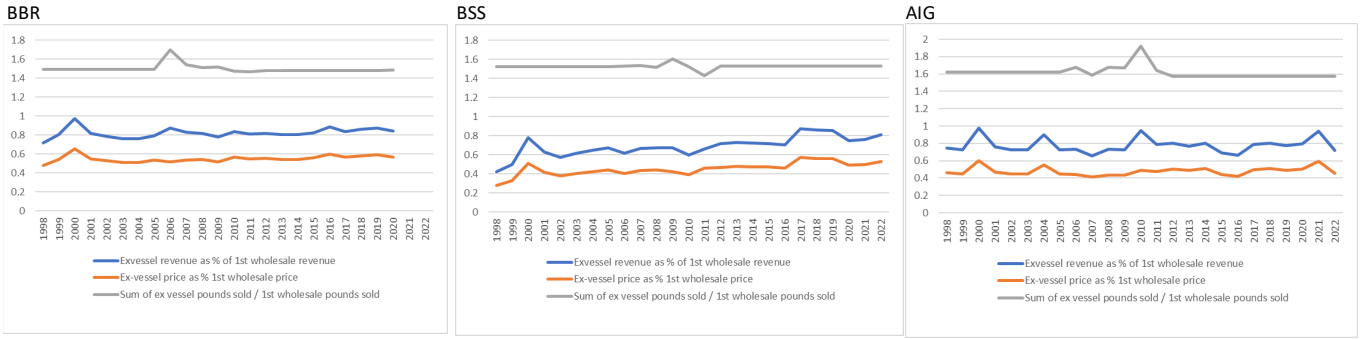


Figure 3-7 Ratio of ex-vessel to first wholesale revenue, price, and pounds sold in the BBR, BSS, and AIG fisheries 1998 through 2022

Source: CRSAFEEXEC01 - BSAI Crab SAFE: harvesting and processing sector output - product volume, gross revenue, and average price, 1998-present

The division of revenues is affected by more factors than the aggregate arm's length ex-vessel price divided by the aggregate first wholesale price. Changes in costs of production for harvesters and processors impact profitability. Several of these costs are discussed in this document. However, using labor costs as an example, processing labor is paid an hourly rate (including overtime pay) that has increased substantially in recent years. Harvesters typically pay crew a share of the ex-vessel value of crab sold after certain costs are deducted from the gross revenue. Deductions vary by firm but typically include lease payments up to 50 percent for BSS and 65 percent for BBR crab8 and can include other major expenses like fuel and provisions.

3.8.2.1 Delivery Terms and Pricing Under the LLP

Much of the information in this section is derived from the ten-year review (NPFMC 2017). Before the CR Program, harvests in most BSAI crab fisheries were consolidated over a short season. Pricing practices differed somewhat between crab fisheries with relatively short seasons and a relatively high number of participants (such as the BBR and BSS fisheries) and fisheries with fewer participants and longer seasons (such as the AIG fisheries). Differences in ex-vessel pricing across fisheries are highlighted.

BBR and BSS Fisheries

In the years leading up to implementation of the rationalization program, harvesters in the BBR and BSS fisheries coordinated most price negotiations. Since the early 1990s, the Alaska Marketing Association (AMA) represented a substantial share of harvesters in price negotiations in the largest crab fisheries (BBR, BSS, and BST).

Approximately one month before each season opening, AMA representatives met with each of the major crab processors to informally discuss the markets for crab products. Based on these discussions and information gathered through its own market research, AMA representatives would determine an expected price for crab, which it would communicate to the processors. The AMA would then solicit price offers from each processor and submit those offers to its members for a vote. This process of soliciting prices would continue until a price offer acceptable to AMA members was received. Since deliveries were unrestricted, once an acceptable offer was received from a processor all other processors usually matched

[8] A recent DOG boat cooperative report noted that lease rates were somewhat more for quota held by a CDQ group, but only the noted limits were deducted when calculating crew payments.

that offer to maintain market share. Prices generally remained constant over the short seasons. In 2001, AMA members created an incentive for higher price offers in the BBR fishery by informally agreeing to reward the processor that offered the accepted price with additional deliveries. AMA members made a similar agreement for the 2002 BSS fishery.

If an acceptable price was not received before the seasoning opening, catcher vessels would not begin fishing. For example, in both the 2000 and 2001 Bering Sea snow crab seasons harvesters did not begin fishing until several days after the announced opening because no processor had offered an acceptable price during pre-season price negotiations. Although not all vessel owners were members of the AMA, the entire catcher vessel fleet remained at port until an acceptable price was received by the AMA.

Catcher processors, on the other hand, did not abide by these "stand downs" but began fishing at the opening of the season. These vessels were unaffected by the price negotiations because they process the crab they harvest. Fishing by catcher processors, however, had the potential to weaken the negotiating position of catcher vessels by reducing the amount of crab available for harvest after a price agreement was reached.

The pricing process in the fisheries typically established two prices—the main price applied to higher value, new shell crab (grade 1) and a secondary, lower price was established for lower value, old shell crab (grade 2). The price differential reflected the differences in prices the two grades brought in wholesale and retail markets. The ex-vessel price difference between grades often varied substantially across processors. In general, the price difference averaged approximately 25 percent of the grade 1 price ($1.00 per pound for red king crab and $0.25 for snow crab), but in some instances, the price difference was much greater.

Although this informal system established a single price for each grade of crab, price competition among processors existed on a minor scale. Occasionally, some processors offered small bonuses (e.g., $0.05 per pound) or used different grading practices to attract additional vessels. In addition, a few harvesters preferred to handle their own price negotiations rather than be represented by the AMA.

Ex-vessel pricing could also vary regionally for several reasons. In fisheries where vessels made multiple deliveries, the availability of goods and services in a delivery location can be important to harvesters. Food, bait, fuel, and good port facilities could make a processor more attractive to vessels wishing to offload harvests. Processors in locations that offer fewer goods and services were, at times, compelled to pay a price premium to induce harvesters to sell their catch. Processors more distant from grounds might also be required to pay a higher price to compensate harvesters for increased transit time and costs and higher risk of deadloss (and possibly for time away from the grounds if harvesters made midseason deliveries). Proximity to markets could also influence ex-vessel prices. Processors with less access to markets sometimes paid slightly less for crab because they were required to bear a higher cost to transport the crab to markets.

3.8.2.2 Delivery Terms Under the CR Program

Several aspects of the structure of the CR Program have affected delivery terms and pricing since its implementation. The different catcher vessel IFQ types may impact prices because of the different limitations on use of those shares and the effects of the arbitration system on Class A IFQ landing prices. Negotiations of prices and terms of delivery occur independently for the different share types to avoid potential infractions of the statute that prohibits processors from using IPQ to leverage Class B IFQ deliveries. That statute specifically states:

> *If the Secretary determines that a processor has leveraged its Individual Processing Quota shares to acquire a harvester[']s open-delivery 'B shares', the processor's Individual Processor Quota shares shall be forfeited.*

For these reasons, the price setting and delivery terms for Class A IFQ were discussed separately from those for Class B and C share IFQ in the ten-year review. That review provided a section that began with a detailed discussion of the pricing of Class A IFQ landings (including the Arbitration System) and concluded with a discussion of Class B and C share IFQ and distributional issues related to the use of those shares. The reader is referred to the ten-year review for a more comprehensive discussion.

3.9 Analysis of Impacts

This section considers the impacts of the current program and proposed CR Program changes.

3.9.1 Alternative 1 (No Action)

The CR Program changed how harvesters and processors negotiated ex-vessel prices and contract terms. The arbitration system played a central role in those changes. While it was designed to resolve price, delivery terms, performance standards, and other disputes fairly and equitably if class A IFQ and IPQ holders are unable to reach an agreement, there is still disagreement regarding how well the system has met those objectives.

The **LBO style of arbitration** was selected for the CR Program. This method of arbitration was selected because it is assumed to provide incentives for both parties to submit reasonable offers and is considered an efficient and less costly form of arbitration. It requires that both parties submit their proposed outcome. The LBO system helps to disincentivize extreme stances, since the arbitrator would just choose the other more reasonable one, rather than crediting the extreme stance by leaning closer to it in a compromise resolution than they might have done for a less extreme position (Appendix 1 p. 16). Parties to the arbitration must also provide evidence supporting their position. That outcome could be the ex-vessel price paid or other disputes (e.g., delivery terms). The arbitration procedures such as the presentation of evidence are virtually identical to standard arbitration. However, LBO arbitration limits the arbitrator's ability to select an outcome. The arbitrator is only empowered to accept the IFQ holder's proposal or accept the IPQ holder's proposal. The arbitrator is not empowered to negotiate an agreement or issue a compromise or independent decision other than the outcome requested by the IFQ holders or the IPQ holders. The decision of the arbitrator is final and issued without explanation of the rationale.

The LBO was selected because granting the arbitrators greater discretion may make the selection of arbitrators more contentious and place more pressure on the arbitrator when selecting an outcome. The authority to only select a outcome submitted by the two parties was anticipated to limit the offers from being too divergent.

Submitting a LBO imposes substantial risks to both harvesters and processors if their offer is not accepted. Representatives of the harvest sector have indicated that the LBO system has compelled them to submit offers at the lower end of the prevailing prices to help ensure their offer is accepted. Processors have indicated that the LBO system does not account for changes in markets during the year and changes in production costs, especially labor costs, over time. For those reasons, they have expressed concerns that the LBO system as view in this case by the arbitrators does not address a broad enough range of considerations changes in the fishery since the program was implemented (e.g., costs) when selecting an outcome.

CR Program arbitration to establish contract terms may only be triggered by Arbitration IFQ holders that have joined a CR Program arbitration organization. IPQ holders are prohibited from initiating the arbitration process to establish contract terms. Because only IFQ holders may initiate the LBO arbitration process, they have control over the years and fisheries utilizing arbitration. It also means that Arbitration IFQ holders are most likely to initiate the arbitration process in fisheries and during the years they anticipate a benefit from the process, either by prevailing at arbitration, or inducing a better result from the IPQ holders' offer at arbitration.

The shared **arbitration system costs** are outlined in an annual report submitted to NMFS and the Council by participants in the Alaska Crab Processors Arbitration Organization (ACPAO). Arbitration costs are divided equally between the harvesters and processors based on a landings fee structure. Because of when costs are incurred and when the fees are collected, the processor pays the arbitration costs and is reimbursed through the fee. The fee and structure are agreed to by both parties and the contract describes how shortfall and excess funds are addressed. The Alaska Crab Processors Arbitration Organization (ACPAO) report identified the shared arbitration system costs.

- The cost to produce the annual Market Report and non-binding pricing formula for each fishery;
- The third-party data provider (Sharematch.com) costs for each fishery;
- The contract arbitrators' costs for each fishery;
- General liability insurance, and directors' and officers' insurance for each arbitration organization;
- The fees and expenses necessary for the participation in the Council's CR Program review process incurred by any arbitration organization authorized representative; and
- Arbitration organization's attorney fees to prepare, negotiate and administer the above contracts, obtain and review the above insurance, pursue Department of Justice antitrust review of the implementation of the arbitration system, contribute to and participate in the Council's CR Program review process, and otherwise implement the arbitration system, as amended from time-to-time by NOAA regulation. Attorney's fees associated with the formation and administration of each arbitration organization are borne by each arbitration organization.

The fee per pound has varied annually, ranging from $0.00 to $0.01 per pound depending on the estimated arbitration costs and the amount of carryover funds held in reserve (2005 through 2022 fishing years). Fishing year costs have ranged from about $325,000 early in the program to as low as about $80,000 in recent years. The average over the past seven years, since the last program review, was about $110,000.

A requirement associated with the arbitration process that has not proven adaptive to economic and environmental changes in the fishery is the Market Report. Production of the Market Report (and the expenditures associated with its development) is required before TACs are determined, so the report is required even when the TAC does not support a fishery.

The Market Report and Price Formula report were estimated to cost $49,000 in total for the 2023/2024 fishing year[9]. The Market Analyst produces two **Market Reports** annually. The first report is for all crab QS fisheries anticipated to be open except for WAG and EAG. The second report is for the WAG and EAG fisheries. As described earlier, the Market Report analyzes the market for products of a specific crab fishery and reports on activities occurring within three months before its generation. Data must be sufficiently aggregated in the report so as not to identify specific price information by an individual. The report provides background information on each crab fishery, the products generated by each fishery, and the position of those products in the marketplace. The Market Report also discusses the historical division of first wholesale revenue and provides a methodology for predicting wholesale prices before the fishery occurs. In addition, the Market Report examines trends in both ex-vessel prices and in wholesale prices.

The **Non-Binding Price Formula Report** is designed to serve as a starting point for negotiations between fishermen and processors, or as a starting point for an arbitrator in evaluating offers in an arbitration process. It is not binding. The recommended formula is not considered the only possible formula for all fishermen and processors; negotiations between individual fishermen and processors may find that other

[9] https://omb.report/icr/202402-0648-001/doc/139606500

price formulas work better for their specific needs. The Non-Binding Price Formula Report for each crab fishery is presented as a report with complete documentation as to how each formula was developed, and with detailed analysis of each of the elements entering into each Non-Binding Price Formula calculation.

The CR Program does not require that parties to a binding arbitration proceeding receive a written report from the arbitrator that includes an **explanation of the rationale**. The parties are informed of the arbitrator's decision. Regulations state that the decision is binding and issued without explanation of the reasoning. Arbitrators are typically not required to explain the reason for their decisions unless the parties request a written report in the arbitrator's contract. Current regulations would not prohibit that clause from being included in the contracts if the information requested was allowed under antitrust rules. Generally, the award consists of a summary of determination. According to American Arbitration Organization, a private non-profit arbitration provider, one reason for a limited report is that written opinions could provide opportunities to challenge the award in court.[10] While courts may not be willing to review an arbitrator's decisions based on the case's merits, thoughts expressed in a written opinion could obstruct or delay enforcement of the award. That organization felt that obligations to the parties are better fulfilled when the award leaves no room for challenge.

Disagreements associated with **non-performance of contracts** are submitted to Binding Arbitration. Binding arbitration is generally considered less costly than civil trials to settle disputes. While the option is available, stakeholders have indicated that arbitration has never been used to settle those disputes. Instead, the possibility of arbitration if needed in those instances has been utilized to help reach an agreement.

Under Alternative 1, these components of the Arbitration System would continue as they are currently established. Retaining those regulations is expected to maintain current divisions of first wholesale revenue and the division of costs that are required under the CR Program.

Regulations are silent on whether RAM may **allow annual IFQ/IPQ applications that have been accepted as complete to be withdrawn**. The ambiguity of the regulations requires that NOAA Fisheries staff determine on an individual basis if an application may be withdrawn. Not knowing the parameters of that decision process creates uncertainty for the IPQ holders that may wish to withdraw their applications after additional information regarding the fishery is available (e.g., the TAC), the other processors that would have the amount of IPQ they are allocated changed, the harvesters that had planned to deliver to the processor that withdraws an application, and RAM knowing when IPQ/IFQ holder's final allocations can be released. Under Alternative 1 there would continue to be ambiguity in whether RAM may allow for a withdrawal of IFQ/IPQ applications.

3.9.2 Alternative 2

3.9.2.1 Option 1: Remove the Regulations for LBO Arbitration

This option would change the fundamental structure of the crab arbitration system for establishing contract terms by eliminating the requirement to use the LBO arbitration model. The 14 references to LBO arbitration would be amended in Federal regulations, including the reference at 50 CFR 680.20(h)(2) that states the Contract Arbitrator will comply with the LBO arbitration method. Regulations would not specify the type of arbitration used to establish prices and other contract terms when other negotiation methods fail to reach a compromise agreement. Parties to any future arbitrations must agree on the arbitration structure or use the arbitrator's default structure and include that information in the report to NMFS. However, because the amended language would allow the arbitrator to select a compromise position

[10] https://www.adr.org/sites/default/files/document_repository/A%20Guide%20for%20Commercial%20Arbitrators.pdf

between the two offers submitted or an independent result, but the arbitrator would not be prevented from selecting one of the offers submitted by the parties to the arbitration.

LBO arbitration was initially selected as an efficient arbitration system, by incentivizing members of Arbitration Organizations to submit reasonable offers, and to avoid gaming of the arbitration process by submitting extreme offers. Harvesters and processors were expected to submit reasonable offers to increase the likelihood of their position being chosen by the arbitrator, who is required to select the better of the two positions, as supported by consideration of various factors specified in regulation. If both offers were similar, selecting either would have fewer negative impacts on the side that did not prevail.

When the current arbitration structure was implemented, it included certain standards to help ensure predictability and fairness for the parties involved. The regulations state that both the Non-Binding Price Formula and the contract arbitrator's decision must be based on the historical distribution of first wholesale revenues using arm's length first wholesale prices and ex-vessel prices. The language also states that the price should preserve the historical division of first wholesale revenue in the fishery while considering several factors. Discussions with industry members indicate that the arbitrators have relied heavily on the historical division of first wholesale prices without considering changes in the cost structures of the two sectors. Representatives of the processing sector have argued that the arbitrator should consider factors beyond the historic division of first wholesale revenue that was established more than two decades ago using data that they feel may be flawed. If additional data were brought into the calculus for determining ex-vessel prices, verifying all the relevant costs incurred by both sectors was noted as a concern. Verifying that data to a level that would make both parties confident in its accuracy is expected to increase costs.

Granting the arbitrators greater discretion to select an intermediate position may make the selection of arbitrators more contentious and place more pressure on the arbitrator when selecting an outcome. The authority to select an intermediate position could result in the requested outcomes by the two parties being more divergent, as a strategy to affect the result. Arbitration IFQ holders and IPQ holders may decide that if they submit an offer that is more advantageous to their side, the arbitrator may select an outcome closer to that offer when finding a middle ground. Whether arbitrators are willing to consider factors other than the current formula based on the division of first wholesale revenue will remain an important determinant of their ultimate decisions.

The following sections highlight several changes that may occur from shifting away from the LBO structure of binding arbitration.

Increased Number of Arbitrations

Arbitration to establish contract terms occurred less frequently over the more recent years of the CR Program (Table 3-3). Fewer arbitrations could be due to only triggering arbitration when Arbitration IFQ holders thought they would prevail. Arbitration IFQ holders have noted that even the cost of LBO arbitration is a deterrent to arbitration. The cost of arbitration is weighed against the potential increase in ex-vessel price and the probability of prevailing in the arbitration. For Arbitration IFQ holders to proceed with an arbitration, they feel they must be relatively certain they will prevail. Fewer arbitrations in recent years could also be due to more predictable outcomes, and therefore, a willingness to settle terms outside of arbitration when the two offers are relatively close.

LBO is very efficient in reducing the information necessary for an arbitrator to select a compromise position and is assumed to reduce the cost of arbitrating. Limiting the arbitrator's option to select one of the offers increases the risk of entering arbitration and creates a disincentive to arbitrate. Harvester representatives have indicated that in past arbitrations, it was common for harvesters to ask for a price equal to the lowest agreement or an average of the price paid. Under an arbitration structure that allowed the arbitrator more flexibility to determine the award, harvesters may be compelled to seek a higher price and processors a lower price than they could have requested under an LBO model. If harvesters prevailed

or received a beneficial award, it could incentivize additional arbitrations with processors who offered a price lower than received under the arbitration.

Change Costs of Arbitrations

If the LBO model was removed from regulation, it would be anticipated that the costs to arbitrate would increase. While analysts cannot quantify this expected increase in cost, it may result if there is an increase in the frequency of arbitrations, the information needed to make a decision, or the duration of each arbitration. Unless the regulations defining how arbitration would be paid for were changed, any increase in cost would be shared equally by the two parties. Regulations at 50 CFR 680.20(d)(1) state that in the arbitration formation process, an Arbitration Organization must establish the Arbitration System that includes the payment of arbitration costs.

Under current fishery conditions, of low prices and low TACs, both harvesters and processors have noted that the economics of the CR Program fisheries are challenging. If the costs to establish contract terms increase, the party with fewer resources to fund arbitration could be impacted the most. Processors initially pay the total arbitration cost. The harvesters' portion of the fee is then collected from harvesters using a reduction in the ex-vessel price paid to the harvester. As reported earlier, the cost has been $0.01 per pound or less in recent years. The amount of the fee could change and would depend on the change in the cost to arbitrate, the overall revenue generated by CR Program fisheries, and carry-over funds from previous years. Processors would need to fund their share of the cost directly.

Changes the Distribution of Wholesale Revenue

Because the first wholesale price is determined by the worldwide demand for the available supply of crab, and the supply is generated from both U.S. and foreign producers, processors must take the price established by the market or hold the crab with the expectation that market conditions will change and prices will increase. Holding the product in cold storage increases the cost of supplying the crab.

Any changes to the percentage of first wholesale revenue paid to harvesters through the ex-vessel price will depend on how closely arbitrators stick to the division of first wholesale revenue and how much arbitrators are willing to move away from the price formula they are provided.

The selection of arbitrators and their willingness to interpret the regulations as providing flexibility to establish ex-vessel prices could become more important. Regulations at 50 CFR 680.20(g)(2) describe the information that must be included in the Formula Arbitrator's contract. That contract establishes the fraction of the weighted average first wholesale price that may be used to set the ex-vessel price for a fishery. The Non-Binding Price Formula is based on the historical distribution of first wholesale revenues between fishermen and processors in the aggregate based on arm's length first wholesale prices and ex-vessel prices, taking into consideration the size of the harvest in each year (50 CFR 680.20(g)(2)(ii)(A)), but may consider a variety of other factors (50 CFR 680.20(g)(2)(ii)(B))

1) Current ex-vessel prices, including ex-vessel prices received for crab harvested under Class A, Class B, and CVC IFQ permits;
2) Consumer and wholesale product prices for the processing sector and the participants in arbitrations (recognizing the impact of sales to affiliates on wholesale pricing);
3) Innovations and developments of the harvesting and processing sectors and the participants in arbitrations (including new product forms);
4) Efficiency and productivity of the harvesting and processing sectors (recognizing the limitations on efficiency and productivity arising out of the management program structure);
5) Quality (including quality standards of markets served by the fishery and recognizing the influence of harvest strategies on the quality of landings);

6) The interest of maintaining financially healthy and stable harvesting and processing sectors;
7) Safety and expenditures for ensuring adequate safety;
8) Timing and location of deliveries; and
9) The cost of harvesting and processing is less than the full IFQ or IPQ allocation (underages) to avoid penalties for overharvesting IFQ and a mechanism for reasonably accounting for deadloss.

The regulations also allow the arbitrator to consider other relevant factors such as product form, delivery timing, and delivery location. The arbitrator may also consider the "highest arbitrated price" for the fishery from the previous crab fishing season.

Allowing arbitrators to select a compromise position would increase the importance of who is selected to serve as arbitrators. Both the Arbitration Organizations must agree upon the persons selected to serve as arbitrators (50 CFR 680.20(e)(5)). The Arbitration Organizations then notify NMFS of the persons selected. Those selections must be provided to NMFS by June 1st for that crab fishing year. NMFS will not issue CVO IFQ and IPQ for a fishery until the Arbitration Organizations establish the contracts with Contract Arbitrators and notify NMFS (50 CFR 680.20(e)(7). Because of these requirements, either of the two Arbitration Organizations could prevent the issuance of CVO IFQ and IPQ for a fishery.

Based on the information available, the contract arbitrators have chosen not to diverge from the historical division of first wholesale revenue in arbitrations that have taken place to establish ex-vessel prices. Potential reasons are that it could create a precedent, be more controversial, and increase the complexity of weighing all factors involved in adjusting the ex-vessel price in terms of all the other (perhaps countervailing) factors that could be considered. If the arbitrator was allowed to select an intermediate position, weighing and perhaps justifying an outcome would be more complex.

Impact on Harvesting Crew

The primary impact on the harvesting crew would be associated with changes in ex-vessel prices directly resulting from modifications to the arbitration structure. If the modified arbitration structure results in lower ex-vessel prices, the crew share would be expected to change approximately in proportion to the change in ex-vessel value. Costs associated with arbitration are not typically deducted from crew shares so any changes in costs are not expected to directly impact crew payments. Without knowing how arbitration may change ex-vessel prices, it is not possible to provide quantitative estimates of changes in crew payments and whether they would be higher or lower than the status quo.

3.9.2.2 Option 2: Provide a Written Report of the Arbitration Outcome

Option 2 would establish regulations allowing parties to the arbitration to receive a written report of the arbitration outcome, including rationale, from the Contract Arbitrator, as well as a publicly available report providing key rationale for the decision (without including confidential information). Much of this information already needs to be provided to NMFS. However, the information provided to NMFS does not include the Contract Arbitrator's rationale for making the decisions.

While the current regulation do not require that the Contract Arbitrator submit a written report of the arbitration outcome, there are also no regulations that prohibit the parties to the arbitration from asking for a report that excludes information that would trigger anti-trust concerns. The contract the two parties sign with the arbitrators could define the written report and the information included.

Regulations at 50 CFR 680.20(h)(6) define the information that the Contract Arbitrator must provide to NMFS under the terms of their contract with the parties. The Contract Arbitrator must provide all required information, documents, or data by 30 days before the end of the crab fishing year for which the open negotiation or arbitration applies.

1. minutes from any meeting attended by that Contract Arbitrator between or among any PQS or IPQ holders;
2. the last-best offers made during the Binding Arbitration process with all contract details;
3. the names of other participants in the arbitration, and whether the Contract Arbitrator accepted the bid; and
4. any information, data, or documents the Contract Arbitrator gave to any person who was not a party to that arbitration, and the person provided the data or documents.

A primary obstacle to allowing a written report that contains confidential information is antitrust concerns. A legal review of the arbitration program was commissioned by NOAA Fisheries in 2004 to review whether the proposed program could trigger antitrust issues (see Appendix 1). That legal opinion found that the originally proposed arbitration component of the BSAI CR Program did raise some antitrust concerns. The main concerns focus on provisions regarding the exchange of information that would not be permitted in an unregulated, competitive environment. The legal opinion advised that several provisions, including publicly announcing a pricing formula, circulating a Market Report, and providing arbitrators with access to information from prior arbitration sessions, could be implemented consistent with antitrust laws if they were conducted within limited parameters.

Other provisions raised antitrust concerns in the 2004 review.

> *These include the provision giving both harvesters and processors access to all information provided to their arbitrators, permitting processors to engage in discussions regarding pricing, and the unlimited publication of the arbitration results. To address the possible anticompetitive effects of these provisions, that paper recommended that the harvesters' and processors' access to information during an arbitration be limited to materials submitted directly by the parties.*

The opinion also concluded that access to the results of other arbitration sessions should be limited to arbitrators and non-affiliated harvesters that have not committed shares to a processor. Limiting the information provided was an important consideration in the program's development to avoid antitrust issues.

The reason stated in the Arnold and Porter review that the results of the completed arbitration sessions should not be publicly announced was that,

> *there is no reason for the processors to have access to this information. While harvesters who are members of a cooperative could freely exchange the information among members, allowing processors (including vertically integrated harvesters) and harvesters who are not co-op members to share the results of other arbitration sessions would run the risk of violating the antitrust laws as an exchange of current pricing information. Additionally, access to this information could influence a harvester's or processor's final offer to the arbitrator in later proceedings or facilitate pricing coordination for other seafood or in future crab seasons. Moreover, vertically integrated harvesters present similar concerns and should be denied access to this information out of a concern that they could share it with their affiliated processors.*

For these reasons, the Council may wish to carefully consider recommending the creation of reports that could result in antitrust violations. Based on the Arnold and Porter memo, providing information on past arbitration results to processors that could influence future price offers is an antitrust concern.

3.9.2.3 Option 3: Remove Requirement for Fishery Market Reports

Certain requirements are established for CVOs who hold Class A QS/IFQ and processors that hold PQS/IPQ, regardless of whether participants in the fishery initiate binding arbitration during a year. Because the required submission dates are set before the determination of whether the stocks will support

a fishery that crab fishing year, the arbitration system process must be conducted and the costs to collect and submit the required information must be incurred each year.

Four data collections are submitted annually:

(1) Annual Arbitration Organization Report (compiled by each of the two arbitration organizations representing the processors and the harvesters[11] see template linked in footnote),

(2) Market Report (analysis of the market for products of a specific crab fishery and reports on activities occurring within three months prior to its generation. The purpose of this report is to provide background information on each crab fishery, the products generated by each fishery, and position of those products in the marketplace; discuss the historical division of wholesale revenue; and provide the methods for predicting wholesale prices before the fishery occurs),

(3) Non-Binding Price Formula Report (a pre-season report that is designed to serve as a starting point for negotiations between fishermen and processors, or as a starting point for a Contract Arbitrator in evaluating offers in an arbitration process. This report documents how each formula was developed), and

(4) Cost Allocation Agreement (provides combined shared arbitration accounting costs since the Federal regulations require that the crab arbitration costs are shared equally between IPQ holders and Class A IFQ holders).

The shared arbitration system costs are outlined in an annual report submitted to NMFS and the Council by the Alaska Crab Processors Arbitration Organization (ACPAO) participants. Arbitration costs are divided equally between the harvesters and processors based on a landings fee structure.

As discussed under the No Action alternative, the estimated 2023/2024 cost to develop the Market Report and the price formula was $49,000[12]. Eliminating the requirement to produce a Market Report for each fishery would eliminate the portion of that cost associated with the Market Report.

A "market analyst" and a "formula arbitrator" (who may be the same person), are jointly selected by the harvesting and processing sectors. develop a Market Report and Non-Binding Price Formula. The Market Report is intended to provide baseline information concerning the current market and provide information to help establish a reasonable price. The price formula is a pre-season report that specifies an ex-vessel price as a portion of the first wholesale price (after considering relevant information including the Market Report), to be used by participants to guide their negotiations. Neither the Market Report nor the formula price has any binding effect. Instead, they are intended to provide baseline information concerning the market and signal what may be considered a reasonable ex-vessel price. They are intended to serve as the starting point for price negotiations by members of the Arbitration Organizations. The Market Report and Non-Market Price Formula must be released at least 50 days before the season opening.

Both harvesters and processors supported removing this requirement at the December 2024 Council meeting. A representative of the harvest sector indicated that other published Market Reports (e.g., Urner Barry's report) have been used to provide timely market information for the negotiations. The industry organizations subscribe to those reports so costs would not increase.

[11] https://s3.amazonaws.com/media.fisheries.noaa.gov/2020-11/Crab-Arbitration-Organization-Annual-Report-Template-AKRO.pdf?null=

[12] https://omb.report/icr/202402-0648-001/doc/139606500

3.9.2.4 Option 4: Remove Arbitration for Non-Performance

Option 4 would eliminate the option for IFQ and IPQ holders to independently initiate arbitration to enforce issues of non-performance. The analysts also note that regulations provide a similar opportunity for IFQ and IPFQ holders to arbitrate over quality disputes (50 CFR 680.20(h)(11)). **Analysts assume that Option 4 would only apply to non-performance and not change regulations relative to quality disputes. Both issues are addressed in the same section of the regulations.**

This option was proposed in the North Pacific Crab Association's December 2024 comment letter to the Council. As noted in that letter, entities eligible to hold IPQ do not know whether the economics of the crab fishing year will support crab processing operations when they must apply for IPQ. If IPQ holders cannot process the IFQ due to economic conditions, or they hold IPQ but do not operate a processing facility, and no crab processor operations are available, they are still subject to contracts. This means they may be required to pay damages to a Class A IFQ holder for non-performance. This option is included to recognize the problem that Class A IFQ holders may be unable to deliver their IFQ crab to an IPQ holder because of economic conditions in the Crab Rationalization program that were unanticipated when the delivery contracts were established. As stated in the letter, the intention appears to be diminishing the penalty for an IPQ holder in situations where crab processing is not possible because a processor does not operate a crab processing facility or if the IPQ holder does operate a processing facility the economic losses of operating under a contract are too great.

Option 4 would result in the two parties with an intractable dispute over performance to either agree to arbitrate or use the civil court system to enforce contract terms, when necessary, when other methods of resolution fail. Discussions with knowledgeable members of the fishing industry indicated that arbitration has not been used to enforce contracts, but the option to use arbitration has been used as a backdrop in negotiations to come to a resolution by the parties.

Under the current regulations either IFQ or IPQ holders must (shall) use arbitration for dispute resolution to enforce contract terms as an alternative to going to court to resolve a dispute. The IFQ/IPQ holders with a dispute submit their argument to an approved contract arbitrator, who renders a binding decision. The contract arbitrator is selected from the list of persons submitted to NOAA Fisheries. The arbitrator selected would hold hearings to consider the evidence from both sides. That evidence and the contract terms are used to make their decision. This decision is binding.

Removing the arbitration regulations would not prohibit the two parties from using arbitration to resolve the disputed contract terms, but both parties would need to agree to arbitrate. If not defined in regulation, arbitration costs could be fully levied on one party or divided by a set or arbitrator-determined method, depending on each particular agreement to arbitrate. These costs would no longer be allocated, paid, or collected under the 680.20 arbitration system.

Arbitration generally offers a more informal setting than a courtroom, allowing the parties to present their case in a semi-formal atmosphere. It does not take place in a courtroom. Instead, it can take place virtually or in a selected meeting room. Often, arbitration cases are a less expensive and less intrusive way to settle a dispute over non-performance of contract terms. Lawyers are generally still involved in the arbitration process to ensure the parties are well represented.

Civil trials are often considered more expensive in terms of time and cost. However, the cost of a civil trial varies depending on the case's complexity. There is typically a filing fee, attorney fees, document certification fees, record retrieval fees, expert witness fees, deposition fees, travel costs, and other miscellaneous fees and costs. The civil lawsuit filing fee is generally a small component of the total cost. Washington State filing fees typically range from $83 to $250, depending on the county and the case's specifics. It can also be higher if a jury demand is filed. Additionally, some counties may have additional fees for dispute resolution, administrative costs, etc. In Alaska, the civil lawsuit filing fee varies depending on the court level and the nature of the case. For formal civil cases, the District Court fee is $150, and the

Superior Court fee is $250. The United States District Court, District of Alaska, also has a filing fee of $405 for civil cases.

Civil trial could also require that persons less familiar with the crab fisheries and the relationships between harvesters and processors in the program (compared to arbitrators agreed to by the IFQ/IPQ holders) render judgements regarding non-performance. This could increase uncertainty regarding the court's decision.

The court in a contract dispute examines the contract, the parties' actions, and relevant evidence to determine if a breach occurred and, if so, what remedies are appropriate. The process typically begins with one of the parties to the contract determining that the other party has not met the contract terms. The plaintiff could then file a lawsuit in a civil court. The lawsuit would describe how the contract was breached and request specific damages or request that the party be required to meet the contract's performance standard. The defendant of the lawsuit can file any counterclaims they may have concerning the contract, and both parties can assert any defenses they might have. A lawsuit can be settled at anytime before resolution by the Court. Either party can ask the court for a decision on how the law applies to the facts of the case, if both parties agree on all relevant facts, by requesting summary judgement. The court would then accept the agreed evidence of the parties, hold a hearing at which the parties present their legal arguments on the case, and issue a decision resolving the case.

If the two parties do not agree on all relevant facts, they may gather evidence through depositions, witness testimony, and document requests. Relevant information is presented to the court as evidence for their position.

The judge then conducts a trial, where the parties can present their evidence and arguments are presented to a judge or jury. The court reviews the evidence, determines whether the plaintiff (and any counterclaimant) has proven their case (i.e., that the contract has not been fulfilled), and issues a judgment against the party found to be in breach of the contract. The court may award attorney's fees and other costs, requiring one party to pay some or all of the other's litigation costs.

The court may order various remedies to enforce the contract such as:

- ordering the party to perform the contract as agreed;
- compensating the plaintiff for the financial losses caused by the breach;
- canceling the contract and returning the parties to their pre-contract position;
- clarifying the parties' rights and obligations under the contract.

The outcome selected depends on the nature of the breach and the circumstances of the case, and the discretion of the judge and any jury. Reaching a judgement usually takes a number of months.

If there is no appeal of the judgement after a judgement is issued, the judgement becomes final and the parties must pay or act as the judgement requires. If a losing party does not fulfill their duties under the judgement, the prevailing party can take steps to enforce the judgement, seeking further court orders to allow collection actions, financial inquiry and mandates to third parties, garnishing of wages or other income, seizure of property, or other enforcement remedies. Some actions such as collecting assets from the breaching party or filing liens on property may be permissible without additional court orders enforcing a final judgement.

If a party appeals the court's judgement, the judgment may be stayed until the appeal is resolved by an appellate court and, in some cases, a higher appellate court or supreme court. An appeal could result in the lower court's judgement being fully or partially upheld, reversed, and/or returned to the lower court for further proceedings. Additional attorney's fees and other costs may also be awarded on appeal. This appeal process can cause costs to multiply many times over, and can delay a final resolution of a case for

years. This additional cost can also be used by a party as a way to seek concessions from the other in exchange for settlement of the appeal.

In the case of the CR Program fisheries, non-performance arbitration has never been utilized. The ability to arbitrate has been used as a negotiation tool many times.[13] Removing this arbitration tool would limit the tools available to IFQ and IPQ holders in the case of non-performance. If only civil courts could be used to settle disputes, there is uncertainty regarding the judgment that will be rendered and a civil trial is more expensive (possibly by a great amount). Since regulations do not define how the cost of the trial will be divided, such a change could benefit the party that has the greater ability to fund a lawsuit.

3.9.3 Alternative 3

Alternative 3 would clarify that IFQ and IPQ may be withdrawn after the applications for quota have been accepted by RAM as complete. Current regulations explicitly state the requirements for submitting and accepting IFQ and IPQ applications. The regulations are silent on whether those applications may be withdrawn by request of the applicant, and any considerations that might apply to reviewing the request, such as the timeframe within which those withdrawals must be completed.

The ambiguity of the regulations requires that NOAA Fisheries staff determine on an individual basis if an application may be withdrawn. Not knowing the parameters of that decision process creates uncertainty for the IPQ holders that may wish to withdraw their applications after additional information regarding the fishery is available (e.g., the TAC), the other processors that would have the amount of IPQ they are allocated changed, the harvesters that had committed to deliver to the processor that withdraws an application, and RAM knowing when IPQ/IFQ holder's final allocations can be released.

The ambiguity of the regulations creates uncertainty and financial risk for the IPQ holders. If they may not be able to withdraw their application after the TAC is established by the State, they will have to decide whether to apply with imperfect information. They may risk operating at a loss if the TAC is too low or they may not apply for IPQ to avoid the risk. Not knowing if the application may be withdrawn could cause them to contact RAM, discuss the possibility of a withdrawal, and then wait to see if the request will be approved or denied. Similar requests could be made in other years, and it would not be guaranteed that the decision to allow the withdrawal would be consistently applied. If they are risk-averse and choose not to apply, but the TAC would have ultimately been enough to sustain their operations, both the IPQ holder as well as the IFQ holders may be adversely impacted by the loss of their engagement in that year.

Conversely, knowing the parameters of the application withdrawal process would allow the IPQ holders to make better and more informed decisions. Knowing whether IPQ applications may be withdrawn may allow other IPQ holders to better plan for how any IPQ application withdrawals will impact the IPQ they are allocated. While processors would not be allowed to coordinate this activity, the understanding that it is possible under certain conditions may allow strategic plans within a company to be formed. Clarification of the IPQ/ IFQ application process could also impact Arbitration IFQ holders. This alternative would not necessarily encourage more withdrawn applications; although it would clarify that applications *may* be withdrawn. If this results in more IPQ holders choosing to withdraw applications subsequent to the announcement of the TAC, it will generally not benefit Arbitration IFQ holders. However, if the proposed alternative results in more PQS holders willing to apply for IPQ due to diminished risk, this may benefit Arbitration IFQ holders. Additionally, the proposed changes would also allow IFQ application to be withdrawn in the same time period. Thus, if harvesters are concerned about a limited pool of IPQ holders in a given year, they could also choose to withdraw their application. The availability of IPQ holders and processors in general also has implications for other A Class IFQ as well as

[13] Personnel communication with Jake Jacobsen (4/19/2025)

B and C Class IFQ. Therefore, the extent to which this proposed action influences that could result in positive or negative impacts for other share types.

With the clarification of the applications process, Arbitration IFQ holders would have more information on how they would be impacted by IPQ holders withdrawing applications. The time between when the TACs are announced and when the IPQ withdrawal would be requested would be short. If an IPQ holder removes their application, harvesters may need to share match with a different processor than they traditionally had committed to. These share matches are facilitated through sharematch.com and the regulations stating that

"any time 120 hours (five days) after NMFS issues IFQ and IPQ for that crab QS fishery in that crab fishing year, holders of uncommitted Arbitration IFQ may choose to commit the delivery of harvests of crab to be made with that uncommitted Arbitration IFQ to an uncommitted IPQ holder. The issuance of IFQ and IPQ for a crab QS fishery occurs on the time and date that IFQ and IPQ amounts for that crab QS fishery are posted on the NMFS, Alaska Region website[14].

The difference between the time when the TAC is announced and when the season opens is the amount of time RAM would have to determine who has applied for IPQ and IFQ, issue the permits, and publish them on NMFS website. The options for withdrawing IFQ or IPQ are **Option 1) 24 hours** or **Option 2) 48 hours** after the TACs are issued. IFQ holders can share-match any uncommitted A Class IFQ to an uncommitted IPQ holder for up to five days after the IPQ and IFQ amounts are issued. and the process should be timed such that the end of the five days falls before or coincides with the start of the season.

Using the 2024 BSS fishery as an example, ADF&G announced the TAC on October 4th. The fishery was opened on October 15th. That year, RAM would have had about five days to determine the IPQ and IFQ allocations, issue the permits, and publish them on the NMFS website.

The option would also allow IFQ holders to withdraw their application during the same time frame. It is less likely that Arbitration IFQ holders or any IFQ would withdraw their applications. IFQ can be assigned to a cooperative and leased within cooperatives. Lease rates have been about 50 percent of the ex-vessel value for BSS and 65 percent for BBR (see Section 3.3). Given that leasing crab can generate an income stream with minimal expense, it is assumed that IFQ would be unlikely to withdraw their application.

3.9.3.1 Community Impacts and Changes in Tax Revenue

If this alternative does result in increased withdrawals of IPQ applications it could impact the communities that are home to processors and the tax revenue derived by crab deliveries to those communities. The IPQ that would have been issued to that processor would be redistributed to the processors that did apply. If all the processors are in the same community or borough, the changes would be minimal. However, if the processor that withdrew its application was the only processor in a community, the impacts could be substantial. In that case, all the taxes derived from the purchase and processing of that crab species would be forgone, in the absence of agreements to compensate the community for lost taxes15. Communities are dependent on fish tax revenue to meet their annual budget and may need to reduce spending (cut services) or seek revenue from other funding sources.

As shown in Section 3.5 most of the processing now takes place in Dutch Harbor/Unalaska, Akutan or on floating processors. Limited information is available on the location where floating processors operate throughout the year. Movement of IPQ between Dutch Harbor/Unalaska and Akutan will directly impact

[14] http://www.fakr.noaa.gov

[15] https://www.adak-ak.gov/media/2841 and https://www.ci.unalaska.ak.us/sites/default/files/fileattachments/Mayor%20and%20City%20Council/page/10360/01_moa_with_st._paul_on_north_region_bering_sea_snow_crab_2025.pdf

the tax revenues of those communities unless other contracts between the communities address the movement of IPQ.

3.9.3.2 Impact on Processing Workers

In aggregate, the impact on processing workers is not expected to change from allowing IPQ applications to be withdrawn. If IPQ moves between processors, fewer jobs or hours processing crab are expected to be available for workers whose plant lost IPQ and more for those who gained IPQ. The total lost wage opportunity will depend on the portfolio of the processors in all their fishery operations.

3.9.3.3 Other Issues

A related question has been asked 'What happens if all IPQ holders withdraw their application for a fishery?' NOAA Fisheries staff have indicated that they are aware of this issue and the questions that industry has posed. This situation has not happened in the history of the CR Program, so there remains uncertainty surrounding exactly how this could impact fishery participants. The CR Program regulations do not address this scenario; it was not contemplated when the CR Program was being developed. As such, NMFS is raising concerns around the possibility of stranded Class A IFQ in the event of this scenario, both due to the framework of regulations built on share-matching, as well as the technical protocol for managing this system. Staff are still actively investigating the current regulations and system to consider if there are options to deal with this scenario. However, the Council may wish to consider developing recommendations now or in the future for how to support the full harvest of Class A IFQ if a scenario like this were to arise.

For instance, regulations at § 680.7(a)(5) prohibit an RCR from receiving any crab harvested under a Class A IFQ permit unless the RCR holds unused IPQ for that crab QS fishery. This means that if there are no RCRs who hold uncommitted IPQ, then there may be no way to make a legal landing of Class A IFQ.

Additionally Section 680.20(h)(3)(iv) states that holders of uncommitted arbitration IFQ may choose to commit the delivery of crab with uncommitted Arbitration IFQ to an uncommitted IPQ holder. In contrast, any holder of uncommitted IPQ must accept all proposed Arbitration IFQ commitments, up to the amount of its uncommitted IPQ. If all holders of uncommitted IPQ withdraw their application and are not issued IPQ permits, then there would not be any holders with uncommitted IPQ. In this event, Arbitration IFQ that is not matched with IPQ would remain unharvested.

From a technical standpoint, the permitting systems used to facilitate the CR Program are designed to calculate, monitor, and administer the program as created, which includes a share matching requirement for A shares. The system is not programmed to deviate from the normal business rules, which is designed not just for issuance of quota, share matching and splits, but also for monitoring use caps. It would take some time and resources to build a new system of monitoring and accounting for crab quota if the system did not include share-matching. It may not be feasible to adapt the system on short-notice.

3.10 Affected Small Entities

Section 603 of the Regulatory Flexibility Act (RFA) requires that an initial regulatory flexibility analysis (IRFA) be prepared to identify if a proposed action will result in a disproportionate and/or significant adverse economic impact on the directly regulated small entities, and to consider any alternatives that would lessen this adverse economic impact to those small entities. This section provides information that NMFS will use to prepare the IRFA for this action, namely a description and estimate of the number of small, directly regulated entities to which the proposed action will apply.

The thresholds applied to determine if an entity or group of entities are "small" under the RFA depend on the industry classification for the entity or entities. Under the RFA, businesses classified as primarily engaged in commercial fishing are considered small entities if they have combined annual gross receipts not in excess of $11.0 million for all affiliated operations worldwide, regardless of the type of fishing operation (80 FR 81194; December 29, 2015). If a vessel has a known affiliation with other vessels – through a business ownership or through a cooperative – it is measured against the small entity threshold based on the total gross revenues of all affiliated vessels. Fish processors are defined as a small entity if it has 500 or fewer employees, including affiliates.

After the Council selects a preliminary preferred alternative, this section will identify the directly regulated entities, the number of those entities considered to be "small" by the definitions provided above, and whether there is expected to be a disproportionate adverse economic impact on these small entities.

3.11 Summation of the Alternatives with Respect to Net Benefit to the Nation

This section will use qualitative methods to assess the potential net benefit of action on the Nation (relative to the No Action baseline). Compared to 'no action', the proposed action in this analysis would revise some components of the arbitration program structure and clarify existing regulations related to the withdrawal of IPQ/IFQ applications that have been accepted by NOAA Fisheries. None of the alternatives or options being considered is expected to change producer or consumer surplus substantially. *A more complete discussion will be provided after the Council selects a preliminary preferred alternative for this proposed action.*

4 Magnuson-Stevens Act and FMP Considerations

4.1 Magnuson-Stevens Act National Standards

In recommending a preferred alternative at final action, the Council must consider how to balance the national standards. *Once the Council selects a preliminary preferred alternative, the proposed action will be evaluated relative to each national standard.*

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

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

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.

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

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.

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

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

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

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.

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

4.2 Section 303(a)(9) Fisheries Impact Statement

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

The proposed action affects the regulations governing the arbitration program in the CR Fishery and the withdrawal of an IFQ/IPQ application after NOAA Fisheries has accepted it. Impacts on participants in fisheries conducted in adjacent areas under the jurisdiction of other Councils are not anticipated as a result of this action. The RIR prepared for this plan amendment constitutes the fishery impact statement. The likely effects of the proposed action are analyzed and described throughout the RIR. Based on the information reported in this section, there is no need to update the Fishery Impact Statement included in the FMP.

4.3 Council's Ecosystem Vision Statement

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

Ecosystem Approach for the North Pacific Fishery Management Council

Value Statement

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

Vision Statement

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

Implementation Strategy

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

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

The Council's preliminary preferred alternative will be evaluated relative to the Ecosystem Vision Statement.

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7 Appendix 1: Arnold and Porter Memo (separate attachment)