

March 22, 2019

Mr. Simon Kinneen, Chairman  
North Pacific Fishery Management Council  
605 W. 4th Avenue  
Anchorage, AK 99501-2252

Dear Chairman Kinneen:

The following report is submitted under Council agenda item D-1 by Inter-Cooperative Exchange (“ICE”), a crab harvesting cooperative formed pursuant to 50 C.F.R. § 680.21. ICE is an Alaska cooperative corporation organized and operated to qualify as a fishermen’s association under the Fishermen’s Collective Marketing Act of 1934, 15 U.S.C. § 521 et seq. (the “FCMA”).

ICE has 197 members that hold quota shares (“QS”) issued under the Bering Sea and Aleutian Islands (“BSAI”) crab rationalization program (the “Program”). ICE vessels harvest approximately 70% of the crab available under Program individual fishing quota (“IFQ”).

The following report is submitted in response to the Council’s February 2013 motion requesting that crab cooperatives voluntarily provide annual reports detailing measures they have taken to facilitate the transfer of QS to active participants, including crew members and vessel owners, and any available measures taken by each cooperative to address concerns expressed by the Council about high lease rates and crew compensation.

ICE has determined that promoting the transfer of Program QS to “active participants” through a right of first offer (“ROFO”) requirement is an “available measure”. The ICE ROFO is described in Section 1, below.

ICE has determined that it can collect and report data concerning the lease rates paid by its members’ vessels, but only under the explicit understanding that its collection and reporting of that data is not expected or intended to restrain competition in the lease rate market.

Given the complexity and sensitivity of crew compensation arrangements, ICE has decided that it is not appropriate to collect or report that data. ICE believes that Council concerns regarding crab fishery crewmember compensation should be evaluated in light of crewmember “daily rate of pay” information that is collected from vessel owners through the Economic Data Reports (EDRs).

### Report

#### 1. What measures is the cooperative taking to facilitate the transfer of QS to active participants, including crew members and vessel owners?

In 2013, ICE implemented a ROFO in favor of crew members and vessel owners, giving them an opportunity to purchase QS in connection with each QS sale made by an ICE member that did not fall within a specific ROFO exemption.

Under the original ICE ROFO, crew members received a first priority right to be offered 10% of QS being sold, and crew members and vessel owners received a second priority right to be offered the remaining 90%. Direct sales to crew members were not subject to the ROFO, and direct sales to vessel owners were only subject to the crew member ROFO.

Over the last few years, it became apparent that QS sales subject to the ROFO typically involved extending a ROFO to crew members, but typically involved a direct sale to one or more vessel owners, which bypassed the vessel owner ROFO. In light of this information, ICE concluded that vessel owner ROFO was superfluous and eliminated it in May of 2018. A copy of the current ICE ROFO rules is attached as Attachment A.

For purposes of the ICE ROFO, a crew member is an individual who meets the Council's catcher vessel crew ("CVC") QS eligibility requirements, and who did not receive catcher vessel owner ("CVO") QS at initial allocation. Crew members receive a first priority right to be offered 10% of QS being sold. Through a website ([www.crabqs.com](http://www.crabqs.com)) created in 2013, qualified crew members can register to receive notification of sales offerings, and brokers are able to easily distribute offerings to the qualified crew.

Direct sales to crew members are not subject to the ROFO. There is no minimum amount of QS a crew member must purchase to exercise the ROFO. If crew member offers to purchase exceed the amount of QS offered to them, the QS is allocated among them on a pro rata basis.

2. What is the level of participation from cooperative members regarding these measures?

The ICE ROFO is incorporated into the ICE Membership Agreement, which each member is required to execute. Transfers are tracked to monitor compliance. To the best of ICE management's knowledge, no ICE members have transferred QS in breach of their ROFO obligations under the ICE Membership Agreement.

3. How effective have these measures been?

During the period February 1, 2018 through January 31, 2019, crab QS units that generated 728,390 pounds of catcher vessel owner ("CVO") or catcher processor owner ("CPO") IFQ were transferred. Of that amount, QS units generating 106,178 IFQ pounds (i.e., about 15% of the amount transferred) were subject to the ROFO. All QS unit transfers subject to the ROFO were completed in compliance with its requirements. Of the total amount transferred, QS units generating 125,581 IFQ pounds (or approximately 17%) were transferred to qualified crewmembers.

An addendum to this report (Attachment B) classifies QS transfers by transferee type, and the transferee types are defined with reference to terms that the Council and NMFS have used in Program analyses and regulations. Please note that some transferee classifications are based on information that is not a matter of public record. Transfers were assigned to those classifications based in part on the personal knowledge of Mr. Jake Jacobsen, ICE's Executive Director.

4. What measures is the cooperative taking to address the issue of high lease rates?

ICE is taking two steps to address Council concerns regarding crab quota lease rates. First, ICE notifies its members that the Council is concerned about the potential impact of high

lease rates on vessel operations, and asks its members to individually consider voluntarily capping their lease rate asks and offers at 65% of adjusted gross revenues for Bristol Bay red King crab (“BBRKC”) and 50% of adjusted gross revenues for Bering Sea Snow crab (“BSS”).

Second, to document its members’ voluntary responses to the notice about the Council’s concerns regarding lease rates, ICE requires its harvesting members to report the lease rates paid by every vessel that harvests crab under ICE IFQ. ICE uses that information to prepare its report to the Council.

ICE does not have a policy concerning lease rates and does not promote lease rate caps or limits of any sort. ICE’s communication with its members regarding lease rates is limited to a discrete annual statement relaying the Council’s concern and suggesting members consider taking individual voluntary action in response.

ICE collects lease rate information on a basis that is intended to be consistent with the related queries under the Program’s EDR requirements. ICE completed its fourth lease rate survey during March of this year. The survey collected data from calendar year 2018, so it covers the 2017-2018 BSS season and the 2018-2019 BBRKC season.

ICE collects and compiles information from vessels for BBRKC and BSS crab delivered on ICE IFQ permits. The vessel manager or responsible ICE member was asked to provide calendar year 2018 financial information if the vessel made one or more deliveries of BBRKC or BSS crab harvested under leasing arrangements. If a vessel harvested crab under two or more different leasing arrangements, the reporting party was asked to provide separate information for each of them. If a vessel did not harvest crab under a lease, their information was not collected for this report.

For each fishery, reporting parties were asked to provide the following information:

- The total pounds harvested by the vessel, its gross sales revenues, the pounds harvested under lease and the sales revenues from leased crab.
- The type and amount of expenses deducted from leased crab sales revenues before applying their lease factor. Reported deductions included landing taxes, NMFS cost recovery fees, crab buy-back fees, cargo insurance, Bering Sea Fisheries Research Foundation assessments and others.
- The total amount paid to the lessor(s).

5. What is the level of participation from cooperative members regarding these measures?

Forty vessels made landings of leased crab on ICE IFQ permits during the 2017-2018 BSS fishery, and 36 vessels made landings of leased crab on ICE IFQ permits during the 2018-2019 BBRKC season. The requested information was submitted for all vessels.

The reported lease rates are a percentage of “adjusted gross revenues” (i.e., gross sales revenues less certain expenses). The “adjusted gross revenues” lease rates do not account for the observed variation among vessels concerning the expenses that are deducted before lease rates are applied.

The average, weighted average and median lease rates for the Opilio (“BSS”) and Bristol Bay red King crab (“BBRKC”) fisheries are shown in the tables below.

<b>BSS</b>	<b>% of Adjusted Gross</b>
Average	52.89%
Weighted Average	51.23%
Median	50%

<b>BBRKC</b>	<b>% of Adjusted Gross</b>
Average	66.48%
Weighted Average	66.88%
Median	65%

Graphics showing the amount of pounds harvested under each lease rate are attached to this report as Attachment C.

6. How effective have these measures been?

ICE looks to the Council to inform it regarding the effectiveness of the measures it is taking to address Council concerns regarding lease rates.

7. What future measures does the cooperative plan to take to address the Council concerns over active participation and lease rates?

ICE plans to continue its ROFO program as amended. ICE will continue to notify its members annually regarding the Council’s sensitivity to high lease rates, will continue to request that members consider voluntarily restricting their lease rate asks and offers per paragraph 4, above, and will continue to conduct lease rate surveys and report the results to the Council.

Attachment A

ICE ROFO

## Inter-Cooperative Exchange

### Quota Share Right of First Offer

Definitions. The capitalized terms in this document have the following meanings.

“Crab Boat” means a fishing vessel that harvests crab in a Bering Sea/Aleutian Islands Crab Rationalization Program (“Program”) fishery.

“Crab Crewmember” means an individual who (i) meets the Program’s “C” share recent participation requirements in effect as of the time ROFO is exercised; (ii) did not receive catcher vessel owner (“CVO”) or catcher processor owner (“CPO”) quota share (“QS”) under the Program at initial allocation; and (iii) is named on the Crab Crewmember list that is maintained for ICE.

“Member” means a current member of Inter-Cooperative Exchange.

“Person” means natural persons, corporations, partnerships, limited liability companies and all other business entities.

“ROFO Administrator” means the person designated by ICE who maintains the Crab Crewmember eligibility list, receives notices concerning Members’ QS sales, distributes those notices to the Crab Crewmembers on those list, collects their replies, and notifies the QS seller or their agents regarding the QS amount that Crab Crewmembers have elected to purchase.

Right of First Offer. The right of first offer described herein (“ROFO”) is part of the ICE Membership Agreement. Each ICE Member agrees to give Crab Crewmembers a ROFO in connection with any sale of their CVO or CPO QS that takes place while they are a Member.

QS Sales. For ROFO purposes, a “QS sale” includes arm’s length purchase and sale transactions and sales of a majority interest in a business entity that holds QS. QS gifts, bequests and exchanges are not considered “sales” for ROFO purposes.

If a Member sells a direct or indirect majority interest in a business entity that holds QS and does not own a Crab Boat, the business entity is required to extend a ROFO on the QS it holds that is proportionate to the ownership interest being transferred.

If a Member sells direct or indirect interests in a business entity that holds QS to the same Person in separate transactions, sales within six (6) months of each other will be treated as a single sale for ROFO purposes. For example, if a Member sells a 20% interest in an LLC that holds QS to a third party on January 1, 2018, and then sells an additional 31% interest in the same LLC to the same third party on March 1, 2018, the two sales will be considered a

single sale of a majority interest in the LLC, and if the third party purchaser is not a Crab Crewmember, before completing the second sale, the LLC must offer 10% of 51% (or 5.1%) of its QS to Crab Crewmembers through the ROFO procedure below.

ROFO Procedure. The ROFO procedure is as follows:

1. Before selling QS to a Person who is not a Crab Crewmember, the Selling Member must notify the ROFO Administrator of the amount of QS offered for sale (the “Offered QS”), and the associated sale terms (the “Offer Terms”).
2. Upon receiving notice from a Selling Member, the ROFO Administrator will notify the Crab Crewmembers that ten percent (10%) of the Offered QS is available for purchase on the Offer Terms. The 10% being offered to the Crab Crewmembers is referred to as the “Crew Offer QS”.
3. Each Crab Crewmember will have fifteen (15) days from receiving notice during which they may agree to purchase some or all of the Crew Offer QS on the Offer Terms. Once made, a Crab Crewmember’s QS Offer is not revocable.
4. If the Crab Crewmember(s) agreeing to purchase Crew Offer QS (the “Purchasing Crewmembers”) collectively agree to purchase an amount of QS in excess of the Crew Offer QS, the ROFO Administrator will allocate the right to purchase Crew Offer QS among the Purchasing Crewmembers pro rata, according to the amount of the Crew Offer QS each of them has agreed to purchase.
5. When the 15-day Crab Crewmember offer period ends, the ROFO Administrator will determine the remaining amount of the Offered QS available for purchase by deducting the amount that Crab Crewmembers have agreed to purchase and will notify the Selling Member accordingly. The remaining amount of QS is referred to as the “Market QS”.
6. The Selling Member will then have the right to sell the Market QS to persons other than Crab Crewmembers (each, a “Third Party”), provided that the terms of the Third Party sales are not more favorable than the Offer Terms, and the Third Party sales are initiated within one hundred eighty (180) days (the “Market Period”).
7. If a Selling Member accepts a Third Party offer that complies with the ROFO (an “Accepted Offer”), the Selling Member must notify the ROFO Administrator of the Accepted Offer and the proposed closing date for the related transaction, which must not be earlier than twelve (12) business days from the date of that notice.
8. Within two (2) business days of receiving notice of an Accepted Offer, the ROFO Administrator will notify the Purchasing Crewmembers of the Accepted Offer and proposed closing date. Within ten (10) days of receiving that notice, each Purchasing

Crewmember must deposit their share of any cash to be paid to the Selling Member at closing into escrow as directed by the ROFO Administrator and must execute and deliver any financial instruments and other documents consistent with the Offer Terms.

9. If the Selling Member transfers QS to one or more Third Parties in accordance with the Accepted Offer, the Selling Member will notify the ROFO Administrator, who will notify the Purchasing Crewmembers and who will direct the escrow agent to proceed with closing of the QS transfers from the Selling Member to the Purchasing Crewmembers.

10. If the Selling Member does not initiate a sale of Offered QS to a Third Party within the Market Period, the Purchasing Crewmembers' offers to purchase Offered QS will expire and the Purchasing Crewmembers will have no right or obligation to purchase any of the Offered QS. The Selling Member may not sell the Offered QS thereafter unless and until the Selling Member repeats the ROFO procedure described above.

Transactions Exempted from Right of First Offer. The following QS sales and transfers of interest in business entities holding QS are not subject to the ROFO procedure.

1. QS sales in which not less than ten percent (10%) of the QS is sold to one or more Crab Crewmembers.

2. QS sales made in connection with a foreclosure of a security interest or pursuant to a court order.

3. QS sales made in connection with the sale of a Crab Boat, or as part of the sale of an entire commercial Bering Sea or Aleutian Islands fishing business that owns QS and one or more Crab Boats (a "Crab Fishing Business"). Sales of all or substantially all assets of a Crab Fishing Business and sales of all or substantially all of the ownership interest in a Crab Fishing Business are exempt under this provision.

4. QS transfers or sales between "Affiliated" business entities. Business entities in which the same person holds a ten percent (10%) or greater voting interest or ownership interest are "Affiliated".

5. Transfers of direct or indirect ownership interests in a business entity between or among existing owners.

Crab Crewmember Failure to Perform. In consideration for the benefits extended to Crab Crewmembers under the ROFO, each of them has an obligation to perform in connection with the closing and purchase of any QS they agree to buy under the ROFO. The ROFO Administrator has the right to permanently remove a person from the Crab Crewmember list if they make an offer and then fail to perform.



Member Failure to Perform. If a Member fails to comply with the ROFO, they are in breach of the ICE Membership Agreement. Because the damages associated with a ROFO breach are difficult to quantify, a Member who fails to comply with the ROFO is liable for “liquidated damages” in an amount equal to ten percent (10%) of the amount paid for QS sold.

No Assignment. The rights granted to Crab Crewmembers under the ROFO procedure are personal and may not be assigned. Any purported assignment is void.

## Attachment B

### ROFO Report – QS Transfer Data

This report is based on QS transfers for the period February 1, 2018 to January 31, 2019.

The QS amounts were converted to pounds using the ratio in the year the transfer occurred, or, if no total allowable catch (TAC) was issued in that year, the ratio in the latest year the fishery occurred. For seasons that have not been issued a TAC since the beginning of rationalization, the IFQ pounds resulting from QS sold is 0.

For purposes of this report, the following terms have the following meanings:

Active Participant – The QS transferee is either a “Crab Crewmember” or a “Direct Owner” (as defined below). A person may be both a “Crab Crewmember” and a “Direct Owner”.

Crab Crewmember – The QS transferee is currently qualified to hold CVC shares.

Vessel Owner – The QS transferee owns a direct or indirect interest in a vessel participating in one or more rationalized BSAI crab fisheries (a “Vessel”).

Direct Owner – The QS transferee owns a Coast Guard-documented interest in a Vessel.

Indirect Owner – The QS transferee owns an interest in an entity that owns a Coast Guard-documented interest in a Vessel.

Common Ownership – A person who holds a significant ownership interest in the QS transferee is also a Direct Owner or an Indirect Owner.

(Attachment B – Cont.)

QS Transfer Data - February 1, 2018 to January 31, 2019

(CVO only)

QS Units and IFQ Pounds Transferred:

Type	Number
Total QS units transferred	30,531,457
Total QS units in period	1,971,105,057
% QS units transferred	1.5%
IFQ pounds in period	35,518,504
Total IFQ pounds resulting from QS transferred	728,390
% IFQ pounds transferred	2.0 %

IFQ Pound Transfers by Transferee Class:

Entities receiving QS may belong to one or more of the classes listed. Persons receiving QS who are directly engaged in or have common ownership in entities directly engaged in the rationalized crab fisheries (i.e., Active Participants added to Common Ownership) composed 61% of the QS recipients. The remaining 39% appear to be related parties participating in restructuring transfers.

Type	Number	% Total
Transferred to an Active Participant	203,906	28%
Transferred to a Crab Crewmember	125,581	17%
Transferred to a Direct Owner	185,228	25%
Note: this year all QS transferred to Vessel Owners went to Direct Owners. No Indirect Owners received QS by transfer.		
Transferred to Common Ownership	240,070	33%

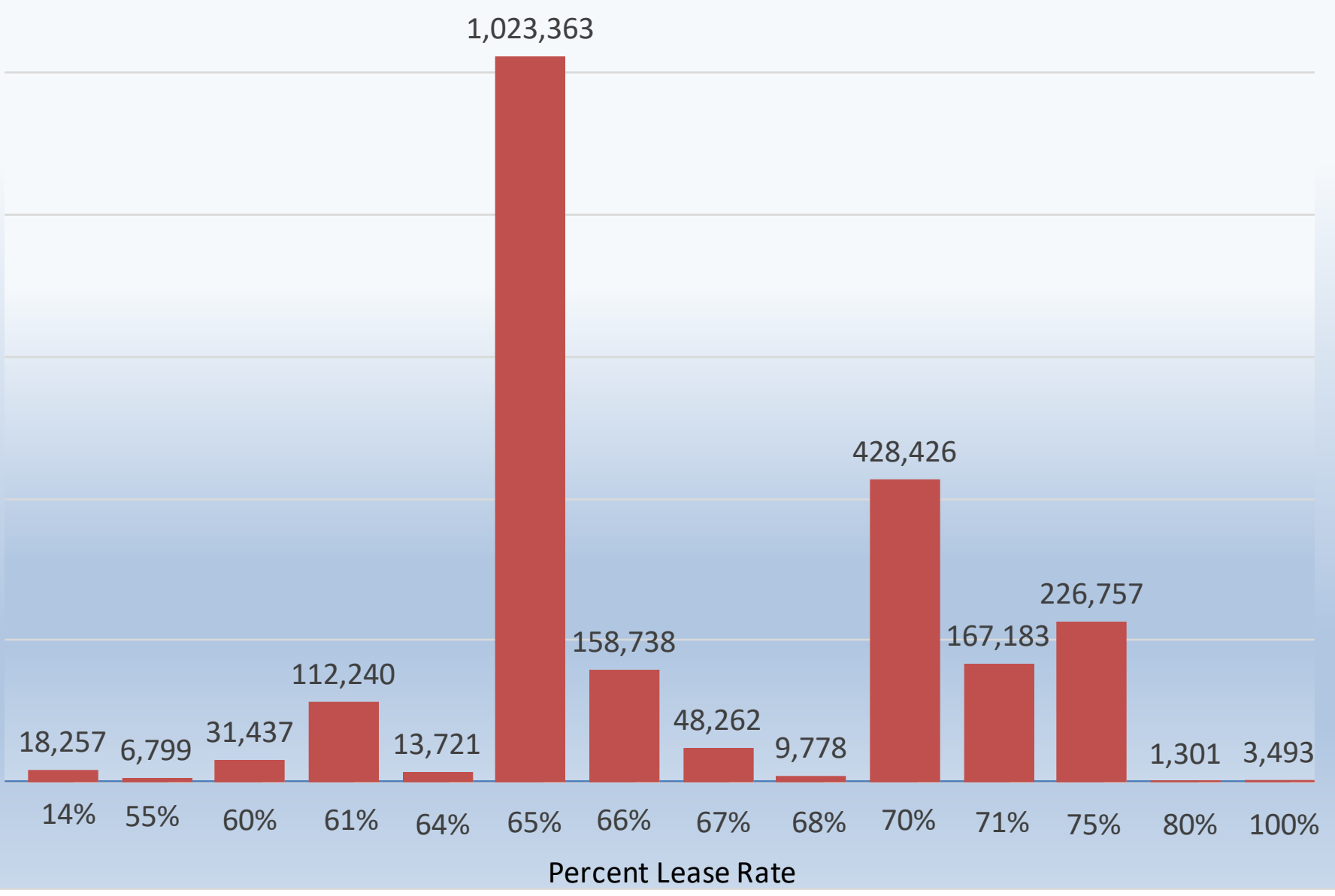
ROFO Program

Type	Number	% Total
Pounds subject to ROFO	106,178	15%
Pounds exempt	622,213	85%
Unknown if subject to ROFO	0	0%

Attachment C

Amounts Harvested per Lease Rate

### BBR Leased Pounds Harvested Under Net Lease Rate



## BSS Leased Pounds Harvested Under Net Lease Rate

