

March 28, 2017

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

Dear Chairman Hull:

The following report is submitted under Council agenda item C-4 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 195 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.

Because it has been some time since the Council took action to request crab cooperative reports, we are providing background from the related discussion paper and Council motion.

#### Background

As part of its 5 year review of the crab rationalization program, at its December 2011 meeting the Council requested a discussion paper concerning the feasibility of requiring crab cooperatives to adopt "best practices" provisions in their cooperative agreements, which could include:

- Minimum crew pay standards, such as a minimum threshold of gross vessel revenue for crew compensation.
- Maximum lease rate caps.
- Maximum amount of lease rates that may be charged against crew compensation.
- Provisions to promote QS ownership among crew and active participants.

That discussion paper was presented to the Council for initial review at its February 2013 meeting. After reviewing it, the Council voted to request that each crab cooperative voluntarily provide an annual report detailing measures the cooperative is taking to facilitate the transfer of QS to active participants, including crew members and vessel owners, and "the available measures which affect high lease rates and crew compensation". Crab cooperative annual

reports are provided in response to this February 2013 Council motion.

Notably, the Council's action does not compel crab cooperatives to adopt best practices. Rather, it asks that cooperatives identify "available measures" that could be taken on a voluntary basis, and asks them to voluntarily report on their effectiveness.

ICE has determined that cooperative crew pay standards and lease rate caps are not "available measures", as there is no guidance ICE is aware of that confirms these activities clearly fall within the scope of the FCMA's antitrust exemption. For the same reason, ICE has concluded that it is not appropriate for ICE to promote collective action by its members concerning crew compensation or harvest share lease rates.

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". ICE implemented its ROFO program on February 1, 2013, and it remains in effect as of this report.

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).

ICE has determined that it can collect and report data concerning the lease rates paid by its members' vessels, but only under strict limits concerning how that is done (which are more fully explained below) and under the explicit understanding that its collection and reporting of that data is not expected or intended to restrain the lease rate market. If those conditions are not acceptable to the Council, ICE has determined that it would not be appropriate to continue collecting and reporting lease rate data.

## Report

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

ICE has 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 does not fall within a specific ROFO exemption.

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, and a vessel owner is a person that holds a direct or indirect interest in a vessel over 29' in length that was employed in commercial fishing in State or Federal waters off Alaska during the last 12 months.

Under the ICE ROFO, crew members receive a first priority right to be offered 10% of QS sold by ICE members, unless the sale falls within one of the ROFO exemptions. Crew members and vessel owners have a second priority, pro rata right of offer with respect to the remaining 90% of the QS being sold.

Direct sales to crew members are not subject to the ROFO, and direct sales to vessel owners are only subject to the crew member ROFO.

There is no minimum amount of QS a crew member or vessel owner must purchase to exercise the ROFO. If crew member and/or vessel owner offers to purchase exceed the amount of QS offered for sale, 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. 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?

Application of the ICE ROFO requirement has resulted in crew members and vessel owners being offered the opportunity to purchase crab QS on a priority basis.

A website ([www.crabqs.com](http://www.crabqs.com)) was created in 2013 to perform several ROFO program functions. Qualified crew members are able to register to receive notification of sales offerings. Brokers are able to easily distribute offerings to the qualified crew. Transfers are tracked to monitor compliance.

During the period February 1, 2016 through January 31, 2017, 611,728 pounds of CVO and catcher processor owner (CPO) IFQ were transferred. Of that amount, 357,899 pounds, or 58.51% were subject to the ROFO. All pounds subject to the ROFO were sold in compliance with its requirements. Of the total amount transferred, 23,608 pounds were transferred to crew members.

Following the April 2016 crab cooperative reports, the Council requested that cooperatives use terms and definitions that are consistent with the Council record concerning the Program and the implementing regulations. In response to this request, ICE has prepared an addendum to this report ([Attachment A](#)) which provides data concerning all QS transfers from February 1, 2013 (the date the ICE ROFO took effect) to January 31, 2017.

The addendum 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. In addition, ICE has added two classifications, "FCMA Owner" and "Common Ownership", because both are relevant to determining the "active participation" status of the transferee. 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.

The addendum reports all IFQ pounds transferred, and the IFQ pounds transferred subject to the ROFO. Of the total amount of IFQ pounds transferred during the February 1, 2013 to January 31, 2017 period, 5,781,442 pounds (66.13%) were subject to the ROFO, 1,842,147 pounds (21.07%) were exempt, and the ROFO status of 1,118,533 pounds (12.79%) is unknown.

Notably, over 70% of the total amount of IFQ pounds transferred during the 2013-

2017 period went to entities holding a direct or indirect ownership interest in a vessel participating in one or more of the Program crab fisheries, and over 90% were transferred to entities with one or more owners in common with an entity holding a direct or indirect ownership interest in a vessel participating in one or more of the Program crab fisheries.

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 required 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.

Because measures addressing lease rates are being taken voluntarily, ICE has concluded that those measures must be very limited in scope and intended effect. 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 believes that it can only continue providing voluntary reports to the Council concerning lease rates if it limits its related communications and actions as described above, and subject to the explicit understanding that its reports are not expected or intended to restrain the lease rate market.

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 third lease rate survey during March of this year. The survey collected data from calendar year 2016, so it covers the 2015-2016 BSS season and the 2016-2017 BBRKC season.

ICE collected and compiled 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 2016 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-six vessels made landings of leased crab on ICE IFQ permits during the 2015-2016 BSS fishery, and 40 vessels made landings of leased crab on ICE IFQ permits during the 2016-2017 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 BSS and BBRKC fisheries are shown in the tables below.

BSS	% of Adjusted Gross
Average	51.03%
Weighted Average	51.01%
Median	50%

BBRKC	% of Adjusted Gross
Simple Average	66.67%
Weighted Average	66.22%
Median	65.01%

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

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. Subject to an explicit understanding that its reports are not expected or intended to restrain the lease rate market, 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

### 2017 ROFO Report Information

The 2012-2013 ICE Membership Agreement stipulated that ROFO provisions take effect 90 days after the ICE Board provided notice to that effect. The ICE Board issued that notice on February 1, 2013, and the ROFO formally took effect on May 2, 2013. However, ICE members voluntarily complied with ROFO in connection with QS transactions that took place between February 1 and May 2, 2013. The data presented in this report includes all QS transfers from February 1, 2013 to January 31, 2017. The information for the period of February 1, 2016 to January 31, 2017 is also presented separately.

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.

Active Participant – The buyer in a transaction is either a “crab crewmember” or the person owning a direct interest in a vessel participating in one or more rationalized BSAI crab fisheries. It does not include entities that own other entities that own a vessel participating in a rationalized BSAI crab fishery.

Crab Crewmember – The buyer in a transaction is currently qualified to hold CVC shares.

Vessel Owner – An entity that is either listed on the Certificate of Documentation for a vessel participating in one or more rationalized BSAI crab fisheries or owns an entity that is listed on the Certificate of Documentation for a vessel participating in one or more rationalized BSAI crab fisheries. Vessel owners are divided into separate columns for Direct or Indirect ownership.

Direct Owner – The entity name appears on the Certificate of Documentation for a vessel participating in one or more rationalized BSAI crab fisheries. Example: Company A is an IFQ holding entity. Company A owns a vessel participating in a rationalized BSAI crab fishery.

Indirect Owner – an entity that owns another entity that appears on the Certificate of Documentation for a vessel participating in one or more rationalized BSAI crab fisheries. Example: Company A owns IFQ. Company A also owns Company B. Company B owns a vessel participating in a rationalized BSAI crab fishery. Community Development Quota (CDQ) groups typically purchase quota in the name of the CDQ group but fish the quota on crab vessels owned by subsidiary companies.

FCMA Owner – An entity that owns a vessel that participates in any Alaskan fishery, and otherwise meets the requirements for membership in an FCMA Cooperative.

Common Ownership – An entity where one or more owners with significant interest in the entity is also the direct or indirect owner of a vessel participating in one or more rationalized BSAI crab fisheries. Company A is an IFQ holding company with no vessel ownership. Company B owns a vessel that participates in a rationalized BSAI crab fishery. Company X owns a significant part of both Company A and Company B.

Transfer data for the period since ICE implementation of ROFO Feb 1, 2013, to Jan 31, 2017:

Total QS units transferred	199,747,778
Total QS units in period	7,764,839,455
% QS units transferred	2.57%
IFQ pounds in period	256,054,500
Total IFQ pounds resulting from QS transferred	9,161,305
% IFQ pounds transferred	3.58%

IFQ pounds transferred:

Type	Number	% Total
IFQ total pounds CVO and CPO	8,742,122	100
Transferred to an Active Participant	1,786,174	20.43
Transferred to a Crab Crewmember	174,132	2.00
Transferred to a Vessel Owner	6,156,695	70.43
Direct Owner	1,640,798	18.77
Indirect Owner	4,516,000	51.66
Transferred to an FCMA Owner	4,686,022	53.6
Transferred to a Common Ownership	8,004,925	91.57

ROFO Program

Type	Number	% Total
Pounds subject to ROFO	5,781,442	66.13
Pounds exempt	1,842,147	21.07
Unknown if subject to ROFO	1,118,533	12.79

All pounds known to be subject to ROFO were sold per the ROFO requirements. All but 3,650 pounds of the 1,118,533 pounds where information was not available were sold to CDQ Groups. The ROFO information was taken from previous cooperative reports, information provided by Dock Street Brokers, and ICE records. Unknown transfers were made by members of cooperatives that failed to file a cooperative report in the year the transfer occurred, or the report did not indicate if the cooperative members complied with ROFO.

For the period from February 1, 2016 to January 31, 2017:

Total QS units transferred	17,124,959
Total QS units in period	1,941,253,469
% QS units transferred	.88%
IFQ pounds in period	32,025,600
Total IFQ pounds resulting from QS transferred	703,703
% IFQ pounds transferred	2.20%

IFQ pounds transferred:

Type	Number	% Total
IFQ total pounds CVO and CPO	611,728	100
Transferred to an Active Participant	358,816	58.65
Transferred to a Crab Crewmember	22,336	3.65
Transferred to a Vessel Owner	432,262	70.66
Direct Owner	363,965	59.5
Indirect Owner	68,297	11.16
Transferred to an FCMA Owner	437,630	71.54
Transferred to a Common Ownership	485,131	79.31

ROFO Program

Type	Number	% Total
Pounds subject to ROFO	357,899	58.51
Pounds exempt	253,829	41.49
Unknown if subject to ROFO	0	0

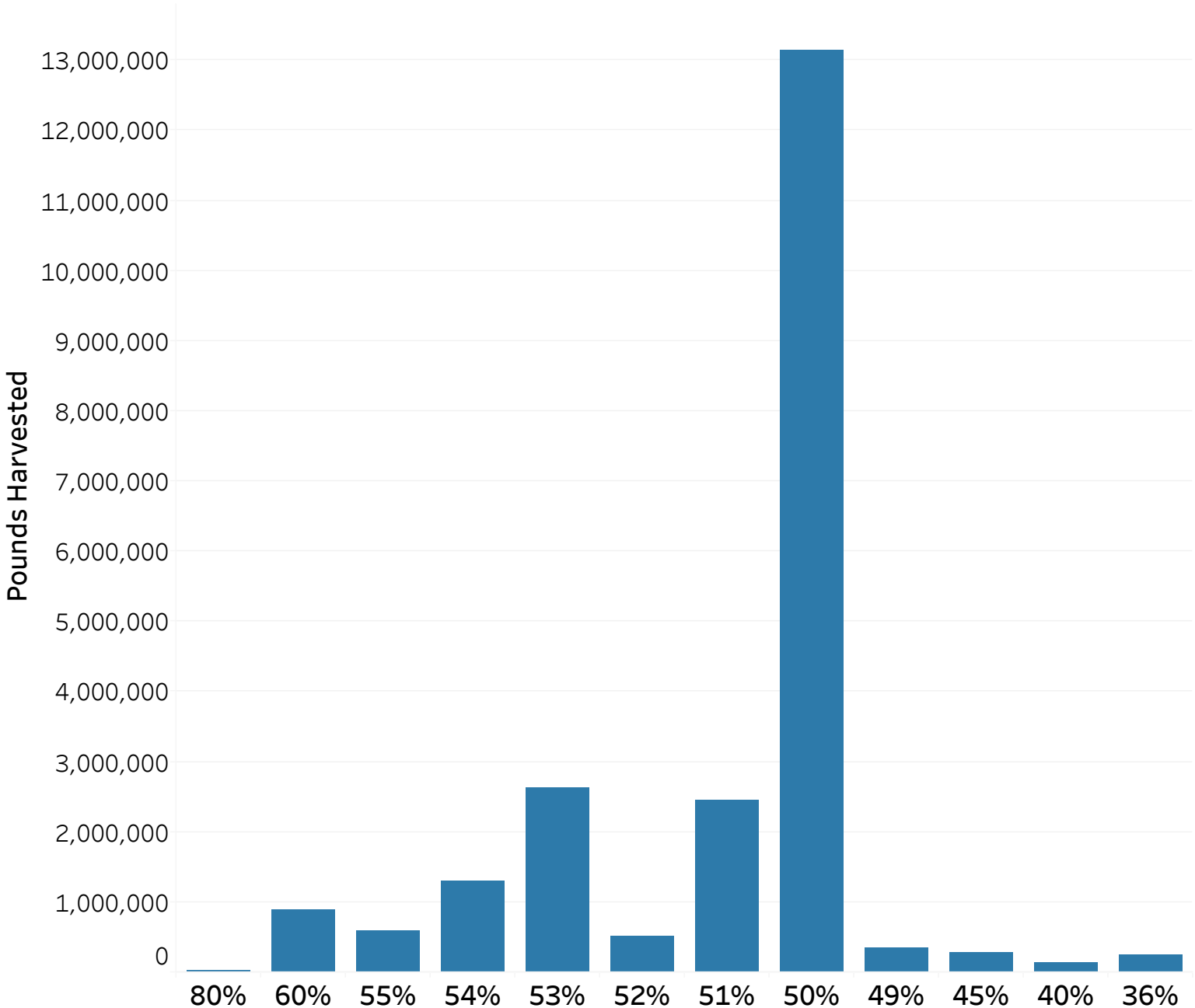
Only one CDQ group purchased quota in this period, and that CDQ group does not own crab fishing vessels.

All transfers in the 2017 reporting period were transferred by members of either ICE or ACE.

ICE members transferred 395,625 lbs (64.67%) and ACE members transferred 216,103 pounds (35.33%).

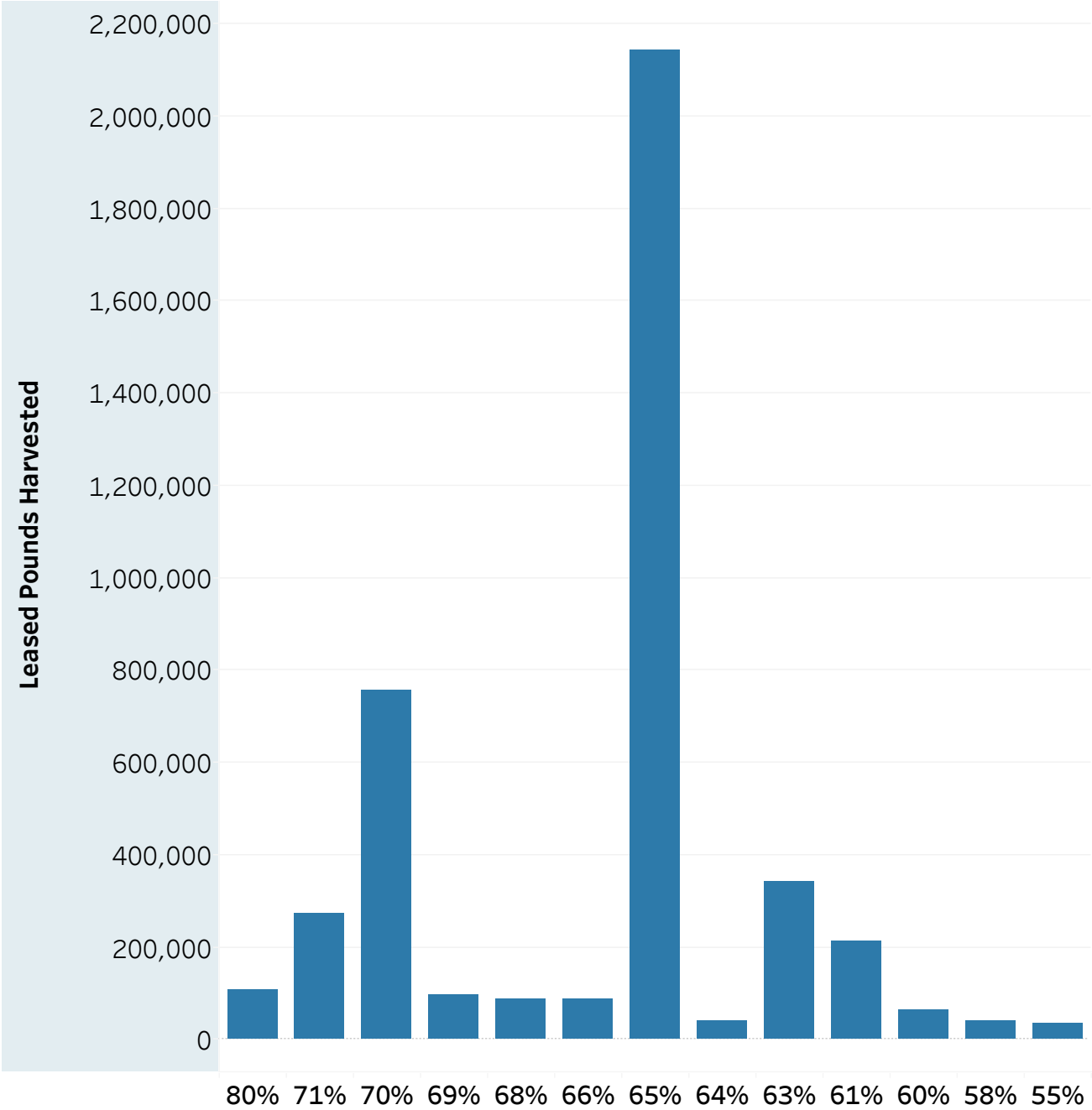


# BSS Leased Pounds Harvested Under Net Lease Rate %



Sum of Pounds Harvested for each Net Lease Rate.

# BBR Leased Pounds Harvested Under Net Lease Rate %



Sum of Pounds Harvested for each Net Lease Rate.