

# **Initial Review Draft**

## **REGULATORY IMPACT REVIEW**

**and**

## **INITIAL REGULATORY FLEXIBILITY ANALYSIS**

### **OF PROVISIONS DEFINING ACTIVE PARTICIPATION REQUIREMENTS FOR THE ACQUISITION AND USE OF OWNER SHARES**

For a proposed Regulatory Amendment to  
Implement \_\_\_\_ to the Fishery Management Plan  
for Bering Sea and Aleutian Islands King and Tanner Crabs

January 2013



## **Executive Summary**

Access to the Bering Sea and Aleutian Island crab fisheries is regulated through the allocation of harvest share privileges (or shares). Holders of long term shares, known as quota shares (QS), receive an annual allocation of individual fishing quota (IFQ), representing a privilege to harvest a certain number of pounds of crab during that year. Under the program, 97 percent of the QS pool was initially allocated to holders of limited entry permits under the previous management program. These QS are known as “owner” QS. Under the management program, these owner QS are transferable to any person who meets a minimum sea time requirement; thereafter, holders of these owner shares may maintain those holdings without any further or continuing qualification. At its December 2011 meeting, after receiving a report reviewing the first 5 years of fishing under the current crab management program, the Council directed staff to analyze alternatives to establish active participation requirements for the acquisition of owner shares and retention of those newly acquired owner shares.<sup>1</sup>

### **Purpose and need statement**

The Council has adopted the following the problem statement for this action:

*The Bering Sea/Aleutian Islands (BSAI) Crab Rationalization Program is a comprehensive approach to rationalize an overcapitalized fishery. Conservation, safety, and efficiency goals have largely been met under the program. Provisions that allow for absentee ownership of crab harvest shares support long-term investment by persons or corporations with little or no involvement in the prosecution of the fisheries and limit the amount of quota available for active participants. This action is intended to ensure that ownership of quota transitions to persons who are actively involved in the prosecution of the fisheries.*

### **Alternatives**

#### **Alternative 1: No action**

No action, status quo.

#### **Alternative 2: Active Participation - Eligibility criteria for purchase of owner shares**

To be eligible to permanently transfer and retain Catcher Vessel Owner or Catcher Processor Owner Quota Shares (QS), the QS holder or an individual that is at least a 10, 20, or 33% (options) share holder when the QS is held by a partnership or corporation must meet one of the following requirements:

- a. hold 5, 10, or 20% (options) ownership of a vessel with participation in a rationalized Bering Sea/Aleutian Islands crab fishery in any of the previous 2 to 4 seasons, or
- b. provide documentation of participation as a captain or crew in a rationalized crab fishery (verified by a signature on a fish ticket or crew members’ affidavit) for at least 1, 2, or 4 (options) fishing trips in a rationalized Bering Sea/Aleutian Islands crab fishery in any of the 3 or 4 (options) previous seasons.

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<sup>1</sup> As a part of its deliberations in the development of alternatives, the Council specified that the action would not affect existing share holdings, but would apply only to shares acquired after implementation of the action.

## Analysis of Alternatives

### Status quo

Under the status quo, five provisions qualify individuals or entities to acquire owner shares (see Table 11), which require some connection to fishing; however, these liberal rules allow persons with no direct connection to the Bering Sea and Aleutian Islands crab fisheries to acquire owner QS.

**Table ES-1. Eligibility to acquire owner QS.**

Type	Qualification requirement
Individuals and entities	recipient of an initial allocation of QS
Individuals	150 sea time in a U.S. fishery
Entities	owner of 20 percent or more of the entity with 150 days sea time in a U.S. fishery
Community entities	Entities holding rights of first refusal to PQS
CDQ groups.	Any CDQ group
Source: 50 CFR 680.41	

Although specific data are not available to fully evaluate the extent to which holders of owner QS have ownership interests in vessels active in the fisheries, a substantial number of vessel owners are known to have considerable QS holdings. In addition, some share of QS holders are actively fishing on crab fishery vessels; however, a number of QS holders, also with substantial holdings, are believed to have no activity in the fisheries through either vessel ownership or as crew. If the current rules governing share acquisition and use are maintained, it is likely that the QS in the fisheries will continue to be held by a mix of persons with and without active participation (through ownership of an active vessel or activity as a crewmember on such a vessel). Although it is possible for persons with no connection to the fisheries (i.e., no vessel ownership or crew experience) to acquire QS, it is likely that most QS purchasers and holders will have some participation (historical or active) as knowledge of the fishery is important to investment decision making. Over time some portion of these QS holders may choose not to continue to maintain that vessel ownership or crewing activity, while maintaining their share holdings.

Private interests that hold QS are likely to be a mix of vessel owners, active crew, and inactive persons. Most persons acquiring QS are likely to either be active in the fisheries at the time of their purchase (through vessel ownership or crewing on a vessel) or already hold shares in the fisheries. Over time, a portion of the active share holders are likely to become inactive, either retiring from crewing or selling their vessel ownership interests to others. Share holders are also likely to cycle out of the fishery, selling their shares to others who either are active in the fishery or already hold shares. CDQ groups are likely to increase their QS holdings by continuing to acquire QS to advance both to advance their community development objectives and further their interests in fisheries in general. As is the case currently, all CDQ groups are very likely to be active through vessel ownership.

Under this cycle of share holdings, most share holders will have reasonably good information concerning fishery operations that will allow them to make reasonable decisions concerning the use of their shares. These decisions should ensure that share holders obtain competitive returns from shares (either through

harvesting the shares through their own activity or through lease payments), as well as achieve relatively full harvest of those allocations.

Shares are likely to trade at a free market price, unaffected by the sea time requirement, the only qualification needed for private share acquisition. That minimal requirement can be met relatively easily, as many persons nationwide meet that the requirement. In addition, CDQ groups, who are relatively well financed, tend to favor Bering Sea and Aleutian Island fishery investments over other investments, as these fishery investments can aid in meeting their community development objectives. As a result, CDQ groups may be willing to pay premium prices for investments in the crab fisheries, further ensuring that share prices are not reduced by the regulatory limit on private acquisitions.

The current rules for qualification for owner QS acquisition are relatively simple and inexpensive to administer. The sea time requirement is administered through certification of the recipient, who is required to provide specific fishing information, which is subject to some verification. Typically, fishery openings and closings are reviewed to ensure that fisheries were open during identified participation periods. In addition, any suspect information may be given additional review. As a single, one-time qualification, information does not need to be submitted for each application, only once for each individual or entity acquiring QS. This simple qualification allows NOAA Fisheries to maintain an individual or entity qualification indefinitely, without requiring additional qualification information for future acquisitions. Consequently, administration costs of the existing rule are relatively low.

#### **Alternatives to change eligibility to acquire and retain owner shares**

The proposed action would require a person to meet an ongoing active participation requirement to acquire and maintain holdings of owner QS.

Under the Council motion, individual's that wish to acquire and hold QS may satisfy the active participation requirement by holding a 5 percent, 10 percent, or 20 percent ownership interest in a vessel that participated on one of the rationalized crab fisheries in 1 of the 2 or 4 preceding seasons. Partnership or corporate held shares would subject to a similar requirement, under which an individual with a 10 percent, 20 percent, or 33 percent interest in the share holding entity would be required to also hold a 5 percent, 10 percent, or 20 percent interests a vessel that participated in a rationalized crab fishery in 1 of the 2 or 4 preceding seasons. For the 2010-2011 and 2011-2012 seasons, fewer than 110 vessels would meet the more liberal landing threshold, which requires one landing in the four preceding years, while fewer than 100 vessels would meet the more stringent landing threshold, which requires one landing in the preceding two years.

If vessel and share ownerships were structured to maximize the number of individuals and entities independently<sup>2</sup> qualified to hold shares, over 400 individuals and entities could independently meet the most stringent proposed threshold. As of the 2011-2012 season 321 individuals and entities held owner QS, approximately 90 fewer than the maximum number of individuals and entities that could meet the threshold independently. While it is unlikely that vessel ownership structures would independently qualify the maximum number of owner QS holders, overlapping ownership structures could qualify a substantially larger number of owners. For example, a single individual that owns a 25 percent interest in a participating vessel would be qualified, and could also qualify several different companies that he or she holds the requisite interest in. Particularly if the ownership threshold is set relatively low – such as requiring only a 10 percent interest of the vessel owner in the share holding company – it is possible that a single vessel could qualify partners in several different entities to hold a relatively large amount of owner

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<sup>2</sup> As used here, independently means that no overlapping interests in QS holdings exists between any qualified individuals and entities. In other words, each entity's qualification is satisfied by a different person meeting the vessel ownership standard.

QS. In any case, the underlying structure would seem to allow for the qualification of a very large number of entities to hold owner QS.

In general, any revision of share holding eligibility to require a vessel ownership is likely to have a substantial effect on the distribution of QS holdings in the fisheries.<sup>3</sup> If only vessel owners (or persons affiliated with vessel owners) are permitted to hold QS, it is likely that vessel owners will gain influence over QS acquisitions and the distribution of QS in the fishery. With each new partnership, it is likely that a portion of the QS will be removed from broader circulation, becoming associated with the vessel (or vessels) controlled by the owner (or ownership group). Over time, it may be expected that concentrations of QS in the fisheries will be associated with the 100 active vessels in the fisheries and be subject to decisions of the owners (and ownership groups) that control those vessels. If QS holdings consolidate into entities associated with the active vessels in the fishery, it is likely to decrease the potential for small amounts of QS to come on to an open market accessible to these crewmembers.

It will remain possible for a person to enter the fishery by acquiring a vessel and leasing quota, but it may also be even more difficult to make such an entry. Since QS holdings will require a vessel ownership relationship, it is likely that a person acquiring a vessel to enter the fishery would need to acquire a substantial amount of QS (or entice holders of substantial amounts of QS to sever an existing relationship with another vessel owner and lease share to be harvested on the entering vessel) to enter the fishery.

In considering the specific operation of the options, it should be noted that for an individual to hold owner QS that person would need to meet the same standard that a single shareholder in a partnership or corporation would need to meet. In other words, an individual owning an active vessel could buy owner QS or could qualify a partnership or corporation to hold owner QS (despite between 66 and 90 percent of the owners of that partnership or corporation having no connection to the fisheries other than their share holdings). A few consequences of this structure are worth considering. First, an individual must make a substantial investment in a vessel to qualify to hold QS. Second, corporate owners may be largely passive, despite a shareholder who meets the corporate ownership threshold also owning an active vessel. Consequently, control of the owner QS may be vested in persons with no active engagement in the fisheries.

As an alternative to qualifying through vessel ownership, an individual or corporation may be eligible to acquire and retain owner QS through participation in the fisheries as a crewmember. Individuals can qualify through verified participation in 1, 2, or 4 trips in one of the previous 3 or 4 years. A partnership or corporation could qualify if an owner with more than a 10, 20, or 33 percent interest in the entity meets the threshold crew participation requirement. Based on landings in the years preceding the 2011-2012 season between 83 and 100 vessels would meet the different trip thresholds. Increasing the trip threshold to four has the greatest effect on the number of vessels that meeting the trip threshold, as between 95 and 100 vessels meet the one and two trip thresholds, while fewer than 90 vessels meet the four trip threshold under either the three or four year window. Again, it should be noted that comparing these data to annual participation levels suggests that some vessels come and go from the fisheries each year. In recent years, vessels in the crab fishery have employed between 5 and 6 unique crewmembers (including captains) annually on average (see Table 14). Assuming that each vessel that meets the threshold qualified the average number of unique crewmembers, between approximately 450 and 600 crewmembers would meet a threshold for the 2011-2012 season, depending on which threshold is applied.

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<sup>3</sup> It should be noted that these changes may take some time to manifest themselves, as the proposed action would apply only to new QS acquisitions. Existing holders who liberally lease their shares through existing arrangements with vessel owners will have no need to restructure their holdings or leasing arrangements as a result of this action. Consequently, the transition of QS holdings to active persons (as defined by the action) and resulting effects may not be realized for several years.

While a relatively large number of individuals are likely to meet the qualification to acquire owner QS, it is possible that a large number of these individuals may not have access to funding to purchase QS. Priced transactions of owner QS have averaged in excess of \$150,000 in every year in the Bristol Bay red king crab and Bering Sea *C. opilio* fisheries and exceeded \$1.0 million in one year in the Bering Sea *C. opilio* fishery. Many active crew work on crab vessels as their primary source of income. From 2006 through 2010, mean and median annual compensation of captains on vessels that participated in both the Bristol Bay red king crab and Bering Sea *C. opilio* fisheries ranged from approximately \$100,000 to approximately \$185,000. During the same time period, mean and median compensation for the remaining crewmembers ranged from approximately \$40,000 to \$90,000.

Although a large number of the crew meeting the qualification may not have access to funding to purchase owner QS, they may be able to access funds by forming partnerships and corporations with persons with access to funding who do not meet the active participation qualification, particularly under options that allow the active individual to have a relatively small share of the ownership interest in the QS holding entity. While these minimal stake arrangements may resolve a funding issue for active crew, they will have consequences. As with the vessel ownership thresholds, the Council should consider the potential for active individuals to have very little control over the entity's QS, if the active individual needs to only hold a relatively small interest in that entity.

From the standpoint of crewmembers, the highest annual trip requirement (four trips in a year) could be problematic. If a vessel fishes a relatively small allocation in one fishery, it is possible that the vessel may make only two or three trips in a year. Despite relatively consistent annual participation, such a vessel's harvest may not be adequate to qualify a crewmember to acquire and retain owner QS. In addition, to the extent that a crewmember may attempt to use their qualification to develop partnerships with persons with better access funding for QS acquisitions, potential partners may be reluctant to enter QS purchase arrangements with crew that work on vessels that harvest small amounts of quota despite their consistent annual participation.

The effects of this action on QS holders and holdings are likely to be realized over many years. Under its terms, the eligibility criteria for maintaining owner QS only apply to shares acquired after the action is implemented. As such, current share holders would not be required to comply with any active participation requirements to maintain their holdings. Share holders that currently lease their holdings (not owning an interest in an operating vessel) are likely to continue to lease their shares. In addition, it is possible that some of the owner QS holders that have maintained ownership interests in active vessels could divest of their interest in a vessel and lease their annual allocations to others. Exempting existing share holdings from the action have the dual effects of not disrupting business plans of current share holders and phase in the active participation requirement over what could be a very extended period of time.

A notable aspect of the action alternatives in their current form is that CDQ groups and other entities that hold rights of first refusal on behalf of communities cannot qualify to acquire owner QS. To be eligible a corporation or partnership must have an individual owner that meets either the vessel ownership or crew eligibility criteria. By their structure, CDQ groups and community entities have no specific individual owners. This disqualification would occur despite several CDQ groups directly owning vessels that actively participate in the fisheries. Although CDQ groups and other crab community entities may not meet the eligibility criteria specified in the alternatives as currently specified, qualifying CDQ groups and other crab community entities either directly or through a modification of the proposed active participation requirements is likely consistent with the Council's intention for the action, as most CDQ groups and other crab community entities maintain direct or indirect interests in active vessels in the fisheries to pursue their community development objectives.

### Interactions of the qualifying provisions

The proposed action's two means of eligibility to acquire owner QS are likely to interact. Persons eligible through vessel ownership qualification are likely to dominate the market for owner QS. Vessel owners are likely to have more assets and access to capital to fund QS acquisitions. Vessel owners are also more likely to be viewed as more appealing business partners, as they have greater business experience with investments and operations. While some individuals meeting the crew qualification are likely to have similar qualities and skills, the majority of active crew are likely to be less experienced in business. In addition, qualifying only as a crewmember could pose some risk, as injuries or loss of job could result in a loss of eligibility. While some risk is also inherent in vessel ownership, qualification through a partnership with an established vessel owner is likely to be viewed as a more stable and reliable means of qualification. These factors may constrain opportunities for crew that might be interested in acquiring owner QS through partnerships with others.

Actions that decrease the pool of individuals and entities eligible to acquire owner QS have the potential to decrease competition for those shares. The proposed action will limit eligibility to acquire owner QS by requiring that an individual QS holder have, or entity QS holder have an individual owner who has, either an ownership interest in an active crab vessel or be active as a crewmember on a crab vessel. Even without eligibility requirements, persons with crew and vessel ownership interests are the most likely to invest in the fisheries. These people have the most knowledge of the fisheries and the business opportunities that they present. The alternatives also provide for substantial investments by persons who do not own a vessel ownership or crew, but partner with someone who does own a vessel or crew on a vessel. These means of indirectly qualifying allows for substantial capital to come into the fisheries by persons who do not actively participate in the fisheries. These avenues should ensure that any price effect of the active participation requirements is relatively minor.

Rules establishing active participation requirements for acquisition and retention of owner QS will require NOAA Fisheries to monitor vessel and crew participation and integrate those participation records with vessel ownership and QS holdings information and corporate and partnership ownership information. The burden associated with this monitoring will vary with each case, but could be very high. Vessel owner eligibility would require submission of vessel ownership and participation records for a period of years, which would be similarly compared to vessel participation records. To verify continuing eligibility to hold owner QS, owner QS holders will likely need to submit information concerning their qualifications on an annual basis (either as a part of their annual IFQ application or separately), since the requirements are applied over a period of years. In addition, the timeline for submitting applications and appealing administrative decisions will need to be reviewed, once the Council has fully specified its alternatives (defining the intended consequences of failing to comply with the active participation requirements).

The action alternative would require that individuals and entities meet eligibility requirements to acquire owner QS. The timeline for applications and filing of appeals will need to be given additional scrutiny as this action proceeds. As currently defined by the motion, verification of active participation would require review of ownership records for vessels and QS holding entities. Depending on the structure of the requirements and the consequences for failing to meet those requirements, the action could create a substantial and costly burden for managers.

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## 1.0 INTRODUCTION

Access to the Bering Sea and Aleutian Island crab fisheries is regulated through the allocation of harvest share privileges (or shares). Holders of long term shares, known as quota shares (QS), receive an annual allocation of individual fishing quota (IFQ), representing a privilege to harvest a certain number of pounds of crab during that year. Under the program, 97 percent of the QS pool was initially allocated to holders of limited entry permits under the previous management program. These QS are known as “owner” QS. Under the management program, these owner QS are transferable to any person who meets a minimum sea time requirement; thereafter, holders of these owner shares may maintain those holdings without any further or continuing qualification. At its December 2011 meeting, after receiving a report reviewing the first 5 years of fishing under the current crab management program, the Council directed staff to analyze alternatives to establish active participation requirements for the acquisition and retention of owner shares.

This document contains a Regulatory Impact Review (Section 2) and an Initial Regulatory Flexibility Analysis (Section 3) of alternatives to establish the active participation requirements to acquire and maintain holdings of owner shares. Section 4 contains a discussion of the Magnuson Stevens Act National Standards and a fishery impact statement.<sup>4</sup>

This document relies on information contained in the Bering Sea/Aleutian Islands Crab Fisheries Final Environmental Impact Statement/Regulatory Impact Review/Initial Regulatory Flexibility Analysis/Social Impact Assessment (NMFS/NPFMC, 2004). Throughout this analysis, that document is referred to as the “Crab EIS”.

## 2.0 REGULATORY IMPACT REVIEW

This chapter provides an economic analysis of the action, addressing the requirements of Presidential Executive Order 12866 (E.O. 12866), which requires a cost and benefit analysis of Federal regulatory actions.

The requirements of E.O. 12866 (58 FR 51735; October 4, 1993) are summarized in the following statement from the order:

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 nonetheless 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 further 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:

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<sup>4</sup> The proposed action is a minor change to a previously analyzed and approved action and the proposed change has no effect individually or cumulatively on the human environment (as defined in NAO 216-6). The action only addresses changes in eligibility to acquire and retain owner quota shares and will have no effect on the human environment, beyond those examined in the EIS.

- 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, local 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 this Executive Order.

### **3.0 PURPOSE AND NEED STATEMENT**

The Council has adopted the following Purpose and Need Statement for this action:

*The Bering Sea/Aleutian Islands (BSAI) Crab Rationalization Program is a comprehensive approach to rationalize an overcapitalized fishery. Conservation, safety, and efficiency goals have largely been met under the program. Provisions that allow for absentee ownership of crab harvest shares support long-term investment by persons or corporations with little or no involvement in the prosecution of the fisheries and limit the amount of quota available for active participants. This action is intended to ensure that ownership of quota transitions to persons who are actively involved in the prosecution of the fisheries.*

**The Council should consider supplementing its purpose and need statement to identify its specific objectives for this action, including the benefits intended to arise from the transition of quota holdings to persons active in the fisheries.**

### **3.1 Description of Alternatives**

The Council has identified the following alternatives for this action:

#### **Alternative 1: No action**

No action, status quo.

#### **Alternative 2: Active Participation - Eligibility criteria for purchase of owner shares**

To be eligible to permanently transfer and retain Catcher Vessel Owner or Catcher Processor Owner Quota Shares (QS), the QS holder or an individual that is at least a 10, 20, or 33% (options) share holder when the QS is held by a partnership or corporation must meet one of the following requirements:

- a. hold 5, 10, or 20% (options) ownership of a vessel with participation in a rationalized Bering Sea/Aleutian Islands crab fishery in any of the previous 2 to 4 seasons, or
- b. provide documentation of participation as a captain or crew in a rationalized crab fishery (verified by a signature on a fish ticket or crew members’ affidavit) for at least 1, 2, or 4 (options) fishing trips in a rationalized Bering Sea/Aleutian Islands crab fishery in any of the 3 or 4 (options) previous seasons.

**It should be noted that the Council specifically stated that these active participation requirements would not apply to shares acquired prior to the implementation of this action. Active participation**

**requirements only apply to the acquisition of shares after this action and the continued holding of those newly acquired shares.**

### **3.2 Existing Conditions**

This section describes the relevant existing conditions in the crab fisheries. The section begins with a brief description of the management of the fisheries under the rationalization program, followed by descriptions of the harvesting and processing sectors in the fisheries.

#### **3.2.1 Management of the fisheries**

The following nine crab fisheries are managed under the rationalization program:

- Bristol Bay red king crab,
- Bering Sea *C. opilio*,
- Eastern Bering Sea *C. bairdi*,
- Western Bering Sea *C. bairdi*,
- Pribilof red and blue king crab,
- St. Matthew Island blue king crab,
- Western Aleutian Islands red king crab,
- Eastern Aleutian Islands golden king crab, and
- Western Aleutian Islands golden king crab.

Under the program, holders of License Limitation Program (LLP) licenses endorsed for a fishery were issued vessel owner quota shares (QS), which are long term shares, based on their qualifying harvest histories in that fishery. These vessel owner QS are approximately 97 percent of the QS pool; the remaining 3 percent of that pool were issued to captains as “C share QS”, as described below. Catcher processor license holders were allocated catcher processor vessel owner QS for their history as catcher processors; catcher vessel license holders were issued catcher vessel QS based on their history as a catcher vessel. QS annually yield individual fishing quota (IFQ), which are privileges to harvest a particular amount of crab in pounds in a given season. The size of each annual IFQ allocation is based on the amount of QS held in relation to the QS pool in the fishery. So, a person holding 1 percent of the QS pool would receive IFQ to harvest 1 percent of the annual total allowable catch (TAC) in the fishery.<sup>5</sup> Ninety percent of the catcher vessel owner IFQ are issued as “A shares” or “Class A IFQ,” which must be delivered to a processor holding unused individual processor quota (IPQ).<sup>6</sup> The remaining 10 percent of the annual IFQ is issued based on catcher vessel owner QS as “B shares” or “Class B IFQ,” which may be delivered to any processor.<sup>7</sup> Processor quota shares (PQS) are long term shares issued to processors. These PQS yield annual IPQ, which represent a privilege to receive a certain amount of crab harvested with Class A IFQ. IPQ are issued for 90 percent of the TAC, creating a one-to-one correspondence between Class A IFQ and IPQ.<sup>8</sup>

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<sup>5</sup> Under an amendment passed by the Council in June of 2008, the holders of owner QS would be allocated 97 percent of the annual IFQ, with that portion of the IFQ pool issued among those QS holders based on their relative holdings of owner QS. The remaining 3 percent of the QS pool would be issued to holders of C share QS based on their relative holdings of C share QS. This amendment has yet to be implemented by NOAA Fisheries Service.

<sup>6</sup> C shares are excepted from this general requirement and thereby are exempt from IPQ landing requirements.

<sup>7</sup> The terms “A share” and “Class A IFQ” are used interchangeably in this paper, as are the terms “B share” and “Class B IFQ”.

<sup>8</sup> Although 90 percent of IFQ issued each year are issued as A shares, individual allocations can vary from 90 percent. Holders of PQS and their affiliates receive IFQ allocations as A shares (and are not allocated B shares) up to the amount of IPQ. Any IFQ issued in excess of IPQ issuance is subject to an A share/B share division such that the total amount of IPQ issued equals 90 percent of the total issuance of IFQ based on owner QS. The rationale for

In addition to processor share landing requirements, Class A IFQ (along with IPQ) are subject to regional landing requirements, under which harvests from those shares must be landed in specified regions. The following regional designations are defined for the different fisheries in the program:

Bristol Bay red king crab – North/South division at 56°20'N latitude  
Bering Sea *C. opilio* – North/South division at 56°20'N latitude  
Eastern Bering Sea *C. bairdi* – none (or undesignated)  
Western Bering Sea *C. bairdi* – none (or undesignated)  
Pribilof red and blue king crab – North/South division at 56°20' N latitude  
St. Matthew Island blue king crab – North/South division at 56°20'N latitude  
Western Aleutian Islands red king crab – South of 56°20'N latitude  
Eastern Aleutian Islands golden king crab – South of 56°20'N latitude  
Western Aleutian Islands golden king crab – undesignated and West of 174°W longitude

The A share/B share allocation structure has the effect of limiting market choices of participants, since only the 10 percent allocation of B shares are free to be sold to any buyer. Under this structure, the 90 percent A share allocation (with corresponding IPQ) is intended primarily to add stability to the processing sector and provide a means for compensated removal of processing capacity from the fisheries. The 10 percent B share allocation is intended to provide negotiating leverage to harvesters, an opportunity for entry to the processing sector, and a check on the processing market (by providing a negotiated market price)<sup>9</sup>. To aid participants in resolving price disputes relative to A share landings, the Council developed a binding arbitration program. The arbitration program is established through a set of private contracts that must meet requirements set out in the regulation. Holders of Class A IFQ and holders of IPQ must join arbitration organizations. These organizations, in turn, must enter contracts that define the arbitration program and select arbitrators. The arbitration program is an elaborate structure that serves several functions, including establishing a system for more orderly matching of Class A IFQ with IPQ, developing a market report and non-binding price formula to inform price negotiations, and provide a binding arbitration process to resolve impasses in negotiations.

Vessel owner shares may be acquired by any individual who is a U.S. citizen with at least 150 days of sea time in a harvest capacity in a U.S. commercial fishery. Corporations and partnerships can also acquire these shares provided a U.S. citizen who meets the 150 day sea time requirement owns at least 20 percent of the corporation. In addition, Community Development Quota (CDQ) groups and community entities qualified to hold rights of first refusal on PQS are authorized to acquire vessel owner shares. Holdings of owner QS are limited by use caps (see Table 2). These caps are more liberal for CDQ groups.

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issuing only A shares to PQS holders and their affiliates is that these persons do not need the extra negotiating leverage derived from B shares. To maintain 10 percent of the IFQ pool as B shares requires that unaffiliated QS holders receive more than 10 percent of their allocation as B shares (and less than 90 percent A shares).

<sup>9</sup> It should be noted that the limitation on the market resulting from the 90 percent A share/IPQ allocation dampens the market for B share landings by limiting the size of the open market for landings. So, the B share price (while providing an indication of the free market price) may not reflect the price that would exist in the absence of the A share/IPQ allocations.

**Table 2. Use caps on owner QS.**

Fishery	General use cap	CDQ use cap
Bristol Bay red king crab	1	5
Bering Sea <i>C. opilio</i>	1	5
Eastern Aleutian Island golden king crab	20	20
Eastern Bering Sea <i>C. bairdi</i>	1	5
Pribilof red and blue king crab	2	10
St. Matthew Island blue king crab	2	10
Western Aleutian Island golden king crab	20	20
Western Aleutian Island red king crab	20	20
Western Bering Sea <i>C. bairdi</i>	1	5
Source 50 CFR 680.42		

The three percent of the initial allocation of QS issued as “C shares” or “crew shares” were distributed to captains based on their harvest histories. C share allocations are subject to management provisions not applicable to owner shares with the intention of ensuring that active fishermen receive the benefits of those shares. C shares may only be acquired by individuals who meet the 150 day sea time requirement and are active in the crab fisheries, where ‘active’ is defined as having participated in a landing within 365 days of the share acquisition.<sup>10</sup> An owner-on-board provision and leasing prohibition are also applied to C shares, and intended to ensure that C shares would benefit active captains and crew. The Council recognized that logistical complications would likely arise early in the program, as a result of the interaction of owner-on-board requirements, leasing prohibitions, fleet contraction, and the IPQ and regional landing requirements. To aid in overcoming these complications, the Council in a later amendment exempted C shares from the regional and IPQ landing requirements of A shares.

Holder of harvest shares are permitted to form harvest cooperatives to coordinate the harvest of their allocations. If a harvester chooses to join a cooperative, the annual allocation of IFQ is made to the cooperative and fished in accordance with the cooperative agreement. To ensure captains and crew are an integral part of the overall fishery, C share holders are permitted to join cooperatives. As incorporated into regulation, this provision effectively removes any prohibition on leasing of and owner-on-board requirements for C shares. Once a C share QS holder joins a cooperative, any IFQ is allocated to the cooperative. So, although a leasing prohibition and owner-on-board requirement apply to C shares, those provisions only apply to individual holders of C share IFQ. Any C share holder who elects to join a cooperative is effectively exempt from those requirements.

Given that the implementing regulations provided C share QS holders with a means of avoiding active participation requirements, the Council developed an amendment package to revise those requirements. In June of 2008, the Council adopted an amendment that included a requirement that a C share QS holder have participated in at least one delivery in a crab program fishery, in the 3 years preceding any annual allocation of IFQ. The amendment also provides for the revocation of C share QS from a holder who has

<sup>10</sup> As a part of its June 2008 amendment, the Council adopted two provisions defining temporary qualification to acquire C shares. Under both provisions, a person would need to meet the 150 day sea time requirement. Under the first provision, persons that received an initial allocation would be permitted to acquire C shares for a period of 4 years from implementation of the amendment. Under the second provision, persons who did not receive an initial allocation, but had participated in a landing in a crab fishery subject to the program in 3 of the 5 years preceding implementation of the program would be permitted to acquire C shares for a period of 4 years after implementation of the amendment. As noted previously, NOAA Fisheries Service has yet to issue a proposed rule for that amendment.

not participated in at least one delivery in a crab program fishery, in a four year period.<sup>11</sup> The proposed rule for this amendment package is expected to be issued by NOAA Fisheries Service late in 2012 or early in 2013.

### 3.2.2 The harvest sector

As of the 2011-2012 season, 321 individuals, partnerships, and corporate entities held owner QS. The distribution of QS holdings among owner share types varies substantially across fisheries (see Table 3). The regional distribution of catcher vessel owner QS differs with landing patterns that arise from the geographic distribution of fishing grounds and processing activities.

**Table 3. Owner quota share holdings as a percent of the owner share pool.**

Fishery	Share holdings by region						Across regions			
	Region/Catcher processor	QS holders	Percent of pool	Mean holding	Median holding	Maximum holding	QS holders	Mean holding	Median holding	Maximum holding
Bristol Bay red king crab	North	30	2.42	0.1	0.0	0.3	257	0.39	0.29	5.00
	South	248	93.01	0.4	0.3	4.7				
	Catcher processor	11	4.56	0.4	0.3	1.0				
Bering Sea <i>C. opilio</i>	North	225	42.52	0.2	0.1	1.2	257	0.39	0.30	5.00
	South	221	48.34	0.2	0.1	3.2				
	Catcher processor	22	9.14	0.4	0.2	2.2				
Eastern Bering Sea <i>C. bairdi</i>	Undesignated	237	93.27	0.4	0.3	4.3	245	0.41	0.27	4.97
	Catcher processor	13	6.73	0.5	0.4	1.1				
Western Bering Sea <i>C. bairdi</i>	Undesignated	238	93.27	0.4	0.3	4.3	246	0.41	0.27	4.97
	Catcher processor	13	6.73	0.5	0.4	1.1				
Eastern Aleutian Island golden king crab	South	15	95.16	6.3	5.0	20.0	17	5.88	4.45	20.00
	Catcher processor	2	4.84	2.4	2.4	4.1				
Western Aleutian Island golden king crab	Undesignated	11	26.86	2.4	0.9	11.0	14	7.14	1.69	45.73
	West	7	26.91	3.8	1.0	13.5				
	Catcher processor	3	46.22	15.4	0.5	45.7				
Western Aleutian Island red king crab	South	35	60.97	1.7	0.6	11.5	36	2.78	0.62	45.16
	Catcher processor	2	39.03	19.5	19.5	37.8				
St. Matthew Island blue king crab	North	130	76.70	0.6	0.5	3.4	145	0.69	0.54	5.00
	South	94	21.31	0.2	0.1	2.5				
	Catcher processor	5	1.99	0.4	0.3	0.9				
Pribilof red and blue king crab	North	91	66.62	0.7	0.5	3.5	119	0.84	0.50	6.96
	South	82	32.87	0.4	0.2	3.5				
	Catcher processor	1	0.52	0.5	0.5	0.5				

Source: NMFS Restricted Access Management IFQ database, crab fishing year 2011-2012.

Note: These share holdings data are publicly available and non-confidential.

Since implementation of the crab program, a relatively large number of individuals and entities who did not receive initial allocations have acquired owner QS (see Table 4). Two types of entrants could be considered: entrants who acquired shares in a fishery in which they received no shares in the initial allocation, and entrants who received an initial allocation in at least one fishery, who later acquired shares in another fishery in which they received no initial allocation. Data suggest that entrants of either type have acquired over 10 percent of the owner QS in all fisheries (except the Western Aleutian Islands red king crab fishery), over 20 percent in the two major fisheries (Bristol Bay red king crab and Bering Sea *C. opilio*), and almost 40 percent in the Eastern Aleutian Islands golden king crab fishery. Over 75 new holders, who did not receive an initial allocation in any fishery, have acquired QS in the first five years of the program. Yet, given that many persons hold owner QS indirectly, through corporations or partnerships, a substantial portion of this suggested entry may be attributable to restructuring of holdings

<sup>11</sup> An additional, alternative qualification would allow an initial recipient of C share QS to receive IFQ and maintain QS holdings, provided that the QS holder meets participation thresholds in any fisheries in the State of Alaska or Federal fisheries off Alaska.

by persons who received allocations in the fisheries. Notwithstanding these limitations, Table 4 provides some indication of QS ownership changes.

**Table 4. Persons that did not receive an initial allocation of owner QS that currently hold owner QS (2012).**

owner qs							
	Fishery	QS holder is new to the fishery			QS holder is new to all fisheries		
		Number of entrants	QS units acquired	Percent of QS pool acquired	Number of entrants	QS units acquired	Percent of QS pool acquired
Bristol Bay red king crab	79	105,324,913	27.2	68	93,210,246	24.0	
Bering Sea <i>C. opilio</i>	85	246,565,146	25.4	75	222,665,056	22.9	
Eastern Aleutian Islands golden king crab	7	4,036,693	41.6	4	3,768,575	38.9	
Eastern Bering Sea <i>C. bairdi</i>	56	43,494,769	22.4	56	43,494,769	22.4	
Pribilof red and blue king crab	36	9,361,103	32.1	27	7,631,159	26.1	
St. Matthew Island blue king crab	46	7,980,936	27.4	36	5,916,856	20.3	
Western Aleutian Islands golden king crab	4	5,722,207	14.7	4	5,722,207	14.7	
Western Aleutian Islands red king crab	12	10,246,983	17.6	7	2,987,728	5.1	
Western Bering Sea <i>C. bairdi</i>	56	43,494,771	22.4	56	43,494,771	22.4	

Source: RAMQS database.

Individual (as opposed to corporate or partnership held owner QS) varies across the fisheries (see Table 5). Although a substantial number of individuals hold owner QS, individual holdings are less than 17 percent of the owner QS pool in all fisheries. As such, it is apparent that the fisheries are dominated by corporate (as opposed to individual) share holdings. The number of individually held shares has changed since the initial allocations, but these changes have been slight. The number of individual share holders has risen, suggesting that some individuals have acquired small numbers of shares.

**Table 5. Individually held QS (2012).**

Fishery				
	Initial allocation		2011-2012	
	Number of individuals	Percent of pool held by individuals	Number of individuals	Percent of pool held by individuals
Bristol Bay red king crab	27	9.2	57	9.3
Bering Sea <i>C. opilio</i>	49	9.4	97	9.5
Eastern Aleutian Island golden king crab	1	2.1	1	2.1
Eastern Bering Sea <i>C. bairdi</i>	29	9.5	43	11.2
Pribilof red and blue king crab	23	17.9	30	16.3
St. Matthew Island blue king crab	17	10.4	55	15.0
Western Aleutian Island golden king crab	2	1.6	3	1.6
Western Aleutian Island red king crab	1	0.4	3	1.2
Western Bering Sea <i>C. bairdi</i>	27	9.5	42	11.3

Source: NMFS Restricted Access Management IFQ database, crab fishing year 2011-2012.

Note: These share holdings data are publicly available and non-confidential.

Eastern Bering Sea *C. bairdi* and Western Bering Sea *C. bairdi* in the initial allocation are derived from allocations of Bering Sea *C. bairdi* at that time, as stock management was not split until the second year of the program.

A significant share of owner QS holdings in the fisheries is by CDQ interests (see Table 6). In addition to the holdings shown, it is likely that some groups have additional indirect holdings that are not reported here because of the complexity of their share holding structures. Under the current rules, CDQ groups are authorized to acquire owner QS without meeting any sea time requirement. In addition, CDQ groups are subject to more liberal use caps (which also limit holdings of owner QS) than those that govern non-CDQ

owner QS holders. Although CDQ groups received relatively little of the initial allocation in the fisheries, they have since acquired more substantial holdings in the fisheries. Under the more liberal caps, CDQ groups have acquired owner QS in excess of the general use caps.

**Table 6. CDQ group owner QS holdings (2012).**

Fishery	Initial allocation		2011-2012		
	Number of groups with holdings	Percent of owner pool held by groups	Number of groups with holdings	Percent of owner pool held by groups	Largest holding of a group
Bristol Bay red king crab	4	3.4	5	11.4	4.9
Bering Sea <i>C. opilio</i>	4	3.6	6	12.8	4.9
Eastern Aleutian Island golden king crab	1	6.0	3	27.8	19.4
Eastern Bering Sea <i>C. bairdi</i>	4	3.8	6	11.0	4.8
Pribilof red and blue king crab	2	2.9	4	11.9	6.8
St. Matthew Island blue king crab	3	2.8	4	8.5	4.9
Western Aleutian Island golden king crab	1	1.3	3	15.0	11.6
Western Aleutian Island red king crab	2	1.3	4	2.4	1.5
Western Bering Sea <i>C. bairdi</i>	4	3.8	6	11.0	4.8

Source: NMFS Restricted Access Management IFQ database, crab fishing year 2011-2012.

Note: These share holdings data are publicly available and non-confidential.

Eastern Bering Sea *C. bairdi* and Western Bering Sea *C. bairdi* in the initial allocation are derived from allocations of Bering Sea *C. bairdi* at that time, as stock management was not split until the second year of the program.

In addition to CDQ groups, community groups that hold rights of first refusal on PQS on behalf of non-CDQ communities are eligible to hold owner QS. None of these community entities hold owner QS currently. Since these non-CDQ entities have no harvest share allocation similar to CDQ allocations, acquisition of owner QS would be an extension of their operations into a new area. Consequently, it is not too surprising that these groups have not acquired owner QS in the early years of the program.

Prior to the implementation of the rationalization program, the BSAI crab fisheries were prosecuted as a limited access, derby fishery, under which the participants raced for crab after the opening with the fishery closing once managers estimated that the guideline harvest level (GHL)<sup>12</sup> was fully taken. This limited access management creates an incentive for all license holders to participate in the fishery, since a person cannot receive a return from the fishery without participating. The results of this incentive were evident in the crab fisheries, as seasons in the two largest fisheries (the Bristol Bay red king crab and Bering Sea *C. opilio* fisheries) ranged from a few days to a few weeks and between 150 and 250 vessels participated annually in each fishery.

Under the rationalization program, the exclusive shares of the TAC allocated as IFQ have limited the need for participants to race to prevent others from preempting their catch. To improve returns from the fisheries, participants have an incentive to reduce costs. One obvious means of reducing costs is fleet consolidation. Stacking quota on fewer vessels can save on costs not only of capital, but also maintenance, insurance, labor, fuel, and other variable input costs. An examination of data from the first several years of the program and the years immediately preceding implementation shows a drastic reduction in the fleet under the program (see Table 7). Although detailed vessel ownership data are not

<sup>12</sup> Historically, the GHL specified a range of allowable catch, providing in-season managers with some discretion to close the fishery based on their assessment of stock conditions. In making these assessments, managers would rely on survey information, as well as in-season and cross-season variations in catch rates. In more recent years, managers specified GHLs as specific amounts, managing the fishery in-season to allow harvest of that specific amount.

available, as fleets contracted to between one-half and one-third of their pre-rationalization levels, the number of persons owning vessels operating in the fisheries likely has declined. In addition, the number of captains and crew working in the fisheries has declined proportionally to the vessel decline. Assuming that each vessel employs 6 crew (including the captain)<sup>13</sup>, annual average captain and crew participation in the Bering Sea *C. opilio* and Bristol Bay red king crab fisheries dropped from in excess of 1,000 to 500 or fewer. Captain and crew participation in the Eastern Aleutian Islands golden king crab fishery dropped from in excess of 100 to fewer than 40. Captain and crew participation in the Western Aleutian Islands golden king crab fishery dropped from annual averages of approximately 40 to approximately 20.

The extent of consolidation, particularly in the first few years of the program, was facilitated by liberal transfer rules that apply to cooperatives. For quota share holders that join cooperatives, IFQ are issued to the cooperative and fished in coordination with all of the cooperative's shares under the cooperative agreement. Cooperative use of shares simplifies transfers (particularly transfers within the cooperative which require no agency administration). The cooperative structure also simplifies share use in instances where the cooperative manager effectively oversees and coordinates share use across the cooperative's fleet. The ability to rely on a cooperative manager to coordinate share use removes that burden from a crewmember who is engaged in the fishery. Cooperative holdings are exempt from vessel caps, removing any regulatory limit on a vessel's harvest of the cooperative's allocation. Lastly, beginning in the fifth year after implementation of the program, only cooperatives are permitted to transfer IFQ. Consequently, any individual IFQ holder would either be required to fish IFQ or leave it stranded. Cooperatives, on the other hand, are able to move allocations among member vessels and transfer IFQ to other cooperatives to efficiently and completely harvest their allocations of IFQ.

The relatively liberal rules governing cooperative IFQ holdings, transfers, and use have led to almost all IFQ being held by cooperatives (see Table 8). In the first year of the program, as much as 15 percent of the IFQ pools in some fisheries were held by individual IFQ holders; however, by the second year, in excess of 95 percent of the IFQ in all fisheries were held by cooperatives. By the fourth year, and continuing through the most recent year (2010-2011), over 99 percent of the IFQ in all fisheries has been held by cooperatives.

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<sup>13</sup> This estimate is consistent with data from the Economic Data Reporting and fish ticket datasets and estimates used in other analyses (see Knapp, 2006).

**Table 7. Catch and number of vessels by operation type (2001 to 2010-2011).**

Fishery	Season	Catch	Catch (as percent of total**) by		Number of vessels participating		
			catcher vessels	catcher processors	catcher vessels	catcher processors	all unique vessels
Bering Sea C. opilio	2001	22,940,704	86.5	13.5	201	8	207
	2002	29,609,702	94.4	5.6	182	9	190
	2003	25,410,122	96.8	3.2	185	5	190
	2004	21,939,493	97.0	3.0	183	6	189
	2005	22,655,777	97.1	2.9	161	6	167
	2005 - 2006	33,248,009	92.2	7.2	76	4	78
	2006 - 2007	32,659,148	90.9	8.4	66	4	70
	2007 - 2008	56,722,400	92.4	7.6	74	4	78
	2008 - 2009	52,687,374	92.8	7.1	73	4	77
	2009 - 2010	43,193,971	*	*	67	2	69
2010 - 2011	48,773,537	95.5	4.4	67	3	69	
Bristol Bay red king crab	2000	7,468,240	97.2	2.8	238	6	244
	2001	7,681,106	95.9	4.1	224	8	230
	2002	8,770,348	96.6	3.4	234	9	241
	2003	14,237,375	95.2	4.8	242	8	250
	2004	13,889,047	95.7	4.3	243	8	251
	2005 - 2006	16,472,400	96.7	3.3	88	4	89
	2006 - 2007	13,877,870	96.5	2.8	79	3	81
	2007 - 2008	18,324,046	97.0	2.9	72	3	74
	2008 - 2009	18,288,881	97.0	2.8	75	3	77
	2009 - 2010	14,337,782	*	*	69	2	70
2010 - 2011	13,349,929	*	*	64	2	65	
Eastern Bering Sea C. bairdi	2006 - 2007	1,264,044	72.7	2.2	33	3	36
	2007 - 2008	1,439,435	*	*	19	1	20
	2008 - 2009	1,553,584	*	*	20	1	21
	2009 - 2010	1,189,573	*	*	16	1	17
Western Bering Sea C. bairdi	2005 - 2006	791,025	52.3	2.0	42	2	43
	2006 - 2007	633,910	62.3	2.1	34	2	36
	2007 - 2008	467,136	23.3	0.5	26	1	27
	2008 - 2009	108,368	7.8	0.0	27	0	27
Eastern Aleutian Islands golden king crab	2000 - 2001	3,086,890	100.0	0.0	15	0	15
	2001 - 2002	3,128,409	100.0	0.0	19	0	19
	2002 - 2003	2,765,436	100.0	0.0	19	0	19
	2003 - 2004	2,900,247	100.0	0.0	18	0	18
	2004 - 2005	2,846,273	100.0	0.0	20	0	20
	2005 - 2006	2,569,209	*	*	6	1	7
	2006 - 2007	2,690,662	*	*	5	1	6
	2007 - 2008	2,690,377	*	*	3	1	4
	2008 - 2009	2,823,773	99.6	0.0	3	0	3
	2009 - 2010	2,832,932	99.9	0.0	3	0	3
2010 - 2011	2,833,188	99.9	0.0	3	0	3	
Western Aleutian Islands golden king crab	2000 - 2001	2,902,518	*	*	11	1	12
	2001 - 2002	2,693,221	*	*	8	1	9
	2002 - 2003	2,605,237	*	*	5	1	6
	2003 - 2004	2,637,161	*	*	5	1	6
	2004 - 2005	2,639,862	*	*	5	1	6
	2005 - 2006	2,382,468	*	*	2	1	3
	2006 - 2007	2,000,276	*	*	2	1	3
	2007 - 2008	2,246,040	*	*	2	1	3
	2008 - 2009	2,252,111	*	*	2	1	3
	2009 - 2010	2,478,313	*	*	2	1	3
2010 - 2011	2,537,161	*	*	2	1	3	
All fisheries	2000 - 2001				246	10	253
	2001 - 2002				235	11	243
	2002 - 2003				238	11	247
	2003 - 2004				245	9	254
	2004 - 2005				247	9	256
	2005 - 2006				100	5	101
	2006 - 2007				87	5	91
	2007 - 2008				83	5	87
	2008 - 2009				84	5	88
	2009 - 2010				76	3	78
2010 - 2011				75	4	78	

Sources: ADFG fishtickets and NMFS RAM catch data (for 2005-2006 through 2010-2011)

\* Withheld for confidentiality.

\*\* Catch as a percent of IFQ allocations for 2005-2006 through 2010-2011 seasons.

Note: "All fishery" participation in a season includes all fisheries prosecuted between August 1 and July 31.

For 2005-2006 through 2010-2011, catcher processor vessel count include all vessels harvesting catcher processor shares.

**Table 8. Cooperatives and cooperative IFQ holdings (2010-2011).**

Fishery	Number of IFQ holders (including cooperatives)	Number of cooperatives	Number of cooperative members (all cooperatives)	Percent of IFQ allocated to cooperatives	Maximum cooperative allocation (as percent of IFQ pool)	Maximum number of members in a cooperative
Bristol Bay red king crab	10	8	386	100.0	72.2	292
Bering Sea C. opilio	10	8	353	100.0	74.2	274
Eastern Aleutian Island golden king crab	2	2	21	100.0	83.8	14
St. Matthew blue king crab	8	2	167	99.4	82.7	160
Western Aleutian Island golden king crab	2	2	20	100.0	53.9	15

Source: NMFS RAM IFQ data.

### 3.2.3 Quota share transfers

Under the current rules, owner quota shares may be transferred to any person (including an individual, corporation, or partnership) that meets the minimum crew time requirement or CDQ or qualified community groups. Under these liberal rules, a large portion of the quota share pools in the various fisheries have been transferred in the first several years of the program (see Table 9). Over 25 percent of the owner share QS has been transferred in five of the program fisheries in the first seven years of the program and over 50 percent of the owner quota share was transferred in one of the program fisheries. Although the complexity of ownership structures prevents any thorough understanding of these holdings, it is believed that these transfers reflect a variety of circumstances. In some cases, transfers are exchanges of shares between unrelated parties; however, many of these transfers are likely restructuring of holdings, as fishery participants have reorganized their businesses or formed new partnerships or corporations with others.

**Table 9. Transfers of QS by year and fishery (2010 and 2011 and total 2005-2011).**

Fishery	Sector	2010		2011		Total 2005-2011 (as percentage of QS pool)
		Number of units	Percentage of QS pool	Number of units	Percentage of QS pool	
Bristol Bay red king crab	Crew	45,874	0.01	344,470	0.09	1.14
	Owner	1,927,359	0.48	20,284,870	5.05	28.33
Bering Sea C. opilio	Crew	191,093	0.02	851,943	0.08	1.03
	Owner	2,392,908	0.24	55,309,080	5.51	28.25
Eastern Aleutian Islands golden king crab	Crew			22,751	0.23	1.77
	Owner					53.04
Eastern Bering Sea C. bairdi	Crew	33,887	0.02	111,462	0.06	0.91
	Owner			6,473,096	3.23	27.91
Pribilof red and blue king crab	Crew			47,000	0.16	0.44
	Owner			2,351,068	7.82	15.22
St. Matthew Island blue king crab	Crew			23,174	0.08	0.67
	Owner			669,765	2.21	19.89
Western Aleutian Island golden king crab	Crew			865,238	2.16	2.71
	Owner					12.70
Western Aleutian Island red king crab	Owner					4.04
Western Bering Sea C. bairdi*	Crew	33,887	0.02	111,462	0.06	0.89
	Owner			6,473,096	3.23	27.25

Source: RAM transfer data.

\* Total includes transfers of Bering Sea C. bairdi from 2005 and 2006.

Note: Percentages are of total QS pool of which owner shares are 97 percent and crew shares are 3 percent.

Limited data are available to show prices on QS transfers, as a substantial number of transfers are not priced and confidentiality limits prevent some disclosures (see Table 10). In general, C share QS have traded for lower prices, approximately one-quarter to one-third lower than the prices of owner shares in the first six years of the program. It should be noted that the extent of any price differential could change with the introduction of the loan program, which began in 2011. The action temporarily allowing C share acquisition by certain persons with pre-rationalization activity in the fisheries and the anticipation of

changes in C share active participation requirements may affect these prices.<sup>14</sup> The annual average price of a reported transfer of owner QS averaged between approximately \$150,000 and \$1.1 million, while the average C share transaction was less than \$100,000 in all years. This difference likely arises, in part, from the magnitude of the allocations and share holdings of these different share types.

**Table 10. Catcher vessel QS transfer prices in the Bristol Bay red king crab and Bering Sea *C. opilio* fisheries by sector (2005 through 2010).**

Fishery		Year	Total paid (\$)	Total QS units transferred	Accompanying pounds of IFQ transferred	Number of transfers	Average transfer price	Percentage of QS pool in the average transaction
Bristol Bay red king crab	Catcher vessel owner	2005	3,991,160	7,139,909	94,298	14	285,083	0.13
		2006	29,292,901	24,420,200	0	27	1,084,922	0.23
		2007	8,383,337	7,144,784	0	21	399,207	0.08
		2008	16,239,943	13,988,271	0	25	649,598	0.14
		2009	4,076,942	4,525,837	0	12	339,745	0.09
		2010	9,105,971	14,596,184	0	33	275,939	0.11
	Catcher vessel crew	2005	873,724	1,221,051	17,402	21	41,606	0.01
		2006	774,159	1,130,330	1744	24	32,257	0.01
		2007	343,034	525,490	0	10	34,303	0.01
		2008	388,326	482,465	4134	9	43,147	0.01
		2009	322,908	427,846	1788	9	35,879	0.01
		2010	181,945	292,573	0	5	36,389	0.01
Bering Sea <i>C. opilio</i>	Catcher vessel owner	2005	9,653,848	24,619,413	164,664	22	438,811	0.11
		2006	12,618,035	48,984,237	81,136	36	350,501	0.14
		2007	11,594,328	24,751,778	0	26	445,936	0.09
		2008	6,727,749	12,649,179	0	15	448,517	0.08
		2009	2,171,857	6,452,415	0	14	155,133	0.05
		2010	15,170,520	34,571,824	0	56	270,902	0.06
	Catcher vessel crew	2005	683,516	2,793,091	38,489	25	27,341	0.01
		2006	543,372	2,864,463	2,536	35	15,525	0.01
		2007	213,042	821,969	0	12	17,754	0.01
		2008	315,891	757,824	18,608	10	31,589	0.01
		2009	312,054	1,121,203	0	15	20,804	0.01
		2010	300,416	851,943	0	11	27,311	0.01

Source: RAM transfer data.

### Right of first offer

In response to a request from the Council to address the perceived issue of owner QS being held by persons who are not active in the crab fisheries, a portion of the harvesting sector (specifically a cooperative representing the holders of approximately 70 percent of the owner QS in the two largest fisheries) has worked with its members to develop a right of first offer program, under which active participants would have first access to most owner QS sold by its members. Under the proposal, 10 percent of qualified QS transfers would be subject to a right of first offer from active captains and crewmembers, as defined by the Council for qualification for C share acquisitions. Currently, a person needs to have made one landing in a program fishery in the 365 days preceding the C share acquisition. The remaining 90 percent of the owner QS proposed for transfer would be subject to a right of first offer from an active participant, defined as person active as a captain or crewmember or as a person holding an

<sup>14</sup> In considering price information, it should also be noted that in some instances transfers included accompanying IFQ for the current season. Although the effects of the inclusion of IFQ in a transfer on the prices of those transactions is not directly examined for this analysis, included IFQ will likely increase the price for QS. In general, the inclusion of IFQ is expected to be a function of the timing of the transfer relative to the crab fishing season and operational considerations of the buyer and seller.

ownership interest in an active vessel. An active vessel is a vessel over 29 feet in length that has made a landing in any commercial fishery in the 365 days preceding the share acquisition.

Under the program, any sale by a member of the cooperative would be required to be made on a right of first offer basis, under which active crewmembers would have a right of first offer on up to 10 percent of the shares proposed for transfer. At the end of the offer period for that 10 percent, any portion of those shares that are not purchased by crew, along with the remaining 90 percent of the shares for sale, would be subject to a second right of first offer. Active crewmembers and vessel owners would be able to exercise this second right of first offer on those remaining shares. Any sale of quota shares in which 10 percent or more is to active crewmembers and all of which is to persons who are active (as crew or vessel owners) would not be subject to the right. In addition, sales between affiliates, sales that are accompanied by crab fishing vessel or of an entire commercial fishing operation, and sales made in foreclosure or under a court order would not be subject to the right.

The right of first offer requires the seller to define the terms of the offer, which persons receiving the right are free to accept. If accepted, a transaction will precede subject to the terms of the offer; if not, the seller may offer the quota shares to the general market. Any sale in the open market, however, must be subject to terms no more favorable than those of the original offer. To administer the right, the cooperative would maintain a list of crewmembers meeting the eligibility criteria to acquire shares under the right. These crewmembers would be notified of any offer extended under the right and provided an opportunity to accept the offer.

If cooperative members accept the right of first offer and operate in the spirit of the provision, it is likely to result in owner quota share coming available to persons active in the fishery. Although the measure has no ongoing active participation requirement to maintain holdings, it could result in shares cycling to active participants who remain active for a period of years. Some of these share holders will transfer shares upon becoming inactive, while others will retain their holdings for a period of years of inactivity, then transfer their shares to others active in the fisheries. The right of first offer includes provisions intended to accommodate sales of a going concern or sales among affiliates. Although these are intended to exempt certain arrangements from the right, they could be used to avoid the limitations created by the right. For example, persons wishing to avoid the right could structure transactions to be a sale of a business or a sale to an affiliate to avoid the complications that might arise, if an offer is extended under the right. Whether the seller in such a transaction would realize a substantial economic gain by avoiding the right might be questionable, although there may be motives or objectives other than maximizing economic gain.

A few aspects of the right of first offer may also influence its effects on the fisheries. Currently, the broad scope of fishery participation that is accepted as qualifying a person as “active” as a vessel owner would allow for the acquisition of shares by persons that have no activity in the crab fisheries and only a minimal interest in a vessel. Whether eligible persons who are not active in the crab fisheries or have a minimal ownership interest in a vessel would be interested in acquiring shares under the right is not known. The provision, however, could provide opportunities to persons with minimal connection to fisheries to the detriment of persons that expend substantial time, effort, and resources to participate in the crab fisheries. Time periods for exercising the right and performing could also be critical to its effectiveness. Particularly for active crew, short time periods to exercise the right could be a barrier to their purchasing shares. Given the uncertainty of these factors on the performance of the right, the Council could choose to have industry provide a detailed report on the measure prior to its full implementation and periodic reports on its performance that can be used to assess its effectiveness.

### **3.3 Analysis of alternatives**

Through this action, the Council will consider the establishment of active participation requirements for persons to acquire vessel owner shares and maintain holdings of those newly acquired shares. **As a part of its deliberations in the development of alternatives, the Council specified that the action would not affect existing share holdings, but would apply only to shares acquired after implementation of the action.**

### 3.3.1 Status quo

In the development of the program, the Council adopted liberal transfer rules in recognition of the industrial nature of the fishery, in which some share of investors have historically had little experience in the fishery prior to investing in an LLP license and vessel. Under the status quo, five provisions qualify individuals or entities to acquire owner shares (see Table 11). Under the first eligibility provision, any person (i.e., individual or entity) who received an initial allocation of QS under the program is eligible to acquire additional owner QS. The second eligibility provision applies only to individuals, requiring that any individual must be a U.S. citizen with at least 150 days of sea time in a harvest capacity in a U.S. commercial fishery, to acquire owner QS. The third eligibility provision applies only to corporations, partnerships, and other entities, requiring that, to acquire owner QS, any such entity have a U.S. citizen owner with a 20 percent or greater ownership interest, who also has at least 150 days of sea time in a harvest capacity in a U.S. commercial fishery. The fourth provision allows owner QS acquisitions by any community organization established to hold rights of first refusal on processor shares. The fifth provision allows Community Development Quota (CDQ) groups to acquire owner QS.<sup>15</sup>

**Table 11. Eligibility to acquire owner QS.**

Type	Qualification requirement
Individuals and entities	recipient of an initial allocation of QS
Individuals	150 sea time in a U.S. fishery
Entities	owner of 20 percent or more of the entity with 150 days sea time in a U.S. fishery
Community entities	Entities holding rights of first refusal to PQS
CDQ groups.	Any CDQ group

Source: 50 CFR 680.41

These liberal rules allow persons with no direct connection to the Bering Sea and Aleutian Islands crab fisheries to acquire QS. The first category qualifies persons who received an initial allocation. Since a person would need to hold an LLP license (or interest in an LLP license) to receive an allocation, these persons would all have had some investment in the crab fisheries. The extent and tenure of that interest is not certain though, as persons who have a small interest in an LLP could have received an allocation under the program. After implementation of the program, the person may have no active role in vessel ownership or management and may not crew on a vessel or participate in the fishery, except through

<sup>15</sup> It should be noted that the CDQ eligibility has been interpreted to allow wholly owned subsidiaries to acquire owner QS; however, a subsidiary that is partially owned by a CDQ group is required to meet other eligibility criteria (i.e., have a US citizen hold at least a 20 percent ownership interest and have at least 150 days sea time in a US commercial fishery in a harvest capacity).

leasing shares. Approximately 60 percent or more the QS in each fishery are held by initial recipients. While initial recipients likely own a large majority of the active vessels in the fisheries, it is possible that a large number of initial recipients do not have an interest in active vessels.

The second eligibility provision qualifies any U.S. citizen with 150 days of sea time in a U.S. commercial fishery to acquire owner QS. As should be apparent, persons meeting this qualification need not have any connection to the Bering Sea and Aleutian Island crab fisheries or even any recent activity in any fisheries.

The third provision qualifies entities in which a U.S. citizen with at least 150 days of sea time in U.S. fisheries holds at least a 20 percent ownership interest. This provision applies the fishing requirement of the previous individual qualification to entities. As with the individual qualification, it is possible for an entity meeting this qualification to have no connection to the Bering Sea and Aleutian Islands crab fisheries or any recent activity in any fishery.

The fourth provision qualifies community entities (other than CDQ groups) that hold rights of first refusal on PQS. These groups represent non-CDQ communities that have historical dependence on processing in the crab fisheries. Currently, none of these groups are believed to hold QS or own a participating vessel (directly or indirectly) in the crab fisheries; however, each of these groups represents a community with at least one resident that has participated in the crab fisheries in each of the four recent years for which data are available (2007 through 2010).<sup>16</sup>

The fifth provision qualifies CDQ groups to hold QS. These groups represent communities that are relatively close to the crab fishing grounds, and each receives an allocation of crab quota under the CDQ program (and outside of the crab rationalization program). Currently, all of the groups have an ownership interests in at least one vessel active in the crab fisheries.

Although specific data are not available to fully evaluate the extent to which holders of owner QS have ownership interests in vessels active in the fisheries, a substantial number of vessel owners are known to have considerable QS holdings. In addition, some share of QS holders are actively fishing on crab fishery vessels; however, a number of QS holders, also with substantial holdings, are believed to have no activity in the fisheries through either vessel ownership or as crew. If the current rules governing share acquisition and use are maintained, it is likely that the QS in the fisheries will continue to be held by a mix of persons with and without active participation (through ownership of an active vessel or activity as a crewmember on such a vessel). Although it is possible for persons with no connection to the fisheries (i.e., no vessel ownership or crew experience) to acquire QS, it is likely that most QS purchasers and holders will have some participation (historical or active) as knowledge of the fishery is important to investment decision making. Over time, some portion of these QS holders may choose not to continue to maintain that vessel ownership or crewing activity, while maintaining their share holdings. While the number of these 'inactive' share holders and the extent of their holdings can be expected to vary over time, certain factors are likely to result in a portion of QS holders to maintain activity in the fisheries.

Maintaining close ties to the fisheries through participation as a vessel owner (including partial ownership) is likely to allow a share holder to better understand the value of QS investments, by maintaining their knowledge of operations and operating costs in the fisheries. Although competition in lease markets will provide some cost information, more specific cost information is available through direct vessel ownership. In addition, harvest of a vessel owner's IFQ can be prioritized over leased IFQ, to improve returns from QS holdings. The extent of QS held by persons active in the fishery may also change with other factors, most significantly TACs in the fisheries. If TACs are high, more QS holders

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<sup>16</sup> This participation is verified through Economic Data Reports.

may be expected to maintain activity in the fisheries (likely through vessel ownership), as more vessels may be needed to fully harvest those TACs. The potential for prioritization of harvests to increase returns from QS are likely to increase when TACs are high, further increasing the advantages that may be derived from vessel ownership. In addition, CDQ groups are likely to maintain (and may increase) vessel ownership as a means of achieving community development objectives, such as community economic development and increasing employment of community residents. Although these factors are likely to limit the extent of holdings that have no active component in the fisheries, it is likely that some QS holders and a substantial share of the QS pool will be held by persons that do not maintain activities in the fisheries.

By putting few limits on the ability of individuals and entities to acquire and hold QS, the status quo increases QS prices. Even persons with no experience in fishing can acquire and maintain an interest in QS by partnering with a person that meets the U.S. citizenship and U.S. sea time requirements. Given these minimal requirements, prices of QS transfers should be near free market prices.

The status quo is likely to result in a mixture of active and inactive individuals and entities holding QS. Private interests that hold QS are likely to be a mix of vessel owners, active crew, and inactive persons. Most persons acquiring QS are likely to either be active in the fisheries at the time of their purchase (through vessel ownership or crewing on a vessel) or already hold shares in the fisheries. Over time, a portion of the active share holders are likely to become inactive, either retiring from crewing or selling their vessel ownership interests to others. Share holders are also likely to cycle out of the fishery, selling their shares to others who either are active in the fishery or already hold shares. CDQ groups are likely to increase their QS holdings by continuing to acquire QS to advance both their community development objectives and their interests in fisheries in general. As is the case currently, all CDQ groups are very likely to be active through vessel ownership.

Under this cycle of share holdings, most share holders will have reasonably good information concerning fishery operations that will allow them to make reasonable decisions concerning the use of their shares. These decisions should ensure that share holders obtain competitive returns from shares (either through harvesting the shares through their own activity or through lease payments), as well as achieve relatively full harvest of those allocations.

### **Price effects**

Shares are likely to trade near a free market price, unaffected by the sea time and U.S. citizenship or incorporation requirements, the only regulatory qualifications needed for private share acquisition. That minimal requirement can be met relatively easily, as many persons nationwide meet that the requirement. In addition, CDQ groups, who are relatively well financed, tend to favor Bering Sea and Aleutian Island fishery investments over other investments, as these fishery investments can aid in meeting their community development objectives. As a result, CDQ groups may be willing to pay premium prices for investments in the crab fisheries, further ensuring that share prices are not reduced by the regulatory limit on private acquisitions.

### **Administration and management**

The current rules for qualification for owner QS acquisition are relatively simple and inexpensive to administer. The sea time requirement is administered through certification of the recipient, who is required to provide specific fishing information, which is subject to some verification. Typically, fishery openings and closings are reviewed to ensure that fisheries were open during identified participation periods. In addition, any suspect information may be given additional review. As a single, one-time qualification, information does not need to be submitted for each application, only once for each individual or entity acquiring QS. This simple qualification allows NOAA Fisheries to maintain an

individual or entity qualification indefinitely, without requiring additional qualification information for future acquisitions. Consequently, administration costs of the existing rule are relatively low.

### **3.3.2 Alternatives to change eligibility to acquire and retain owner shares**

The proposed action would require a person to meet an ongoing active participation requirement to acquire and maintain holdings of owner QS. The requirement could be met by either crewing on or owning an interest in a vessel active in one of the crab fisheries under the following provisions:

To be eligible to permanently transfer and retain CVO or CPO QS, the QS holder or an individual that is at least a 10, 20, or 33% (options) share holder when the QS is held by a partnership or corporation must meet one of the following requirements:

- a. hold 5, 10, or 20% (options) ownership of a vessel with participation in a rationalized Bering Sea/Aleutian Islands crab fishery in any of the previous 2 to 4 seasons, or
- b. provide documentation of participation as a captain or crew in a rationalized crab fishery (verified by a signature on a fish ticket or crew members' affidavit) for at least 1, 2, or 4 (options) fishing trips in a rationalized Bering Sea/Aleutian Islands crab fishery in any of the 3 or 4 (options) previous seasons.

The analysis examines the direct effects of vessel ownership requirements first, then goes on to examine the direct effects of crewing requirements. These more specific discussions are followed by a more encompassing analysis of the direct and indirect effects of alternatives (including alternatives that include both qualification provisions). Although discussion of relevant administrative issues are included throughout the analysis, a separate section on administration is included at the end of this section.<sup>17</sup>

#### **Vessel ownership qualifications**

Under the Council motion, individual's that wish to acquire and hold QS may satisfy the active participation requirement by holding a 5 percent, 10 percent, or 20 percent ownership interest in a vessel that participated in one of the rationalized crab fisheries in 1 of the 2 or 4 preceding seasons. Partnership or corporate held shares would be subject to a similar requirement, under which an individual with a 10 percent, 20 percent, or 33 percent interest in the share holding entity would be required to also hold a 5 percent, 10 percent, or 20 percent interests a vessel that participated in a rationalized crab fishery in 1 of the 2 or 4 preceding seasons. For the 2010-2011 and 2011-2012 seasons, fewer than 110 vessels would meet the more liberal landing threshold, which requires one landing in the four preceding years, while fewer than 100 vessels would meet the more stringent landing threshold, which requires one landing in the preceding two years. Lower total allowable catches in the Bristol Bay red king crab and Bering Sea *C. opilio* fisheries in the 2008-2009 and 2009-2010 seasons likely contributed to the reduction in the number of vessels meeting the qualification based on more recent years. Given the relatively short history of the rationalized fishery, it is uncertain whether this difference arises from vessels periodically participating in the fisheries or a longer term contraction in the number of vessels in the fleet. Additional vessels may have been drawn into the fisheries in 2011-2012 by an increase in the Bering Sea *C. opilio* fishery.

If vessel and share ownerships were structured to maximize the number of individuals and entities independently<sup>18</sup> qualified to hold shares, over 400 individuals and entities could independently meet the

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<sup>17</sup> To address potential survivorship issues, NOAA Fisheries would include a provision in the rule that allows a surviving spouse or designated beneficiary, in the absence of a surviving spouse, to receive owner QS and lease that QS for a period of 3 years without meeting the active participation requirements of this action. Such a provision is intended to allow for orderly administration of the estate of a deceased QS holder.

<sup>18</sup> As used here, independently means that no overlapping interests in QS holdings exists between any qualified individuals and entities. In other words, each entity's qualification is satisfied by a different person meeting the vessel ownership standard.

most stringent proposed threshold. As of the 2011-2012 season 321 individuals and entities held owner QS, approximately 90 fewer than the maximum number of individuals and entities that could meet the threshold independently. While it is unlikely that vessel ownership structures would independently qualify the maximum number of owner QS holders, overlapping ownership structures could qualify a substantially larger number of owners. For example, a single individual that owns a 25 percent interest in a participating vessel would be qualified, and could also qualify several different companies that he or she holds the requisite interest in. Particularly if the ownership threshold is set relatively low – such as requiring only a 10 percent interest of the vessel owner in the share holding company – it is possible that a single vessel could qualify partners in several different entities to hold a relatively large amount of owner QS. In any case, the underlying structure would seem to allow for the qualification of a very large number of entities to hold owner QS.

**Table 12. Vessels meeting the one landing threshold prior to the 2010-2011 and 2011-2012 seasons.**

One landing in the two preceding seasons		One landing in the four preceding seasons	
for 2010-2011	for 2011-2012	for 2010-2011	for 2011-2012
93	83	109	100

Source: NMFS RAM landings data.

In general, any revision of share holding eligibility to require a vessel ownership is likely to have a substantial effect on the distribution of QS holdings in the fisheries.<sup>19</sup> If only vessel owners (or persons affiliated with vessel owners) are permitted to hold QS, it is likely that vessel owners will gain influence over QS acquisitions and the distribution of QS in the fishery. As demonstrated by the consolidation in the fishery after implementation of the rationalization program, the fisheries (at current total allowable catches and in the absence of vessel harvest caps) are likely to support approximately 100 vessels. The owners of these vessels will be able to influence QS holdings by their choices of partners in the fisheries. With each new partnership, it is likely that a portion of the QS will be removed from broader circulation, becoming associated with the vessel (or vessels) controlled by the owner (or ownership group). Over time, it may be expected that concentrations of QS in the fisheries will be associated with the 100 active vessels in the fisheries and be subject to decisions of the owners (and ownership groups) that control those vessels.

Developing vessel ownership thresholds for QS acquisition (particularly high percentage ownership thresholds) will likely constrain individuals with few assets from entering the fishery or acquiring additional QS, as they will need to invest in both QS and a vessel to enter. Those individuals, however, are more likely to be active in the fishery as crew, which would provide them with access to C shares on the market and qualify them for acquisition of owner QS, if a provision for crewmember qualification is adopted. Despite their qualification, these crewmembers may not have reasonable access to owner QS. If QS holdings consolidate into entities associated with the active vessels in the fishery, it is likely to decrease the potential for small amounts of QS to come on to an open market accessible to these crewmembers. Small amounts of quota may be more likely to be swept up by partners in those vessel centered QS holding arrangements.

<sup>19</sup> It should be noted that these changes may take some time to manifest themselves, as the proposed action would apply only to new QS acquisitions. Existing holders who liberally lease their shares through existing arrangements with vessel owners will have no need to restructure their holdings or leasing arrangements as a result of this action. Consequently, the transition of QS holdings to active persons (as defined by the action) and resulting effects may not be realized for several years.

It will remain possible for a person to enter the fishery by acquiring a vessel and leasing quota, but it may also be even more difficult to make such an entry. Since QS holdings will require a vessel ownership relationship, it is likely that a person acquiring a vessel to enter the fishery would need to acquire a substantial amount of QS (or entice holders of substantial amounts of QS to sever an existing relationship with another vessel owner and lease share to be harvested on the entering vessel) to enter the fishery.<sup>20</sup> In addition, the vessel acquisition would need to precede the acquisition of the QS.<sup>21</sup> Although many of the current inactive QS holders have established relationships with vessel owners, these relationships are likely less formally established than would be required for future QS acquisitions, if a vessel ownership/active participation requirement is adopted. While the establishment of a vessel ownership/active participation requirement would lead to consolidation of QS holdings in associations centered around the approximately 100 active vessels in the fisheries, it is possible substantially greater than 100 individuals and entities may hold QS. This broader distribution of QS holdings is aided by the divisibility QS. In addition, some corporations and partnerships may have several share holders, effectively increasing the number of persons who have an interest in QS (but not the number of named holders). These effects of vessel ownership requirements under consideration may be exacerbated or mitigated depending on the structure of the requirement and specific threshold ownership requirements.

In considering the specific operation of the options, it should be noted that for an individual to hold owner QS, that person would need to meet the same standard that a single shareholder in a partnership or corporation would need to meet. In other words, an individual owning an active vessel could buy owner QS or could qualify a partnership or corporation to hold owner QS (despite between 66 percent and 90 percent of the owners of that partnership or corporation having no connection to the fisheries other than their share holdings). A few consequences of this structure are worth considering. First, an individual must make a substantial investment in a vessel to qualify to hold QS. Second, corporate owners may be largely passive, despite a shareholder who meets the corporate ownership threshold also owning an active vessel. Consequently, control of the owner QS may be vested in persons with no active engagement in the fisheries. Whether ownership qualification can be structured to overcome this problem is unclear. A few different structures could be used to address this problem. First, a different vessel ownership threshold could be applied to corporations. For example, owner QS active participation standards could be applied that require 1) an individual to own at least 10 percent of an active vessel and 2) a corporation could be required to have a 30 percent owner who also owns at least 30 percent of a vessel. This different requirement would effectively ensure that a large share of ownership interest in the corporate QS holder is actively engaged in the fishery; however, administration of the vessel ownership standards is likely to be complex and costly for NOAA Fisheries and industry. To actively oversee the requirement the agency would need to collect ownership information for all vessels active in the fishery. These ownership records would need to be cross checked with existing QS holdings information to verify that the overlapping ownership requirements are met. These records would then need to be integrated with vessel activity records across a period of years (i.e., 2 or 4) to determine whether each QS holder has satisfied the active participation requirement. Integrating ownership structures of QS holders and vessels, together with vessel activity records, is likely to create a substantial administrative burden for both industry and the agency. The data collection would likely be incorporated into the application for IFQ. To allow time for processing ownership records, the deadline for applications may need to be modified.

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<sup>20</sup> To the extent possible, entrants are likely to use their vessels in other fisheries and tendering (outside of the crab program) to support the overall vessel's operations. The extent of these opportunities to supplement ocrab revenue will vary with opportunities in those other fisheries.

<sup>21</sup> Structuring such a transaction will depend on the specific regulatory requirement. **As the Council proceeds with this action, it should clearly state whether a person would be considered active, if that person simultaneously acquires an active vessel and associated QS. Alternatively, the Council could choose to require that the person either own an active vessel prior to the QS acquisition or own an active vessel at the time that the vessel harvested crab to meet the active participation requirement. The management section of this analysis will need to consider the specific requirement the Council wishes to adopt.**

Alternatively (but even more complicated to administer), the Council could specify a common ownership requirement. For example, a corporation could be required to have more than 30 percent common ownership with an entity that owns an active vessel. This requirement could achieve the objective of ensuring quota holders have a more direct interest in fishery operations. Tracking common ownership would further complicate administration, as NOAA Fisheries would need to examine overall structures of each QS holder and vessel owner to ensure that the overlapping ownership meets the required threshold. Given the complex structures of current QS holdings, it is likely that monitoring a common ownership requirement would substantially increase the agency's oversight burden over the alternative proposed by the Council.

A third alternative could simply require that any quota holder also own a share of a vessel. This is likely more restrictive than the current proposal, and would prevent a share holder from separating QS holdings from vessel ownership, but it could be used to ensure active participation requirements are achieved and treat individuals and other entities similarly. The primary benefit of this measure is that it would simplify administration, allowing for relatively straightforward oversight by the agency, as it would only need to verify named owners of vessels and QS holders; however, this rule would likely lead to a substantially different structure of QS holdings, as persons who might prefer to separate QS holdings from vessel ownership for business reasons would need to adopt a structure that combines those holdings in a single entity going forward. While this rule may be easiest to administer, it may contribute to a change in QS holdings distribution. Holdings would likely consolidate into fewer corporate entities. While some of these entities may have several share holders, decision making and control would be substantially more consolidated than it is currently. As a result, entry to the fishery could be substantially more difficult, particularly for individuals. The rule would likely accelerate the concentration of QS holdings, resulting in larger blocks that are affordable only to large entities. Additional complications would arise from this rule's interactions with other elements of the program. For example, vessels would need to enter the fishery simply to meet share caps (such as the 1 percent cap on QS holdings in the Bristol Bay red king crab and Bering Sea *C. opilio*), if a substantial portion of the QS in the fishery is not held by active crew. In short, such a rule would require careful consideration of its interactions with other aspects of the rationalization program.

### **Crewing qualifications**

As an alternative to qualifying through vessel ownership, an individual or corporation may be eligible to acquire and retain owner QS through participation in the fisheries as a crewmember. Individuals can qualify through verified participation in 1, 2, or 4 trips in one of the previous 3 or 4 years. A partnership or corporation could qualify if an owner with more than a 10 percent, 20 percent, or 33 percent interest in the entity meets the threshold crew participation requirement. Under the current definitions, a "fishing trip" is defined as "the period beginning when a vessel operator commences harvesting crab in a crab QS fishery and ending when the vessel operator offloads or transfers any processed or unprocessed crab in that crab QS fishery from that vessel."<sup>22</sup>

To specifically examine the potential for a crewmember to qualify either as an individual or to qualify a partnership or corporation to acquire and hold QS would for any of these thresholds would require crewmember specific trip-level data. Currently, crew identifiers are collected only through the crab economic data reports, but those data are not collected at a trip level. To assess the potential crew qualification under this provision, the number of vessels meeting a 1, 2, or 4 trip threshold and the number of active crew on vessels in the fisheries can be examined. Based on landings in the years

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<sup>22</sup> It should be noted that this definition only applies in reference to § 680.7(e)(2) of the regulations. This definition would need to be revised to apply to active participation requirements, if the Council proceeds with this action. See 50 CFR § 680.2.

preceding the 2011-2012 season between 83 and 100 vessels would have met the different trip thresholds (see Table 13). Increasing the trip threshold to four has the greatest effect on the number of vessels that would have met the trip threshold, as between 95 and 100 vessels met the one and two trip thresholds, while fewer than 90 vessels met the four trip threshold under either the three or four year window. Again, it should be noted that comparing these data to annual participation levels suggests that some vessels come and go from the fisheries each year.

**Table 13. Number of vessels meeting a one, two, or four trip threshold in one of the 3 or 4 years preceding the 2011-2012 season.**

Preceding years within which to meet participation requirement	Threshold number of trips in one year		
	One trip	Two trips	Four trips
3	96	95	83
4	100	99	89

Source: NMFS RAM data.

In recent years, vessels in the crab fishery have employed between 5 and 6 unique crewmembers (including captains) annually on average (see Table 14). Assuming that each vessel that meets the threshold qualified the average number of unique crewmembers, between approximately 450 and 600 crewmembers would meet a threshold for the 2011-2012 season, depending on which threshold is applied.

**Table 14. Vessel and unique crewmember participation (including captains) annually in Bering Sea and Aleutian Island crab fisheries (2007 through 2010).**

Year	Participating vessels	Total unique crew	Average number of crew per vessel
2007	80	424	5.30
2008	87	509	5.85
2009	83	472	5.69
2010	75	433	5.77

Source: EDR data

Note: EDR data are collected on a calendar year basis, not fishery season basis. Consequently, vessel counts differ from those shown in other tables based on seasonal participation. Crew counts include catcher processor crews with crew licenses.

While a relatively large number of individuals are likely to meet the qualification to acquire owner QS, it is possible that a large number of these individuals may not have access to funding to purchase QS. Priced transactions of owner QS have averaged in excess of \$150,000 in every year in the Bristol Bay red king crab and Bering Sea *C. opilio* fisheries and exceeded \$1.0 million in one year in the Bering Sea *C. opilio* fishery. Many active crew work on crab vessels as their primary source of income. From 2006 through 2010, mean and median annual compensation of captains on vessels that participated in both the Bristol Bay red king crab and Bering Sea *C. opilio* fisheries ranged from approximately \$100,000 to approximately \$185,000. During the same time period, mean and median compensation for the remaining crewmembers ranged from approximately \$40,000 to \$90,000.

Although a large number of the crew meeting the qualification may not have access to funding to purchase owner QS, they may be able to access funds by forming partnerships and corporations with persons with access to funding who do not meet the active participation qualification, particularly under options that allow the active individual to have a relatively small share of the ownership interest in the QS holding entity. Whether persons with capital would be interested in entering these relationships with crew is uncertain. Depending on the size of the QS holding, other circumstances in the fishery, and the specific individuals involved, it may be possible for an active crewmember to leverage a 10 percent interest with little funding by maintaining qualification as an active participant. While these minimal stake arrangements may resolve a funding issue for active crew, they will have consequences. As with the vessel ownership thresholds, the Council should consider the potential for active individuals to have very little control over the entity's QS, if the active individual needs to only hold a relatively small interest in that entity. Even at the highest proposed threshold (33 percent), it is possible that the active individual may have little control over any decisions concerning use of the QS. Although this lack of control might be viewed as negative, it could have some benefits. Crew with little funding are also likely to have little business management experience. To the extent that these partnerships provide these crewmembers with business management assistance and an opportunity to develop management skills, a long term benefit may arise. Whether arrangements bring this second benefit (of developing business management capacity in crewmembers) is uncertain and will likely depend on the specific arrangements and the persons in the partnership. A crewmember's primary function in the partnership may initially be only to meet the eligibility requirements. Partners are likely to expect crew to invest financially in the QS holdings. As a result, these arrangements are likely only feasible with crewmembers that show an interest, capacity, and willingness to develop and invest in an ownership role. The number of these crewmembers is not known, but may not be very great.

From the standpoint of crewmembers, the highest annual trip requirement (four trips in a year) could be problematic. If a vessel fishes a relatively small allocation in one fishery, it is possible that the vessel may make only two or three trips in a year. Despite relatively consistent annual participation, such a vessel's harvest may not be adequate to qualify a crewmember to acquire and retain owner QS. In the four years prior to the 2011-2012 season, three vessels participated in the crab fisheries in all four years, but failed to meet the four trip threshold in any year. Crews on these vessels would not be eligible as active participants under the four trip threshold, despite their consistent participation in the fishery. It is notable that the active vessel ownership eligibility criteria contain no similar trip threshold. Vessel owners will qualify based on a single trip in the preceding two or four seasons. Crews on these vessels that do not harvest substantial amounts of IFQ could be disqualified from acquiring owner QS or may be reluctant to acquire owner QS when qualified because of the risk that they may not have enough trips annually to maintain their qualification. In addition, to the extent that a crewmember may attempt to use their qualification to develop partnerships with persons with better access funding for QS acquisitions, potential partners may be reluctant to enter QS purchase arrangements with crew that work on vessels that harvest small amounts of quota despite their consistent annual participation. Consequently, the high landing threshold may have the effect of disqualifying some consistently participating crew from eligibility to acquire owner QS.

The effects of this action on QS holders and holdings are likely to be realized over many years. Under its terms, the eligibility criteria for maintaining owner QS only apply to shares acquired after the action is implemented. As such, current share holders would not be required to comply with any active participation requirements to maintain their holdings. Share holders that currently lease their holdings (not owning an interest in an operating vessel) are likely to continue to lease their shares. In addition, it is possible that some of the owner QS holders that have maintained ownership interests in active vessels could divest of their interest in a vessel and lease their annual allocations to others. Exempting existing share holdings from the action has the dual effects of not disrupting business plans of current share

holders and phasing in the active participation requirement over what could be a very extended period of time.

### **CDQ and community entity considerations**

A notable aspect of the action alternatives in their current form is that CDQ groups and other entities that hold rights of first refusal on behalf of communities cannot qualify to acquire owner QS. To be eligible a corporation or partnership must have an individual owner that meets either the vessel ownership or crew eligibility criteria. By their structure, CDQ groups and community entities have no specific individual owners, and therefore, cannot meet the active participation requirements as currently written. This disqualification would occur despite several CDQ groups directly owning vessels that actively participate in the fisheries. The Council could choose from several different provisions to qualify CDQ groups and community entities. The simplest and most direct means would be to explicitly qualify CDQ groups and community entities, regardless of vessel ownership, with a direct statement to that effect. Such a provision could be justified, since CDQ groups and community entities are intended to use fishery resources to advance community interests. The Council took this approach in its original action, explicitly qualifying CDQ groups and entities that represent communities by holding rights of first refusal. Alternatively, the Council could choose to qualify entities that directly own vessels in the fisheries. This provision would qualify some (but not all) of the CDQ groups, as some CDQ groups do not directly own vessels, but own vessels in partnerships with non-CDQ entities. None of the non-CDQ rights holding community entities would be eligible under this provision, since none currently own a vessel that participates in the fisheries. The Council could also choose to set a threshold vessel ownership interest for CDQ groups and community entities (similar to those set for individual share ownership); however, such a threshold would currently exclude all non-CDQ community entities and might unintentionally exclude some CDQ groups depending on the structure of their vessel ownership interests. In short, the Council should consider its policy concerning current and future CDQ group and community entity holdings and develop appropriate alternatives appropriate to that policy.

### **Interactions of the qualifying provisions**

The proposed action's two means of eligibility to acquire owner QS are likely to interact. Persons eligible through vessel ownership qualification are likely to dominate the market for owner QS. Vessel owners are likely to have more assets and access to capital to fund QS acquisitions. Vessel owners are also more likely to be viewed as more appealing business partners, as they have greater business experience with investments and operations. While some individuals meeting the crew qualification criterion are likely to have similar qualities and skills, the majority of active crew are likely to be less experienced in business. In addition, qualifying only as a crewmember could pose some risk, as injuries or loss of job could result in a loss of eligibility. While some risk is also inherent in vessel ownership, qualification through a partnership with an established vessel owner is likely to be viewed as a more stable and reliable means of qualification. These factors may constrain opportunities for crew that might be interested in acquiring owner QS through partnerships with others.

As is currently the case, the market for owner QS is likely to be dominated by larger entities with access to financial resources to support their investments. Although the intent of the action may be to create additional opportunities for active crewmembers to enter the fishery, the vessel ownership qualification could lead to fewer opportunities for entry, as partnerships formed to meet eligibility qualifications could result in a less open market for sales of QS. As ties between QS holders and vessel owners develop, it is likely that QS holdings will be consolidated. These relationships could increase consolidation, as persons who exit the fisheries may be inclined to transact with partners and associates, rather than enter QS into the broader market. While QS will periodically reach more open markets, it is possible that offers will be for larger amounts of QS as a result of consolidation that occurs around active vessels. Crew opportunities to acquire owner QS currently arise from their participation in open markets for QS and, in some cases, from relationships with vessel owners they work for. With fewer opportunities in the open market, these

latter opportunities that arise through relationships with vessel owners and their associates may become more important, as the most likely opportunities for entry to the fishery.

The different options selected for each alternative could also affect the interactions of the two different qualifications. For example, a relatively low vessel ownership threshold is likely to create greater opportunities for entry to the fisheries through partnerships with owners of active vessels. These opportunities could increase competition for owner QS, decreasing the potential for active crewmembers to access owner QS either directly or through associations with persons that are not able to meet the eligibility requirements on their own. While low thresholds for crew qualification and high thresholds for qualification through vessel ownership may qualify more crewmembers and pose organizational challenges to vessel owners and their associates attempting to qualify to acquire and maintain holdings of owner QS, the effects on crew and vessel owners and their associates who wish to acquire owner QS are likely to be less pronounced. Vessel owners and their associates are likely to have the resources to ensure compliance with the eligibility requirements, thereby maintaining their qualification. So, despite more crewmembers being qualified to acquire owner QS, the market for owner QS may be unchanged.

### **Price effects**

Actions that decrease the pool of individuals and entities eligible to acquire owner QS have the potential to decrease competition for those shares. The proposed action will limit eligibility to acquire owner QS by requiring that an individual QS holder have, or entity QS holder have an individual owner who has, either an ownership interest in an active crab vessel or be active as a crewmember on a crab vessel. Even without eligibility requirements, persons with crew and vessel ownership interests are the most likely to invest in the fisheries. These people have the most knowledge of the fisheries and the business opportunities that they present. The alternatives also provide for substantial investments by persons who do not own a qualifying vessel or qualify as crew, but partner with someone who does own a vessel or crew on a vessel. These means of indirectly qualifying allow for substantial capital to be invested in the fisheries by persons who do not actively participate in the fisheries. These avenues should ensure that any price effect of the active participation requirements is relatively minor.

Whether and how the Council addresses CDQ groups and other crab community entities could also affect prices for owner QS under the action alternative. CDQ groups, in particular, are known to have access to substantial capital and often favor investing in fishery resources to further their community development objectives. As a result, these groups tend to reinforce prices of fishery assets (including crab owner QS). If the Council chooses to make CDQ groups eligible to acquire and maintain holdings of owner QS (as is currently the case), this action will have no perceptible effect on prices.

While non-CDQ group communities entities that hold rights of first refusal may also be authorized to acquire and maintain holdings of owner QS, those entities currently have few assets and have chosen not to enter the market for owner QS. Based on the current circumstances, authorizing these entities to acquire and hold owner QS would have little effect on the market for those shares. If, at some time in the future, these entities enter the market with substantial assets, it could reinforce the support of prices in a manner similarly to CDQ groups. Currently, the community entities most able to enter the market are from Dutch Harbor and Kodiak, but their entry would require a substantial commitment of assets by their communities. These communities, however, may be reluctant to enter the market, particularly in competition with local residents. Only if investment by local residents drops off substantially (or if local residents are able to induce the community to support investment as a means of community development) are these communities likely to invest in owner QS in the fisheries. Under current circumstances, support for these investments does not appear to exist.

### **Administration and management**

Rules establishing active participation requirements for acquisition and retention of owner QS will require NOAA Fisheries to monitor vessel and crew participation and integrate those participation records with vessel ownership and QS holdings information and corporate and partnership ownership information. The burden associated with this monitoring will vary with each case, but could be very high.

Any person wishing to acquire owner QS will need to apply for eligibility, which will require the submission of information to NOAA Fisheries concerning participation either as crew or as a vessel owner. For a crew member, these will include a record of crewing in crab fisheries over a period of years, which NOAA Fisheries would verify with vessel participation records. Vessel owner eligibility would require submission of vessel ownership and participation records for a period of years, which would be similarly compared to vessel participation records.

To verify continuing eligibility to hold owner QS, owner QS holders will likely need to submit information concerning their qualifications on an annual basis (either as a part of their annual IFQ application or separately), since the requirements are applied over a period of years. In addition, the timeline for submitting applications and appealing administrative decisions will need to be reviewed, once the Council has fully specified its alternatives (defining the intended consequences of failing to comply with the active participation requirements).<sup>23</sup>

The action alternative would require that individuals and entities meet eligibility requirements to acquire owner QS. This requirement could be administered through the application process, during which satisfaction of the active participation requirement could be verified. More problematic is the requirement that retention of QS would be conditioned on continuing compliance with the active participation requirement. This analysis assumes that QS would be revoked from QS holders that fail to meet the active participation requirement annually. In addition, it is assumed that the active participation requirement would be applied when making annual IFQ allocations. In other words, each QS holder would need to meet the active participation requirement each year to receive IFQ in that year. **As the Council advances this action, it should specify whether the failure to comply with active participation requirements would result in IFQ being withheld, QS being revoked, or both.** The Council's action to require active participation for individuals to retain C share holdings, specifically provided for: a) C share IFQ to be withheld, if a person failed to actively crew on a vessel for 3 consecutive years, and b) C share QS to be revoked, if a person failed to actively crew on a vessel for 4 consecutive years. This greater specificity allowed managers, analysts, fishery participants, and the public to better understand the implications of the proposed action. More specifically defining the consequences of an owner QS holder's failure to meet the active participation requirements could provide for a clearer understanding of the effects of the action.

To monitor compliance with vessel ownership requirements, NOAA Fisheries will need to monitor vessel activity using existing records, integrate those data with vessel ownership data and further integrate the results with data showing QS holdings. In the simplest cases, the QS holder and vessel owner would be the same named individual, allowing annual vessel participation records to be used to verify compliance with the threshold participation requirement. Any other scenarios, however, are likely to be substantially more complicated. Given limitations on the time constraints on submission and processing of applications for IFQ and IFQ issuance, it is not clear that these administrative verifications can be completed and finalized prior to the season opening. The timeline for applications and filing of appeals will need to be

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<sup>23</sup> The Council's action to modify active participation requirements for C share QS holders suggested that a modification of the application process, under which C share QS holders would annually submit a statement of fishing activity to verify their compliance with the active participation requirement. These submissions would be reviewed prior to submission of IFQ applications. In addition, the time for appealing findings concerning active participation would be reduced from 60 days to either 45 days or 30 days to ensure that most determinations would be final prior to the issuance of IFQ in the fisheries.

given additional scrutiny as this action proceeds. As currently defined by the motion, verification of active participation for any circumstance other than the same named vessel owner and QS holder would require vessel ownership records showing individual ownership interests to verify whether an individual meets the minimum ownership threshold for an active vessel. For individually held QS, the QS holder must own in excess of the threshold interest in an active vessel. For partnership or corporate held QS, an individual must own in excess of a threshold interest in an active vessel and in excess of a threshold interest in the QS holding corporation or partnership. Either of these scenarios will require that NOAA Fisheries examine vessel ownership records and/or ownership records for a QS holding entity to ensure that an individual meets the applicable threshold ownership requirements. Completing these reviews of ownership records could take several weeks, if many reviews are needed. Any rule that requires vessel ownership records will also require substantial data collection from industry and complex processing of those ownership data by the agency. Corporate records verifying the interests of relevant individuals will need to be provided to the agency.<sup>24</sup>

Once these ownership data are collected, effective administration of any rule will require that all determinations be final prior to the issuance of IFQ for a season (to avoid issuing IFQ to persons not meeting the qualification or setting aside to satisfy pending claims, which if unsuccessful would strand those IFQ). The agency would need to wait until the end of May (when the last fishery closes) to make any initial determinations of whether QS holders satisfied the active participation requirement, after which it would have to finalize appeals for the golden king crab fisheries within 75 days (prior to their openings on August 15). If the agency allowed appellants the typical 60-day period to appeal findings, appeals would need to be processed within 15 days to be finalized prior to the season opening. To increase the likelihood that appeals are processed prior to the golden king crab season openings, the time to appeal would need to be shortened to 30 days. Even with this shortened time, it is possible that appeals would not be finalized prior to the opening, if facts are disputed or any complex or contentious issue arises.

In the fisheries other than the golden king crab fisheries, IFQ are typically issued a week or two before the October 15<sup>th</sup> fishery openings. Given this tight timeframe, NOAA Fisheries would likely need to determine eligibility to receive an annual allocation prior to those allocations being issued. Notices of ineligibility could be appealed. Applications for golden king crab IFQ would be prioritized, with the applications for other fisheries processed subsequently. Even expeditiously processing these applications, the 60 day time period for making an appeal is likely to leave little time for NOAA Fisheries to process any appeals. Shortening the time to appeal could relieve this any time pressure to some extent. Even with a shorter time to appeal, it is possible that appeals could not be finalized, if several determinations are appealed. All of these factors increase the potential for stranding IFQ that are set aside to address pending claims.

In summary, the administration of active participation requirements proposed by this action could be relatively costly. Depending on the structure of the requirements and the consequences for failing to meet those requirements, the action could impose some very challenging time constraints on managers who are attempting to issue IFQ seasonally.

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<sup>24</sup> Verifications for QS acquisition could be more or less complicated, depending on how the Council wishes its vessel ownership qualification to be interpreted. One could interpret the requirement as applying to ownership of the vessel at the time of QS acquisition. Another interpretation is to require vessel ownership at the time of the vessel's activities.

### 3.3.3 Net benefits to the Nation

Although the changes this action will have distributional effects on persons holding or interested in holding owner quota shares, the action will not noticeably affect production from the fisheries. As a consequence, this action is likely to have little or no effect on net benefits to the Nation.

## 4.0 REGULATORY FLEXIBILITY ANALYSIS

### 4.1 Introduction

The Regulatory Flexibility Act (RFA), first enacted in 1980, and codified at 5 U.S.C. 600-611, was designed to place the burden on the government to review all regulations to ensure that, while accomplishing their intended purposes, they do not unduly inhibit the ability of small entities to compete. The RFA recognizes that the size of a business, unit of government, or nonprofit organization frequently has a bearing on its ability to comply with a Federal regulation. Major goals of the RFA are: 1) to increase agency awareness and understanding of the impact of their regulations on small business; 2) to require that agencies communicate and explain their findings to the public; and 3) to encourage agencies to use flexibility and to provide regulatory relief to small entities.

The RFA emphasizes predicting significant adverse impacts on small entities as a group distinct from other entities and on the consideration of alternatives that may minimize the impacts, while still achieving the stated objective of the action. When an agency publishes a proposed rule, it must either, (1) “certify” that the action will not have a significant adverse effect on a substantial number of small entities, and support such a certification declaration with a “factual basis”, demonstrating this outcome, or, (2) if such a certification cannot be supported by a factual basis, prepare and make available for public review an Initial Regulatory Flexibility Analysis (IRFA) that describes the impact of the proposed rule on small entities.

Based upon a preliminary evaluation of the proposed pilot program alternatives, it appears that “certification” would not be appropriate. Therefore, this IRFA has been prepared. Analytical requirements for the IRFA are described below in more detail.

The IRFA must contain:

1. A description of the reasons why action by the agency is being considered;
2. A succinct statement of the objectives of, and the legal basis for, the proposed rule;
3. A description of, and where feasible, an estimate of the number of small entities to which the proposed rule will apply (including a profile of the industry divided into industry segments, if appropriate);
4. A description of the projected reporting, record keeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities that will be subject to the requirement and the type of professional skills necessary for preparation of the report or record;
5. An identification, to the extent practicable, of all relevant Federal rules that may duplicate, overlap, or conflict with the proposed rule;
6. A description of any significant alternatives to the proposed rule that accomplish the stated objectives of the Magnuson-Stevens Act and any other applicable statutes, and that would minimize any significant adverse economic impact of the proposed rule on small entities. Consistent with the stated objectives of applicable statutes, the analysis shall discuss significant alternatives, such as:
  - a. The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities;
  - b. The clarification, consolidation or simplification of compliance and reporting requirements under the rule for such small entities;

- c. The use of performance rather than design standards;
- d. An exemption from coverage of the rule, or any part thereof, for such small entities.

The “universe” of entities to be considered in an IRFA generally includes only those small entities that can reasonably be expected to be directly regulated by the proposed action. If the effects of the rule fall primarily on a distinct segment of the industry, or portion thereof (e.g., user group, gear type, geographic area), that segment would be considered the universe for purposes of this analysis.

In preparing an IRFA, an agency may provide either a quantifiable or numerical description of the effects of a proposed rule (and alternatives to the proposed rule), or more general descriptive statements if quantification is not practicable or reliable.

#### **4.1.1 Definition of a Small Entity**

The RFA recognizes and defines three kinds of small entities: 1) small businesses; 2) small non-profit organizations; and 3) and small government jurisdictions.

Small businesses: Section 601(3) of the RFA defines a “small business” as having the same meaning as a “small business concern,” which is defined under Section 3 of the Small Business Act. A “small business” or “small business concern” includes any firm that is independently owned and operated and not dominate in its field of operation. The U.S. Small Business Administration (SBA) has further defined a “small business concern” as one “organized for profit, with a place of business located in the United States, and which operates primarily within the United States, or which makes a significant contribution to the U.S. economy through payment of taxes or use of American products, materials, or labor. A small business concern may be in the legal form of an individual proprietorship, partnership, limited liability company, corporation, joint venture, association, trust, or cooperative, except that where the form is a joint venture there can be no more than 49 percent participation by foreign business entities in the joint venture.”

The SBA has established size criteria for all major industry sectors in the U.S., including fish harvesting and fish processing businesses. A business “involved in fish harvesting” is a small business if it is independently owned and operated and not dominant in its field of operation (including its affiliates), and if it has combined annual receipts not in excess of \$4.0 million for all its affiliated operations worldwide. A seafood processor is a small business if it is independently owned and operated, not dominant in its field of operation (including its affiliates) and employs 500 or fewer persons, on a full-time, part-time, temporary, or other basis, at all its affiliated operations worldwide. A business involved in both the harvesting and processing of seafood products is a small business if it meets the \$4.0 million criterion for fish harvesting operations. A wholesale business servicing the fishing industry is a small business if it employs 100 or fewer persons on a full-time, part-time, temporary, or other basis, at all its affiliated operations worldwide.

The SBA has established “principles of affiliation” to determine whether a business concern is “independently owned and operated.” In general, business concerns are affiliates of each other when one concern controls or has the power to control the other or a third party controls or has the power to control both. The SBA considers factors such as ownership, management, previous relationships with or ties to another concern, and contractual relationships, in determining whether affiliation exists. Individuals or firms that have identical or substantially identical business or economic interests, such as family members, persons with common investments, or firms that are economically dependent through contractual or other relationships, are treated as one party, with such interests aggregated when measuring the size of the concern in question. The SBA counts the receipts or employees of the concern whose size is at issue and those of all its domestic and foreign affiliates, regardless of whether the affiliates are

organized for profit, in determining the concern's size. However, business concerns owned and controlled by Indian Tribes, Alaska Regional or Village Corporations organized pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601), Native Hawaiian Organizations, or Community Development Corporations authorized by 42 U.S.C. 9805 are not considered affiliates of such entities, or with other concerns owned by these entities, solely because of their common ownership.

Affiliation may be based on stock ownership when: (1) A person is an affiliate of a concern if the person owns or controls, or has the power to control 50% or more of its voting stock, or a block of stock which affords control because it is large compared to other outstanding blocks of stock, or (2) If two or more persons each owns, controls or have the power to control less than 50% of the voting stock of a concern, with minority holdings that are equal or approximately equal in size, but the aggregate of these minority holdings is large as compared with any other stock holding, each such person is presumed to be an affiliate of the concern.

Affiliation may be based on common management or joint venture arrangements. Affiliation arises where one or more officers, directors, or general partners control the board of directors and/or the management of another concern. Parties to a joint venture also may be affiliates. A contractor and subcontractor are treated as joint venturers if the ostensible subcontractor will perform primary and vital requirements of a contract or if the prime contractor is unusually reliant upon the ostensible subcontractor. All requirements of the contract are considered in reviewing such relationship, including contract management, technical responsibilities, and the percentage of subcontracted work.

Small organizations: The RFA defines "small organizations" as any nonprofit enterprise that is independently owned and operated and is not dominant in its field.

Small governmental jurisdictions: The RFA defines small governmental jurisdictions as governments of cities, counties, towns, townships, villages, school districts, or special districts with populations of fewer than 50,000.

## **4.2 A description of the reasons why action by the agency is being considered**

The Council developed the following purpose and need statement defining its rationale for considering this action:

*The Bering Sea/Aleutian Islands (BSAI) Crab Rationalization Program is a comprehensive approach to rationalize an overcapitalized fishery. Conservation, safety, and efficiency goals have largely been met under the program. Provisions that allow for absentee ownership of crab harvest shares support long-term investment by persons or corporations with little or no involvement in the prosecution of the fisheries and limits the amount of quota available for active participants. This action is intended to ensure that ownership of quota transitions to persons who are actively involved in the prosecution of the fisheries.*

## **4.3 The objectives of, and the legal basis for, the proposed rule**

The objective of this action is to increase opportunities for persons in the Bering Sea and Aleutian Islands crab fisheries to acquire and retain holdings of quota shares.

Under the current regulatory structure, Bering Sea/Aleutian Islands crab resources are managed by NOAA Fisheries and the State of Alaska, under the FMP. The authority for this action and the FMP are contained in the Magnuson-Stevens Act, as amended by the Consolidated Appropriations Act of 2004.

#### **4.4 A description of, and where feasible, an estimate of the number of small entities to which the proposed rule will apply**

*To be added in a future draft*

#### **4.5 A description of the projected reporting, record keeping, and other compliance requirements of the proposed rule**

*To be added in a future draft –*

*Depending on how alternatives evolve, this section will describe additional reporting that will be needed to verify active participation. For individuals qualifying as crewmembers, additional reporting will be needed to affirm their fishing activity. For qualification of partnerships and corporations additional records will be needed to verify the both levels of participation of crewmembers and vessel owners. Depending on the circumstance, these records may include ownership interests in the QS holding entity, ownership interests in an active vessel, and records verifying activity as a crewmember. Submission requirements could also vary depending on how the provisions are to be administered. This discussion will be fully developed in a future draft.*

#### **4.6 An identification, to the extent practicable, of all relevant Federal rules that may duplicate, overlap, or conflict with the proposed rule**

The analysis uncovered no Federal rules that would conflict with, overlap, or be duplicated by the pilot program alternatives.

#### **4.7 A description of any significant alternatives to the proposed rule that accomplish the stated objectives of the Magnuson-Stevens Act and any other applicable statutes, and that would minimize any significant adverse economic impact of the proposed rule on small entities**

*To be added in a future draft*

### **5.0 NATIONAL STANDARDS AND FISHERY IMPACT STATEMENT**

#### **5.1 National Standards**

Below are the ten National Standards as contained in the Magnuson-Stevens Act, and a brief discussion of the consistency of the proposed alternatives with each of those National Standards, as applicable.

##### ***National Standard 1***

Conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery.

Nothing in the proposed alternatives would undermine the current management system that prevents overfishing.

### **National Standard 2**

Conservation and management measures shall be based upon the best scientific information available.

The analysis draws on the best scientific information that is available, concerning the Bering Sea and Aleutian Island crab fisheries. The most up-to-date information that is available has been provided by the managers of these fisheries, as well as by members of the fishing industry.

### **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.

The proposed action is consistent with the management of individual stocks as a unit or interrelated stocks 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 U.S. 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.

The proposed alternatives would treat all participants the same, regardless of their residence. The proposed change would be implemented without discrimination among participants and is intended to contribute to the fairness and equity of the program by ensuring that holders of owner QS have requisite fishery participation. The action will not contribute to an entity acquiring an excessive share of privileges, as those acquisitions are subject to direct limitations under the program's use caps.

### **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.

The action is intended to result in a more equitable distribution of interests in the fisheries and will not affect production efficiency in the fisheries.

### **National Standard 6**

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

None of the alternatives would be expected to affect changes in the availability of Bering Sea and Aleutian Island crab resources each year. Any such changes would be addressed through the annual allocation process, which is not affected by the alternatives.

### **National Standard 7**

Conservation and management measures shall, where practicable, minimize costs and avoid unnecessary duplication.

The management action will not duplicate other measures.

*Cost discussion to be added once administration is fully developed.*

### **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 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.

*Community effects will be developed once CDQ and community entity eligibility is addressed.*

### **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.

Implementing this action will have no effect on bycatch.

### **National Standard 10**

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

*Discussion on safety to be added.*

## **5.2 Section 303(a)(9) – Fisheries Impact Statement**

Section 303(a)(9) of the Magnuson-Stevens Act requires that any management measure submitted by the Council take into account potential impacts on the participants in the fisheries, as well as participants in adjacent fisheries. The impacts of the alternatives on participants in the harvesting sector and processing sector have been discussed in previous sections of this document. This action will have no effect on participants in other fisheries.

## **6.0 REFERENCES**

North Pacific Fishery Management Council/National Marine Fisheries Service (August 2004a) Environmental Impact Statement, Voluntary Three-Pie Cooperative Program for the Bering Sea and Aleutian Islands Crab Fisheries.

North Pacific Fishery Management Council/AECOM (November 2010) Five-Year Review of the Crab Rationalization Management Program for Bering Sea and Aleutian Islands Crab Fisheries.

### **Prepared by**

Mark Fina  
Michael Fey, AKFin

### **Persons Consulted**

Edward Poulsen	Gretchen Harrington	John Iani	Karen Palmigiano
Einar Sorvik	Glenn Merrill	Tracy Buck	Jessica Gharrett