

Acquisition and use of C shares North Pacific Fishery Management Council June 2006

Based on public testimony and a recommendation from the Advisory Panel, the Council initiated consideration of an amendment to the criteria used to determine a person's eligibility to acquire captain and crew shares (C shares) in the Bering Sea and Aleutian Islands crab fisheries governed by the rationalization program. Currently, a person must be an 'active participant' in the fisheries, defined as having participated in a landing during the 365 days preceding the C share purchase. Testimony suggested that this requirement is overly burdensome to some former participants wishing to secure a position in the fisheries, who were unable to participate in the first year of the program because of fleet consolidation. Relaxing participation criteria could facilitate share purchase by persons wishing to reenter the fisheries. This paper begins with a summary of the current rules pertaining to C shares. The paper goes on to discuss potential concepts to incorporate in a purpose and need statement and then reviews possible elements and options that could be incorporated into an amendment package, if the Council wishes to amend the current regulations.

Under current regulations, C shares will become subject to the 90/10 A share/B share split at the beginning of the 2008-2009 season. At its March/April 2007 meeting, the Council initiated an amendment to maintain the current status as shares unrestricted by processor share and regional landing requirements. This paper concludes with a draft purpose and need statement for that amendment for Council consideration. Since that action is scheduled for initial review at the Council's October 2007 meeting, establishing the purpose and need for the action will assist in guiding the analysis and the Council's consideration of the amendment.

Background

Under the rationalization program, quota shares (QS) are issued to eligible LLP license holders and eligible captains based on qualifying harvest histories. Eligible LLP license holders were issued 97 percent of the QS pool, while eligible captains were issued 3 percent of the QS pool. These QS are classified based on their origin, with allocations to an LLP based on vessel harvests referred to as 'vessel owner QS' and allocations to captains based on catcher vessel activity referred to as 'captain QS' (or 'C shares'). QS are also classified by operation type (catcher vessel or catcher processor) of the qualifying participant. 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 TAC in the fishery.

Under the current regulation, ninety percent of the IFQ issued to holders of catcher vessel owner QS are issued as "A shares" or "Class A IFQ," which must be delivered to a processor holding unused individual processor quota (IPQ). The remaining 10 percent of the annual IFQ issued to holders of catcher vessel owner QS are issued as "B shares" or "Class B IFQ," which may be delivered to any processor. Processor quota shares (PQS) are long term shares issued to processors based on qualifying processing history. These PQS yield annual IPQ, which represent a privilege to receive a certain amount of crab harvested with Class A IFQ. IPQ are issued in an amount equal to 90 percent of the catcher vessel owner IFQ, creating a one-to-one correspondence between Class A IFQ and IPQ. Also, in certain fisheries the program establishes a region designation on Class A IFQ and IPQ. Both A share IFQ and IPQ are 'regionalized' requiring catch made using those IFQ (and landings received using those IPQ) to be delivered in the region of the associated qualifying history. The regional division in most fisheries separates the fishery North/South at 56°20' N latitude.¹

¹ Exceptions are the Western Aleutian Islands golden king crab fishery, in which 50 percent of the A share

Under the current regulations, catcher vessel C shares are exempt from the A share/B share split (and all associated regionalization and IPQ landing requirements) for the first three years of the program. After three years, both the 90/10 A share/B share split (and the associated IPQ landing requirements) and regionalization would be applied to catcher vessel C shares.

C share allocations are also subject to other management provisions intended to ensure that active fishermen receive the benefits of those shares. C shares may only be acquired by persons that are active in the fisheries, where ‘active’ is defined as having participated in a landing within 365 days of the share acquisition. An owner-on-board provision and leasing prohibition are also applied to C shares, 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, and fleet contraction with the IPQ and regionalization landing requirements applicable to ‘A shares’. To facilitate share usage and fleet coordination, the Council exempted C shares from not only the landing requirements of A shares, but also owner-on-board requirements and prohibitions on leasing, for the first three seasons of the program (see 50 CFR 680.41(e) and 50 CFR 680.42(c)(5)). Currently the Council is considering an amendment that would indefinitely exempt catcher vessel C shares from both the A share/B share split and regionalization. That amendment is scheduled for initial Council review in October 2007 and possible Council action in December 2007.

To fully assess the potential effects of changes in the rules governing acquisition of C shares, the Council should consider the rules governing use of these shares. The rationale advanced for the creation of C shares was to create a pool of shares that may be held only by active captains and crew in the crab fisheries. Although the regulations contain provisions prohibiting leasing of C shares and requiring holders of those shares to be on board the vessel fishing the shares, the current rules governing cooperative use of C shares may make those rules ineffectual. To ensure captains are an integral part of the overall fishery, C share holders are permitted to join cooperatives (see 50 CFR 680.21(a)(1)). 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 are allocated to the cooperative. The leasing prohibition and owner-on-board requirements apply only to individual holders of C share IFQ; separate use provisions apply to IFQ held by a cooperative (see 50 CFR 680.21(c)(2)). In the current fisheries, the holders of approximately 75 percent to 95 percent of the C shares by fishery are cooperative members (see Table 1). Given the relatively high rate of cooperative membership of C share holders, relaxing participant requirements for acquisition of these shares could interact with the existing use rules in a manner that results in shares being held by persons with little or no participation in the crab fisheries.

Table 1. Catcher vessel C share IFQ held by cooperatives (2006-2007).

Fishery	Catcher vessel captain and crew IFQ		Percent of vessel captain and crew IFQ held by cooperatives
	held by cooperatives	in total	
Bristol Bay red king crab	350,720	402,768	87.1
Bering Sea <i>C. opilio</i>	817,980	929,338	88.0
Eastern Bering Sea <i>C. bairdi</i>	35,133	46,358	75.8
Western Bering Sea <i>C. bairdi</i>	20,496	27,047	75.8
Eastern Aleutian Islands golden king crab	76,855	80,075	96.0
Western Aleutian Islands golden king crab	38,303	41,914	91.4

Source: NMFS Restricted Access Management IFQ database, crab fishing year 2006-2007.

allocation is regionalized requiring landing west of 174° W longitude, and the *C. bairdi* and Western Aleutian Islands red king crab fisheries, which are not subject to regional designations.

Purpose and Need Statement

To begin the process of developing an amendment concerning the acquisition of C shares, the Council could develop a draft purpose and need statement to guide its development of alternatives. Testimony that led the Council to consider an amendment suggested that the current requirement that a person be active in the fishery in the 365 days preceding the acquisition of C shares prevents some long term participants from acquiring shares that may be useful for securing a position in the fisheries. The following purpose and need statement could be used to develop a set of alternatives for consideration to address that concern:

Following rationalization of the crab fisheries, fleet underwent substantial contraction, with withdrawal of more than 50 percent of the vessels from every fishery. Contraction affected experienced captains and crew, including some with substantial experience in the fishery. Current regulations require a person to have participated in the fishery during the 365 days preceding an acquisition of C shares. This requirement has the effect of preventing some displaced long-time captains and crew from acquiring share holdings that would be useful for securing or maintaining position in the fisheries. A revision to the current requirements for active participation could address this problem by providing long-term participants with the opportunity to acquire shares.

Elements and options

This section presents elements and options that could be used to construct alternatives for Council review. The supporting discussion attempts to bring to light potential issues that could arise under some of the alternatives that might be of concern to the Council, given its purpose for establishing a C share pool.

Under current regulations, C shares can be acquired only by an individual who:

- 1) is a U.S. citizen,
- 2) has at least 150 days of sea time as part of a harvesting crew in any U.S. commercial fishery (historic participation), and
- 3) has participated in at least one delivery in a fishery subject to the crab rationalization program in the 365 days preceding the acquisition (recent participation)(see 50 CFR 680.41(c)).²

Public testimony at the February 2007 meeting suggested that the recent participation requirement be removed, allowing long term participants who have been unable to find employment in the fishery since the implementation of the program to acquire C shares. Although the removal of the recent participation requirement would allow long-term captains and crew not currently employed in the fishery to purchase C shares, the simple removal of the provision would substantially broaden the group of persons eligible to acquire C shares to include persons with no participation in either the crab fisheries or Alaskan fisheries.

The Council could consider two aspects of this problem in developing a potential revision to the requirements for acquiring C shares. First, the Council should consider whether the issue is a transitional problem or a long term issue. If the Council believes the problem with the current provision is a transitional problem, it could be addressed with an exemption applicable only for a transitional period. For example, an exemption could be provided to allow persons that have history in the years immediately preceding implementation of the rationalization program (including recipients of an initial allocation of C

² Under the regulation, recent participation is demonstrated by 1) a fish ticket imprinted with the person's permit number, 2) an affidavit of the vessel owner, or 3) a signed receipt for an IFQ crab landing on which the applicant acted as a hired master. In the past, the agency has found proof of participation to be problematic. Without additional guidance from the Council, the agency would continue to rely on these three sources for evidence of participation.

shares) to acquire C shares for a period of time. The exemption could apply either for a period of time from implementation of the rationalization program or until some period of time has passed since implementation of the loan program (as suggested by some participants in the fishery). Since the loan program has yet to be implemented and requires Congressional authorization, the second approach would have an indeterminate time period that could be several years.

If the Council believes that the problem is long term, the recent participation requirement could be revised to accommodate persons that have demonstrated history, but do not meet the current recent participation requirement. For example, the Council could relax the current requirement for participation within a year of the acquisition to require participation within 2 or 3 years of the acquisition. This lower recent participation threshold may accommodate not only persons affected by the recent decline in positions, but also persons that are affected by transitional situations in the future. These transitions could arise not only because of changes in the fisheries (such as stock or TAC changes or seasonal closures), but also because of changes in individual circumstances (such as loss of a position through sale of a business by a long term employer). In either of these cases, relaxing the recent participation requirement could provide a crewmember with the ability to purchase shares, in the event that crewmember was unable to secure a position in a given year.

If the Council attempts to develop a solution to a long term problem, it should consider the extent that the solution will require persons acquiring C shares to demonstrate ongoing ties to the crab fisheries. A simple grandfather provision could be used to qualify initial recipients of C shares to continue to acquire additional C shares. While appealing for its simplicity, the provision may not meet the Council's intended purpose. In the long run, initial recipients of C shares are likely to retire from fishing. These retired captains would retain qualification to purchase C shares, potentially competing for purchases with crew who remain active in the fisheries. So, in developing provisions to address this issue, the Council should consider both the transitional issues and potential long term ramifications of solutions to those issues.

In developing revisions to eligibility requirements for acquiring C shares, the Council should define requirements that meet its objectives in establishing the C share pool. The current requirement for acquiring C shares is participation in a single landing from any of the crab fisheries in the 365 days preceding the acquisition. Most long term crew that are fully employed in the fisheries will have little difficulty meeting the current requirement for acquiring C shares on an ongoing basis. Only in a transitional circumstance (such as the current fleet restructuring) would a long term participant be expected to have difficulty meeting the requirement. A provision could be developed as an exception to the current requirement that could accommodate crew confronted with a transitional situation during which the current requirement is not met. For example, the Council could adopt a provision that allows a person that demonstrates longer term participation to acquire shares during a period during which the person is unable to meet the more immediate participation requirement of the current provision. For example, the Council could create an additional provision that would allow a person that can demonstrate participation during 3 of the last 5 years to purchase C shares. This provision would accommodate some transitional circumstances for crew that are regular participants in the fisheries, but who are unable to participate for one or two years.

Lastly, the Council may wish to consider whether it is appropriate to revise the current participation requirement to remove any requirement for participation in the crab fisheries (as suggested in public testimony). Under this approach, a person would still be required to demonstrate at least 150 days of sea time in a U.S. commercial fishery, but may have no experience in either the crab fisheries or Alaskan fisheries. The rationale for this change could be that allowing a person to acquire C shares prior to participating in the crab fisheries could allow the person to use the purchased shares to secure a crew position.

Possible elements and options

Status quo

C shares can be acquired only by an individual who:

- 1) is a U.S. citizen,*
- 2) has at least 150 days of sea time as part of a harvesting crew in any U.S. commercial fishery (historic participation), and*
- 3) has participated in at least one delivery in a fishery subject to the crab rationalization program in the 365 days preceding the acquisition (recent participation)(see 50 CFR 680.41(c)).*

Options to address current transition

For a period of 3, 5, or 7 years from the

Option 1: implementation of the program

Option 2: implementation of the loan program

C shares can also be acquired only by an individual who:

- 1) is a U.S. citizen,*
- 2) has at least 150 days of sea time as part of a harvesting crew in any U.S. commercial fishery (historic participation), and*

Option 1: received an initial allocation C shares

Option 2: demonstrates participation in a rationalized crab fishery during

a. 3 of the 5 years(2000-2004) or

b. 2 of the 3 years(2002-2004)

immediately preceding implementation of the crab rationalization program

Options to address transitions in the long run

C shares can also be acquired only by an individual who:

- 1) is a U.S. citizen,*
- 2) has at least 150 days of sea time as part of a harvesting crew in any U.S. commercial fishery (historic participation), and*

Option 1: received an initial allocation C shares

Option 2: demonstrates participation in a rationalized crab fishery during

a. 3 of the 5 years(2000-2004) or

b. 2 of the 3 years(2002-2004)

Immediately preceding implementation of the crab rationalization program

Options for full revision of current qualification

C shares can be acquired by an individual who:

- 1) is a U.S. citizen, and*
- 2) has at least 150 days of sea time as part of a harvesting crew in any U.S. commercial fishery (historic participation).*

Coordination with other C share provisions

The interaction of the eligibility requirements for acquiring C shares with the rules governing use of those shares should be considered in developing provisions for analysis in this action. Liberal eligibility rules (which require little or no crab fishery participation) to acquire C shares, together with the current exemption of C share holders that join cooperatives from leasing prohibitions and owner-on-board requirements, create an opportunity for C shares to be held by persons with no other connection to the crab fisheries (including no captain or crew time). Given the small size of the C share pool and the stated interest of making these shares available to active captains and crew, the Council should consider whether liberal rules governing acquisition of these shares are appropriate, particularly in the absence of revising

the rules concerning participation requirements for C share holders.

If the Council were to consider revising rules governing C share use, it could consider revision of those rules in their entirety, which would result in C share holders that are members of a cooperative being subject to the same requirements as C share members that do not join a cooperative. Alternatively, the Council could retain the current rules for non-members of cooperatives (which will prohibit share leasing and require the holder to be on board the vessel harvesting the shares) and revise only the rules governing cooperative members (which currently allow leasing and have no on board requirement). The rationale for differentiating cooperative members from non-members is not wholly clear, since some C share holders may choose not to join a cooperative unless the vessel owners that they work for are also members of the cooperative. The current rule (which differentiates cooperative members from non-members) creates an incentive for C share holders to put their shares in a cooperative regardless of their employing vessel owners' cooperative membership choices, simply to avoid the complications of leasing prohibitions and owner on board requirements. Cooperative shares cannot be fished by the same boats that fish shares not held by a cooperative. So, a C share holder that fishes on a non-cooperative vessel, but is a member of a cooperative, cannot fish C shares he holds. Applying more relaxed rules for cooperative members could maintain this incentive for C share holders that fish for non-members of cooperatives to commit their shares to a cooperative separate from their own fishing activity.

If the Council were to pursue changes in the current leasing prohibitions and on board requirements, it should consider the transitional issues that led it to consider revisions to eligibility requirements for C share purchases. Specifically, the Council should consider that in current transition fewer vessels are active, at least temporarily removing some long term crew from the fisheries. On board requirements could force some C share recipients to divest shares decreasing their interests in the fisheries and possibly inducing some of these C share holders to permanently leave the fisheries. A less stringent active participation requirement (in lieu of a strict owner on-board-requirement) could be used to ensure that C share holders that are likely to remain active in the fishery in the long run do not have their position in the fishery further jeopardized by compelled divestiture of those shares.

The Council should also consider changes in the prosecution of the fisheries since implementation of the rationalization program. Some vessels are not likely to participate in all fisheries every year. Vessels are likely to move in and out of fisheries with TAC fluctuations and coordination of catch in cooperatives. This change in prosecution of the fisheries could effectively drive more transitional phases for participants (particularly C share holders). Stringent on board requirements could force C share holders subject to these transitions to divest based on the annual participation decisions of cooperatives and vessel owner decisions. C share holdings are very small in size; the largest permitted holdings in most fisheries are limited to 0.06 percent of the quota share pool; the current average holding in the two largest fisheries is approximately 0.02 percent of the quota share pool. In fisheries in which the average vessel fishes in excess of 1 percent of the quota share pool, C share holdings are unlikely to influence operational fishing decisions. Furthermore, even if C share holders could influence these decisions, it is not clear that any benefit would be derived by either C share holders or vessel owners from compelling active vessels to participate in more fisheries to ensure owner on board requirements are met. A cooperative may decide to deploy four vessels in the *C. opilio* fishery; three of the vessels may make two trips with the fourth making a single trip prior to moving on to fish the cooperative's entire (but relatively small) allocation of *C. bairdi*. Under this scenario, owner on board requirements could be met in one of three ways. First, more vessels could be deployed in the *C. bairdi* fishery. Introducing more vessels to harvest the small allocation is likely to drive up fishing costs, which could reduce crew shares. Alternatively, crew could move among vessels, with the *C. bairdi* share holders all working on the same vessel. Operationally, vessel crews differ from one another, even within a common owner's fleet. These differences suggest that compelling crew to move among vessels would not be a good solution for meeting owner on board requirements. Lastly, *C. bairdi* shares could be traded to crew on the vessel harvesting *C. bairdi* for the cooperative. Compelling transfers of this type to meet owner on board requirements would reduce

stability for C share holders that are unlikely to be able to influence vessel deployments with their share holdings. In effect, applying an absolute owner on board requirement to C share holders could cause instability of C share investments for their holders.

An alternative approach to revising C share participation requirements could parallel the current eligibility requirement for C share acquisitions. Under that provision, a person that has fished in one of the rationalized crab fisheries during the preceding 365 days is eligible to acquire C shares. A similar requirement could be established for a person to receive annual C share IFQ allocations and maintaining C share holdings. For example, annual C share IFQ allocations could be contingent on the applicant providing evidence (such as an affidavit) of either active participation in a rationalized crab fishery as a crewmember in the previous season or a secured crew position in a fishery for the coming season. A person could be compelled to divest only after a period of inactivity (such as two or three years) in the rationalized fisheries. Under such a provision, C share holders active in at least one of the crab fisheries would be permitted to receive the benefit of all their C share holdings. In addition, C share holders that are unable to secure a position during a brief period of one or two years would not be forced to divest. A flexible approach to participation requirements, such as suggested above, would allow C share holders to retain their shares during periods of instability provided that they remain generally active in the fisheries.

Additionally, the Council could consider a grandfather provision that would extend the time for current C share holders to comply with any active participation requirements. An extended period for current C share holders could be justified by the rapid fleet consolidation that occurred on implementation of the program. An extension could be granted for a period of years allowing current holders a reasonable opportunity to secure a position. An indefinite grandfather provision (which would allow the current holder to retain shares regardless of their participation) would likely protract the time until the C share component of the rationalization program is fully operational. C share holders that obtain the 'grandfather exemption' would be able to retain their holdings into retirement regardless of whether they intend to participate or have a reasonable expectation of future participation. A limited grandfather provision, on the other hand, could provide C share holders with a reasonable period of time to reenter the fishery after which those who are unable or unwilling to secure a position would be required to divest of their holdings.

The Council should consider administrative burdens and complexities when developing provisions governing participation requirements for C share holders. A relatively straightforward rule with low administrative costs should be favoured over a rule that is complex and requires extensive documentation. Given the Council's intention to allow C share holders to participate in cooperatives (pooling C shares with vessel owner shares for harvest), a strict owner on board requirement that requires tracking of IFQ held by the cooperative is viewed as overly burdensome by the agency. In addition, share holders will not receive the full benefit of cooperative membership or their C share holdings, if the cooperative's loses flexibility to coordinate harvest of C shares, as would be necessitated by a strict owner on board requirement.

Draft Purpose and Need Statement Concern Processing Share and Regional Landing Requirements

At its March/April 2007 meeting, the Council directed staff to prepare an analysis of an amendment to indefinitely exempt C shares from the processing share and regional landing requirements (established by the A share/B share structure). Under current regulations, these landing requirements are scheduled to apply to 90 percent of each C share allocation beginning in August of 2008. Council adoption of a draft purpose and need statement for this action would assist staff in development of the analysis of that amendment.

The A share/B share allocation structure, and the associated landing requirements applicable to A shares,

has the effect of requiring substantially greater coordination of deliveries, since only the 10 percent allocation of B shares are free to be sold to any buyer. The 90 percent A share allocation (with corresponding IPQ and regional landing requirements) is intended primarily to add stability to the processing sector and regions that process crab and to 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). These A share landing restrictions would greatly complicate use of C shares and could severely diminish the value of these shares to their holders. Constraining C shares with the IPQ and regional landing requirements would decrease the value to their holders. If C share holders are bound to the A share landing requirements for a portion of their allocations, their shares should be included in the arbitration program, which applies only to A shares. This additional cost would further diminish the value of C shares to their holders. These declines in flexibility of use and value would limit the benefit of C shares to their holders. The Council elected to consider an amendment to exempt C shares from processor share and regional landing requirements indefinitely to ensure that C shares holders receive the greatest benefit from their C share holdings.

The Council could consider the following purpose and need statement for this action:

In the crab rationalization program, the Council created a C share pool (comprised of three percent of the total harvest share pool) intended to benefit captains and crew active in the fishery. To provide stability to processors and regions that support crab processing, the Council also created processor share and regional landing requirements applicable catch landed using harvest shares under the program. For the first three years of the program, the Council elected to exempt C shares from any processor share or regional landing requirements to allow time for C share holders to adapt to the new management. The Council also stated its intent to review the application of processor share and regional landing requirements to C shares after 18 months of fishing under the program to determine whether application of those landing requirements to 90 percent of the C share allocation would be appropriate. The application of processor share and regional landing restrictions would greatly complicate use of C shares and could severely diminish the value of these shares to their holders. The value of C shares would also be diminished by their inclusion in the arbitration program, which is necessitated by the application of processor share landing requirements. To allow C share holders to receive maximum benefit of those shares, the exemption of those shares from processor share and regional landing requirements should be considered.

Conclusion

This paper provides background and a draft purpose and need statement from which the Council could request staff to develop an analysis of an amendment to revise the current eligibility requirements for acquiring C shares. The paper also addresses some potential for C shares to be acquired by persons with little or no past or future crew time in the crab fisheries. If the Council is concerned by this potential, it could also incorporate elements to incorporate active participation requirements for persons holding C shares into the program. Lastly, the paper includes a draft purpose and need statement for consideration by the Council that could be used to support the proposed amendment for maintaining the current exemption of C shares processor share and regional landing requirements.