

Purpose and Need Statement

In developing the crab rationalization program, the Council included several measures to protect regional and community interests. Among those provisions, the Council developed regional designations on individual processing quota and a portion of the individual fishing quota that require associated catch to be delivered and processed in the designated region. Since implementation of the program in late 2005, and except in the case of the Western Aleutian Islands Golden King Crab fishery, all of the crab IFQ has been harvested and processed as intended by the crab rationalization program. However, icing conditions in the Northern Region have created safety concerns, and delayed and in some cases prevented harvesters from entering harbors to deliver to shore-based and floating processors located in the regions, as required by the regional share designations. In addition, other unforeseeable events, events such as an earthquake or tsunami, or man-made disaster, could prevent deliveries to eligible processors in a region necessary for compliance with the regional designations on Class A IFQ and IPQ. A well-defined exemption from regional landing and processing requirements of Class A IFQ and IPQ that includes requirements for those receiving the exemption to take efforts to avoid the need for and limit the extent of the exemption could mitigate safety risks and economic hardships that arise out of unforeseeable events that prevent compliance with those regional landing requirements. Such an exemption should also provide a mechanism for reasonable compensation to all parties directly impacted by the granting of the exemption to ensure that the protections intended by the regional designations continue to be realized despite the exemption. The purpose of this action is to develop a regulation to allow waiver of the regional landings requirement for Class A shares in the event that eligible processing facilities are unable to receive crab for an extended period of time.

Regional Landing Exemption

This action would establish an emergency relief exemption for the regional delivery requirement under the BSAI crab program. Component One specifies the eligibility requirements for the exemption and the contracting parties. Component Two establishes reserve pool certification and periodic reporting requirements. Component Three establishes how the emergency relief regulation is to be administered. Component Four establishes a Council review process.

Component One. The Contract Parties.

Option 1: To be eligible to apply for and receive an exemption from a regional landing requirement, the IFQ holders, the matched IPQ holders and the affected community entity or entities in the region for which the regional landing exemption is sought shall have entered into a framework agreement, including mitigation requirements and a range of terms of compensation.

If compensation is to include compensatory deliveries in the year following the granting of an exemption, the community entity or entities in the region from which the compensatory deliveries will flow may also be parties to the framework agreement.

Suboption 1: prior to the opening of the season.

Suboption 2: by a fixed date (to be determined).

To receive an exemption from a regional landing requirement the IFQ holders, the matched IPQ holders and the affected community entity or entities in the region for which the regional landing

exemption is sought shall have entered into an exemption contract prior to the day on which the exemption is sought.

Option 2: To be eligible to receive an exemption from a regional landing requirement the IFQ holders, the matched IPQ holders and the affected community entity or entities in the region for which the regional landing exemption is sought shall have entered into an exemption contract prior to the day on which the exemption is sought.

The entity that will represent communities shall be (options):

- (a) the entity holding or formerly holding the ROFR for the PQS,
- (b) the entity identified by the community benefiting from (or formerly benefiting from) the ROFR,
- (c) a regional entity representing the communities benefiting from the ROFR or formerly benefiting from the ROFR.

The entity or entities determined by the Council to be the community representatives in a region shall develop an allocation or management plan for any PQS issued without a ROFR in that region by a date certain established by the Council.

Component Two. Reserve Pool and Reporting Requirements.

A reserve pool can provide industry wide, civil contract based delivery relief without regulatory or administrative intervention; therefore, regulatory relief is an explicit incentive available only to Class “A” participants who are members of approved reserve pools, to matched IPQ holders and to affected community entities.

Harvest sector reserve pools do not require NMFS approval; however, on an annual basis, before a date certain established by NMFS through regulation, participants in the BSAI crab fisheries must certify to NMFS their establishment of or membership in an existing reserve pool to be eligible for regional landing requirement relief. The certification shall name the Class A IFQ holders who have established or are members of the reserve pool. Subject to the other terms and conditions of this action, the parties to a reserve pool shall be eligible for regional landing requirement relief if: 1) their reserve pool certification states that the reserve pool agreement commits each party to be bound by the rules of the reserve pool; and 2) the parties to the reserve pool identified on the certification represent not less than (60%, 70%, 80%) of the “A” share IFQ held by (a) unaffiliated cooperatives and unaffiliated IFQ holders not in a cooperative, in the aggregate; or (b) held by affiliated cooperatives and affiliated IFQ holders not in a cooperative, in the aggregate.

Reserve pool representatives shall provide an annual Regional Landing Exemption Report to the Council which will include the following:

- 1) a comprehensive explanation of the membership composition of the reserve pool and the measures in effect in the previous year,
- 2) the number of times a delivery relief exemption was requested and used, if applicable,
- 3) the mitigating measures employed before requesting the exemption, if applicable,
- 4) an evaluation of whether regional delivery exemptions were necessary, and their impacts on the affected participants, if applicable.

Reserve Pool Representatives shall circulate the annual Regional Landing Exemption Report to communities that are parties to framework agreements with the reserve pool representatives two weeks

before submission to the Council. Communities may submit to the Council a Community Impact Report that responds to the annual Regional Landing Exemption Report.

Component Three. Administration of the Exemption.

Administration of the exemption

Option 1:

In accordance with Component One, the three parties will file an affidavit with NMFS affirming that a framework agreement has been signed, and, if applicable, subsequently file a second affidavit affirming that an exemption contract has been signed. In the affidavits, the parties shall affirm that the framework agreement includes mitigation requirements and a range of terms of compensation, and that the exemption contract describes the conditions under which the exemption is being or would be requested, including mitigation requirements and terms of compensation specific to the exemption being sought.

Option 2:

In accordance with Component One, the three parties will file an affidavit with NMFS affirming that an exemption contract has been signed. In the affidavit, the parties shall affirm that the exemption contract describes the conditions under which the exemption is being or would be requested, including mitigation requirements and terms of compensation specific to the exemption being sought.

Exemption

Option 1:

An exemption shall be granted upon timely submission of a framework agreement affidavit and subsequent filing of an exemption contract affidavit by the Class "A" IFQ holders, the matched IPQ holders and the affected community entity or entities that are parties to the framework agreement that they have entered into an exemption contract, and that the exemption contract describes the conditions under which the exemption is being requested, including mitigation requirements and the terms of compensation. Pursuant to Component Two, above, the Class A IFQ holder that is party to the framework agreement and the exemption contract must be identified as having established a reserve pool or as a reserve pool member on a timely filed reserve pool certification that meets the requirements of Component Two.

Option 2:

An exemption shall be granted upon timely submission of an exemption contract affidavit by the Class "A" IFQ holders, the matched IPQ holders and the affected community entity or entities that they have entered into an exemption contract, and that the exemption contract describes the conditions under which the exemption is being requested, including mitigation requirements and the terms of compensation. Pursuant to Component Two, above, the Class A IFQ holder that is party to the exemption contract must be identified as having established a reserve pool or as a reserve pool member on a timely filed reserve pool certification that meets the requirements of Component Two.

The exemption contract affidavit shall result in the regional tag being removed from the requested amount of Class "A" IFQ and the matched IPQ; and the requirement that NMFS apply any IPQ used at a facility through a custom processing arrangement against the IPQ use cap of the owners of that facility shall be suspended for all Class A IFQ and matched IPQ included in the exemption.

If an exemption contract includes an obligation to make compensatory deliveries, an exemption making such deliveries possible shall be granted upon submission of an affidavit by the Class A IFQ holders, the matched IPQ holders and the affected community entity or entities that the exemption is being requested to make compensatory deliveries pursuant to the terms of an exemption contract under which regional landing relief was previously granted and used.

Component Four. Council Review.

The Council will review the Regional Landing Exemption Program within:

- (a) two years
- (b) after the first season in which an exemption is granted.

Thereafter, the Council will review the Regional Landing Exemption Program as part of its programmatic review, and, based on the record, may amend or terminate the Regional Landing Exemption Program.