North Pacific Fishery Management Council

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Comments of North Pacific Fishery Management Council to Proposed Rule
Allocating Bering Sea and Aleutian Islands King and Tanner Crab Fishery Resources
Crab Rationalization RIN 0648-AS47

Dear Ms. Salveson:

The Council would like to express its gratitude to NOAA Fisheries for recognizing the importance of the Council's crab rationalization program to the Bering Sea/Aleutian Islands crab fisheries participants and dependent communities. The great efforts that NOAA Fisheries has devoted to rapidly completing the proposed rules for the rationalization program are very appreciated. The work of NOAA Fisheries in this regard is perhaps unprecedented.

As you know, the Council spent several years developing the program to carefully balance the interests of the different participants in the fisheries, as well as the communities that depend on commercial activity generated by the fisheries. Rationalization will improve economic conditions substantially, for all sectors of the crab industry. Community concerns and the need to provide for economic protections for hired crew are addressed. Safety in the fisheries will be enhanced and biological benefits will also be realized.

Although the proposed rule embodies many of aspects of the program developed by the Council, we believe that in some areas the rule does not accurately reflect the program defined by the Council motion or the Council's intent, and which are included in Congressional legislation. Attached are the specific comments of the Council concerning the proposed rule. To aid NOAA Fisheries in evaluating the comments, each comment references both the section of concern in the proposed rule and relevant sections of the Council motion and supporting analyses. Areas of the proposed rule that cause the Council particular concern are:

1) The rule allows either IFQ holders or IPQ holders to initiate binding arbitration. The motion intended to allow only IFQ holders to initiate arbitration. (§680.20(h)).

2) The rule assumes that "harvest cooperatives" under the Council motion are intended to be FCMA cooperatives. This interpretation appears to have led the NOAA Fisheries to conclude that any processor affiliated QS holder could not join a cooperative. The motion intended cooperatives for the limited purpose of coordinating harvest activity to allow all holders of harvest shares to achieve efficiencies and should not require FCMA qualification. We also note that the December 3, 2004 memorandum of NOAA General Counsel on Harvesting Cooperatives under the Crab Rationalization Program clarifies that the cooperative system intended by the Council can be implemented consistent with antitrust law, providing NOAA Fisheries with the latitude to address this critical flaw. (§680.21)

3) The rule allows a person to join a single cooperative on an "all or nothing" basis. Persons would not be permitted to join different cooperatives for different fisheries. This could limit the ability of some harvesters to achieve efficiencies in some fisheries. (§680.21(b)(4) and (5)).

4) The rule provides that crew shares (C shares) are converted to standard IFQ, if the holder joins a cooperative, effectively removing any owner on board requirement relative to C shares. The motion intended the C share pool to benefit persons actively on board vessels in the fisheries. (§680.21(d)(4)) and (§680.42(d)(5)).

5) The rule allows cooperative to freely engage in intercooperative transfers without regard to individual use caps. The motion intended intercooperative transfers to be conducted through members to allow the application of use caps. (§680.21(g)).

6) The rule provides that persons with 10 percent common ownership with a processor share holder would receive all A shares (and no B shares). The motion intended that the exclusively A share allocation be limited to the amount of IFQ "controlled" by the IPQ holder, with the remainder allocated as Class A and Class B shares. (§680.40(h)(4)).

7) The rule incorrectly revised the rules of the right of first refusal. The motion clearly identifies the terms of the right of first refusal. (§680.40(m) and (§680.41(c) and (d)).

8) The rule incorrectly waives all use caps with respect to harvest shares. The motion establishes use caps. (§680.41(l)(2) and (4)).

9) The rule could limit the benefits from the license buyback to persons that purchased licenses after June 10, 2002 that were put over the use caps by the buyback. (§680.42(b)(1)(i)).

10) The rule does not apply a control date (June 10, 2002) to the acquisition of history in excess of the use caps for CDQ groups and vertical integration. The motion intended to apply this control date to all use caps. (§680.42(b)(3) and (4)).

11) The rule contains no provision for the crew loan program. This program is a critical component that should be implemented simultaneously with all other aspects of the program. In addition, the provision of seed money to fund the program from its inception would substantially increase the effectiveness of the loan program.

12) The rule exempts all PQS holders from the individual IFQ caps and applies a higher use cap to those persons. The motion intended a very limited exemption that would not apply to individuals. (§680.42(b)(4).

Although the Council's comments may appear voluminous, they are not intended as criticism of NOAA Fisheries efforts in developing the proposed rule. Given the complexity of the program and the short time frame in which the rule was produced, the Council believes that NOAA Fisheries should be given tremendous credit for this work.

Best Regards,

Stephanie D. Madsen

Stephanie Madsen
Council Chair

Comments of North Pacific Fishery Management Council to Proposed Rule
Allocating Bering Sea and Aleutian Islands King and Tanner Crab Fishery Resources
Crab Rationalization RIN 0648-AS47
December 2004

Regulation Section	Issue/Comment	Council motion provisions	Suggested solution
§680.1	The rationale for having both ECCOs and ECC entities is not clear. The ECCO seems to be the entity that holds shares for a community, while the ECC entity has the right of first refusal. The Council motion contemplates a single entity to serve both of these purposes. In addition, it is unclear that one entity would have the ability to exercise a ROFR, but not be able to take possession of shares on the exercise of that right. In addition, given the administrative burden of the program, it is unclear why the agency would like to oversee additional entities/organizations.	p.18, 4. Identification of the Community Groups and Oversight	Establish a single entity to hold the right of first refusal and any community shares.
§680.6(c)(2), (e)(2), and (g)(2)	The time for providing the completed submission of historic data is limited to 60 days after final rule becomes effective. Given the historic nature of these data and the complexity of consolidating information into reports, substantially greater time should be permitted for providing these data.		Extend time for submission of historic data.
§680.6(c)(3), (e)(3), and (g)(3)	The rule provides for the submission of information concerning the 2004 fishery, which might be used as a baseline for estimating the economic impacts of the rationalization program on the fishery. The Council motion suggests that regulation follow the committee recommendation that data not less than 2 years prior to the rationalization program be used for estimating rationalization impacts.	p. 21, paragraph B. 4., and committee minutes from June 25, 2002 and September 5, 2002.	Remove provision requiring submission of data from 2004 fisheries.
§680.6(i)	The verification of data provisions require the data provider to provide a broad range of data on request within 15 days of receipt of the request from the data collector. Given the breadth of data that may be requested for verification of reports, the 15 day response time is not sufficient.		Extend period to respond to request for additional data for verification purposes.
§680.20(a)(1)	CVC QS holders should not be required to be in arbitration organizations in the first three years of the program. Arbitration is optional for these share holders until July 1, 2008. They could elect to join the arbitration process by joining an arbitration organization, but should not be required to join.	p.11, Binding Arbitration System, 4. Shares subject to binding arbitration	Make membership in arbitration organizations optional for CVC QS holders prior to July 1, 2008

Regulation Section	Issue/Comment	Council motion provisions	Suggested solution
§680.20(a)(2)	The regulation should not limit negotiations to the preseason period. Although the process for arbitration states that negotiations should be conducted in the preseason (see, p.13 of the Council motion, Last Best Offer Binding Arbitration, Process, 1 Negotiations and voluntary share matching), the purpose of that language is to define the matching of shares for purposes of the arbitration procedure. The regulation suggests that IFQ and IPQ cannot be used if parties do not reach a preseason negotiation. Nothing is lost in the arbitration process from allowing voluntary negotiations between holders of uncommitted shares to occur after the season is begun.	p.13, Last Best Offer Binding Arbitration, Process, 1 Negotiations and voluntary share matching, See also, RIR, p. 387 "Structure II" and pp. 392-7, "Analysis of Structure II"	"Prior" should be deleted from the second line.
§680.20(a)(3)	The word "uncommitted" has been omitted front of IPQ in a few places. Only uncommitted shareholders can negotiate deliveries with holders of uncommitted IFQ.	Last Best Offer Arbitration, See also, RIR, p. 387 "Structure II" and pp. 392-7, "Analysis of Structure II"	Review section for omission of the term "uncommitted".
§680.20(d)(1)	The reference to paragraph (b)(1) should be clear that CVC QS holders may (not must) join Arbitration Organizations prior to July 1, 2008.	p.11, Binding Arbitration System, 4. Shares subject to binding arbitration	Revise provision to exclude CVC QS holders from mandatory membership until July 1, 2008
§680.20(d)(1)(iv)	This provision permits a person to be a member of only one arbitration organization. If a person is only permitted to be a member of a single organization, holders of both IFQ and IPQ cannot meet the requirements of the regulation to be members of separate organizations for IFQ and IPQ.		Revise to allow membership in one IFQ arbitration organization and one IPQ arbitration organization.
§680.20(e)(2)(ii)	This provision requires the use of the "Share Matching Approach," the "Lengthy Season Approach," and "Binding Arbitration". None of these should be required of all participants since arbitration is intended to be voluntary. The regulation requires arbitration organization membership and contracts that define the terms that govern arbitration participation. This provision is overbroad.	Last Best Offer Arbitration, See also, RIR, p. 387 "Structure II" and pp. 392-7, "Analysis of Structure II"	Revise to state that participants shall engage in arbitration subject to the rules and to the extent specified in the contracts.
§680.20(e)(2)(v)	This provision is overbroad. All information generated pursuant to section 620.20 would require each arbitration organization to obtain documents that it and its members have no access to.		This provision should be deleted.

Regulation Section	Issue/Comment	Council motion provisions	Suggested solution
§680.20(e)(2)(v)(B)(1) and (2)	The provisions require the arbitration organizations to deliver notices to uncommitted Arbitration IFQ holders. IPQ arbitration organizations, however, have no way of knowing who holds uncommitted IFQ. General comment: As drafted, the arbitration requires the arbitration organizations to deliver several different notices and pieces of information to members that meet certain criteria. The regulation also places strict limitation on the persons that may receive this information (i.e., only holders of uncommitted IFQ are permitted to receive the terms of the arbitration finding or the identities of the holders of uncommitted IPQ that are parties to an arbitration proceeding). The provisions create a paradox under which the persons (or organizations) required to deliver the notices are unlikely to be able to deliver the notices, because no person would be in a position to receive the information that needs to be disseminated or know the identities of the persons that need to receive the information. The regulation could overcome this problem by providing arbitration organizations with the ability to hire a third party for the delivery of notices. That third party should be required to be independent of any associations with any IFQ holders or IPQ holders (except for the management of arbitration organization notices) and be bound to hold all information received confidential.		The provisions should be revised so that persons required to deliver notices 1) have access to the names of those required to receive the notice, 2) have access to the information required to be delivered, and 3) are required to maintain confidentiality.
§680.20(f)(4)	This timeline may not be appropriate for the first year delivery of the arbitration formula.		Allow the same time as permitted in (e)(6) for the Market Report.
§680.20(h)(2)(ii)(B)	This provision permits IPQ holders to initiate arbitration. Only IFQ holders are permitted to initiate arbitration under the Council's arbitration program.	Last Best Offer Arbitration, EIS 2-48 and 4-162 See also, RIR, p. 387 "Structure II" and pp. 392-7, "Analysis of Structure II".	Limit arbitration initiation to IFQ holders.
§680.20(h)(3)	This paragraph describes the arbitration procedure. The regulation should also provide that a single binding arbitration proceeding (excluding quality disputes, performance disputes, and the lengthy season approach) is permitted for each IPQ holder per fishery per year.	See, RIR, p. 387 "Structure II" and pp. 392-7, "Analysis of Structure II"	Include a provision that limits each IPQ holder to a single binding arbitration proceeding per fishery per year.

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§680.20(h)(3)(ii)	This section generally sets out the process by which arbitration is initiated. Although the commitment of shares is defined in the definitions section of the regulation (section 680.1, Committed IFQ and Committed IPQ), the regulation could be clarified, if the process for negotiated commitments were included here.		Include description of commitment definition in this process description of in (h)(3)(ii).
§680.20(h)(3)(ii)	This section limits negotiations to "prior to the date of the first crab fishing season". Negotiation should be permitted at any time, including after the season opens, as long as participants are not committed to another share holder.	See comment concerning §680.20(a)(2) above.	Delete "prior to the date of the first crab fishing season" from this provision.
§680.20(h)(3)(iii)	The provisions concerning the "Lengthy Season Approach" should specify that the adoption of this negotiation/arbitration approach is available only to persons that have committed shares.	Last Best Offer Arbitration, See also, RIR, p. 387 "Structure II" and pp. 392-7, "Analysis of Structure II"	Require share commitments for participants to use the lengthy season approach.
§680.20(h)(3)(iii)	The inclusion of the provisions concerning the "Lengthy Season approach" at this point in the regulations adds confusion to the arbitration process. This paragraph primarily concerns the commitment of shares and the process that share holders undertake preceding, and possibly leading up to, Binding Arbitration. The lengthy season approach is an alternative to that standard procedure.	Last Best Offer Arbitration, See also, RIR, p. 387 "Structure II" and pp. 392-7, "Analysis of Structure II"	The provisions concerning the lengthy season approach should be included in the contract for the Contract Arbitrators, but as a separate provision outside the process description here.
§680.20(h)(3)(iii)	The process for arbitration of the lengthy season approach is not well defined in the Council motion. The regulation should not attempt to specifically define that process.	p.13, Last Best Offer Binding Arbitration General, 6. Lengthy Season Approach	The regulation should state that industry should define the procedure for arbitration of the lengthy season approach, including the timing of the proceeding and the ability of any IFQ holders to join the proceeding or opt-in to the outcome of the proceeding.

Regulation Section	Issue/Comment	Council motion provisions	Suggested solution
§680.20(h)(3)(iii)(C)	IPQ holders are not permitted to initiate arbitration under the Council motion - the reference to "IPQ holders" initiating the process should be removed.	Last Best Offer Arbitration, EIS 2-48 and 4-162.	Remove the reference to IPQ holders here.
§680.20(h)(3)(iv)(B)	This provision requires an arbitration IFQ holder to commit at least 50 percent of the IFQ held to an IPQ holder to make a unilateral commitment. The provision should provide for the commitment of the lesser of 50 percent of the IFQ held and an amount of IFQ that results in the commitment of all of the processor's IPQ. In the absence of this provision, a harvester may be unable to commit any IFQ to a processor under the provision because the processor does not hold sufficient IPQ to take most of the harvester's IFQ. In addition, the regulation should consider a lower level than 50 percent for a cooperative to make a unilateral commitment, since a cooperative represents several share holders. A more appropriate threshold might be 50 percent of the average share holding in the cooperative.		Revise the provision concerning the minimum commitment. For a cooperative unilateral commitment, a more appropriate threshold might be 50 percent of the average CVO share holding in the cooperative.
§680.20(h)(3)(iv)	The time period to initiate arbitration must be limited on both sides, since only one arbitration proceeding is allowed for each processor. The share matching limit of 25 days before the start of the season is intended to also operate as a limit on the ability to initiate arbitration. In the absence of a limit, a harvester could initiate an arbitration proceeding several months prior to the season, which is unreasonable for all parties including other harvesters that may wish to deliver to that processor.	Last Best Offer Binding Arbitration, Process, 2. Required Share-Matching and Arbitration, See also, RIR, p. 387 "Structure II" and pp. 392-7, "Analysis of Structure II"	Limit IFQ holders from initiating binding arbitration more than 25 days prior to the season opening.
§680.20(h)(3)(iv)(D)	This provision states that the "IPQ holder and IFQ holder may decide to enter Binding Arbitration". Only IFQ holders can initiate the Binding Arbitration and it can be initiated unilaterally by IFQ holders.	Last Best Offer Arbitration, EIS 2-48 and 4-162.	Revise to provide that IFQ holders can unilaterally initiate arbitration and that IPQ holders cannot initiate binding arbitration.
§680.20(h)(3)(v)	IPQ holders are not permitted to initiate arbitration under the Council motion.	Last Best Offer Arbitration, EIS 2-48 and 4-162.	All references to "IPQ holders" initiating the process should be removed.

Regulation Section	Issue/Comment	Council motion provisions	Suggested solution
§680.20(h)(3)(v)	This provision needs to limit arbitration to holders of shares that are committed to one another.	Last Best Offer Arbitration, Negotiation and Voluntary Share matching and Required Share-matching and Arbitration	Revise provision so that an IFQ holder may initiate arbitration with an IPQ holder to which the IFQ holder has committed shares.
§680.20(h)(3)(v)(A), (B), (C), and (D)	The provisions referencing the use of Open Negotiations, the Lengthy Season Approach, Share Matching, and Performance Disputes do not work here because of the timing of these actions and the timing for initiating arbitration. For example, performance disputes will not arise until during the season, while this arbitration referred to here is limited to preseason. These references should be removed, as the preceding language defining the terms of arbitration are clear. The procedures for the lengthy season approach and performance disputes should be defined in the contract, but not specifically defined in the regulation.	Last Best Offer Arbitration, See also, RIR, p. 387 "Structure II" and pp. 392-7, "Analysis of Structure II"	Remove the references in (A), (B), (C), and (D) to the open negotiations, lengthy season approach, share matching, and performance disputes.
§680.20(h)(3)(vi)	There needs to be a limit on the time during which a person can join an arbitration proceeding in order to prevent parties joining during the proceeding to disrupt the proceeding.	Last Best Offer Arbitration, See also, RIR, p. 387 "Structure II" and pp. 392-7, "Analysis of Structure II"	Require the contract with the Contract Arbitrator to specify the terms and timing of joining the proceedings.
§680.20(h)(3)(vi)	The ability to join should be contingent on the IPQ holder having uncommitted shares and the harvester making a commitment of IFQ	Last Best Offer Arbitration, See also, RIR, p. 387 "Structure II" and pp. 392-7, "Analysis of Structure II"	Limit joining by requiring a commitment under §680.20(h)(3)(iv).
§680.20(h)(3)(vii) and (viii)	The rationale for requiring separation of the schedule meeting and the meeting defining terms of last best offers is not clear. It may be that antitrust concerns dictate that IFQ holders that are not part of an FCMA cooperative should not participate in a joint meeting. If that is the case, a provision should be added to that effect.		

Regulation Section	Issue/Comment	Council motion provisions	Suggested solution
§680.20(h)(3)(viii), (ix), and (x)	These provisions should make clear that the arbitration will apply to all committed IFQ of the IFQ holder and the corresponding committed IPQ of the IPQ holder. The arbitration outcome should decide the delivery terms of all shares that the parties have committed to one another.	Last Best Offer Arbitration, See also, RIR, p. 387 "Structure II" and pp. 392-7, "Analysis of Structure II"	Revise to make arbitration apply to and fully binding on all deliveries of committed shares of the parties.
§680.20(h)(5)	Under this provision, information flow in binding arbitration is limit to the information submitted by parties and market report and formula. The broad availability of data to IFQ holders under notice requirements and FCMA cooperatives could be argued to create an imbalance in the proceedings.		
§680.20(h)(8)	This provision makes reference to (h)(6)(v), which does not exist.		
§680.20(h)(11)(ii)	Using the same procedure for performance disputes as for other arbitration is not possible because of the timing of arbitration and the timing of performance disputes. The specific process should be defined by industry in the contract with the contract arbitrator.	Last Best Offer Arbitration, See also, RIR, p. 387 "Structure II" and pp. 392-7, "Analysis of Structure II"	The contract with the Contract Arbitrator should define the process for resolution of performance disputes through arbitration.
§680.20(h)(11)(iii)	It is unclear how arbitration can be "unsuccessful".		The reference to "unsuccessful" arbitration should be removed or explained.

Regulation Section	Issue/Comment	Council motion provisions	Suggested solution
§680.21	This provision in the rule should not require that harvest cooperatives be FCMA cooperatives. The Council motion establishes a "harvesting cooperative" that is intended to coordinate harvests of its members' IFQ to achieve efficiencies in the fisheries. The terms that govern these harvesting cooperatives are delineated in section 6 of the Council motion (p. 20), with further clarification in item 13 of the Clarifications (pp.25-6). The motion and clarification describe a system of coordination of harvests that would be used to pursue fleet consolidation. Similarly, the clarification describes systems of leasing and use of allocations. No mention of marketing or negotiation activities is made in either the motion or clarifications. In the arbitration section of the motion FCMA cooperatives are distinguished as the only cooperatives that may negotiate on behalf of their members. The current regulation disregards this critical distinction, treating all cooperatives as FCMA cooperatives and thereby limiting the ability of processors and their affiliates to realize the benefits of coordination of harvest activity that could be achieved through the harvest cooperative structure the Council has developed. The language of the Council distinguishes and requires FCMA cooperatives in the arbitration program, the only portion of the motion in which a cooperative would engage in negotiation. In addition, the motion specifically identifies the role of its harvest cooperatives. Given the limited scope of harvest cooperatives actions and the distinction of FCMA cooperatives in the arbitration provisions of the motion, harvest cooperatives should not be required to be FCMA cooperatives.	p. 20, 6. Cooperative model options and pp.25-6, 13 Rules governing cooperatives, see also, Binding Arbitration requiring FCMA cooperatives for purposes of negotiations.	Remove requirement that harvest cooperatives be FMCA cooperatives.
§680.21(a)(3)	The provision prohibits PQS and IPQ holders and their affiliates to join harvest cooperatives. This limits the ability of vertically integrated harvesters to achieve harvest coordination efficiencies. (see comment related to §680.21 above)	p. 20, 6. Cooperative model options and pp.25-6, 13 Rules governing cooperatives	Remove this provision.
§680.21(b)(1)	The rule should provide that any individual share holder is a unique person for purposes of determining whether the threshold minimum number of persons for cooperative formation is met. Each share holding person should be unique, whether or not that person holds some interest in a commonly held corporation. The corporation may not be a unique.	6.1, 3)	Clarify that any individual share holder is a unique person for purposes of establishing the threshold number of persons for cooperative formation.

Regulation Section	Issue/Comment	Council motion provisions	Suggested solution
§680.21(b)(4) and (5)	Limiting a person to a single cooperative and "all or nothing" participation is inconsistent with Council intent. Doing so, will also limit ability of participants to achieve efficiencies. Any hoped for simplification in management is likely to be lost either through individuals choosing not to join cooperatives (forcing the agency to manage substantially greater numbers of individual holdings) or the use of corporate structures to subvert the intention but not the letter of rules (i.e., the establishment of different unaffiliated share holding companies for different cooperatives). Strict administration of a single cooperative rule, which would be necessary to achieve any saving in management of share transactions, is likely to be ineffective and costly. In addition, a single cooperative requirement is likely to result in substantially greater intercooperative trades, each of which would need to be processed and administered by the agency. An alternative would be to allow a single cooperative per fishery or per fishery and region. This approach would reasonably balance the agency's desire to reduce administrative burdens while still allowing participants to realize efficiency benefits of cooperative coordination of harvests. This approach is also consistent with the EIS description of the program.	EIS 4-34, 4-161, see also Cooperative model options p.20 Council motion and 13. Rules governing cooperatives pp.25-6 Council motion.	Replace with a rule that permits a person to enter one cooperative per fishery or one cooperative per fishery and region.
§680.21(d)(4)	Conversion of CVC and CPC IFQ to CVO and CPO IFQ, respectively, on allocation to a cooperative effectively removes any owner on board requirement for C shares. The primary purpose of C shares is to provide active fishermen with shares that can be used for leverage in negotiating the terms of their employment. By removing owner-on-board requirements, C shares could be held by persons that do not fish in the fisheries. Even with owner-on-board requirements, C share holders can gain greatly by being cooperative members, since cooperatives will coordinate the harvest of all of the cooperative's shares. Participation in the discussions during which that fishing activity is scheduled will be important to C share holders regardless of whether the C share holders are required to be on board the vessels fishing their shares. This provision also raises the question of whether the converted CVC IFQ would be subject to the Class A/Class B split in the first three years of the program. The regulation should be clear that the split should not apply in the first three years.	1.8.1.9 and EIS 2-44	Require owner on board for CVC and CPC IFQ. Do not convert these shares to CVO and CPO when held by a cooperative. The regulation should clarify that converted CVC IFQ are not subject to the Class A/Class B split during the first three years of the program.

Regulation Section	Issue/Comment	Council motion provisions	Suggested solution
§680.21(f)(4)	Prohibition on cooperative members holding or transferring PQS and IPQ is likely to limit the achievement of efficiencies in the fisheries for a substantial number of vertically integrated share holders. This provision is unnecessary, if cooperatives are not required to be FCMA cooperatives.	See comment on §680.21 above.	Remove the prohibition on cooperative members holding or acquiring IPQ and PQS.
§680.21(g)	In order to have effective use caps, the Council motion specifies that transfers outside a cooperative (i.e., intercooperative transfers) are to be made through individual members. Once IFQ are inside a cooperative any individual or vessel caps do not apply to the movement of those IFQ within the cooperative. In the absence of a requirement that intercooperative transfers be accounted for by individuals in a cooperative for purposes of applying use caps, the program is without any effective use caps. For example, four persons all holding QS at the cap could form a cooperative and acquire additional IFQ through intercooperative transfer in excess of the use caps.	pp.25-6, 13. Rules governing cooperatives.	Require cooperatives to conduct intercooperative transfers through members, as described in the Council motion.
§680.40(b)(2)(i)(B)(2)	This provision suggests that regional designations apply to CVC QS "prior to July 1, 2008."	1.8.1.6	The provision should read, "on and after July 1, 2008."
§680.40(b)(4)(ii)(B) and (E)	These provisions prevent the separation of a license from its history. The provision should allow separation in the case of a person acquiring a license to remain in a fishery (§680.40 (c)(1)(vii)).	1.4.1, Option 1	Insert a provision that permits the separation of a license from its history to the extent necessary to achieve the purpose of §680.40 (c)(1)(vii).
§680.40 (c)(1)(vii)	This provision permits a person that purchased a license to remain in a fishery to use the history of the vessel on which the license was used or on which the license was based. The requirement that the vessel using the license have an interim license could limit the application of this provision to situations where multiple license transfers were required to comply with vessel length limits on licenses.	1.4.1, Option 1	Remove the limitation that the license be an "interim" license. The rule should be clear that no history may be credited toward two different allocations and that only one history may be credited to a license.

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§680.40(e)(1)(i) and (e)(ii)(D)	This provision refers to the TPD for each year. When taken together with the reference to the "average percentage of the TPD for a person" in (e)(ii)(D), the provisions suggest that the "average annual percentage" approach to determining allocations will be used for processors, which is not correct.	2.3, Option 1, footnote 1 on p. 10 of the Council motion	Clarify method of allocation of processor individual allocations is total individual qualified history divided by all qualified history.
§680.40(f)(3) and (7)	The requirement of a ROFR contract at the time of application is inconsistent with the Council motion. PQS applicants need to enter the contract only if the ECC entity is designated by a time certain.	p. 17 of the Council motion	Provide notice to an eligible community on the application for PQS that could be subject to a ROFR. If the community notifies the agency and the PQS applicant that it has formed an entity (and provides contact information for the entity) the PQS allocation would be made only on completion of the contract establishing the terms of with the requirements for ROFR. If the contract is not executed, the parties could seek remedies in civil court to the extent necessary.
§680.40(f)	This section makes interchangeable use of the terms "QS and PQS Application" and "QS or PQS Application" suggesting that QS is subject to a ROFR, which is not the case.	Community purchase and right of first refusal options, p. 16-8 of Council motion	Clarify application of ROFR to only PQS and IPQ.

Regulation Section	Issue/Comment	Council motion provisions	Suggested solution
§680.40(h)(4)	This provision uses processor affiliation for determining whether a QS holder receives Class B IFQ. Eligibility to receive an allocation of B shares in the Council motion relies on whether the processor "controls" delivery of the IFQ. Use of a "control" standard for determining whether B shares will be allocated has two effects: First, if the processor holds a limited amount of IPQ, the A share only allocation should be limited to an amount of IFQ that offset the IPQ holding, with the remainder of the allocation subject to the Class A/Class B split. (See EIS 2-41, which states holders of PQS and their affiliates that hold QS would be allocated Class A IFQ in the amount of their IPQ holdings with the remainder issued as Class A IFQ and Class B IFQ at the same ratio as those allocated to independent harvesters.) Using this approach, a person receives a Class A only IFQ allocation for only those IFQ that are controlled by the processor, with the remainder of the allocation (which is beyond the control of the processor) as a Class A/Class B allocation. Second, if the processor does not control deliveries (regardless of the number of IPQ held), the B share allocation will be necessary for negotiating strength of the person controlling deliveries in their negotiations with processors generally. Issue: If a "control" affidavit is used for determining who will receive B shares, the term "control" must be well-defined, so that the signatory to the affidavit knows what the attestation means.	1.6.4, EIS 2-41	Allocation of "only Class A IFQ" should be limited to the amount of controlled IFQ. The remainder of the allocation should be subject to the Class A/Class B division of fully independent harvesters. The definition of control should be revised to reflect the nature of control at issue (i.e., does the IPQ holder control the delivery of the IFQ). This definition may rely to some extent on "affiliation," but control of deliveries should be paramount.
§680.40(h)(1) through (7)	These provisions appear to make no IFQ allocations for CVC QS holders prior to July 1, 2008. The CVC IFQ should not be subject to region or processor landing restrictions during this time period.	1.8.1.6	The provision should make clear that CVC QS holders receive an allocation prior to July 1, 2008.
§680.40(h)(5)(ii)	The term "IFQ TAC" used in the calculation of the Class A IFQ allocation and the IPQ allocation is not defined. Care should be taken in defining the term to show that prior to July 1, 2008, CVC QS yield IFQ that are not subject to the A share landing requirements and that IPQ should be issued for 90 percent of the CVO IFQ allocation. After July 1, 2008, CVC share holders will receive A shares and IPQ will be issued for 90 percent of the CVO and CVC IFQ allocation.	1.8.1.6 and EIS 2-44.	Clarify definition and calculation of IPQ and Class A IFQ allocations.

Regulation Section	Issue/Comment	Council motion provisions	Suggested solution
§680.40(h) and (i)	These sections should contain the IPQ cap in 680.42 (c)(4), which limits the IPQ allocation in the Bristol Bay red king crab and Bering Sea snow crab fisheries. Inclusion of the caps in the section on use limitations (680.42 (c)(4)) seems incorrect since the allocation is limited, not the use of the allocation.	IPQ caps at p. 16 of the Council motion	Include allocation limitation in this section.
680.40(l)	The legislation authorizing the program provides in section 801(j)(7) provides that IPQ should not create a right, title, or interest in any crab, until that crab is purchased from a fisherman. No similar language appears in the regulation.		Inclusion of language from the legislation in the regulation.
§680.40(m)	The contract terms for ROFR are not those in the Council motion. A cleaner approach would be to just copy the Council motion, rather than reinterpret it.	Contract terms at p. 17 of the Council motion.	Use the language from the motion.
§680.40(m)	For purposes of implementing the ROFR, "movement of shares from a first or second class city, if one exists, and borough, if a first or second class city does not exist," constitutes "movement of shares from the community". Note that this differs from the cooling off period.	General right of first refusal at pp.16-8 of the Council motion	Clarify provisions that apply to movement of shares from the community.
§680.40(m)(2)	The provision states that "any sale must be provided on the same terms" to the EEC entity. This wording is not a complete description of the right of first refusal, since the ability to exercise the right applies for a limited period and is exercised by performing the terms, not receiving an offer.	Contract terms at p. 17 of the Council motion.	Use the language from the motion.
§680.40(m)(6)	Since ROFR applies to IPQ, this provision should be broadened to include waivers with respect to IPQ.	Contract terms at p. 17 of the Council motion.	Broaden the provision so that waivers to apply to IPQ.
§680.40(m)(7)	Since ROFR applies to IPQ, this provision should be broadened to include ROFR with respect to IPQ.	Contract terms at p. 17 of the Council motion.	Broaden the provision so that ROFR applies to IPQ, under the terms of the motion.

Regulation Section	Issue/Comment	Council motion provisions	Suggested solution
§680.41(c)(1)(i)	Table is incorrect concerning CVC or CPC in lines (E) and (F). In line (E), the initial recipient of QS is not relevant (no provision authorizing recipients of an initial allocation to receive shares is included for the acquisition of CVC and CPC shares). The only standard for eligibility to receive CVC or CPC shares is that the person acquiring the shares must be an individual that is a US citizen and an "active participant" . Similarly, in line (F), a cooperative cannot receive shares since it doesn't meet those criteria. The line concerning cooperative acquisition could be deleted. Alternatively, a cooperative could be permitted to receive shares through an individual that meets the requirements, if the agency would like to assume the added administrative burden of tracking those transactions and performance of owner on board requirements.	1.8.1.7	Limit eligibility to receive CVC and CPC shares to individuals who are U.S. citizens and "active participants".
§680.41(c)(2)(ii)(B)(3)	Applications to receive CVC and CPC QS by transfer must be by individuals.	1.8.1.7	Limit eligibility to receive CVC and CPC shares to individuals who are U.S. citizens and "active participants".
§680.41(c)(2)(ii)(D)(2) (i) and (ii)	This section does not adequately parallel the Council motion. For corporations and other entities, one "owner" (not "member") must meet the sea time requirement. In addition, that same owner must hold at least a 20 percent ownership interest in the entity. The section does not exactly parallel these requirements.	1.6	Use language from the Council motion.
§680.41(c)(3)(i) and (ii)	It is unclear whether the ECCO can hold and transfer PQS. The ECCO should be able to hold and transfer both QS and PQS.	p. 18, Identification of community groups and oversight	Clarify that ECCOs can hold PQS.
§680.41(c)(3)(i) and (ii)	The provision states that each ECC must designate an ECCO. The rationale for this absolute requirement is unclear. Communities have the option of designating an ECC entity, but would waive the ROFR and not be permitted to use the community purchase privilege, if they chose not to.	pp. 16-8, Community purchase and right of first refusal options	"Must" should be changed to "may".

Regulation Section	Issue/Comment	Council motion provisions	Suggested solution
§680.41(d)(2)(i)(C)	This provision requires a statement from an authorized representative of a community that the ROFR has been offered on sale of shares outside a community. Several aspects should be clarified here. First, a signature from an authorized representative is too strict of a requirement. A provision that requires a PQS/IPQ holder that is subject to ROFR to provide notice to ECC entity (and the agency) of the sale is all that should be included here. Otherwise, reluctance to sign the authorization could lead to a delay in the transaction despite proper notice of the sale. Second, the notice is only required if the sale meets the requirements for the ROFR (i.e., some transfers do not trigger the ROFR). Intra-company transfers, transfers for use in the community, and some transfers of IPQ are not subject to the ROFR. This is not clear from the way the provision is drafted. Third, somewhere in the regulation the process of completing a sale on which the ROFR is exercised should be stated. Under the Council motion, the EEC entity should notify the PQS/IPQ holder (and agency) of its intent to exercise (and evidence of its earnest money payment). Then need some confirmation of performance for the agency to finish the transaction.	pp. 16-8, Community purchase and right of first refusal options	Require notice of the transaction only to the holder of the ROFR only. Require notice only if sale is subject to the ROFR. Develop regulation defining process for exercise of the right.
§680.41(h)	This provision should require designation of the members of the cooperative that are engaged in the transaction for purposes of applying use caps to the shares a person may bring to a cooperative. In the absence of this limitation, persons could join a cooperative and acquire shares in excess of the cap, making individual use caps ineffective.	pp.25-6, 13. Rules governing cooperatives	Adopt requirement consistent with the Council motion.
§680.41(j)(1)(ii)	The community of Adak does not receive the ROFR. It should be expressly excluded here.	General right of first refusal, p. 16 of the Council motion	Exclude Adak from the ROFR.
§680.41(j)(2)(ii)	The community does not need to designate an ECC entity. If they do not the ROFR is waived.	pp. 16-8, Community purchase and right of first refusal options	Change “must” to “may”.

Regulation Section	Issue/Comment	Council motion provisions	Suggested solution
§680.41(j)(3)	Requiring the ECC entity to be a signatory to the transfer is inappropriate. A ROFR only requires notice and the opportunity to exercise the right. It may be useful to have PQS holders submit an annual report identifying the amount of IPQ that it used in a community during the year and if used outside a community, who used the IPQ (which would be used to determine whether the ROFR would apply to a future transaction).	pp. 16-8, Community purchase and right of first refusal options	Remove requirement for signature of community authorized representative. Require that the transferor provide evidence of notice to the ECC entity.
§680.41(j)(4)	This provision seems to confuse the process of passing on the ROFR to a successor. If the transfer is within the ECC, the recipient of the PQS would need to sign a contract granting the ROFR to the ECC organization (not "exercising the right") and agree to terms concerning the use of the shares in the community in future years. In addition, the ECC entity need not have signed the contract on application. The submission of the contract signed by the recipient of the shares will allow the agency to delivery the contract to the ECC entity for signature. If the ECC entity does not sign the contract the ROFR would be waived.	pp. 17-18, Contract terms	Revise process for intra-community transfers consistent with the Council motion.
§680.41(j)(5)	The provisions defining the ROFR in the North Gulf need to limit the ROFR to the same terms generally as the general ROFR. This means that the ROFR applies only to the first transfer from the community of origin. These terms are not clear in the current regulation.	pp. 16-18, Community purchase and right of first refusal options and GOA first right of refusal	Revise regulation consistent with the Council motion.
§680.41(l)(2) and (4)	These provisions concern the transfer of CVO QS and CVC QS, respectively. They specifically provide, "Notwithstanding QS use limitations under section 680.42, CVO (CVC) QS may be transferred to any person eligible to receive CVO or CPO (CVC or CPC) QS as defined under paragraph (c) of this section." These provisions appear to override any use caps contained in 680.42 (the only section of the regulation defining use caps). They should be deleted in their entirety.	1.6.3 and 1.8.1.9	Delete these provisions in their entirety.

Regulation Section	Issue/Comment	Council motion provisions	Suggested solution
§680.42(b)(1)(i)	This provision grandfather's from the use caps any initial allocation receive based on licenses owned prior to June 10, 2002. Some purchasers of licenses since that date may have been pushed over the use caps by the license buyback. If a person bought a license after June 10, 2002 and would have been under the limit, but the buyback put the person over the limit, they would not receive an allocation over the cap.		Include a provision that would grandfather any initial allocation in excess of the use caps received from licenses acquired after June 10, 2002 and prior to the referendum on the buyback, to the extent that the allocation would not have been in excess of the cap, but for the buyback.
§680.42(b)(1)(iii)	The provision creates ambiguity concerning non-individuals holding CVC IFQ and QS. CVC IFQ and QS may be held only by individuals.	1.8.1.7	Limit to CVC and CPC share holdings to individuals.
§680.42(b)(2)	This lead in creates an ambiguity concerning individuals holding PQS and IPQ being exempt from the cap. Only corporations and other non-individuals that directly hold PQS and IPQ are exempt from this cap. In addition, the exemption should be limited under cap described in (b)(4), not generally.	1.6.4 of the Council motion and Clarification 13 on p.26	The lead in should read, "Except for corporations and other non-individuals as provided in (b)(4) and CDQ groups as provided for in (b)(3)."
§680.42(b)(2)(i)	The table specifies the use caps for CVC and CPC shares. Under the Council motion, these caps are to be equivalent to the CVO and CPO vessel use caps. As written, they are equivalent to the individual CVO and CPO use caps (in most cases one-half of the correct cap).	1.8.1.9, 2) Option 2	Revise individual use caps for CVC and CPC shares to equal the vessel use caps.
§680.42(b)(3) and (4)	The rule limiting the acquisition of licenses (and history) in excess of the cap after June 10, 2002 should apply to (b)(3) (CDQ caps) and (b)(4) (vertical integration caps), as well as the general caps.	1.6.3 and 1.6.4	Add in control date.
§680.42(b)(3)	For CDQ groups, the individual and collective rule is used to determine holdings for applying the caps.	1.6.3	Add in "individual and collective" application.

Regulation Section	Issue/Comment	Council motion provisions	Suggested solution
§680.42(b)(4)	For PQS holders, the AFA-style 10 percent limited threshold rule is used for determining compliance with the vertical integration cap on IFQ holdings. Under this approach all QS and IFQ holdings of the holder of the PQS and all of its affiliates are counted toward the cap. The application of this rule is not clear from the regulation. A second issue arises in this provision of the regulation because this is an additional cap to the cap in (b)(2)(i). This cap supersedes the cap in (b)(2)(i) only for a corporation or other non-individual directly holding the PQS. In other words, all individuals will still be subject to the individual caps in (b)(2)(i).	1.6.4 and Clarification 13 on page 26 of the motion and EIS 2-43	Clarify the method of calculating holdings. Clarify the application of the cap and the limited exemption.
§680.42(c)(1)	Caps on PQS and IPQ use should the AFA-style 10 percent limited threshold rule, not the individual and collective rule. Under this approach all PQS and IPQ holdings of the holder of the PQS and all of its affiliates are counted toward the cap. The application of this rule is not clear from the regulation.	2.7.1 and EIS 2-46	Clarify the method of calculating holdings.
§680.42(c)(4)	The provision prevents the issuance of IPQ in excess of the "IPQ cap" in the Bristol Bay red king crab fishery and the Bering Sea snow crab fishery. It is very confusing to have this provision in the section on "use limitations" since it is not a use limit, but an allocation limit. The provision should likely be moved to 680.40(h) and/or (i), which concern the allocation of Class A IFQ and IPQ. The provision at a minimum must be referenced in that section.	p. 16, IPQ caps	Move allocation cap to section on allocations (§680.40(h)(5).
§680.42(c)(5)	This cooling off provision allows IPQ to be used inside the borough, if one exists, and inside the first or second class city, if a borough does not exist. This provision appears to limit use of shares outside of the first or second class city in all cases.	p.16, Cooling down period	Revise provision to define boundaries based on Council criteria.
§680.42(c)(7)	This provision should also state that all CVC IFQ may be delivered to any RCR prior to July 1, 2008. (The section refers only to Class B CVC IFQ. Prior to July 1, 2008, CVC IFQ is not subject to Class A/Class B division.)	1.8.1.6, Option 2	Include CVC IFQ prior to July 1, 2008.
§680.42(c)	For purposes of applying processing caps, crab custom processed at a plant is to be counted toward the cap of the owner of the plant. This requirement appears to be missing.	p.24, clarification 2	Revise to add in custom processing crediting toward the processor cap.

Regulation Section	Issue/Comment	Council motion provisions	Suggested solution
§680.42(d)(5)	Exemption from owner-on-board for CVC and CPC IFQ, if a member of a cooperative is incorrect. Although the Council motion provides for CVC holders to join cooperatives, the Council motion makes no mention of exemptions from owner-on-board requirements. Owner on board requirements are fundamental to the Council's goal of having these shares support active fishermen.	1.8.1.11, EIS 2-44	Remove exemption to owner on board for cooperative members.
Table 7	The table mixes the concepts of eligibility and qualification. Eligibility defines the persons eligible to receive an allocation. For CVO and CPO, holders of permanent LLP licenses are eligible for an initial allocation. For CVC and CPO, persons meeting the historical participation requirement (i.e., landings in 3 of the qualifying years for vessels) and recency requirements (i.e., landings in 2 of the 3 most recent years) are considered eligible. Once persons are found eligible, their allocations are based on the qualifying years shown in Column B. The same subset of years would apply to all participants (CVO, CPO, CVC, and CPC). Column E is incorrect. In addition, Columns C and D define CVC and CVP eligibility, not qualification.	1.8.1.4	Revise table to reflect difference between eligibility and qualification.
Table 7	The table leaves out the season beginning in 1991 for Bering Sea Tanner crab. The seasons shown in (2) and (3) are one season, not two.	1.4.2	Revise dates in the table to include the 1991 BS Tanner season.
Table 7	The table defines seasons with an opening and closing date. Often the last landing of the season is made after the closing date. The regulation should be clear that legal landings made after the closing date will be counted for allocations.		Clarify that these landings will count for determining allocations.
General comment	The Council motion provides that deadloss would be counted against quota. This provision appears to be missing from the regulation.	p.20 paragraph 13 and 1.7.3	Include provision providing for deadloss accounting.
General comment	The Council motion provides for the forfeiture of any overage from the last trip from a fishery and for penalties for any overage in excess of 3 percent of the unused quota on the last trip. These provisions appear to be missing from the regulation.	1.8.2	Clarify that all overages are forfeited and that overages in excess of 3 percent are a violation.
General comment	The Council motion provides that AFA crab harvesting and processing sideboards would be removed on implementation of the program. The regulation does not appear to contain a provision concerning the removal of AFA sideboards.	1.8.3 and 2.8	Include provisions removing the AFA crab harvesting and processing sideboards.

Regulation Section	Issue/Comment	Council motion provisions	Suggested solution
General comment	The Council motion outlines the terms that should govern the management of the Adak allocation of WAI brown king crab. No provision is made in the regulation for management of that allocation.	p.19, Additional provisions concerning the Adak allocation.	
General comment	The regulations make no provision for the loan program that is intended to be support purchase of shares by captains and crew. The loan program, including its initial funding, is an important element intended to support captain and crew interests and should be implemented simultaneously with all other aspects of the program.	1.8.1.8	Include the regulation for the loan program with the primary regulations in the program and implement the loan program simultaneously with the implementation of all other aspects of the program. Explore options for seed money to fund on implementation.
General comment	Management of observers in the crab fisheries is the purview of the State of Alaska under the FMP. The regulation should not contain provisions concerning the observer program in the fisheries.		Remove provisions concerning observers from the rule.