

Final Regulatory Flexibility Analysis

for the

Crab Rationalization Program

for the

Bering Sea and Aleutian Islands King and Tanner Crabs

Abstract: This Final Regulatory Flexibility Analysis (FRFA) evaluates the impacts of the Crab Rationalization Program for the king and Tanner fisheries in the Bering Sea and Aleutian Islands on small entities. The proposed rule for the Crab Rationalization Program was published in the Federal Register on October 29, 2004 (69 FR 63200). An Initial Regulatory Flexibility Analysis (IRFA) was prepared for the proposed rule, and described in the classification section of the preamble to the rule. The public comment period ended on December 13, 2004. NMFS received three comments on the IRFA. This FRFA addresses the statutory requirements of the Regulatory Flexibility Act (RFA) of 1980, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 (5 U.S.C. 601-612).

List of Responsible agencies

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Executive Summary

This Final Regulatory Flexibility Analysis (FRFA) evaluates the impacts of the Crab Rationalization Program (Program) for the king and Tanner crab fisheries in the Bering Sea and Aleutian Islands on small entities. This FRFA addresses the statutory requirements of the Regulatory Flexibility Act (RFA) of 1980, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 (5 U.S.C. 601-612). It specifically addresses the requirements at section 604(a).

National Oceanographic and Atmospheric Administration's National Marine Fisheries Service (NMFS) published the proposed rule for the Program in the Federal Register on October 29, 2004 (69 FR 63200). An Initial Regulatory Flexibility Analysis (IRFA) was prepared for the proposed rule, and described in the classification section of the preamble to the rule. The public comment period ended on December 13, 2004. NMFS received 49 letters of public comment on the proposed rule. NMFS summarized these letters into 234 separate comments. Of these, three comments were specifically directed to the IRFA and are presented in this FRFA. Several comments directly or indirectly dealt with economic impacts to small entities resulting from the management measures presented in the proposed rule. These comments and responses are included in the preamble to the final rule.

The BSAI crab fisheries are currently managed under the LLP. Under current management, the fisheries are prosecuted in an economically inefficient manner with significant amounts of the capital idle between seasons. The race to fish also creates incentives for participants to compromise safety to increase catch. The Council developed the Program which slows the race for fish, minimizes bycatch and associated mortalities, provides for conservation to increase the efficacy of crab rebuilding strategies, and addresses the social and economic concerns that have arisen under current management. The U.S Congress mandated NMFS approve and implement the Program by amending section 313(j) of the Magnuson-Stevens Act through the Consolidated Appropriations Act of 2004 (Pub. L. 108-199, section 801).

Approximately 238 small entities own crab harvest vessels or crab catcher/processors. They are directly regulated by the final rule. Eight small entities appear to qualify for processor allocations. Thirteen communities, which are considered small government jurisdictions, could be directly impacted by the community protection provisions under consideration. The six non-profit CDQ groups are small entities directly regulated by the final rule.

Implementation of the final rule will change the overall reporting structure and recordkeeping requirements of the participants in the BSAI crab fisheries. Under the final rule, all participants will be required to provide additional reporting. Each harvester will be required to track harvests to avoid exceeding his or her allocation. As in other North Pacific rationalized fisheries, processors will provide catch recording data to managers to monitor harvest of allocations. Processors will be required to record deliveries and processing activities to aid in Program administration.

The Council considered an extensive and elaborate series of alternatives, options, and suboptions as it designed and evaluated the potential for rationalization of the BSAI crab fisheries, including the "no action" alternative. The Regulatory Impact Review (RIR) presents the complete set of alternatives, in various combinations with the complex suite of options. The Environmental Impact Statement (EIS) presents four alternative programs for management of the BSAI crab fisheries, namely, Status Quo/No Action (Alternative 1); the Crab Rationalization Program (Alternative 2); an Individual Fisherman's Quota (IFQ) Program (Alternative 3); and a Cooperative Program (Alternative 4). These alternatives constitute the suite of "significant alternatives", under the proposed action, for RFA purposes. Each is addressed in this FRFA.

After an exhaustive public process, spanning several years, the Council and NMFS selected the Crab Rationalization Program alternative because it concluded that the Crab Rationalization Program best accomplishes the stated objectives articulated in the problem statement and applicable statutes, and minimizes to the extent practicable adverse economic impacts on the universe of directly regulated small entities; harvesters, processors, and communities. The Program contains many provisions to minimize significant negative impacts on small entities, consistent with stated objectives of applicable statutes.

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1.0 Introduction

This Final Regulatory Flexibility Analysis (FRFA) evaluates the impacts of the Crab Rationalization Program for the king and Tanner crab fisheries in the Bering Sea and Aleutian Islands on small entities.

The proposed rule for the Crab Rationalization Program was published in the Federal Register on October 29, 2004 (69 FR 63200). An Initial Regulatory Flexibility Analysis (IRFA) was prepared for the proposed rule, and described in the classification section of the preamble to the rule. The public comment period ended on December 13, 2004. NMFS received three comments specifically directed to the IRFA.

This FRFA addresses the statutory requirements of the Regulatory Flexibility Act (RFA) of 1980, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 (5 U.S.C. 601-612). It specifically addresses the requirements at section 604(a).

1.1 The purpose of a FRFA

The Regulatory Flexibility Act (RFA), first enacted in 1980, requires the government to review all regulations to ensure that, while accomplishing their intended purposes, the government does not unduly inhibit the ability of small entities to compete. The RFA recognizes that the size of a business, unit of government, or nonprofit organization frequently has a bearing on its ability to comply with a Federal regulation. Major goals of the RFA are: (1) to increase agency awareness and understanding of the impact of their regulations on small business, (2) to require that agencies communicate and explain their findings to the public, and (3) to encourage agencies to use flexibility and to provide regulatory relief to small entities. The RFA emphasizes predicting impacts on small entities as a group distinct from other entities and on the consideration of alternatives that may minimize the impacts while still achieving the stated objective of the action.

On March 29, 1996, President Clinton signed the Small Business Regulatory Enforcement Fairness Act. Among other things, the new law amended the RFA to allow judicial review of an agency's compliance with the RFA. The 1996 amendments also updated the requirements for a final regulatory flexibility analysis, including a description of the steps an agency must take to minimize the significant economic impact on small entities. Finally, the 1996 amendments expanded the authority of the Chief Counsel for Advocacy of the Small Business Administration (SBA) to file amicus briefs in court proceedings involving an agency's violation of the RFA.

In determining the scope, or 'universe', of the entities to be considered in a FRFA, NMFS generally includes only those entities that can reasonably be expected to be directly regulated by the final rule. If the effects of the rule fall primarily on a distinct segment, or portion thereof, of the industry (e.g., user group, gear type, geographic area), that segment would be considered the universe for the purpose of this analysis. NMFS interprets the intent of the RFA to address negative economic impacts, not beneficial impacts, and thus such a focus exists in analyses that are designed to address RFA compliance.

Because, based on all available information, it is not possible to 'certify', should the proposed action be adopted, a formal FRFA has been prepared and is included in this package for Secretarial review.

1.2 What is required in a FRFA?

Under 5 U.S.C., Section 604(a) of the RFA, each FRFA is required to contain:

- (1) a succinct statement of the need for, and objectives of, the rule;
- (2) a summary of the significant issues raised by the public comments in response to the initial regulatory flexibility analysis, a summary of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments;
- (3) a description of and an estimate of the number of small entities to which the rule will apply or an explanation of why no such estimate is available;
- (4) a description of the projected reporting, recordkeeping and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record; and
- (5) a description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.

1.3 Definition of a Small Entity

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

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

The SBA has established size criteria for all major industry sectors in the U.S., including fish harvesting and fish processing businesses. A business “involved in fish harvesting” is a small business if it is independently owned and operated and not dominant in its field of operation (including its affiliates), and if it has combined annual receipts not in excess of \$3.5 million for all its affiliated operations worldwide. A seafood processor is a small business if it is independently owned and operated, not dominant in its field of operation (including its affiliates) and employs 500 or fewer persons, on a full-time, part-time, temporary, or other basis, at all its affiliated operations worldwide. A business involved in both the harvesting and processing of seafood products is a small business if it meets the \$3.5 million criterion for fish harvesting operations. A wholesale

business servicing the fishing industry is a small business if it employs 100 or fewer persons on a full-time, part-time, temporary, or other basis, at all its affiliated operations worldwide.

The SBA has established “principles of affiliation” to determine whether a business concern is “independently owned and operated.” In general, business concerns are affiliates of each other when one concern controls or has the power to control the other, or a third party controls or has the power to control both. The SBA considers factors such as ownership, management, previous relationships with or ties to another concern, and contractual relationships, in determining whether affiliation exists. Individuals or firms that have identical or substantially identical business or economic interests, such as family members, persons with common investments, or firms that are economically dependent through contractual or other relationships, are treated as one party, with such interests aggregated when measuring the size of the concern in question. The SBA counts the receipts or employees of the concern whose size is at issue and those of all its domestic and foreign affiliates, regardless of whether the affiliates are organized for profit, in determining the concern’s size. However, business concerns owned and controlled by Indian Tribes, Alaska Regional or Village Corporations organized pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601), Native Hawaiian Organizations, or Community Development Corporations authorized by 42 U.S.C. 9805 are not considered affiliates of such entities, or with other concerns owned by these entities, solely because of their common ownership.

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

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

NMFS applied the SBA’s principles of affiliation for purposes of the IRFA and FRFA analysis.

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

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

2.0 A succinct statement of the need for, and objectives of, the rule

The Council has identified the following problem statement, which this Program is intended to address:

Vessel owners, processors, and coastal communities have all made investments in the crab fisheries, and capacity in these fisheries far exceeds available resources. The BSAI crab stocks have also been highly variable and have suffered significant declines. Although four of these stocks are presently under rebuilding plans, the continuing race for fish frustrates conservation efforts. Additionally, the ability of crab harvesters and processors to diversify into other fisheries is severely limited and the economic viability of the crab industry is in jeopardy. Harvesting and processing capacity has expanded to accommodate highly abbreviated seasons, and presently, significant portions of that capacity operate in an economically inefficient manner or are idle between seasons. Many of the concerns identified by the North Pacific Fishery Management Council (NPFMC) at the beginning of the comprehensive rationalization process in 1992, still exist for the BSAI crab fisheries. Problems facing the fishery include:

1. Resource conservation, utilization and management problems;
2. Bycatch and its associated mortalities, and potential landing deadloss;
3. Excess harvesting and processing capacity, as well as low economic returns;
4. Lack of economic stability for harvesters, processors and coastal communities;
- and
5. High levels of occupational loss of life and injury.

The problem facing the Council, in the continuing process of comprehensive rationalization, is to develop a management program which slows the race for fish, reduces bycatch and its associated mortalities, provides for conservation to increase the efficacy of crab rebuilding strategies, addresses the social and economic concerns of communities, maintains healthy harvesting and processing sectors, and promotes efficiency and safety in the harvesting sector. Any such system should seek to achieve equity between the harvesting and processing sectors, including healthy, stable, and competitive markets.

The BSAI crab fisheries are currently managed under the LLP. Under that management, the fisheries openings are scheduled, after which each participant races to harvest the available resource. Managers monitor harvests in-season and close the fishery when they estimate that the guideline harvest level is reached. Under this management, vessel owners, processors, and coastal communities have made investments in the fisheries, and capacity in these fisheries exceeds that necessary to harvest and process the available resources, if harvest rates are slowed. The BSAI crab stocks have also been highly variable and have suffered significant declines in recent years. Although four of these stocks are presently under rebuilding plans, the continuing race for fish complicates conservation efforts. Under current management, the fisheries are prosecuted in an economically inefficient manner with significant amounts of the capital idle between seasons. The race to fish also creates incentives for participants to compromise safety to increase catch. The objectives of the Crab Rationalization Program are to slow the race for fish, minimize bycatch and associated mortalities, provide for conservation to increase the efficacy of crab rebuilding strategies, and address the social and economic concerns that have arisen under current management.

3.0 Public Comments

The proposed rule for the Crab Rationalization Program was published in the Federal Register on October 29, 2004 (69 FR 63200). An Initial Regulatory Flexibility Analysis (IRFA) was prepared for the proposed rule, and described in the classifications section of the preamble to the rule. The public comment period ended on December 13, 2004. NMFS received 49 letters of public comment on the proposed rule. NMFS summarized these letters into 234 separate comments. Of these, three comments were specifically directed to the IRFA and are presented below in section 3.2. No changes were made to the final rule from the proposed rule in response to the comments on the IRFA. Several comments directly or indirectly dealt with economic impacts to small entities resulting from the management measures presented in the proposed rule. These comments and responses are included in the preamble to the final rule and, as indicated in the preamble, changes were made in response to these comments. A summary of regulation changes in response to public comments is contained below in section 3.1. Additionally, NMFS made a number of changes to the compliance requirements as a result of public comments. These changes are discussed in section 5.0, A description of the projected reporting, record keeping, and other compliance requirements of the final rule.

3.1 Summary of Regulation Changes in Response to Public Comments

This section provides a summary of the major changes made to the final rule in response to public comments. All of the specific changes, and the reasons for making these changes, are contained under Response to Comments in the preamble to the final rule. All of these changes mitigate the impacts of the Program on small entities, as discussed below.

Harvester, Crew, and Processor Sectors

The following significant changes from the proposed to final rule in response to public comments are necessary to meet the requirements of Amendment 18 and 19. These changes mitigate the effects on small entities by improving clarity in the regulations to ensure compliance, providing additional harvest opportunities to small entities affiliated with processors, and refining the application of use caps to reduce the effects of excessive QS/PQS consolation on small entities.

In the final rule NMFS:

- (1) Revised the way in which Class A IFQ and Class B IFQ are allocated to individual IFQ holders who hold PQS or IPQ, or who are affiliated with PQS or IPQ holders, so that Class A IFQ is issued in proportion to the amount of IPQ that is held by the IPQ holder or affiliates.
- (2) Revised the definition of “affiliation” to clarify the term “otherwise controls”.
- (3) Clarified that CVC QS and IFQ are not subject to regional designation and the Class A and Class B IFQ assignment for the first three years of the program – until July 1, 2008.
- (4) Revised the QS use caps that apply to non-individual PQS and IPQ holders so that the application of those caps considers the QS holding of that PQS and IPQ holder and the total QS holdings of all persons affiliated with that PQS or IPQ holder.
- (5) Revised the PQS and IPQ use caps that apply to PQS and IPQ holders so that the PQS or IPQ holdings of that PQS or IPQ holder and the total PQS or IPQ holdings of all persons affiliated with that PQS or IPQ holder are used in the calculation of the PQS or IPQ holder’s caps.
- (6) Clarified that an “individual and collective” rule applies for computing QS use caps for individual PQS holders, CDQ groups, and all other QS holders. This methodology sums all QS holdings by a person and the percentage of ownership by that person in any QS holding entity. This method is more consistent with Amendment 18.

- (7) Added provisions on applying limits on the amount of “custom processing” that may be undertaken at any one processing facility, or at any facility, or group of facilities that is owned by an IPQ holder.
- (8) Clarified the limited exemption that applies to using legal landings based on the activities of a vessel which received an LLP by transfer in order to remain in a fishery.

Crab Harvesting Cooperatives

The following significant changes from the proposed to final rule in response to public comments are necessary to meet the requirements of Amendment 18 and 19. These changes mitigate the effects on small entities by providing additional opportunities for economic efficiencies for small entities affiliated with processors while ensuring compliance with anti-trust laws, maintaining the owner on board requirements for crew QS/IFQ to ensure entry level access into the crab fisheries, and applying the use caps to crab harvesting cooperatives to reduce the effects of excessive QS consolidation on small entities.

In response to Council and public comments, NMFS removed the requirement in § 680.21 that crab harvesting cooperatives be formed under the Fishermen’s Collective Marketing Act (FCMA, 15 U.S.C. 512). With this change, QS holders that hold PQS and IPQ, as well as QS holders affiliated with PQS and IPQ holders, can participate in crab harvesting cooperatives. To address antitrust concerns, NMFS: (1) clarified that issuance of a crab harvesting cooperative IFQ permit is not a determination that the crab harvesting cooperative is formed or is operating in compliance with antitrust laws; and (2) added that members of crab harvesting cooperatives, that are not FCMA cooperatives, should consult counsel before commencing any activity under the crab harvesting cooperative if members are uncertain about the legality under the antitrust laws of the crab harvesting cooperative’s proposed conduct. Additionally, NMFS added definitions of crab harvesting cooperatives and FCMA cooperatives at § 680.2.

Additionally, NMFS changed the regulations at § 680.42(c)(5) so that a CVC or CPC QS holder is subject to the owner on board restriction regardless of whether he or she joins a crab harvesting cooperative. NMFS revised the final rule at § 680.21(a)(1)(iii)(B) to allow CVC QS holders who join a crab harvesting cooperative to withhold their Class B IFQ from submission to the crab harvesting cooperative. This will take effect after the third year of the Program when CVC QS becomes subject to the Class A/Class B IFQ split. NMFS revised the final rule at § 680.21(a)(1)(iii)(A)-(B) to permit QS holders to hold memberships in one crab harvesting cooperative per fishery. If a QS holder joins a crab harvesting cooperative for fishery, all of that QS holder’s IFQ for that fishery will be submitted to the crab harvesting cooperative.

NMFS revised intercooperative transfers at § 680.21(e) to require the designation of the members of the crab harvesting cooperatives that are engaged in the transfer for purposes of applying the use caps of the members to the cooperative IFQ that is being transferred between the crab harvesting cooperatives.

Right of First Refusal (ROFR)

The following significant changes from the proposed to final rule in response to public comments are necessary to meet the requirements of Amendment 18 and 19. These changes mitigate the effects on small entities by reducing potential confusion for small entities in compliance with civil contract terms required under section 313(j) of the Magnuson-Stevens Act.

The final rule revises proposed provisions for an ECC’s ROFR of purchase of PQS or IPQ that is being proposed by a PQS/IPQ holder for use outside the community. These revisions are in response to public comment and are intended to more closely reflect the original intent of the Council. First, the final rule clarifies that an ECC has discretion on whether or not to designate an ECC entity to represent it in ROFR and enter into civil contract arrangements for this purpose. If an ECC entity is not designated within a reasonable period of time, then the ECC permanently waives its opportunity to exercise ROFR. Second, statute terms

for civil contracts establishing ROFR between eligible ECCs and holders of PQS/IPQ have been removed from the regulations. Instead, the regulations now refer to the provisions in § 313(j) of the Magnuson-Stevens Act. This approach ensures consistency with the Magnuson-Stevens Act and is appropriate because NMFS does not enforce these contract terms.

Arbitration System

NMFS made the following significant changes from the proposed to final rule in response to public comments. These changes are necessary to meet the requirements of Amendment 18 and 19. These changes mitigate the effects on small entities by clarifying requirements for small entities to participate in the Arbitration System, and ensuring improved compliance with the Arbitration System to improve its ability to resolve price disputes while complying with anti-trust law.

In the final rule NMFS:

- (1) Clarified that only IFQ holders can initiate the Binding Arbitration procedure.
- (2) Revised the timeline for the 2005 season for QS holders and PQS holders to join an Arbitration Organization which is responsible for selecting a group of experts that can assist in price negotiations: the market analyst, formula arbitrator, and contract arbitrator.
- (3) Revised the mechanism for exchanging information between uncommitted IPQ holders and uncommitted Arbitration IFQ holders to allow for a third-party to provide data in an arms-length relationship.
- (4) Established a minimum of 25 percent of the total IFQ held by an FCMA cooperative that must be committed to an IPQ holder in order to engage in share matching.
- (4) Clarified the timing under which a Binding Arbitration procedure must occur and the process whereby it can occur.
- (5) Clarified the ability of persons to participate in FCMA cooperatives and collectively negotiate, and the limits to which FCMA cooperatives may exchange information among cooperatives.
- (6) Removed the requirement that the transferors require persons receiving QS/IFQ or PQS/IPQ by transfer to join an Arbitration Organization, and requiring the transferees to do that themselves.
- (7) Required that CVO IFQ, CVC IFQ after July 1, 2008, and IPQ would not be issued for a crab QS fishery until the Market Analyst, Formula Arbitrator, or Contract Arbitrators have been selected for that fishery.
- (8) Clarified the type of Arbitration Organization which a person must join depending on their holdings of QS/IFQ and PQS/IPQ.

3.2 Summary of Public comments on the IRFA

Comment 1: The IRFA incorrectly states the number of small entities. The ownership affiliation standard in the proposed rule surely reduces the number of small businesses to far less than 223. The EIS Appendix identifies approximately 39 processor-affiliated vessels, including CPs. So, this statement seems to presume all non-processor-affiliated vessels are unique, small entities. Application of the affiliation standard in the proposed regulations makes this number highly suspect, especially in light of CDQ ownership affiliations.

Response: As stated in the IRFA, the SBA establishes the principles of affiliation for defining small entities in an IRFA. The analysis in the IRFA used these principles of affiliation to define the number of small entities, and not the proposed rule's affiliation standard for the Program. Additionally, NMFS has limited information on vessel ownership, therefore, the analysis is based on the best available information. The estimation of the number of small entities under the IRFA is likely over inclusive because of the lack of better ownership information. NMFS has determined that the extensive economic data collection that is part of this Program will enable the agency to better determine the small business status of participants in the Program.

Comment 2: This statement in the IRFA concerning entry of new processors is not complete. They may also buy or lease IPQ in order to purchase and process Class A IFQ. This means of entry should be added to the text.

Response: NMFS agrees and has added this means of entry to the FRFA. NMFS points out that this means of entry discussed in the preamble to the proposed rule.

Comment 3: NMFS expressed interest in receiving comments regarding the definition of crab catcher processor in the IRFA. For the most part, crab catcher processors should be classified as small business size entities.

Response: Comment noted. The commenter did not provide any information supporting the statement that catcher processor vessel should be considered small business entities. The SBA has established size criteria for all major industry sectors in the U.S., including fish harvesting and fish processing businesses and these criteria are also included in NMFS guidelines for RFA. NMFS considers catcher/processors to be small entities for the analysis in the IRFA and this FRFA. NMFS has determined that the extensive economic data collection that is part of this Program will enable the agency to better determine the small business status of catcher/processors.

4.0 A description of, and where feasible, an estimate of the number of small entities to which the final rule will apply

The entities directly regulated by this action are those entities that harvest and process king and Tanner crabs in the BSAI, including governmental jurisdictions. The entities are not directly regulated by this action do not qualify for the Program because they either left the fishery or currently fish under interim LLP licenses, as discussed below. Table 4-1 shows the estimated numbers of small and large entities in the BSAI king and Tanner crab fisheries. The reasoning behind these estimates is summarized in the paragraphs which follow the table.

Table 4-1 Summary of small and large entities directly and not directly regulated by the regulatory action.

Entity Classes	Units	Directly regulated		Not directly regulated	
		Small	Large	Small	Large
Number of catcher vessels	Vessels	223	34	154	9
	Owners	211	12	128	5
Number of catcher/processors	Vessels	15	4	1	0
	Owners	13	4	1	0
Total number of harvest vessels ¹	Vessels	238	38	155	9
	Owners	223	13	129	5
Number of processors	Plants	10	28	50	0
	Owners	8	9	43	0
Number of Non-profit CDQ groups		6			
Number of governmental jurisdictions	Communities	As many as 13 small government jurisdictions could be directly regulated under the community protections.			

¹Owners may have both catcher vessels and catcher/processors, therefore the sum of the catcher vessel and catcher/processor owners may be greater than the total number of owners. Also a vessel may have acted as both a catcher vessel and catcher/processor over the 1991-2000 time period.

- Note: 1) The lack of ownership data makes these small and large entity determinations tenuous.
 2) Catcher/processors are included in the vessel sections and not the processor section

Source: NPFMC Crab Data Set 2001 Version 1

Approximately 236 entities own crab harvest vessels that are directly regulated under the final rule. Of those entities, 223 are small entities because they, alone or with a processor-affiliate, generated 3.5 million or less in gross revenue, based on participation in 1998, 1999, or 2000. Thirteen of the entities (owning 38 vessels) are considered non-small entities. Fifteen catcher/processors are considered small entities. NMFS requested public comment on the appropriate small business size standard for catcher processors: the catcher vessel size standard or the processor size standard. NMFS received one comment on this issue, which is discussed under Public Comments.

A total of 134 entities made at least one crab landing from 1991 to 2000, but do not appear to qualify for an initial allocation of QS. Five of these entities are not small entities and 129 qualify as “small” by SBA standards. The non-small entities owned a total of nine catcher vessels. The small entities owned a total of

155 catcher vessels and one CP. By and large, vessels that do not qualify for the Program either left the fishery or currently fish under interim LLP licenses. Moreover, the vessels the FRFA considers “not directly regulated” could not or would not be allowed to continue fishing under the current LLP. The impacts to the small entities that would be prohibited from fishing by the LLP were analyzed in the RIR/IRFA and FRFA prepared for the LLP. Therefore, the not directly regulated vessels are not considered impacted by the final rule and are not discussed in this FRFA.

Eight small entities and nine non-small entities appear to qualify for processor allocations based on participation during 1998 and 1999. These totals exclude CPs, which are included in the vessel discussion. The nine inshore processors are considered non-small entities because they appear to exceed the “500 or more employees” threshold when all their affiliates, worldwide, are included. The nine large processing entities owned 28 separate crab processing facilities, and the eight small processing entities owned 10 plants. Forty-three small processing entities (owning 50 plants) appear not to qualify for initial PQS allocations.

Thirteen communities will be directly regulated by the regionalization provisions under consideration. The overall impact on communities cannot be determined until NMFS makes all of the allocations of processing quota shares. At a minimum, St. Paul, St. George, Adak, Akutan, Dutch Harbor, King Cove, False Pass, Ninilchik, Homer, Port Moller, Cordova, and Kodiak possess recorded landings in the crab fisheries under any of the alternatives. The communities where these processors are located are all considered small government jurisdictions. Each of the communities have populations well under the 50,000 limit for consideration as a small entity.

The six non-profit CDQ groups are small entities that will be directly regulated by this Program. CDQ groups that currently participate in the CDQ Program and the owners and operators of vessels harvesting CDQ on behalf of the CDQ groups. The CDQ groups include: Aleutian Pribilof Island Community Development Association, Bristol Bay Economic Development Corporation, Central Bering Sea Fishermen’s Association, Coastal Villages Region Fund, Norton Sound Economic Development Corporation, and Yukon Delta Fisheries Development Association. As noted, each of these groups is organized as a not-for-profit entity and none is dominant in its field; consequently, each is a “small entity” under the RFA. The CDQ groups represent 65 Alaskan communities, all with populations well under the 50,000 limit for consideration as a small entity. Note that the 65 CDQ communities are not directly regulated under this Program.

Other supporting businesses may also be indirectly affected by this action if it leads to fewer vessels participating in the fishery. These impacts are treated in the RIR prepared for this action.

5.0 A description of the projected reporting, record keeping, and other compliance requirements of the final rule

Implementation of the final rule will change the overall reporting structure and recordkeeping requirements of the participants in the BSAI crab fisheries. Under the statutorily mandated final rule, all participants will be required to provide additional reports. Each harvester will be required to track harvests to avoid exceeding his or her allocation. As in other North Pacific rationalized fisheries, processors will provide catch recording data to managers to monitor harvest of allocations. Processors will be required to record deliveries and processing activities to aid in the Program administration.

Congress directed the implementation of much of the Program through statute. To the extent that the statute allowed flexibility, NMFS considered multiple alternatives to effectively implement specific provisions within the Program through regulation. In each instance, NMFS attempted to impose the least burden on the public, including the small entities subject to the Program. Additionally, NMFS made a number of changes to the compliance requirements, discussed below, as a result of public comments. Those comments and NMFS' responses are provided in the preamble to the final rule.

NMFS has developed new databases to monitor harvesting and processing allocations. These changes required the development of new reporting systems. The costs of NMFS' monitoring of the fisheries will be passed to participants through the cost recovery program.

To participate in the Program, persons will be required to complete application forms, transfer forms, Economic Data Report (EDR) forms, reporting requirements, and other collections-of-information. These the forms are either required by the Magnuson-Stevens Act or required for the administration of the Program. These forms impose costs on small entities in gathering the required information and completing the forms.

We have estimated the costs of complying with the reporting requirements based on the burden hours per response, number of responses per year, and a standard estimate of \$25 per burden hour (except the estimate for the EDR forms is \$100 per burden hour). NMFS is not charging participants permit fees for any of the compliance requirements in the following paragraphs. Persons will be required to complete most of the forms at the start of the Program, like applications for initial issuance of quota share (QS) and processor quota share (PQS) and the historic EDR. Persons will be required to complete some forms every year, like applications for IFQ/IPQ and annual EDRs. Participation in the Arbitration System will be also be annual. Additionally, catch reporting will be completed more frequently. It is not possible to estimate the total number of hours that will be necessary to comply with the rule or the overall compliance costs because, due to the complexity of the Program, there are numerous combinations of specific forms that a small entity may be required to complete and those combinations depend on the individual business decisions of that entity.

The final rule also includes a comprehensive economic data collection program, which will require participants to submit detailed EDRs concerning their participation in these fisheries. The data collection program is intended to provide managers with better information concerning the fisheries to aid in management and to limit negative unintended consequences arising from management decisions. Under the required data collection program, NMFS minimized the cost and time burden associated with the data collection components by breaking down the program into specific forms directed at specific segments of the fishery. Although most participants collect data similar to that which will be collected by the data collection program for making business decisions, the data collection program could impose additional recordkeeping requirements on participants in the fisheries. The detailed level of data required will likely require some additional data compilation and reporting beyond the status quo. Professional assistance, such as accounting

services, are likely to be necessary for most participants to comply with these requirements. NMFS estimates that completing an each EDR requires approximately 15 hours and will cost small entities that hold QS or PQS approximately \$1,503 to complete the historic EDR and an additional \$1,503 each year to complete the annual EDR. Small entities that are catcher/processors that hold QS may spend approximately 30 hours at a total cost of \$2,503 to complete the historic EDR and an additional 30 hours at a total cost of \$2,503 each year to complete the annual EDR because they will report both harvesting and processing information.

In response to public comment requesting additional time to prepare and submit the historic EDRs, NMFS increased the submission interval for the historic EDR from 60 days to 90 days to provide both the time to gather records and complete an accurate EDR. Also in response to public comment, NMFS extended the time interval allowed for verification of data by all submitters in the final rule to 20 days from the 15-day interval identified in the proposed rule.

Participants in the Program will spend approximately 2 and a half hours at a total cost of \$56 to complete applications to receive an initial allocation of QS and PQS, and a similar amount of time at a total cost of \$55 for the annual application for IFQ and PQS, \$61 to complete the one-time application to be eligible to receive transfers, and \$61 to complete a transfer application. Additionally, it will cost processors who intend to process crab less than 1 hour at a total cost of \$16 to complete an RCR permit application. Eligible Crab Community Organizations (ECCO) will spend approximately 3 hours at a total cost of \$64 to complete the Application to Become an ECCO and approximately a little more than an hour at a total cost of \$54 to complete the Application to Transfer Crab QS/IFQ to or from the ECCO. Additionally, ECCO's will spend approximately 8 and a half hours at a total cost of \$206 to complete the required annual report.

All retained crab catch must be weighed, reported, and debited from the appropriate IFQ account under which the catch was harvested and IPQ account under which the catch was processed. The crab landing report (internet version and optional fax version) will be used to debit crab landings from IFQ accounts. Under recordkeeping and reporting, NMFS considered the options of a paper based reporting system or an electronic reporting system. NMFS chose to implement an electronic reporting system, called the Interagency Electronic Reporting System (IERS), as a more convenient, accurate, and timely method of reporting. Additionally, the electronic reporting system will provide continuous access to IFQ and IPQ accounts. These provisions will make recordkeeping and reporting requirements less burdensome on participants by allowing them to more efficiently monitor their accounts and fishing activities. NMFS recognizes that participants in the current fishery might be more familiar with the paper based fish ticket system, but believes that the added benefits of the electronic reporting system outweigh any benefits of the paper based system. However, NMFS will also provide an optional lower-tech backup using existing telecommunication and paper based methods, which will reduce the burden on small entities in more remote areas possessing less electronic infrastructure.

NMFS made two major changes to requirements for catcher/processors as a result of public comment. Both changes reduce the burden on participants in the crab fishery. NMFS reduced the required reporting interval for crab catch by catcher/processors from once every twenty four hours to weekly. NMFS also clarified regulations governing the use of the IERS to ensure that vessels that are unable to use the Internet may report catch using an alternative, NMFS approved, method such as an email attachment to report catch.

The Magnuson-Stevens Act requires NMFS to collect cost recovery fees associated with the monitoring and enforcement of the Program. The fees will be charged to harvesters and processors based on the amount of IFQ and IPQ used by each IFQ and IPQ holder. The initial amount of the fee will be 3 percent of the ex-vessel value of each fishery. We can not calculate the actual amount of the fee for each fishery in each year because we can not predict the future TACs or future ex-vessel values. NMFS considered options that included: (1) collection and payment individually by harvesters and processors under a billing system, and (2) collection

of fees from the harvester by the processor and self-collection of processor fees under an annual fee submission process. NMFS determined that the collection of all fees from the harvesting and processing sector by the receiving processor for submission to NMFS on an annual basis will impose the least administrative burden on the affected public. The collection of fees by the receiving processor corresponds with the existing requirement for many processors to collect excise taxes from delivering harvesters in other fisheries. Additionally, rather than use the calendar year for administrative purposes, NMFS negotiated an administrative year for the program that accommodates fee collection by imposing the most significant administrative burden on the affected participants during the time of year when the crab fisheries are closed.

NMFS made one change to the cost recovery fee system in response to public comment by adjusting the methodology by which catcher/processors must calculate and submit fees to reduce any disparity between fees paid by catcher/processors and shoreside processors.

Under this final rule, CPs will be required to purchase and install motion-compensated scales to weigh all crab at-sea. The scales themselves will initially cost approximately \$25,000 per vessel. Additional installation costs of the scales are estimated to be between \$10,000 and \$40,000, depending on the extent to which the vessel must be reconfigured to install the scale. Scale monitoring requirements will cost approximately \$6,235 per year.

NMFS considered, but rejected, the use of product weight and recovery rates (PRRs) in favor of the use of at-sea scales for catch accounting on CPs. NMFS rejected the use of PRRs for several reasons. First, the technology for weighing catch at-sea is well developed, and NMFS believes that the catch weights generated from these scales produce the best available data for catch accounting purposes. Second, recovery rates are not well known for many stocks, and, because recovery could vary with season, the rates may change when fishing occurs over a larger portion of the year. Third, glaze percentages on products vary widely by CP. If NMFS chose to use PRRs, NMFS must either apply vessel specific rates that incorporate glaze percentages or develop a standard glaze percentage that will either unfairly penalize the boats with high amounts of glaze or underestimate the amount of harvest on boats with low glaze percentages. Finally, CPs conduct different cooking, precooking, prefreeze brining and freezing processes. These procedural differences create significant uncertainty in calculating and verifying recovery. NMFS acknowledges that PRRs would be less costly to the affected public, particularly the small entities, but determined that, given the described problems with PRRs, the added management benefits of scales outweigh their costs. To the extent that additional PRR data become available to NMFS for analysis, future rules may allow PRR based catch accounting. CPs not wishing to incur the costs associated with scale installation prior to that time have the option of either joining a cooperative or leasing their quota.

NMFS considered, but rejected, requirements for increased observer coverage for the CP fleet. Under existing State regulations, CPs are required to pay for, and carry, one observer when engaged in crab fishing operations. In similar NMFS managed quota fisheries, NMFS requires that all fishing activity be observed. In most cases, this means that a vessel must carry two observers. NMFS rejected this approach in the crab fisheries for two reasons. First, the Council motion specifically delegated observer coverage responsibility to the State of Alaska. Second, NMFS felt that the monitoring approach developed for the fishery (total catch weighing plus a requirement for a total offload weight) provided for more effective monitoring at a lower cost. NMFS estimates that a requirement for increased observer coverage would have cost CPs approximately \$400/day plus the additional costs associated with reconfiguring vessels to ensure that adequate space was available for the additional observer. By not requiring increased observer coverage, NMFS is reducing the potential burden on small entities.

NMFS removed requirements for catcher/processors to provide an observer work area on board their vessels as a result of public comment. The State of Alaska manages the BSAI crab observer program, and therefore there could be duplicative regulations and potential regulatory conflict between state and federal requirements. Further, catch accounting for catcher/processors is based on not only on the round weight of crab as verified by the observer at-sea, but also upon a full accounting of product when the crab is actually landed. Because of this approach, NMFS does not believe, at this time, that it is dependent upon the provision of adequate working areas for observers in order to obtain data for accurate catch accounting. Thus, NMFS has determined that these provisions are not necessary and removed them from the final rule.

For monitoring of processing activity, shore-based processors will spend approximately 17 hours at a total cost of \$416 to complete the catch monitoring plan (CMPs) and spend an additional 112 hours at a total cost of \$2,800 annually to complete all landing reports. CMPs must be submitted and approved by NMFS for each location where an RCR intends to take deliveries of CR crab. The CMP details how the RCR processes crab, how that process can be effectively monitored, and how the RCR will ensure that all crab are properly sorted and weighed.

NMFS determined that a vessel monitoring system (VMS) program is essential to the proper enforcement of the Program. Therefore, all vessels participating in the Program will be required to participate in a VMS program. Depending on which brand of VMS a vessel chooses to purchase, NMFS estimates that this requirement will impose a cost of \$2,000 per vessel for equipment purchase, \$780 for installation and maintenance, and \$5 per day for data transmission costs. Based on the number of qualified vessels, NMFS estimates that a maximum of 276 vessels, of which 238 are considered small entities, could incur this cost if they choose to participate in the Program.

6.0 Description of significant alternatives and description of steps taken to minimize the significant economic impacts on small entities.

A FRFA should include “a description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.”

The Council considered an extensive and elaborate series of alternatives, options, and suboptions as it designed and evaluated the potential for rationalization of the BSAI crab fisheries, including the “no action” alternative. The RIR presents the complete set of alternatives, in various combinations with the complex suite of options. The EIS presents four alternative programs for management of the BSAI crab fisheries, namely, Status Quo/No Action (Alternative 1); the Crab Rationalization Program (Alternative 2); an Individual Fisherman’s Quota (IFQ) Program (Alternative 3); and a Cooperative Program (Alternative 4). These alternatives constitute the suite of “significant alternatives”, under the action, for RFA purposes. Each is addressed briefly below. Please refer to the EIS and its appendices for more detail. The following is a summary of the contents of those more extensive analyses, specifically focusing on the aspects which pertain to small entities, the reasons why each alternative to the action was rejected, and the reasons why the Crab Rationalization Program was selected.

In January 2004, the U.S. Congress amended section 313 of the Magnuson-Stevens Act through the Consolidated Appropriations Act of 2004 (Pub. L. No. 108-199, section 801), by adding paragraph (j). As amended, section 313(j)(1) requires the Secretary to approve and implement by regulation the Crab Rationalization Program, as it was approved by the North Pacific Fishery Management Council (Council) between June 2002 and April 2003, and all trailing amendments, including those reported to Congress on May 6, 2003.

Under the status quo (no action), the BSAI crab fisheries have followed the well known pattern associated with managed open access. Enticed by the prospect of capturing 100 percent of the benefits, while externalizing all but a very small “common” share of the cost of an individual fishing decision (i.e., no enforceable ownership rights to ration access) these BSAI crab fisheries have been characterized by a “race-for-fish”, capital stuffing behavior, excessive risk taking, and a dissipation of potential rents. In the face of substantial stock declines, participants in these fisheries are confronted by significant surplus capacity (in both the harvesting and processing sectors), financial distress (for some, failure), and widespread economic instability, all contributing to resource conservation and management difficulties.

In response to worsening biological, economic, social, and structural conditions in many of the BSAI crab fisheries, the Council and NMFS found that the status quo management structure was causing significant adverse impacts to the participants in these fisheries, as well as the communities that depend on these fisheries. As indicated in the IRFA, many small entities, as defined under RFA, are negatively impacted under current managed open access rules. The management tools in the existing FMP (e.g., time/area restriction, LLP, pot limits) do not provide managers with the ability to effectively solve these problems, thereby making Magnuson-Stevens Act goals difficult to achieve and forcing reevaluation of the existing FMP. For these reasons, the Council and NMFS rejected the status quo alternative as a means to rationalize the crab fisheries.

In an effort to alleviate the problems caused by excess capacity and the race for fish, the Council and NMFS determined that the institution of some form of rationalization program is needed to improve crab fisheries management in accordance with the amended Magnuson-Stevens Act.

The IFQ alternative would, as the name implies, allocate individual shares of the crab TAC to harvesters, imparting a “quasi-private property interest” (i.e. a transferrable access privilege) in a share of the TAC, thus removing the undesirable “common property” attributes of the status quo on qualifying harvesters. The rationalization of the BSAI crab fisheries would likely benefit the approximately 223 businesses that own harvest catcher vessels and are considered small entities. In recent years these entities have competed in the race to fish against larger businesses. The IFQ alternative would allow these operators to slow their rate of fishing and give more attention to efficiency. Some of these operations and the vessels they use could be negatively impacted if the allocations they qualify for are small and cannot be fished economically. The participants, however, would be permitted to lease or sell their allocations, and could obtain some return from their allocations. Differences in efficiency implications of rationalization by business size cannot be predicted. Some participants believe that smaller vessels could be more efficient than larger vessels in a rationalized fishery because a vessel only needs to be large enough to harvest the IFQ. Conversely, under open access, a vessel has to be large enough to out compete the other fishermen and, hence, the overcapacity problems under the race for fish. If that is true, it is possible that some of the smaller participants in the fishery could increase their activity (by purchasing or leasing QS/IFQ) in a rationalized fishery.

Council and NMFS rejected the IFQ alternative because the IFQ alternative would fail to protect the economic and social interests of other participants, also dependent on these crab fisheries, namely, processor and community entities. As the analysis in the RIR demonstrates, while harvesters clearly benefit, the IFQ alternative likely would increase the negative economic impacts relative to status quo on processor and community small entities. Specifically, as discussed in the RIR and SIA, harvesters may deliver crab to new processors in locations with more access to the outside world, forcing the closing of processing facilities in remote areas that are dependant on the crab fisheries, such as Saint Paul, Saint George, and Unalaska/Dutch Harbor.

The Cooperative alternative yields many of the positive economic, social, and structural results cited above for the IFQ alternative. In addition, however, the Cooperative alternative holds out the promise of providing efficiency gains to both small entity harvesters and the processors. Data on cost and operating structure within each sector are unavailable, so a quantitative evaluation of the size and distribution of these gains, accruing to each sector under this management regime, cannot be provided. Nonetheless, it appears that the Cooperative alternative offers all of the same “improvements” over the status quo as does the IFQ alternative (e.g. institution of “rights-based-management” structure, reduction in uncertainty) while including another population of participants, the crab processors, that the Council expressed explicit concern about protecting in its problem statement and objectives for this action.

While, on the basis of available information, the Cooperative alternative appears to minimize negative economic impacts on small entities to a greater extent than does an IFQ alternative, and both appear to minimize negative economic impacts compared to the Status Quo, it is apparent, on the basis of the EIS and RIR analyses, that the Cooperative alternative does not extend the benefits of rationalization to the third population of small entities, fishery dependent communities. Therefore, the Council and NMFS rejected the Cooperative alternative.

After an exhaustive public process, spanning several years, the Council and NMFS selected the Crab Rationalization Program alternative because it concluded that the Crab Rationalization Program best accomplishes the stated objectives articulated in the problem statement and applicable statutes, and minimizes

to the extent practicable adverse economic impacts on the universe of directly regulated small entities; harvesters, processors, and communities. This final rule will implement the Program.

The Program contains many provisions to minimize significant negative impacts on small entities, consistent with stated objectives of applicable statutes. The Program makes three separate allocations; one to the harvest sector, one to the processing sector, and one to defined regions. All three allocations are based on historic participation, to protect investment in and reliance on the fisheries. Harvesters will receive harvest allocations, processors will receive processing allocations, and regions will receive allocations of landings and processing activity. These three separate allocations are also intended to mitigate the negative effects of the transition from a regulated open access race-for-fish to rationalized fisheries, burdens which tend to fall most heavily on small entities.

The competing interests of harvesters and processors, many of which are small entities, are balanced by allocating different portions of the total harvest to the two sectors. Harvesters will be allocated harvest shares for 100 percent of the TAC, minus the community allocations. Processors will be allocated processing shares for 90 percent of the TAC. To ensure corresponding allocations to the two sectors, 90 percent of the harvest allocation is allocated as Class A IFQ that require delivery to a processor that holds IPQ. The remaining 10 percent will be Class B IFQ shares that can be delivered to any processor. Under the Program, harvesters (many of whom, as noted, are small entities) will be permitted to form cooperatives to achieve efficiencies and reduce transaction costs through the coordination of harvest activities and deliveries to processors.

Small harvester entities that receive allocations large enough to support their participation could benefit from not needing to participate in the race for fish, as with the IFQ alternative. The portion of the fishery allocated as Class B IFQ, also known as open delivery IFQ, will also impact the effects of the Program on small harvesters, since Class B IFQ are likely to provide harvesters with additional power in their delivery negotiations with processors.

Small processors appear to have been exiting the crab fishery in recent years as the harvest levels have declined and seasons have been compressed. The final rule will allocate PQS to processors that participated in the fishery in either 1998 or 1999. “Small” processors that plan to enter or reenter the crab fisheries (but did not participate during the qualifying years) will be allowed to process crab harvested with Class B IFQ and CDQ crab, or lease IPQ to process crab caught with Class A IFQ. Class B IFQ and CDQ crab will provide a mechanism for small processors to enter the fishery without large capital outlays to purchase PQS or IPQ. Class B IFQ, however, will reduce the allocation of PQS to the small and large processors that qualify for the Program. Class B IFQ therefore may negatively impact small processors, if they are unable to compete with large processors in the market place for the Class B IFQ.

To resolve impasses in price negotiations, a potentially crippling occurrence for the smaller operators, the Program will include a mandatory binding arbitration program for the settlement of price disputes between harvesters and processors. Historically, prices have been settled by protracted, often contentious negotiations, from time to time resulting in harvesters delaying fishing (i.e., strikes), which can be detrimental to all concerned. An effective system of binding arbitration could protect the interests of both sectors in negotiations, while avoiding costly delays in fishing due to strikes.

A number of small governmental jurisdictions will be directly regulated by, and therefore could be impacted by, this final rule. All communities benefitting from these special provisions of the final rule are “small”, under SBA criteria. Community interests have been explicitly considered in the Program, and special provisions have been included to minimize (to the extent practicable) adverse impacts on these small entities. Under these provisions, the degree of protection will likely vary community-to-community.

The allocation to regions is accomplished by regionally designating all Class A IFQ (delivery restricted) and all corresponding IPQ to be delivered and processed in a designated region. In most fisheries, regionalized IFQ and IPQ are either North or South, with North IFQ designated for delivery in areas on the Bering Sea north of 56°20' north latitude and South IFQ designated for any other areas, including Kodiak and other areas on the Gulf of Alaska. IFQ and IPQ designations are based on the historic location of the landings and processing that gave rise to the shares. The final rule will also increase the allocation of crab to CDQ groups from 7.5 percent to 10 percent, providing additional aid to the 65 CDQ communities (all small entities).

Community processing requirements in the first two years of the Program and right of first refusal (ROFR) will benefit communities with history supporting initial allocations and are intended to protect community interests. The ROFR provisions are likely to benefit communities that are more capable of exercising the right. Under the more general regional protection, processing activity could move between communities in a region. This is likely to benefit those communities able to attract additional processing activity from other communities in the region and harm communities that processing activity leaves. IPQ caps will benefit communities able to attract processing in years of high total harvest. Additionally, CDQ groups will be able to purchase QS and PQS to increase their participation in the BSAI crab fisheries above the CDQ allocation.

The final rule also contains several additional measures to protect various interests. Eligible crew will receive 3 percent of the initial allocation of QS. Sideboards will limit the activity of crab vessels in other fisheries (such as the GOA groundfish fisheries) to protect participants in those fisheries from a possible influx of activity that could arise from vessels that exit the crab fisheries, or are able to time activities to increase participation in other fisheries. While these benefactors of this provision are not directly regulated, and therefore not counted among the entities addressed in this IRFA, they are predominantly small entities.

Fish taxes will likely be redistributed with any redistribution of processing activity. In addition, the provision of support services and associated sales taxes will likely be redistributed to some extent by redistribution of landings in a rationalized fishery. Increased efficiency in the fisheries arising from the Program could reduce the demand for support services, impacting sales tax revenues, if the fleet is able to reduce their overall costs. These impacts may occur in large and small communities. Since the redistribution of activity and the increased efficiency cannot be predicted these effects cannot be fully characterized. Additional analysis of community impacts is contained in the Social Impact Analysis, EIS Appendix 3.

Also, NMFS made a series of changes in issuing the final rule from measures included in the proposed rule. Many of these changes were designed to further mitigate the cost of the Program. A summary of the major changes made to the final rule in response to public comments is contained in section 3.1, along with an explanation of how those changes mitigate the impact of the Program on small entities. Changes to the compliance requirements, including the deadlines to submit historic EDRs, the requirements for catcher/processors, and the cost recovery fee system, are described in section 5.0. For a complete list of regulation changes, please refer to the preamble to the final rule.

