Agenda Item C-2(a)
December 2010

Initial Review Draft

REGULATORY IMPACT REVIEW

and

INITIAL REGULATORY FLEXIBILITY ANALYSIS

OF ALTERNATIVES CREATING EMERGENCY EXEMPTIONS FROM REGIONAL LANDING REQUIREMENTS

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

December 2010

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Executive Summary

In the spring of 2007, the North Pacific Fishery Management Council (the Council) established a committee to address certain concerns with the Bering Sea and Aleutian Islands crab rationalization program (the program). In the course the committee's meetings, members expressed concern that at times of extreme icing and other uncontrollable circumstances, the regional landing requirements applicable to Class A individual fishing quota (IFQ) could pose safety risks, loss of resource (such as excessive deadloss), or extreme economic hardships to participants in the crab fisheries. At its October 2008 meeting, after receiving a staff discussion paper, an advisory panel recommendation, and public testimony, the Council directed staff to prepare an analysis of alternatives to provide an emergency exemption from regional landing requirements. To avoid potential insurmountable administrative burdens the Council identified for analysis a system of civil contracts between harvesters, processors, and a regional representatives as the means of defining the exemption from the regional landing requirements. The analysis contains a Regulatory Impact Review, an Environmental Assessment, and an Initial Regulatory Flexibility Analysis.

Purpose and need statement

The Council has adopted the following purpose and need statement for this action:

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

Alternatives

The Council has adopted the following alternatives for analysis:

Alternative 1 – Status quo

No exemption from regional landing requirements is permitted.

Alternative 2 – Regional Landing Exemption

Under this alternative, an exemption would be granted on the agreement of the IFQ holder, the holder of matched IPQ, and a region/community representative. The Council is considering three options for defining the regional representative. Under the first, the regional representative is the same entity that holds the right of first refusal on the matched IPQ. Under the second, the regional representative is selected by the community intended to benefit from the right of first refusal. Under the third option, the regional representative is chosen by agreement of all communities benefiting from the rights of first refusal in the region. Under one option, the parties would be required to enter a 'non-binding framework' by a date certain and an exemption agreement prior to the exemption being granted. Under the second option, the parties need only enter an exemption agreement prior to the exemption being granted.

Alternatives considered but not advanced for analysis

The Council considered four types of alternatives that it elected not to advance for analysis. Generally, these alternatives were perceived by the Council as limiting the effectiveness of the alternatives in achieving their intended purpose. First, alternatives that specifically define exemption criteria in regulation were eliminated as those alternatives are believed to be overly restrictive and cannot be adapted as circumstances may require. Second, alternatives directly administered by NOAA Fisheries were not advanced, as these alternatives were viewed as overly expensive to administer and potentially preventing the exemption from fulfilling its purpose. Necessary fact finding would not only delay decision making, but could also be costly, as verification of conditions may be difficult or impracticable. Third, the Council also elected not to advance for analysis alternatives that specifically define compensation, as those alternatives were deemed too prescriptive to effectively balance the competing interests of parties, which are likely to change with the circumstances surrounding the granting of an exemption. Fourth, the Council chose not to advance alternatives that would redesignate IFQ and IPQ to compensate for landings redirected under the exemption, as those redesignations would be administratively complex and may be impossible, if TACs change substantially year-to-year.

Existing conditions

Nine Bering Sea and Aleutian Island crab fisheries are managed under the rationalization program. Harvesting quota shares (QS) were created in each program fishery. QS are a revocable privilege that allow the holder to harvest a specific percentage of the annual TAC in a program fishery. The annual allocations, which are expressed in pounds, are referred to as individual fishing quota (IFQ). The size of each annual IFQ allocation is based on the amount of QS held in relation to the QS pool in a program fishery—a person holding one percent of the QS pool receives IFQ to harvest one percent of the annual TAC in the fishery.

QS are designated as either catcher vessel QS or catcher processor QS, depending on whether the vessel that created the privilege to the shares processed the qualifying harvests on board. Approximately 97 percent of the QS (referred to as "owner QS") in each program fishery were initially allocated to license holders based on their catch histories in the fishery. The remaining 3 percent of the QS (referred to as "C shares" or "crew QS") were initially allocated to captains based on their catch histories in the fishery.

Catcher vessel owner IFQ are issued in two classes, Class A IFQ and Class B IFQ. Class A IFQ are issued for 90 percent of the catcher vessel owner IFQ in a program fishery. Crab harvested using these IFQ must be delivered to a processor holding unused individual processing quota (IPQ).

Short term transfers under leases and cooperative fishing arrangements are the primary means by which QS holders in the crab fisheries have achieved fleet consolidation under the rationalization program. These leases and transfers within cooperatives have also facilitated more complete harvest of allocations and coordination of deliveries in the event of unanticipated circumstances. Liberal rules exempt vessels fishing cooperative allocations from vessel IFQ use caps. Because of these attributes, most QS holders have elected to join cooperatives. Since the third year of the program, nearly all IFQ were held by cooperatives. In the fifth year of the program, the largest cooperative had grown to hold in excess of 70 percent of the IFQ in each fishery. The extent to which cooperatives manage and coordinate harvest by their fleets varies across cooperatives. Some cooperatives have relatively central management of harvest activities, while others leave members to determine the harvest of their own allocations. The largest cooperative, formed through several cooperatives merging, allows segments of the cooperative to manage harvests. These segments also vary in degree to which they coordinate harvests. Over the first five years of the program, coordination of harvests has progressively increased. This relinquishment of individual management of the harvest of shares not only contributes to consolidation of IFQ harvests, but also has allowed for better coordination in the event of unanticipated circumstances that might prevent compliance with regional landing requirements.

In addition to harvest shares, the program also created processing quota shares (PQS), which are allocated to processors and are analogous to the QS allocated to harvesters. PQS are a revocable privilege to receive deliveries of a fixed percentage of the annual TAC from a program fishery. These annual allocations are referred to as individual processing quota (IPQ). IPQ is issued for 90 percent of the owner IFQ pool, corresponding to the 90 percent allocation of owner IFQ as Class A IFQ. As with owner QS and Class A IFQ, PQS and IPQ are designated for processing in a region. While a processing share cap prevents any person from holding or using in excess of 30 percent of the outstanding processing shares in any program fishery, an exception that would exempt custom processing in certain fisheries and regions from the plant owners share cap was adopted recently. That exemption is intended to allow consolidation beyond the caps in fisheries and regions that pose particular economic challenges to processors. The rationalization program provides communities with substantial processing history with the opportunity to designate an entity that is entitled to hold rights of first refusal on certain transfers of IPQ and PQS for use outside of the community in which processing occurred that led to the allocation of the PQS (the community of origin). Based on historical landings, the distribution of rights of first refusal varies across fisheries and regions (see Table 9). In addition, some rights have lapsed, most significantly those held by St. George; however, a portion of the shares initially subject to those rights are now held by the former right holder, while others were transferred with the consent of that right holder.

Over time several communities have benefited from landings and processing activity in the crab fisheries. The rationalization program attempts to protect communities from some of the potential redistribution of landings, in part, by the regionalization of owner QS and Class A IFQ, whereby harvests are required to be delivered within an identified region. Regional designations are based on historic landing and processing, in most instances. The protection of regionalization applies at a regional level. As a result, groups of communities (rather than individual communities) are protected. In fisheries with North/South regionalization, St. Paul and St. George, collectively, are perceived to receive significant protection from North regionalized shares. In the Western Aleutian Islands golden king crab fishery, Adak and Atka, collectively, are perceived to receive substantial protection from regionalization.

Table 1 Distribution of rights of first refusal by community (2009-2010).

Fishery	Region	Right of first refusal boundary	Percentage of PQS pool
Bristol Bay red king crab	North	None	0.0
		St. Paul	2.5
	South	Akutan	19.7
		False Pass	3.7
		King Cove	7.4
		Kodiak	0.2
		None	12.2
		Port Moller	3.5
		Unalaska	50.7
Bering Sea *C. opilio*	North	None	16.0
		St. Paul	30.9
	South	Akutan	9.7
		King Cove	6.3
		Kodiak	0.0
		None	2.0
		Unalaska	35.0
Eastern Aleutian Island golden king crab	South	Akutan	1.0
		None	7.8
		Unalaska	91.2
Pribilof red and blue king crab	North	None	0.3
		St. Paul	67.3
	South	Akutan	1.2
		King Cove	3.8
		Kodiak	2.9
		Unalaska	24.6
St. Matthew Island blue king crab	North	None	64.6
		St. Paul	13.8
	South	Akutan	2.7
		King Cove	1.3
		None	0.0
		Unalaska	17.6

Source: RAM PQS data, 2009-2010

To date, two conditions may have created impediments to deliveries in a region, ice conditions and a fire aboard a floating processor.[1] Ice conditions have been an obstacle to deliveries in every year since implementation of the program. Ice abutted St. Paul in each of the first five years and abutted St. George in four of those years (see Table 16). Depending on the severity of conditions, this ice may prevent deliveries of catch into St. Paul and St. George. Prior to rationalization, harvesters with catch on board could elect to make deliveries to processors in the South, which are unaffected by the ice. Under the rationalization program, deliveries required to be made to North region locations may be prevented by the ice. Whether a delivery is prevented may depending on the circumstances, including spatial distribution and type of ice, the specific vessel, the location of the vessel relative to the islands, the amount and condition of crab on board, whether IFQ not subject to the North region landing requirement are available, and any factors affecting the willingness of the captain to wait for conditions to change. Historical data suggest that, in the first five years of the program, some deliveries may have been delayed

[1] Although the absence of processing in St. George caused deliveries to be redirected to St. Paul, that redistribution was permitted without exemption to the regional landing requirements. In addition, the circumstances that prevented deliveries into Adak prompting emergency rulemaking and provision for exemption from regional landing requirements in that fishery are beyond the scope of this action.

or redirected using shares that allow delivery in the South by ice conditions. North deliveries were made in several of the weeks that ice abutted the islands. The most notable disruption to deliveries occurred in the third year of the program, when deliveries almost ceased in the 25th week. In the two following years (particularly in the 2009-2010 season), the fleet coordinated harvest of the North region IFQ, fishing that allocation early in the season before ice conditions reached their extreme (see Figure 1 and Figure 2). In the 2009-2010 season, this coordination allowed all deliveries of North region IFQ to be completed by the end of February.

Table 2 St. Paul and St. George ice conditions (1997-2008) and crab landings in the North region (2005-06 through 2009-10).

Season	Month	December		January				February				March				April				May			
	Week	51	52	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20
1997*	Ice conditions																						
1997-1998																							
1998-1999																							
1999-2000																							
2000-2001																							
2001-2002																							
2002-2003																							
2003-2004																							
2004-2005																							
2005-2006	North landings				2	7	19	15	8	6	8	7	8	9	9	10	6						
	Ice conditions																						
2006-2007	North landings								2	4	5	4	5	7	12	18	13	16	2				
	Ice conditions																						
2007-2008	North landings				1	11	14	18	18	13	8	9	11	8	3			5	8	13	3		
	Ice conditions																						
2008-2009	North landings						14	23	12	14	17	17	19	13				1	2	1	1	3	
	Ice conditions																						
2009-2010	North landings				13	15	17	18	15	17	13												
	Ice conditions																						

Note: Includes only all North region Class A IFQ landings.
Denotes ice abutting St. Paul Island during the week.
Denotes ice abutting St. Paul Island and St. George Island during the week.
* Includes only 1997 conditions.
Sources: RAM landings data (2005-6 through 2009-10) and National Ice Center Ice Charts (1997-2010).

Analysis of alternatives

For clarity, the analysis first examines the operation of the different alternatives and options under consideration. The analysis then goes on to examine the effects of the alternatives on different stakeholders (including harvesters, processors, and affected communities) and management and enforcement.

Operation of the alternatives

Under the **status quo**, holders of Class A IFQ and IPQ must comply with regional landing and processing requirements, respectively. If an event occurs that prevents compliance with these requirements, the IFQ and IPQ holders cannot obtain an exemption from the regional requirements, but must postpone use of their shares until the condition preventing delivery is removed or an alternative delivery arrangement compliant with the regional requirement is made. Alternative arrangements could be either an alternative location within the region or use of alternative IFQ that allows delivery outside of the region.

In general, an unanticipated event could prevent one or more scheduled deliveries after crab are harvested requiring harvesters to make some other arrangements for the deliveries. In some cases, this may be addressed through coordination of the deliveries with other processors in the region or the use of substitute IFQ allowing delivery in another region. In the worst cases, it is possible that no processor might be available to take the deliveries in the region and no substitute IFQ allowing deliveries elsewhere

are available. In these instances, deadloss could be exacerbated, while the harvester waits for the circumstance to pass (or to be addressed).[2] Although these circumstances could occur, it may be possible to avoid this outcome. The fleet could organize its deliveries so that IFQ are reserved to address a contingency preventing delivery required by a regional designation. With most IFQ held by cooperatives, it is possible that a cooperative may be able to substitute IFQ that allow deliveries outside of the region, when a regional delivery is prevented. In addition, with fewer than 20 cooperatives participating in any fishery, it is possible that a harvester without IFQ to support deliveries in another region could acquire those IFQ from another cooperative.

The **exemption alternative** to establish an exemption would allow an IFQ holder who has reached one or more agreements with the matched IPQ holder and a regional or community representative to deliver a landing outside of the designated region on meeting certain conditions.

Under the **first option (a)**, the regional representative in the contract would be the entity representing (or formerly representing) the community of origin in the right of first refusal. Since this entity already represents the community of origin through the right of first refusal on IPQ, that entity could be considered as the contracting entity for purposes of defining the exemption from regionalization (including compensation provisions). Use of the right holder as the regional entity would simplify administration by using parties that are already identified by and included in the rationalization program administration. Some participants in the fisheries, however, have expressed concern that the right of first refusal holders (who are generally formed to hold shares in the fisheries) may not be appropriately positioned to represent community or regional interests in landings. To accommodate this circumstance, the **second option (b)** would allow the community benefiting from the right of first refusal on IPQ to select an entity to represent regional interests in any contract related to those IPQ. This option would allow the community to select the right holder, in the event that the community believed that the right holder would adequately represent the community's interests in the contract. Although the first two options may be perceived as having a benefit of allowing communities to independently represent their own interests, **both of these first two options fail to fully identify parties for contracts for all shares.** In both options, the right of first refusal is used to identify the party to the contract; however, some regionally designated PQS and IPQ are not (and have never been) subject to rights of first refusal. **If either of these first two options is selected, an alternate method of identifying a community (or regional) party to the contract could be included for IPQ that are not subject to a right of first refusal. Alternatively, the Council could elect to apply the exemption only to shares that have (or formerly had) a right of first refusal.** The motion, however, includes a provision that would allow the community representatives selected under (a) or (b) to devise a means of selecting a regional representative for any shares not subject to the right of first refusal. **The means of selecting such a representative are not specified in the motion.** The **third option (c)** could also be used to establish representation for shares never subject to a right of first refusal, by allowing each of the communities benefiting from a right of first refusal to select a regional entity to represent all regional interests in the exemption. Under any option creating multiple representatives in a region, it is possible that a subset of the represented communities in a region may provide the exemption agreements, while others elect not to agree to the exemption. In general, this separation of regional interests might be appropriate, as it allows each community the opportunity to negotiate an arrangement appropriate to its interest in the fisheries. The agreements may also provide a greater nexus between these communities and fishery participants than the existing regional structure.

[2] It is also possible that a harvester could return harvested crab to the water (with an indeterminate amount of associated handling mortality). Such discarding is a violation, as any crab place in a tank is only permitted to be offloaded to a registered receiver.

Under the exemption options, the Council motion suggests that IFQ holders wishing to obtain an exemption should establish a **reserve pool**. A well-administered reserve pool may address many of the contingencies that might otherwise prevent compliance with a delivery requirement. Under a reserve pool arrangement, it is anticipated that harvesters will coordinate harvests to address contingencies that might otherwise require a regional landing requirement exemption. In particular, harvesters are likely to coordinate effort early after the New Year in the Bering Sea *C. opilio* fishery to meet all North region landing requirements prior to ice dropping into the vicinity of the Pribilof Islands.

To qualify for the exemption, an IFQ holder, the matched IPQ holder, and a regional/community representative must attest to having entered **one or two agreements**. Under one option, a single agreement attesting to a contract for the exemption is required. Under the other, a non-binding framework agreement is required by a date certain, followed by a specific exemption agreement. The framework agreement could be useful in preliminarily defining the terms of potential exemptions. Under either option, administration of the exemption would be through the parties filing an affidavit stating that an exemption has been agreed to and identifying the amount of IFQ/IPQ that could be landed under out of the designated region. The use of contracts and affidavits for administration will allow the exemption to be implemented on a case-by-case basis to accommodate individual circumstances that may vary across participants. For example, ice conditions, which to date are believed to be the most likely event that would justify an exemption, vary greatly with location. Also, the ability to navigate through ice safely varies across vessels. The use of agreements and affidavits is intended to allow for consideration of these specific circumstances and aid in overcoming several potential complications in administration.

Although not specifically required by regulation, it is anticipated that the parties will include provisions for mitigation (including an IFQ reserve pool) and consider compensation arrangements for losses that might arise from an exemption. A reserve pool arrangement would be intended to ensure that vessel operators coordinate their harvest activities in a manner that reduces the potential need for the exemption.[3] These different contract provisions would be specifically decided by agreement of the parties. To ensure the flow of benefits to those intended to benefit from the regional share designations and to limit potential abuse of the exemption, compensation may be specified in the contract in the event the exemption is used. The degree to which it is appropriate for an IFQ holder or IPQ holder to pay compensation for losses arising from exemptions is debatable, since those parties are unlikely to have caused the circumstance that prevented deliveries and effects may differ across IFQ holders and IPQ holders. Some IFQ holders may bear additional costs from rescheduling deliveries and traveling to more distant ports, while others may have no additional costs from the exemption. Likewise, an IPQ holder who has activity and production redistributed to another location will be affected differently from one who loses the benefit of the activity and production altogether. These uncertainties and differences suggest that a flexible mechanism for determining any compensation for exemptions may be appropriate. Although it may appear the regional representative is in a weak position with respect to any negotiations concerning compensation, requiring the contract and making the regional representative a required party to the contract effectively provides that entity with the power to prevent any exemption. IFQ and IPQ holders would therefore forced to negotiate terms for compensation to the community entity. The community entity might be willing to concede reasonable terms to avoid being cast or perceived as

[3] The Council could consider recommending that a certain percentage of IFQ be subject to the reserve pool arrangement in a reasonable exemption agreement. This recommendation would define for the parties reasonable expectations concerning the use of reserve pools to ensure that the exemption does not evolve into a matter of convenience for IFQ holders.

extracting excessive compensation from IFQ and IPQ holders unable to comply with regional landing requirements without exposing their vessels and crews to unreasonable risks or bear excessive costs.

Compensation for costs and losses arising from the exemption could take on a few different forms. The simplest regulatory means of addressing the redistribution of benefits would be a system of cash payments. Yet, the amount of those payments may differ across stakeholders and circumstances. Providing the parties with the ability to negotiate compensation also allows for more creative arrangements to compensate for the effects of the exemption. For example, when deliveries are prevented by unforeseeable circumstances a community may suffer losses in economic activity, in addition to losses of tax revenues. Compensating the community for those losses by delivery arrangements for unrestricted shares at some future time may be a more agreeable resolution to all parties than a payment to the regional entity (or its designee). These delivery arrangements may impose less cost on IFQ and IPQ holders who may already bear unexpected costs arising from the disruption of their operating plans and more adequately compensate the community than simple payments to offset lost tax revenues. An added advantage to using a system of contracts to administer compensation is that NOAA Fisheries need not be involved in the administration of compensation. Instead, the parties can administer any compensation, with enforcement through civil actions between the parties to the compensation contract. Although settlement of claims through civil actions may increase costs to the parties if one party contests a claim, in most instances the private administration of claims will reduce costs and expedite claim processing by removing the administrative requirements that apply to agency processing of claims.

Effects on QS and IFQ holders

Under the **status quo**, no exemption to regional landing requirements on catcher vessel owner Class A IFQ is permitted. Consequently, an IFQ holder must organize the harvest of crab and use of IFQ to comply with the regional landing requirements associated with Class A IFQ. If a landing using regionally designated Class A IFQ is prevented by an unforeseeable circumstance, the IFQ holder must either delay the landing or arrange for delivery to an alternative location. As a first measure, an IFQ holder may choose to delay a delivery, possibly continuing fishing or waiting in a safe location until the circumstance passes. The ability to effectively delay a landing may be limited, if the circumstance is unlikely to pass quickly. For a lasting condition, an IFQ holder will need to find an alternative delivery location or may suffer excessive deadloss, which would count against IFQ at the time of landing.[4] Alternative delivery arrangements can be made either by coordinating the delivery with another facility within the region or by accessing IFQ that would support the landing outside of the region (i.e., either Class B IFQ or C share IFQ that can be delivered to any location or Class A IFQ designated for delivery outside the region).

In any case of a landing prevented by an unforeseen circumstance, the IFQ holder will be forced to assess the costs of these different choices. In general, an IFQ holder is likely to choose the alternative that imposes the least cost. An unanticipated circumstance that prevents a delivery will increase costs to harvesters. The distribution of these costs between vessel owners and QS holders will vary across participants. Over the first few years of the program, lease arrangements have evolved so that some agreements deduct certain costs from lease payments. These arrangements that include cost deductions are believed to be more common in cooperatives that use a single IFQ holder that oversees harvest of all IFQ. In these cases, in which revenues of the cooperative are shared across QS holders, the vessel owner's incentives are better aligned with the QS holder. The terms of these arrangements are generally confidential and vary across participants, but agreements are believed to pass on most out-of-pocket costs associated with unanticipated circumstances to the QS holders.

[4] Any crab placed in the tank of a vessel is required to be landed and counted against IFQ.

In addition, in the 2009-2010 season, one large cooperative controlled in excess of 75 percent of the IFQ in each fishery. In the Bering Sea *C. opilio* fishery, the fishery that most commonly suffers from ice conditions, the cooperative coordinated harvest activity to ensure that North region landings occurred prior to deliveries being prevented by ice developing the in the area of St. Paul Island. This type of coordination would likely continue to be used to address barriers to delivery in the future.

Under the **exemption alternative**, if an IFQ holder, the holder of matched IPQ, and the community/region representative agree to an exemption, IFQ may be delivered outside of the designated region. By providing the IFQ holder with an additional choice when confronted with an obstacle to a delivery, the exemption could in some circumstances reduce added harvester costs and risks that accompany an unforeseeable circumstance preventing a delivery within a region. The potential for an IFQ holder to direct the use of the exemption will depend on several factors, including the cost and risks associated with alternative means of addressing the obstacle to deliveries and the cost of any compensation required under the exemption agreement.

Two factors are likely to be considered when determining whether to use the exemption. First, safety risks arising from the obstacle to deliveries and operational costs of travelling to and making delivery outside the region under the exemption would be considered. These various operational considerations could make the exemption more or less appealing depending on the circumstances of the vessel. Second, compensation requirements will also affect the decision of the IFQ holder to secure an exemption. Higher compensation amounts could create a disincentive for IFQ holders to use the exemption. Although available, the exemption is only likely to be used only when it is more favorable than the other options, including waiting for the interfering circumstance to pass and possibly discarding catch.

QS holders will be affected by the exemption, since they likely bear some (or, in some cases, all) of the costs arising when compliance with regional delivery requirements are prevented by unforeseeable circumstances. To the extent that IFQ holders are able to reduce costs associated with these circumstances through use of the exemption, QS holders are likely to benefit from the exemption. Since the exemption is available only in very limited circumstances and comes at a cost of compensation to regional interests (and possibly the IPQ holder), the exemption is unlikely to result in substantial financial savings for QS holders, in most instances. Typically, the use of the exemption will have minor changes in operational efficiency. QS holders fishing the IFQ yielded by their QS will realize all of this savings, while a portion of this savings will be passed on QS holders that have lease arrangements for the fishing of IFQ yielded by their QS.

Effects on vessel operations and safety

Under the **status quo**, vessel operators must comply with regional landing requirements when using regionally designated catcher vessel owner Class A IFQ. Vessel operators prevented from making a landing using regionally designated IFQ have several possible choices. In some instances, the IFQ holder may have alternate IFQ allowing the landing to be made in another location. Alternatively, IFQ may be acquired to allow the landing to be made in outside of the designated region. In either of these cases, the vessel operators will need to coordinate their activity with the IFQ holder (if the IFQ holder is not the vessel operator) and both the processor (and IPQ holder) who was initially scheduled to receive the landing and the processor (and IPQ holder, if needed) who will ultimately receive the landing. If the condition preventing the landing is likely to pass, the vessel operator could choose to wait to make the delivery.

The need to full comply with all regional landing requirements increases the incentive for vessel operators (in conjunction with IFQ holders) to force deliveries when circumstances may prevent the vessel from

safely making the delivery. In all cases, the captain of a vessel is responsible for the safety of the vessel and may choose not to attempt to make a delivery to ensure the safety of the vessel. The captain, however, will have to balance the safety risk of attempting to make a delivery against the financial cost of redirecting or delaying the delivery. The potential to accept the risk is likely greatest at the end of season when little or no unused IFQ would support a delivery outside of the designated region. In that case, a captain may be unable to substitute IFQ for the regionally designated IFQ. In addition, captains and crews are likely to have less patience for waiting out ice conditions and may be more inclined to accept greater risks to complete their seasons. In these circumstances, the threat to safety will likely be the greatest.

The **exemption alternative** provides an additional option to vessel operators that encounter unforeseeable impediments to complying with regional delivery requirements. Since these unforeseeable events arise infrequently and agreements will likely allow exemptions in limited circumstances, it is unlikely to have widespread implications on vessel operations. The alternative, however, could provide some vessel operators with an additional choice in some circumstances that could benefit operators and reduce some safety risks. Specifically, the ability of vessel operators to gain an exemption could relieve some of the financial pressure to accept the risks incumbent in making a delivery under questionable circumstances (such as when ice is present, but is arguably navigable) by providing a limited exemption from the regional landing requirement. Clearly, a vessel operator could still perceive a benefit to complying with the regional landing requirement, thereby avoiding any compensation that might be required in the event of an exemption. Yet, the outlet created by the exemption could be particularly important nearer the end of season when little or no unused IFQ would support a delivery outside of the designated region. In that case, a captain may be unable to use the regionally designated IFQ except by receiving the exemption to the regional designation or accepting risks associated with the delivery. Late in the season, captains and crews are likely to have less patience for waiting out ice conditions and may be more inclined to accept greater risks to complete their seasons. The exemption may provide a reasonable alternative that could lead vessel operators to avoid risks associated with attempting lands despite obstacles.

Effects on PQS and IPQ holders and processors

Under the **status quo**, no exemption to regional landing requirements is permitted. So, both regional landing requirements and IPQ commitments must be complied with. Processors will likely be idled in the event compliance with regional delivery requirements is prevented by an unforeseeable circumstance. If additional capacity is available within a region, IPQ holders may be able to make use of their IPQ by redirecting landings to another plant using custom processing arrangements. In some circumstances, compliance with regional landing requirements may require that an IPQ holder arrange for additional processing capacity in a region to receive deliveries under Class A IFQ/IPQ contractual agreements. Processors may incur additional costs through these arrangements. Clearly, a circumstance preventing compliance with regional landing requirements will increase costs to processors with those costs being dependent on the specific circumstances, the responses of both the harvesting and processing sectors, and any change in pricing that might be negotiated between the parties or driven by the arbitration system.

The **exemption alternative** allows a Class A IFQ holder to obtain an exemption from regional landing requirements by agreement of the matched IPQ holder and a region/community representative. IPQ holders are likely to require some level of notice prior to exercising the exemption (except in case of emergency). This type of notice requirement should ensure that processors are not expending substantial efforts to overcome the circumstance, only to have an IFQ holder redirect the landing under the exemption. Likewise, a compensation requirement in the contract could be carefully drafted to protect an IPQ holder should an IFQ holder exercise the exemption in a manner that unreasonably imposes excessive cost on the IPQ holder. These two provisions together should limit the extent to which any

circumstance imposes an undue burden on an IPQ holder in the event an IFQ holder elects to use the exemption.

Effects on regions and communities

Under the **status quo**, holders of Class A IFQ and IPQ holders must abide by regional landing requirements without exception. Consequently, the only circumstance under which a region will not benefit from a landing from a regionally designated IFQ is if the IFQ is not used. Without an exemption, IFQ could be left unharvested, should an unanticipated circumstance prevent the harvest altogether or make the harvest cost prohibitive. In considering the effects of regional landing requirements, it should be noted that those requirements provide no community specific benefit. As a result, regional landing requirements will only ensure that additional offloads and processing take place in the region. That activity may not benefit a community or even the regional economy, if the processing occurs outside the boundaries of a community.

The potential for landings to be redirected outside of communities differs across fisheries and regions. In the North region of the Bering Sea *C. opilio* fishery, where unanticipated circumstances might be most likely to arise, the potential to redirect landings away from communities is relatively limited. Areas in the region that are outside of communities are relatively exposed, and likely cannot safely support offloads and processing activities during the winter months when most processing occurs. In the St. Matthew Island blue king crab fishery, locations near St. Matthew Island (and not within any community) provide some protection from weather for processors. Much of the processing historically relied on these locations. In the Pribilof Island red and blue king crab fishery, most processing occurred historically in the Pribilof Island communities. Since the fisheries are relatively small, it is likely that the North processing in the St. Matthew Island blue king crab fishery would be consolidated with processing in the Pribilof Island red and blue king crab fishery in the Pribilofs. The effect of any unanticipated circumstances on the redistribution of processing within the North region in these fisheries cannot be predicted, but would depend on available resources. An unanticipated circumstance might redistribute landings to a different location, but the Pribilofs are the most likely location for processing. In the Western Aleutian Islands golden king crab fishery, the only plant to receive deliveries under the program to date is in Adak. Some participants have suggested that processing could take place in Atka in the future. If deliveries are prevented to Adak or Atka by an unanticipated circumstance, it is likely that landings would move to a different location, if a plant is made available. This movement of landings could be simply between these communities, but also could result in a loss of benefits to communities in the region, if those landings move to a location outside of any community. If a delivery into a South region processor is prevented by an unforeseeable circumstance, it is likely that the processing would move to a different facility. In Dutch Harbor/Unalaska and Kodiak, it is possible that the processing would simply move to another local facility, unless the entire community is inaccessible. Any other processing location in the South is likely to have processing moved to a different community (or outside of any community) in the event that a delivery is prevented by an unforeseeable circumstance.

Under the **exemption alternative**, if an unanticipated circumstance prevents deliveries within a designated region that delivery may be redirected outside of the region. Although the terms of the exemption are defined by agreement and may not be fully predictable, it is unlikely to be used liberally or frequently. In cases when the exemption is applied, the community that would have hosted the landing and processing will lose tax revenues and could lose economic activity associate with the landing. In a few circumstances, the community's economic activity may be unaffected. For example, if the landing would have taken place at a floating processor within community boundaries, but with no interaction within the community, it is possible that only tax revenues would be affected. These losses could be compensated under depending on the terms of the exemption agreement.

In cases of a few redirected deliveries in the course of a relatively long processing period, it is possible that the community could suffer little loss of economic activity. If the compensation agreement makes up for lost tax revenues, it is possible that the community may be unaffected by the exemption. On the other hand, if the exemption is granted for a large share of a community's processing activity, it could have a very different effect on the community's economy. It should be noted that in some instances, a community that would have received a landing but for an unforeseeable circumstance could be better off under the exemption than with a strict requirement to comply with regional landing requirements. For example, under the status quo, IFQ may be either left unharvested or redirected to another community in a region by an IFQ holder that is unable to make a delivery to a community. If the IFQ holder is able to use an exemption to redirect the landing to another region and is required to pay compensation to the community under the agreement, the community would be better off under the exemption. Arguably, movement of the processing within the region would leave the region in unaffected, but redistribution of landings among communities will affect those local economies.

Notwithstanding the case of movement of small numbers of landings, it is also important to consider circumstances that affect a large portion of a community's processing being redirected under an exemption. In these instances, it is likely that processing in the community will have been prevented for an extended period. Obligations to exert reasonable efforts to avoid the exemption and compensation provisions in the exemption agreement should prevent IFQ and IPQ holders from redirecting landings for simple convenience. The provisions should also prevent excessive abuse of the exemption, in the event a single location within a region is unavailable for deliveries, while processors may be accessible in other locations (or a processor can be brought to a location to support deliveries). Assuming deliveries are prevented in a region, without the exemption, these landings would not occur. If they occur under the exemption, the community would receive any compensation prescribed by the agreement (or alternatively the regional interest protected by the compensation provision would receive that compensation).

Effects on management, monitoring, and enforcement

Under the **status quo**, managers monitor use of regionally designated IFQ and IPQ through the elandings system. Since compliance with designations is required without exception, oversight is simplified. Any violation could be tracked and verified through the elandings monitoring system, which creates a record of landings including IFQ and IPQ usage by facility.

Under the **exemption alternative**, NOAA Fisheries managers will be required to oversee exemptions. NOAA Fisheries will be required to assess the proper party to contract on behalf of a region with respect to the exemption contract. Since exemptions will only be granted for IFQ and IPQ that are subject to a contract (as verified by an affidavit), NOAA Fisheries must also collect those affidavits. Since most IFQ holders will deliver to multiple IPQ holders, it is likely that each IFQ and IPQ holder that wishes to have the exemption available will need to enter several contracts. The number of contracts could differ depending on the option selected for identifying the regional representative. If regions have multiple representatives (such as each right of first refusal holder) more contracts will be required. Once contracts are filed, the exemption would be available for the number of pounds of IFQ identified in the affidavit. Beyond documentation of the affidavit attesting to agreement to the exemption, other aspects of exemption oversight and enforcement would be shifted to participants (including the region/community representative). By shifting contract performance oversight to the parties, NOAA Fisheries burden for overseeing performance (particularly performance of compensation requirements) is limited. Although the shifting of management burdens to participants should reduce agency administration costs, the costs to participants may increase. The extent of costs to parties will depend greatly on the choices of the parties in the exemption agreements and the complexities and costs of enforcing those arrangements.

1 Introduction

In the spring of 2007, the North Pacific Fishery Management Council (the Council) established a committee to address certain concerns with the Bering Sea and Aleutian Islands crab rationalization program (the program). In the course the committee's meetings, members expressed concern that at times of extreme icing and other uncontrollable circumstances, the regional landing requirements applicable to Class A individual fishing quota (IFQ) could pose safety risks, loss of resource (such as excessive deadloss), or extreme economic hardships to participants in the crab fisheries. After receiving recommendations from participating stakeholders and its advisory panel, a staff discussion paper, and public testimony, the Council directed staff to prepare an analysis of alternatives to provide an emergency exemption from regional landing requirements. To avoid potential insurmountable administrative burdens the Council identified for analysis a system of civil contracts between IFQ holders, IPQ holders, and regional representatives, as the means of defining the exemptions from the regional landing requirements.

This document contains a Regulatory Impact Review (Section 2), an Environmental Assessment (Section 3), and an Initial Regulatory Flexibility Analysis (Section 4) of the alternative to create an exemption to the regional landing requirements in that event compliance is prevented by an unanticipated circumstance. Section 4 contains a discussion of the Magnuson Stevens Act National Standards and a fishery impact statement.

This document relies on information contained in the Bering Sea/Aleutian Islands Crab Fisheries Final Environmental Impact Statement/Regulatory Impact Review/Initial Regulatory Flexibility Analysis/ Social Impact Assessment (NMFS/NPFMC, 2004). Throughout this analysis, this document is referred to as the "Crab EIS".[5]

2 Regulatory Impact Review

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

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

> In deciding whether and how to regulate, agencies should assess all costs and benefits of available regulatory alternatives, including the alternative of not regulating. Costs and benefits shall be understood to include both quantifiable measures (to the fullest extent that these can be usefully estimated) and qualitative measures of costs and benefits that are difficult to quantify, but nonetheless essential to consider. Further, in choosing among alternative regulatory approaches agencies should select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity), unless a statute requires another regulatory approach.

[5] The proposed action is a minor change to a previously analyzed and approved action and the proposed change has no effect individually or cumulatively on the human environment (as defined in NAO 216-6). The only effects of the action are economic and safety effects arising from creating an exemption to regional landing requirements. As such, it is categorically excluded from the need to prepare an Environmental Assessment.

E.O. 12866 further requires that the Office of Management and Budget review proposed regulatory programs that are considered to be "significant". A "significant regulatory action" is one that is likely to:

- Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, local or tribal governments or communities;
- Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
- Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

2.1 Purpose and need statement

Participants in the fishery identified three potential problems that could be addressed through a provision allowing an exemption from regional landing requirements. All problems arise from the occurrence of an unanticipated event that prevents delivery of a landing in compliance with a regional landing requirement. Most prevalent have been assertions that ice conditions in and around the Pribilof Islands, where all North region processing takes place, have created substantial risks to vessels and crews in the fishery. A second need for the exemption could arise, if events prevent the delivery of landings in a region for an extended period of time which could lead to excessive deadloss of harvested crab. A third problem could arise if an unanticipated event or circumstance prevents (or delays) deliveries for an extended period, thereby preventing the full harvest of the TAC. Although economic costs should not be the sole motivator for an exemption, it is possible that in some circumstances, costs arising from an unanticipated event could make harvest of the TAC for landing in a specific region unreasonably costly. These costs might be unavoidable, despite all reasonable efforts of the IFQ and IPQ holders. A well-drafted purpose and need statement could identify unavoidable costs arising from an unanticipated circumstance that would make harvest of IFQ designated for landing in a region uneconomical as a reasonable motivation for an exemption provision.

The Council has adopted the following purpose and need statement for this action:

> *In developing the crab rationalization program, the Council included several measures to protect regional and community interests. Among those provisions, the Council developed regional designations on individual processing quota and a portion of the individual fishing quota that require associated catch to be delivered and processed in the designated region. Since implementation of the program in late 2005, and except in the case of the Western Aleutian Islands Golden King Crab fishery, all of the crab IFQ has been harvested and processed as intended by the crab rationalization program. However, icing conditions in the Northern Region have created safety concerns, and delayed and in some cases prevented harvesters from entering harbors to deliver to shore-based and floating processors located in the regions, as required by the regional share designations. In addition, other unforeseeable events, events such as an earthquake or tsunami, or man-made disaster, could prevent deliveries to eligible processors in a region necessary for compliance with the regional designations on Class A IFQ and IPQ. A well-defined exemption from regional landing and processing requirements of Class A IFQ and IPQ that includes requirements for those receiving the exemption to take efforts to avoid the need for and limit the extent of the exemption could mitigate safety risks and economic hardships that arise out of unforeseeable events that prevent compliance with those regional landing*

requirements. Such an exemption should also provide a mechanism for reasonable compensation to all parties directly impacted by the granting of the exemption to ensure that the protections intended by the regional designations continue to be realized despite the exemption. The purpose of this action is to develop a regulation to allow waiver of the regional landings requirement for Class A shares in the event that eligible processing facilities are unable to receive crab for an extended period of time.

2.2 Alternatives

The Council has adopted the following alternatives for analysis:

Alternative 1 – Status quo (no exemptions from regional landing requirements)

Alternative 2 – Regional Landing Exemption

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

Component One. The Contract Parties.

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

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

Suboption 1: prior to the opening of the season.
Suboption 2: by a fixed date (to be determined).

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

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

The entity that will represent communities shall be (options):
(a) the entity holding or formerly holding the ROFR for the PQS,

(b) the entity identified by the community benefiting from (or formerly benefiting from) the ROFR,

(c) a regional entity representing the communities benefiting from the ROFR or formerly benefiting from the ROFR.

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

Component Two. Reserve Pool and Reporting Requirements.

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

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

(a) unaffiliated cooperatives and unaffiliated IFQ holders not in a cooperative,[6] in the aggregate; or

(b) held by affiliated cooperatives and affiliated IFQ holders not in a cooperative, in the aggregate.

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

1) a comprehensive explanation of the membership composition of the reserve pool and the measures in effect in the previous year,

2) the number of times a delivery relief exemption was requested and used, if applicable,

3) the mitigating measures employed before requesting the exemption, if applicable,

4) an evaluation of whether regional delivery exemptions were necessary, and their impacts on the affected participants, if applicable.

Reserve Pool Representatives shall circulate the annual Regional Landing Exemption Report to communities that are parties to framework agreements with the reserve pool representatives two weeks before submission to the Council. Communities may submit to the Council a Community Impact Report that responds to the annual Regional Landing Exemption Report.

[6] **It should be noted that IFQ holders other than cooperatives cannot transfer IFQ in season. This limitation prevents their effective membership in a reserve pool agreement.**

Component Three. Administration of the Exemption.

Option 1 (corresponds to Component 1, Option 1):
In accordance with Component One, the three parties will file an affidavit with NMFS affirming that a framework agreement has been signed, and, if applicable, subsequently file a second affidavit affirming that an exemption contract has been signed. In the affidavits, the parties shall affirm that the framework agreement includes mitigation requirements and a range of terms of compensation, and that the exemption contract describes the conditions under which the exemption is being or would be requested, including mitigation requirements and terms of compensation specific to the exemption being sought.

Option 2 (corresponds to Component 1, Option 2):
In accordance with Component One, the three parties will file an affidavit with NMFS affirming that an exemption contract has been signed. In the affidavit, the parties shall affirm that the exemption contract describes the conditions under which the exemption is being or would be requested, including mitigation requirements and terms of compensation specific to the exemption being sought.

Exemption

Option 1 (corresponds to Component 1, Option 1):

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

Option 2 (corresponds to Component 1, Option 2):

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

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

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

Component Four. Council Review.

The Council will review the Regional Landing Exemption Program within:

(a) two years

(b) after the first season in which an exemption is granted.

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

A different approach to development of alternatives and the Council's action

As currently written the Council's exemption alternative contains extensive discussion of the intended operation of the exemption. For example, the motion contains extensive discussion of the development of a reserve pool to avoid the need for the exemption. This discussion has some details concerning the scope of reserve pool membership, but omits any detail concerning the operation of the reserve pool. The reason for omitting that description is that the specific requirements may depend on the circumstances and may vary over time, as the parties gain experience with its use. Inclusion of the reserve pool as a specific element of the exemption, however, creates some confusion concerning whether (or the degree to which) NOAA Fisheries will play a role in administering and overseeing the reserve pool requirement. The lack of specificity in the reserve pool requirement likely eliminates any potential for the NOAA Fisheries to oversee that aspect of any exemption. Similarly, a strict requirement that holders of at least a certain percentage of the Class A IFQ be a party to an agreement (or a reserve pool) will complicate administration, as IFQ are typically issued only a few weeks or days prior to most season openings and the distribution of Class A IFQ is uncertain under the rules for allocating IFQ to affiliates. These types of provisions in the motion create ambiguity concerning the scope of the regulations and the extent of agency oversight of these requirements. Dividing the motion into two parts would simplify the regulations and remove this ambiguity.

The simplifying motion would contain the regulatory direction in its first part; the second part would identify the Council's intent for the motion, which would generally describe considerations for the parties in developing exemption agreements. The first portion of the motion would only define the specific provisions that would be expected to be administered and overseen by NOAA Fisheries. The alternatives in their current form suggest that the exemption would be granted provided that certain required parties entered one or two agreements. NOAA Fisheries administration would simply authorize the use of certain amounts of Class A IFQ and IPQ outside of the designated region on receipt of affidavits affirming the existence of the contracts. In addition, annual reporting requirements would be incorporated into this portion of the motion, as those requirements would be included in regulation. The reporting would be used to verify that the Council's intent for development of the exemption agreements is being achieved. Specific reporting requirements could be included in this provision. For example, the motion (and regulations) could require that the parties include either a copy of the agreements or descriptions of certain provisions, such as mitigation requirements, reserve pool arrangements, and provisions for compensation, in the event the exemption is used (as is suggested by the current motion).

The second portion of the motion would provide more general statements of Council's intent concerning the exemption and possible exemption agreements. The motion currently contains several aspects that could be included in this section of the motion. The intention that the agreement contain a commitment for IFQ holders to create a reserve pool to limit the potential need for the exemption could be described. In addition, any threshold share holding for an effective reserve pool could be included in this second

section of the motion. The potential to have compensatory obligations (including possibly compensatory deliveries) to mitigate the impacts of the exemption could also be described. Including the descriptions of these possible provisions in the second portion of the motion would ensure that the Council has a solid record concerning its intention for establishing the exemption, while avoiding the potential for the regulatory uncertainty.

Some interested parties may question whether their positions might be jeopardized by this division of the motion. For example, these persons may argue that the exemption would be more readily available, if the regulation does not specifically provide for mitigation and compensation; however, the addition of references to mitigation, compensation, or other factors in the regulation could create uncertainty that would complicate administration, which (at the extreme) could compromise its enforceability. Simpler, clearer, more concise regulations are easier to enforce.

Under the simpler regulation suggested here, the only requirements for the exemption are one or more agreements of the required parties. On filing an affidavit attesting to the agreement, the exemption would be granted for the amount of IFQ and IPQ identified. Since any required party may withhold its consent to an agreement, thereby preventing the exemption, the interests of those parties that might be harmed by the exemption should be protected. This more focused regulation would streamline administration of the exemption, prevent undue delays in granting exemptions, and reduce uncertainties concerning qualification for the exemption that might arise, if exemption criteria are included in the regulation. The Council's statement of intent would define the Council's expectations for certain conditions to the exemption, while the reporting requirement would provide the Council with information to assess whether the exemption is operating as intended.

Such a simplified motion could take the following form:

Alternative 2 – Regional Landing Exemption

This action would establish an emergency relief exemption for the regional delivery requirement under the BSAI crab program. The action 1) specifies the eligibility requirements for the exemption and the contracting parties, 2) establishes reserve pool certification and periodic reporting requirements 3) establishes how the emergency relief regulation is to be administered and 4) establishes a Council review process.

Regulatory components

Exemption and administration

Option 1: As a prerequisite to being eligible to apply for and receive an exemption from a regional landing requirement, the IFQ holders, the matched IPQ holders and the affected community entity or entities in the region for which the regional landing exemption is sought shall provide NMFS with an affidavit attesting to having entered into a non-binding framework agreement that addresses mitigation, a reasonable range of terms of compensation, and a reserve pool requirement to the satisfaction of the parties. The affidavit shall be delivered to NMFS:

Suboption 1: prior to the opening of the season.
Suboption 2: by a fixed date (to be determined).

To receive an exemption from a regional landing requirement the IFQ holders, the matched IPQ holders and the affected community entity or entities in the region for which the regional landing exemption is sought shall deliver to NMFS an affidavit attesting to having entered into an exemption contract that addresses mitigation, terms of compensation if appropriate, and a reserve pool requirement, to the satisfaction of the parties, prior to the day on which the exemption is sought. The exemption shall be granted upon timely submission of a framework agreement affidavit and subsequent filing of an exemption contract affidavit.

Parties to the framework agreement (and the affidavit attesting to that agreement) may include several IFQ holders, several IPQ holders, and several community/regional representatives, including representatives from multiple regions.

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

Note: Any affidavit attesting to an exemption contract shall specifically identify the amount of IFQ/IPQ that are subject to the exemption.

<u>Regional/community representatives</u>
The entity that will represent communities shall be (options):

- *(a) the entity holding or formerly holding the ROFR for the PQS,*
- *(b) the entity identified by the community benefiting from (or formerly benefiting from) the ROFR,*
  - *Option: The entity or entities determined by the Council to be the community representatives in a region shall develop an allocation or management plan for any PQS issued without a ROFR in that region by a date certain established by the Council.*[7] *(**Note: This provision could be applied instead of (c), if (a) or (b) is selected as the primary means of determining regional representatives)**.*
- *(c) a regional entity representing the communities benefiting from the ROFR or formerly benefiting from the ROFR.*

<u>Effect on excessive share caps</u>
The requirement that NMFS apply any IPQ used at a facility through a custom processing arrangement against the IPQ use cap of the owners of that facility shall be suspended for all Class A IFQ and matched IPQ included in the exemption.

<u>Reporting requirements</u>
Any IFQ holders who are party to a framework agreement shall provide an annual Regional Landing Exemption Report to the Council which will include the following:

1) *a comprehensive explanation of the membership composition of the reserve pool and the measures in effect in the previous year,*
2) *the number of times a delivery relief exemption was requested and used, if applicable,*
3) *the mitigating measures employed before requesting the exemption, if applicable,*

[7] This provision has been moved under options (b) and (c), as this provision is unnecessary, if (c) is selected.

4) *an evaluation of whether regional delivery exemptions were necessary, and their impacts on the affected participants, if applicable, and*
5) *a description of the consistency of the agreement with the Council's intent for this action.*

At least two weeks prior to providing the annual Regional Landing Exemption Report to the Council, IFQ holders shall provide the annual Regional Landing Exemption Report to the communities and IPQ holders that are parties to framework agreements. Communities or IPQ holders may submit to the Council a Community Impact Report or IPQ holder report, respectively, that responds to the annual Regional Landing Exemption Report.

Statement of Council Intent

In developing the crab rationalization program, the Council included several measures to protect regional and community interests. Among those provisions, the Council developed regional designations on individual processing quota and a portion of the individual fishing quota that require associated catch to be delivered and processed in the designated region. A well-defined exemption from regional landing and processing requirements of Class A IFQ and IPQ that includes requirements for those receiving the exemption to take efforts to avoid the need for and limit the extent of the exemption could mitigate safety risks and economic hardships that arise out of unforeseeable events that prevent compliance with those regional landing requirements.

*The Council intends that exemptions will be developed by agreement of the holders of Class A IFQ, holders of IPQ, and regional/community representatives. A prerequisite to an exemption will be that the parties have entered a nonbinding framework agreement. It is the Council's intent that this framework agreement will define certain terms of the exemption, including mitigation requirements and a range of terms of compensation, and that the exemption contract describes the conditions under which the exemption is being or would be requested, including mitigation requirements and terms of compensation specific to the exemption being sought. Mitigation would be intended to mitigate the effects on parties that might suffer some loss because of the granting of an exemption. Compensation would be intended to compensate parties for losses arising from the exemption. All framework agreements are expected to contain provision for a reserve pool. A reserve pool would be intended to provide industry wide, civil contract based delivery relief without regulatory or administrative intervention. Specifically, a reserve pool would be an agreement among holders of IFQ to certain arrangements in the use of their IFQ to reduce the need for exemptions from the regional landing requirement. It is believed that an effective reserve pool must 1) commit each participant in the pool to be bound by its rules; and 2) include not less than (**60%, 70%, 80%**) of the "A" share IFQ held by:*

(a) *unaffiliated cooperatives and unaffiliated IFQ holders not in a cooperative,[8] in the aggregate; or*
(b) *affiliated cooperatives and affiliated IFQ holders not in a cooperative, in the aggregate.*

Allowing several IFQ holders, IPQ holders, and community/regional entities to be a party to the same framework agreement is intended to streamline negotiations, facilitate the use of reserve pools, and allow for the incorporation of compensatory deliveries (should the parties believe compensating deliveries are appropriate). If an exemption is needed for compensatory deliveries, the process for receiving that exemption shall be the same as the process of affidavits used to make any other exempt deliveries under this action.

[8] **It should be noted that IFQ holders other than cooperatives cannot transfer IFQ in season. This requirement would only affect the threshold level but would not bring those persons into an effective reserve pool agreement.**

Council Review

The Council will review the Regional Landing Exemption Program within:

(a) two years and

(b) after the first season in which an exemption is granted.

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

Note: Council intent language may need modification for the specific options selected (particularly, options including or excluding a framework agreement).

The revision of the motion, as presented, is intended to remove any confusion concerning which portions of the Council's action should be incorporated into regulation and which portions of the motion express the Council's intent.

2.2.1 Alternatives considered, but not advanced for analysis

The Council considered four types of alternatives that it elected not to advance for analysis. Generally, these alternatives were perceived by the Council as limiting the effectiveness of the alternatives in achieving their intended purpose.

First, the Council elected to eliminate alternatives that specifically define exemption criteria in regulation. Given that the claims for the exemption are likely to be based on unavoidable and unforeseeable events, the qualification of an event for the exemption, the scope of the exemption, and any subsequent compensatory action are likely to be case specific. A flexible structure, able to accommodate this variability, could be beneficial. Specifically, defining events that qualify for an exemption is problematic because the nature of the exemption is to accommodate unforeseen events that prevent deliveries. Although the types of events that might qualify for the exemption (such as ice, natural disasters, and disabling of a processing facility) are reasonably identifiable, it is possible that some events might not be identifiable. As such, it is reasonable to generally define an exemption with a description of the type of events that would qualify for the exemption, allowing flexibility of contractual agreements among affected parties to further define the exemption triggering circumstances by adding specificity to its terms. To accommodate unanticipated events, the Council has elected to eliminate from analysis any alternatives that specifically define the exemption, instead relying on a more general definition of potential circumstances and conditions qualifying for the exemption and its scope.

Second, the Council considered alternatives under which NOAA Fisheries would fully administer the exemption, determining whether conditions qualifying for the exemption are met. The Council elected not to advance these options for analysis, as it deemed the potential administration by NOAA Fisheries as costly and potentially preventing the exemption from fulfilling its purpose. Several issues would arise through NOAA Fisheries administration of the exemption. First, NOAA Fisheries administration of general standards that lack specific criteria is complicated. The need for an exemption applicable to unanticipated circumstances (which would include circumstances other than icing in the harbor) requires a flexible regulatory standard that may not delineate all criteria. While a less specific standard may accommodate a broader range of needs, it also may increase the scale of agency fact finding required for determining whether the exemption standard has been met. This increased scale of fact finding may not

only increase administration costs, but may also delay decision making and open such decisions to legal challenge. The need for efficient and timely administration of the exemption is a second challenge to an agency administered standard. Under conventional agency administration, an agency finding of qualification for the exemption would require that the agency make an evidentiary determination that the standard is met. These findings are not made lightly, requiring verification of conditions (which, in the crab fisheries, will likely be in remote locations with limited accessibility and poor information). Although a slight delay in processing an application for an exemption may be desirable (particularly if the exemption is based on ice conditions that may clear), administrative delays could also lead captains to wait to be informed of the decision on the exemption, which may expose their vessels and crews to additional risk and may contribute to costly deadloss to crab on board. In addition, any agency administered exemption will require provision for appeals by affected parties, which may be time consuming and limit the effectiveness of the exemption. The conflict between the need for expedited consideration of and ruling on exemption applications, and the need for a flexible standard for determining qualification for the exemption, suggest that agency administration may limit the effectiveness of the exemption provision.[9]

Third, the Council also elected not to advance for analysis alternatives that specifically define compensation, in the event that the exemption is used. Alternatives containing specific compensation requirements were deemed too prescriptive to effectively balance the competing interests of parties, which are likely to change with the circumstances surrounding the granting of an exemption. Alternatives that allow flexibility to parties to define compensation were believed to better equip the participants (including those representing regional interests) to balance the competing interests that arise when an exemption is required.

Fourth, the Council chose not to advance alternatives that would redesignate IFQ and IPQ to compensate for landings redirected under the exemption. Under such an alternative, the IFQ holder could receive an allocation in the following year that is redesignated for the region in which the exemption was granted. Such a redesignation is likely infeasible. It may be unfair to a recipient of a QS transfer early in the season (but after IFQ issuance) who may have no involvement in the IFQ used in the season of the exemption to have IFQ redesignated. To offset the lost landings, the redesignation would need to be for an equivalent amount of IFQ in the following year. TAC changes would leave IFQ redesignations uncertain until only a few days prior to those allocations being made. With the variety of annual IFQ and IPQ allocations and the complexity of determining those allocations, share redesignations could further delay IFQ/IPQ issuance, which already poses challenges to participants attempting to match Class A IFQ and IPQ. In most cases, IFQ holders are cooperatives that are not QS holders. Changes in cooperative membership and transfers of QS from year to year may result in extremely complicated and costly tracking of QS to ensure that exemptions offsetting IFQ are issued. Arranging compensating share

[9] Under the two-year cooling off provision, landings were required to be made in a specific community. IPQ holders were exempt from the requirement if prevented from complying by an unforeseen, unavoidable circumstance. Under the 'cooling off' provision, the definition was deemed to apply to unrepaired storm damage to the St. George harbor entrance that prevented deliveries to that location. The damage and its repair were found to be beyond the control of the IPQ holder, the party bound by the 'cooling off' requirement (see In re Appeal of Aleutian Pribilof Island Community Development Association v. Snopac Products, Inc. (May 2, 2008)). Although the agency managed to apply the exemption to that circumstance, the exemption was delayed by required administrative proceedings suggesting that the agency might be unable to administer an emergency exemption that is needed on short notice. This experience suggests that an exemption that requires agency findings of fact may be inappropriate in this case.

redesignation will also be complicated for IPQ holders. If the IPQ holder receives the landings covered by the exemption, redesignation of IPQ may be appropriate. In some cases, however, other processors may receive the benefits of redirected landings under an exemption. Redesignation of IPQ in that case might be inappropriate. In addition, some IPQ holders may hold no PQS for the region where the exempted shares were landed making redesignation impossible. These inequities and complexities suggest that other means of compensation may more appropriate than share redesignation and led the Council to eliminate such alternatives from consideration.

2.3 Existing conditions

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

2.3.1 Management of the fisheries

Nine Bering Sea and Aleutian Island crab fisheries are managed under the rationalization program. Harvesting quota shares (QS) were created in each program fishery. QS are a revocable privilege that allow the holder to harvest a specific percentage of the annual TAC in a program fishery. The annual allocations, which are expressed in pounds, are referred to as individual fishing quota (IFQ). The size of each annual IFQ allocation is based on the amount of QS held in relation to the QS pool in a program fishery – a person holding one percent of the QS pool receives IFQ to harvest one percent of the annual TAC in the fishery.

QS are designated as either catcher vessel QS or catcher processor QS, depending on whether the vessel that created the privilege to the shares processed the qualifying harvests on board. Approximately 97 percent of the QS (referred to as "owner QS") in each program fishery were initially allocated to License Limitation Program license holders based on their catch histories in the fishery. The remaining 3 percent of the QS (referred to as "C shares" or "crew QS") were initially allocated to captains based on their catch histories in the fishery.

Catcher vessel owner IFQ are issued in two classes, Class A IFQ and Class B IFQ. Class A IFQ are issued for 90 percent of the catcher vessel owner IFQ in a program fishery. Crab harvested using these IFQ must be delivered to a processor holding unused individual processing quota (IPQ). In addition, Class A IFQ are subject to regional share designations, whereby harvests are required to be delivered within an identified region. The delivery restrictions of Class A IFQ are intended to add stability to the processing sector by protecting processor investment in program fisheries and to preserve the historic distribution of landings and processing between regions. Since the only IFQ that are subject to regional landing requirements are catcher vessel owner Class A IFQ, it is only those IFQ that are directly subject to this action. Class B IFQ are issued for the remaining 10 percent of the catcher vessel owner QS in a program fishery. Crab harvested using these IFQ can be delivered to any processor (except a catcher processor) regardless of whether the processor holds unused IPQ. In addition, Class B IFQ are not regionally designated. The absence of delivery restrictions on a portion of the catch is intended to provide harvesters with additional market leverage for negotiating prices for landings of crab. Consequently, Class B IFQ are allocated only to harvesters that are unaffiliated with holders of processing shares.[10] The IFQ yielded by

[10] Cooperatives that are made up exclusively of QS holders without processor affiliation are permitted to participate in an arbitration program for settling price negotiation disputes. Those IFQ holders (including cooperatives) that are not processors or affiliated with processors are hereinafter referred to as "unaffiliated". IFQ holders that are processors or have processor affiliations are referred to as "affiliated".

crew QS ("Class C IFQ") are not subject to regional or IPQ landing requirements applicable to Class A IFQ.

QS and IFQ are transferrable under the program, subject to limits on the amount of shares a person may hold or use. Transferability of shares among eligible purchasers of QS and IFQ may promote production efficiency in the harvest sector and provides a means for compensated removal of excess harvesting capacity in the program fisheries. In addition, transferability may be used to avoid overages, in the event a harvester exceeds its available IFQ. The use of transfers to avoid permit violations from overharvest of quota could increase under a new amendment adopted by the Council that allows transfers after delivery to remedy an overage.

Leasing of owner QS (or equivalently, the sale of owner IFQ) will be prohibited, except by cooperatives, after the first five years of the program. Leasing is defined as the use of IFQ on a vessel in which the holder of the underlying QS holds less than a 10 percent ownership interest and on which the underlying QS holder is not present. The prohibition on leasing of QS (or sale of IFQ) by persons not in cooperatives is intended to create an incentive for cooperative membership. The interim period in which leasing is not constrained is intended to allow a period of adjustment during which harvesters can coordinate fishing activities and build relationships necessary for cooperative membership.

In addition to harvest shares, the program also created processing quota shares (PQS), which are allocated to processors and are analogous to the QS allocated to harvesters. PQS are a revocable privilege to receive deliveries of a fixed percentage of the annual TAC from a program fishery. These annual allocations are referred to as individual processing quota (IPQ). IPQ is issued for 90 percent of the owner IFQ pool, corresponding to the 90 percent allocation of owner IFQ as Class A IFQ. As with owner QS and Class A IFQ, PQS and IPQ are designated for processing in a region. These processing shares are intended to protect processor investment in program fisheries and preserve regional interests in the fisheries. Since most IPQ are subject to regional landing requirements, all IPQ are directly subject to this action. IPQ do not apply to the remaining 10 percent of the catcher vessel owner IFQ, corresponding to the catcher owner IFQ allocated as Class B IFQ.

Processing shares are transferable, including leasing of PQS (or equivalently, the sale of IPQ) subject to use caps. As with harvesting shares, transferability of processing shares is intended to promote efficiency and facilitate compensated reduction of excess capacity. In addition, IPQ transfers may aid in the coordination of deliveries from the fisheries. To provide a period of general stability for processors and communities to adjust to the program a two-year ''cooling off period'' was established during which processing shares could not be relocated from the community where the historical processing occurred that led to the allocation (the community of origin).[11] In addition, a right of first refusal on certain transfers of PQS and IPQ was granted to the CDQ group that represents the community of origin (if there is one) or an entity designated by the community of origin (if the community is not represented by a CDQ group) for communities with significant crab processing history. Exceptions to the right allow a company to consolidate operations among several commonly owned plants to achieve intra-company efficiencies, and the temporary lease of shares outside of the community of origin.

[11] The 'cooling off' limitation applied to most processing shares, but shares allocated based on processing history in communities with minor amounts of crab were not subject to the provision. In addition, each processing share holder was permitted to move small amounts of IPQ out of the 'community of origin' during the cooling off period to allow for some coordination of landings and more complete use of Class A IFQ and IPQ allocations.

A processing share cap prevents any person from holding or using in excess of 30 percent of the outstanding processing shares in any program fishery. In general, all share holdings of an entity and any custom processing by a plant owned by an entity is counted toward that entity's cap. An exception that would exempt custom processing in certain fisheries and regions from the plant owner's share cap was adopted recently. That exemption is intended to allow consolidation beyond the caps in fisheries and regions that pose particular economic challenges to processors.[12] As with vertical integration caps, processor share caps are applied using a threshold rule for determining whether the shares are held by a processor and then the individual and collective rule for determining the extent of share ownership. Under the threshold rule, any entity with 10 percent or more common ownership with a processor is considered to be a part of that processor. Any direct holdings of those entities are fully credited to the processor's holdings. Indirect holdings of those entities are credited toward the processor's cap in proportion to the entities ownership. A "grandfather" provision exempted initial allocations of PQS in excess of the cap. In the *C. opilio* fishery, in addition to the PQS ownership cap, no processor is permitted to use in excess of 60 percent of the IPQ issued in the North region.

Regional share designations

The allocation to regions is accomplished by regionally designating all Class A (delivery restricted) IFQ and all corresponding IPQ. In most program fisheries, regionalized shares are either North or South, with North shares designated for delivery in areas on the Bering Sea north of 56º 20´ north latitude and South shares designated for any other areas, including Kodiak and other areas on the Gulf of Alaska. In the Western Aleutian Islands (Adak) golden king crab fishery, the designation is based on an east/west line to accommodate a different distribution of activity in that fishery. Share designations are mostly based on the historic location of the landings and processing that gave rise to PQS allocations. So, share distributions across regions differ by fishery, as shown in the following:

Bristol Bay red king crab – division at 56°20'N latitude
- 3 percent - North
- 97 percent - South

Bering Sea *C. opilio* – division at 56°20'N latitude
- 47 percent – North
- 53 percent - South

Eastern Bering Sea *C. bairdi* – none (or undesignated)

Western Bering Sea *C. bairdi* – none (or undesignated)

Pribilof red and blue king crab[13] – division at 56°20'N latitude
- 68 percent - North
- 32 percent - South

St. Matthew Island blue king crab – division at 56°20'N latitude
- 78 percent - North
- 22 percent - South

[12] The exemption would apply to custom processing in the North region of the *C. opilio*, Pribilof red and blue king crab, the St. Matthew Island blue king crab, the Western Aleutian Islands red king crab, the Western Aleutian Islands golden king crab, and the Eastern Aleutian Islands golden king crab fisheries. The exemption is limited to processing that occurs in communities to protect community interests. Along with the exemption, a provision was adopted that would limit the processing in any facility to 60 percent of the IPQ in the Western Aleutian Islands red king crab and Eastern Aleutian Islands golden king crab fisheries.

[13] The Pribilof red and blue king crab fishery is a single fishery in which red king crab and blue king crab are managed.

Western Aleutian Islands red king crab – division at 56°20'N latitude
100 percent - South
Eastern Aleutian Islands golden king crab – division at 56°20'N latitude
100 percent - South
Western Aleutian Islands golden king crab – division at 174ºW longitude
50 percent - Undesignated
50 percent - West

A recent amendment allows certain interested parties to agree to an exemption to the West region landing requirement in the Western Aleutian Islands golden king crab fishery. Under that amendment, the exemption is granted on the agreement of all holders of QS who hold more than 20 percent of the QS pool, all PQS holders who hold more than 20 percent of the PQS pool, and the communities of Adak and Atka. This West region exemption likely eliminates any potential that any participants in the Western Aleutian Islands golden king crab fishery would need to or make use of any exemption provided by this action.

The arbitration system

Since delivery of Class A IFQ is permitted only to a holder of unused IPQ, an arbitration system is included in the program to aid in the resolution of price disputes. The arbitration system serves several important purposes in the program. It coordinates the matching of A share IFQ held by harvesters with IPQ held by processors. For a 5-day period starting when IFQ and IPQ are issued, shares are matched only by mutual agreement of share holders. After that period has expired, shares may be matched either by agreement or by unilateral commitment of the IFQ holder. Although this share matching process may aid in establishing commitments to deliver and receive A share IFQ landings, the terms of those transactions may be disputed. The arbitration system defines a procedure intended to assist participants in coming to reasonable terms for those deliveries. If the parties are unable to negotiate a settlement, an arbitration process may be used to resolve those terms. The arbitration system can be used to resolve not only price, but delivery time and location. To date, the arbitration system has not been used to settle delivery time or location. Parties have resolved those issues outside of the arbitration process.

2.3.2 The harvest sector

This section examines the distribution of interest and activities in the harvest sector under the program. The section begins with a summary of share holdings, then describes harvest activities. The section contains limited information concerning the Class B IFQ and C share QS and IFQ, since those shares are not directly affected by this action.

Owner harvest share holdings

The distribution of owner share holdings varies across fisheries (see Table 1) Share holdings in the Aleutian Islands fisheries, which have the least number of participants, are the most concentrated. In all fisheries, at least one share holder exceeds the individual use cap. This is possible because initial allocations above the cap were grandfathered. In the Western Aleutian Island golden king crab and Western Aleutian Islands red king crab fisheries the largest initial allocation was in excess of 4 times the maximum share cap; in the Bristol Bay red king crab, Bering Sea *C. opilio*, Bering Sea *C. bairdi*, Eastern Aleutian Islands golden king crab, and St. Matthew Island blue king crab fisheries, the largest initial allocation was more than double the permissible individual use cap. Notwithstanding these large share holdings, the median share holding in all fisheries, except the two Aleutian Islands golden king crab fisheries, is less than half the permissible individual use cap. The regional distribution of shares differed with landing patterns that arose from the geographic distribution of fishing grounds and processing

activities. In the Bering Sea *C. opilio* fishery, almost half of the catcher vessel owner QS are designated for landing in the North region, while in excess of two-thirds of the catcher vessel owner pool is designated for landing in the North region in both the St. Matthew Island blue king crab and Pribilof red and blue king crab fisheries. CDQ groups, which are subject to separate higher share holdings caps, are permitted to acquire shares over the cap level that applies to all other persons. In each fishery, one of those groups has acquired shares beyond the individual cap applicable to persons other than CDQ groups since the program was implemented.

Table 1 Current owner quota share holdings by region.

cvpo qs

Fishery	Share holdings by region						Across regions			
	Region/Catcher processor	QS holders	Percent of pool	Mean holding	Median holding	Maximum holding	QS holders	Mean holding	Median holding	Maximum holding
Bristol Bay red king crab	North	33	2.42	0.1	0.0	0.2	257	0.39	0.31	4.79
	South	248	93.04	0.4	0.3	4.5				
	Catcher processor	12	4.54	0.4	0.3	1.0				
Bering Sea *C. opilio*	North	219	42.55	0.2	0.1	1.2	246	0.41	0.34	4.92
	South	218	48.37	0.2	0.1	3.2				
	Catcher processor	14	9.08	0.6	0.6	2.2				
Eastern Bering Sea *C. bairdi*	Undesignated	237	93.28	0.4	0.3	4.2	245	0.41	0.28	4.96
	Catcher processor	13	6.72	0.5	0.4	1.1				
Western Bering Sea *C. bairdi*	Undesignated	238	93.28	0.4	0.3	4.2	246	0.41	0.28	4.96
	Catcher processor	13	6.72	0.5	0.4	1.1				
Eastern Aleutian Island golden king crab	South	15	95.16	6.3	5.0	20.0	17	5.88	4.45	20.00
	Catcher processor	2	4.84	2.4	2.4	4.1				
Western Aleutian Island golden king crab	Undesignated	12	26.86	2.2	1.0	11.0	15	6.67	1.78	45.73
	West	8	26.91	3.4	1.2	13.5				
	Catcher processor	3	46.22	15.4	0.5	45.7				
Western Aleutian Island red king crab	South	32	60.97	1.9	0.5	13.5	33	3.03	0.62	45.16
	Catcher processor	2	39.03	19.5	19.5	37.8				
St. Matthew Island blue king crab	North	132	76.72	0.6	0.5	3.4	147	0.68	0.52	4.95
	South	95	21.31	0.2	0.1	2.5				
	Catcher processor	5	1.97	0.4	0.3	0.9				
Pribilof red and blue king crab	North	90	66.62	0.7	0.5	3.1	119	0.84	0.49	3.41
	South	81	32.86	0.4	0.2	2.8				
	Catcher processor	1	0.52	0.5	0.5	0.5				

Source: NMFS Restricted Access Management IFQ database, crab fishing year 2010-2011.

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

Ninety percent of annual catcher vessel owner IFQ allocations are issued as Class A IFQ. In fisheries that are subject to the program's regionalization component, these IFQ are subject to regional landing requirements. The amount of IFQ that are subject to regional landing requirements is determined based on the TAC (see Table 2). Regional landing requirements are split almost equally between North and South in the Bering Sea *C. opilio* fishery. As a result, in excess of 16 million pounds of the annual IFQ have been subject to the North regional landing requirements in each of the last three years. In the Bristol Bay red king crab fishery, most of the IFQ subject to regional landing requirements are required to be landed in the South region, with fewer than one-half million pounds required to be landed in the North region in any year since the program was implemented. In the Western Aleutian Islands golden king crab fishery approximately 600,000 pounds have been required to be landed in the West region each year of the program. The 2009-2010 season was the first season the St. Matthew Island blue king crab fishery has opened since the program was implemented. In that season, slightly less than three-quarters of one million pounds were subject to the North region landing requirement.

Table 2 IFQ subject to regional landing requirements (2005-2006 through 2009-2010).

Fishery	Region	Season				
		2005-2006	2006-2007	2007-2008	2008-2009	2009-2010
Bristol Bay red king crab	North	348,759	294,205	388,006	387,853	304,912
	South	13,427,878	11,293,616	14,893,400	14,886,834	11,703,794
Bering Sea *C. opilio*	North	12,428,159	12,137,450	21,073,807	19,382,290	16,053,270
	South	14,117,399	13,799,709	23,957,111	22,250,814	18,249,659
Eastern Aleutian Islands golden king crab	South	2,243,081	2,245,212	2,243,082	2,355,261	2,355,354
Western Aleutian Islands golden king crab	West	570,932	570,932	570,932	599,474	599,475
St. Matthew Island blue king crab	North					703,652
	South					195,476

Source: NMFS RAM IFQ data.

Vessel participation and harvest activity

This section reviews harvest sector IFQ use and participation in the fisheries in the first three years of the program. The section begins with a brief discussion of participation levels before and after implementation of the program and the overall harvest of IFQ. The section goes on to discuss cooperative fishing and leasing, to the extent that those practices are known. The section concludes with a discussion of vessel operations and the distribution of catch within the participating fleet.

Examination of data from the first three years of the program shows a substantial reduction in the fleet size in all fisheries (see Table 3). The figures reveal initial precipitous declines that, as expected, gradually slowed over time. Prior to the implementation of the rationalization program, between 167 and 251 vessels participated annually in each of the two largest fisheries, the Bristol Bay red king crab and Bering Sea *C. opilio* fisheries. In the Bristol Bay red king crab fishery, the fleet contracted to less than one-third its pre-rationalization size. In the Bering Sea *C. opilio* fishery the fleet contracted to levels similar to those in the Bristol Bay red king crab fishery, but the contraction was of smaller magnitude because this fleet had contracted to some degree prior to implementation of the program, as GHLs in the fishery were at historic lows in the years preceding the program. The table shows that catcher processor participation in the Bristol Bay red king crab and Bering Sea *C. opilio* fisheries dropped slightly less than participation of catcher vessels. Substantial fleet consolidation also occurred in the smaller Aleutian Islands golden king crab fisheries, while the Bering Sea *C. bairdi* fisheries were reopened under the program after being closed for nearly a decade.

Fleet consolidation in the program fisheries was the result of owners and operators making business decisions to idle boats in order to remove excess capacity from the fisheries. Leasing of quota, and the accompanying retirement or sidelining of excess capital, has taken place to the some degree but more quickly than most predicted. A few factors likely contributed to the substantial consolidation that occurred in the first years of the program. Consolidation was stimulated by the cooperative structure under the program. Cooperatives created the framework and led to the development of harvesting associations, strengthening relationships creating an environment ripe for leasing. The cooperative structure also reduces administrative burdens for in-season quota exchanges among members, which are not reported to NOAA Fisheries administrators, since each cooperative manages the aggregated allocation of IFQ of its members.

Table 3 Catch and number of vessels by operation type.

Fishery	Season	Catch	Catch (as percent of total) by		Number of vessels participating		
			catcher vessels	catcher processors	catcher vessels	catcher processors	all unique vessels
Bering Sea *C. opilio*	2001	22,940,704	86.5	13.5	201	8	207
	2002	29,609,702	94.4	5.6	182	9	190
	2003	25,410,122	96.8	3.2	185	5	190
	2004	21,939,493	97.0	3.0	183	6	189
	2005	22,655,777	97.1	2.9	161	6	167
	2005 - 2006	33,248,009	92.2	7.2	76	4	78
	2006 - 2007	32,699,911	90.9	8.4	66	4	70
	2007 - 2008	56,722,400	92.4	7.6	74	4	78
	2008 - 2009	52,687,374	92.8	7.1	73	4	77
	2009 - 2010	43,193,971	100.0		67	2	69
Bristol Bay red king crab	2001	7,681,106	96.6	3.4	224	8	230
	2002	8,770,348	95.2	4.8	234	9	241
	2003	14,237,375	95.7	4.3	242	8	250
	2004	13,889,047	96.7	3.3	243	8	251
	2005 - 2006	16,472,400	96.5	2.8	88	4	89
	2006 - 2007	13,877,870	97.0	2.9	79	3	81
	2007 - 2008	18,324,046	97.0	2.8	72	3	74
	2008 - 2009	18,288,881	97.1	2.4	75	3	77
	2009 - 2010	14,337,782	99.5		69	2	70
Eastern Bering Sea *C. bairdi*	2006 - 2007	1,267,106	72.7	2.2	33	3	36
	2007 - 2008	1,439,435	46.4		19	1	20
	2008 - 2009	1,553,584	62.5		20	1	21
	2009 - 2010	1,189,573	97.9		16	1	17
Western Bering Sea *C. bairdi*	2005 - 2006	791,025	54.3		42	2	43
	2006 - 2007	633,910	64.4		34	2	36
	2007 - 2008	467,136	23.9		26	1	27
	2008 - 2009	108,368	7.8		27	0	27
St. Matthew Island blue king	2009 - 2010	460,859	43.9		7	0	7
Eastern Aleutian Islands golden king crab	2001 - 2002	3,128,409	100.0		19	0	19
	2002 - 2003	2,765,436	100.0		19	0	19
	2003 - 2004	2,900,247	100.0		18	0	18
	2004 - 2005	2,846,273	100.0		20	0	20
	2005 - 2006	2,569,209	95.2		6	1	7
	2006 - 2007	2,692,009	99.7		5	1	6
	2007 - 2008	2,690,377	99.6		3	1	4
	2008 - 2009	2,823,773	99.6		3	0	3
	2009 - 2010	2,832,932	99.9		3	0	3
Western Aleutian Islands golden king crab	2001 - 2002	2,693,221	100.0		8	1	9
	2002 - 2003	2,605,237	100.0		5	1	6
	2003 - 2004	2,637,161	100.0		5	1	6
	2004 - 2005	2,639,862	100.0		5	1	6
	2005 - 2006	2,382,468	98.0		2	1	3
	2006 - 2007	2,002,186	82.3		2	1	3
	2007 - 2008	2,246,040	92.4		2	1	3
	2008 - 2009	2,252,111	88.3		2	1	3
	2009 - 2010	2,478,313	97.1		2	1	3
All fisheries	2001 - 2002				235	11	243
	2002 - 2003				238	11	247
	2003 - 2004				245	9	254
	2004 - 2005				247	9	256
	2005 - 2006				100	5	101
	2006 - 2007				87	5	91
	2007 - 2008				83	5	87
	2008 - 2009				84	5	88
	2009 - 2010				76	3	78

Sources: ADFG fishtickets prior to 2005 and NMFS RAM catch data (for 2005-2006 through 2009-2010)

Notes: Catch as a percent of IFQ allocations for 2005-2006 through 2009-2010 seasons.

"All fishery" participation in a season includes all fisheries prosecuted between July 1 and June 30.

For 2005-2006 through 2009-2010, catcher processor vessel counts include all vessels harvesting catcher processor shares.

Short term transfers under leases and cooperative fishing arrangements are the primary means by which QS holders in the crab fisheries have achieved fleet consolidation under the rationalization program. These leases and transfers within cooperatives have also facilitated more complete harvest of allocations and coordination of deliveries in the event of unanticipated circumstances.

The cooperative arrangements and the complexity of ownership patterns in the fisheries prevent any reliable estimates of the extent of leasing in the fisheries. Intra-cooperative transfers of IFQ are not administered or tracked by fishery managers, limiting available information concerning these transfers.[14] Vessel ownership data are limited. QS ownership information reveal complex, overlapping individual, partnership, and corporate holdings of QS. This array of QS ownership arrangements, together with the absence of vessel ownership information, limits any ability to develop a full understanding of the scope of leasing in the fisheries.[15]

Cooperative membership appeals to QS holders for several reasons. Cooperative shares are more easily consolidated because transfers among cooperative members are administered by the cooperative rather than by NOAA Fisheries, with NOAA Fisheries monitoring catch of the cooperative as a whole. Since NOAA Fisheries monitors a cooperative's fishing in the aggregate, share transactions among members may be held confidential. Liberal rules exempt vessels fishing cooperative allocations from vessel IFQ use caps. Because of these attributes, most QS holders have elected to join cooperatives (Table 4). By the fifth year of the program, nearly all IFQ were held by cooperatives. In addition, the inability of non-cooperative IFQ holders to engage in IFQ transfers with cooperatives increases the incentive for cooperative membership as the share of IFQ held outside of cooperatives (which may be available for coordinating harvest activity among non-cooperative IFQ holders) decreases. The degree of consolidation of harvest activity is also shown by the relatively large share of the IFQ held by a relatively small number of cooperatives in the fisheries. In the 2009-2010 Bristol Bay red king crab and Bering Sea *C. opilio* fisheries, fewer than 10 cooperatives held in excess of 99 percent of the IFQ in each fishery, with a single cooperative in each fishery holding in excess of 70 percent of the IFQ. Although these cooperatives may allow each large QS holder to fish their contribution to the cooperative's IFQ, the cooperative management provides a framework that simplifies consolidation in the harvest sector.

[14] Although leasing information is collected in the economic data reports, the reliability of those data are uncertain because the leasing definition may not be consistently interpreted across the fleet and some transactions may be between affiliates.

[15] Determining the scope of leasing also requires the development of a definition of leasing. Depending on the definition, two very similar arrangements could be characterized differently. In addition, under any definition, minor changes in a relationship may result in the recharacterization of the relationship as a lease. For example, under most definitions of leasing if two persons have equal QS holdings and one independently owns a vessel that harvests all of the yielded IFQ, half of the IFQ would be viewed as leased. If these persons formed a partnership that held all of the QS, it is possible that none of the IFQ would be viewed as leased.

Table 4 Percent of IFQ held by cooperatives.

Fishery	Number of IFQ holders (including cooperatives)	Number of cooperatives	Number of cooperative members (all cooperatives)	Percent of IFQ allocated to cooperatives	Maximum cooperative allocation (as percent of IFQ pool)	Maximum number of members in a cooperative
2005 - 2006						
Bristol Bay red king crab	90	13	306	83.3	16.9	74
Bering Sea *C. opilio*	82	13	285	83.6	15.2	64
Bering Sea *C. bairdi*	111	13	291	82.5	14.3	69
Eastern Aleutian Island golden king crab	7	3	22	91.2	59.9	12
Western Aleutian Island golden king crab	3	3	18	100.0	47.3	12
2006 - 2007						
Bristol Bay red king crab	37	16	350	98.2	21.7	87
Bering Sea *C. opilio*	31	16	318	98.5	19.4	74
Eastern Bering Sea *C. bairdi*	54	15	327	96.9	17.2	75
Western Bering Sea *C. bairdi*	55	16	338	96.9	17.9	75
Eastern Aleutian Island golden king crab	5	4	23	99.9	45.9	12
Western Aleutian Island golden king crab	4	3	17	99.8	45.6	10
2007 - 2008						
Bristol Bay red king crab	28	17	361	98.7	20.5	85
Bering Sea *C. opilio*	25	18	347	99.4	18.8	73
Eastern Bering Sea *C. bairdi*	29	13	313	99.0	17.9	74
Western Bering Sea *C. bairdi*	32	16	336	99.0	14.8	74
Eastern Aleutian Island golden king crab	5	4	23	99.9	53.3	11
Western Aleutian Island golden king crab	4	3	15	99.8	48.1	9
2008 - 2009						
Bristol Bay red king crab	25	18	377	99.6	19.9	80
Bering Sea *C. opilio*	24	18	349	99.9	17.2	70
Eastern Bering Sea *C. bairdi*	26	16	329	99.8	25.1	70
Western Bering Sea *C. bairdi*	27	17	345	99.8	16.7	70
Eastern Aleutian Island golden king crab	4	3	20	99.9	47.8	8
Western Aleutian Island golden king crab	5	4	22	99.8	46.1	10
2009 - 2010						
Bristol Bay red king crab	14	9	378	99.9	73.2	295
Bering Sea *C. opilio*	13	9	350	99.9	74.4	274
Eastern Bering Sea *C. bairdi*	21	8	324	99.8	74.2	225
Eastern Aleutian Island golden king crab	3	3	17	100.0	84.3	13
Western Aleutian Island golden king crab	2	2	19	100.0	53.9	14
St. Matthew blue king crab	11	4	176	99.7	87.5	159

Source: NMFS RAM IFQ data.

The extent to which harvests of allocations are managed by the collectively varies within and across cooperatives, but has increased substantially over time. In the most recent season, several cooperatives merged into a single cooperative that controls in excess of approximately three-fourths of the IFQ in all fisheries, except the Western Aleutian Islands golden king crab fishery. This consolidation has resulted in fewer than 20 IFQ holders (including cooperative IFQ holders) in all but one fishery. Catches of the largest cooperative's harvests are coordinated within and among subgroups (or districts) to varying degrees. Some of these subgroups have relatively central management of harvest activities, while others leave members to determine the harvest of their own allocations. Although most cooperatives (and subgroups of the largest cooperative) have continued to allow individual members to arrange the harvest of their shares, management of harvests at the cooperative level has increased. This relinquishing of individual management of the harvest of shares not only contributes to consolidation of IFQ harvests, but also has allowed for better coordination, to reduce the disruption of unanticipated circumstances.

In each of the first five years of the crab rationalization program, ice conditions in the North region delayed deliveries from vessels in the Bering Sea *C. opilio* fishery. In addition, in the second year, a fire on a floating processor limited capacity in the North region, further complicating compliance with regional delivery requirements in the *C. opilio* fishery. Notwithstanding these barriers to deliveries that have arisen in the first three years of the program, participants have harvested most of the issued IFQ (Table 5). The percentage of IFQ harvested is relatively consistent across regions in most fisheries. The exceptions are the Western Bering Sea *C. bairdi*, Eastern Bering Sea *C. bairdi* and Western Aleutian Islands golden king crab fisheries. The *C. bairdi* fisheries are reported by participants to be particularly difficult to prosecute, because of low catch rates. Harvest of the Western Aleutian Islands golden king crab fishery is reported to be economically challenging, because of low market prices for golden king crab. Although the amount of unharvested IFQ in the Western Aleutian Islands golden king crab fishery cannot be reported on a regional basis, due to policies regarding the protection of confidential data, participants report that most of the unharvested IFQ are from the West region, where processing costs are reported to be relatively high. The failure to harvest and deliver these IFQ is not attributable to any emergency condition that might qualify for any exemption under consideration in this action.

Table 5 Percentage of IFQ harvested by operation type, share type, and region.

pct ifq harv

Season	Fishery	Catcher vessel												Catcher processor			
		Owner										Crew		Owner		Crew	
		Class A North		Class A South		Class A West		Class A Undesignated		Class B							
		Number of vessels	Percent of IFQ harvested	Number of vessels	Percent of IFQ harvested	Number of vessels	Percent of IFQ harvested	Number of vessels	Percent of IFQ harvested	Number of vessels	Percent of IFQ harvested	Number of vessels	Percent of IFQ harvested	Number of vessels	Percent of IFQ harvested	Number of vessels	Percent of IFQ harvested
2005 - 2006	Bristol Bay red king crab	9	100.0	84	99.9					68	99.7	65	95.6	8	100.0	6	99.8
	Bering Sea *C. opilio*	59	99.3	69	99.6					55	99.2	50	93.6	7	99.9	7	87.4
	Eastern Aleutian Islands golden king crab			6	95.1					6	92.6	4	95.9	3	100.0		
	Western Aleutian Island golden king crab					2	*	2	*	2	*	2	*	2	*	2	*
	Western Bering Sea *C. bairdi*							32	58.4	18	41.5	10	27.9	2	*	2	*
2006 - 2007	Bristol Bay red king crab	6	100.0	75	100.0					61	99.2	58	96.1	8	99.9	7	100.0
	Bering Sea *C. opilio*	43	100.0	54	100.0					50	99.9	44	96.8	7	100.0	5	86.8
	Eastern Aleutian Islands golden king crab			5	100.0					4	100.0	3	88.4	2	*		
	Eastern Bering Sea *C. bairdi*							27	79.0	11	68.5	13	55.5	5	42.5	4	55.0
	Western Aleutian Island golden king crab					1	*	2	*	2	*	2	*	2	*	1	*
	Western Bering Sea *C. bairdi*							28	69.0	11	56.0	10	*	3	33.4	2	*
2007 - 2008	Bristol Bay red king crab	6	100.0	71	100.0					45	99.8	41	99.4	10	99.9	7	100.0
	Bering Sea *C. opilio*	67	100.0	69	100.0					50	99.9	37	100.0	8	100.0	6	100.0
	Eastern Aleutian Islands golden king crab			3	99.9					3	98.2	2	*	1	*		
	Eastern Bering Sea *C. bairdi*							18	47.0	6	52.2	4	38.7	3	36.4		
	Western Aleutian Island golden king crab					1	*	2	*	2	*	1	*	2	*	1	*
	Western Bering Sea *C. bairdi*							25	26.4	4	14.7	4	*	1	*		
2008 - 2009	Bristol Bay red king crab	5	100.0	74	100.0					42	98.5	32	98.9	10	100.0	8	100.0
	Bering Sea *C. opilio*	62	100.0	67	100.0					55	100.0	39	100.0	14	99.9	6	100.0
	Eastern Aleutian Islands golden king crab			3	100.0					3	98.6	3	*	1	*		
	Eastern Bering Sea *C. bairdi*							18	64.2	6	67.2	10	*	2	*	2	*
	Western Aleutian Island golden king crab					2	*	2	*	1	*	1	*	1	*	1	*
	Western Bering Sea *C. bairdi*							19	8.2	8	10.1	5	*	1	*	1	*
2009 - 2010	Bristol Bay red king crab	6	99.7	68	99.6					45	98.3	36	99.4	8	100.0	9	100.0
	Bering Sea *C. opilio*	54	100.0	61	100.0					46	100.0	33	100.0	14	99.5	8	99.9
	Eastern Aleutian Islands golden king crab			3	99.9					3	100.0	3	*	1	*		
	Eastern Bering Sea *C. bairdi*							13	98.8	10	100.0	9	86.3	5	89.0	3	83.2
	Western Aleutian Island golden king crab					2	*	2	*	2	*	2	*	1	*	2	*
	St. Matthew Island blue king crab	7	58.1978	1	*					1	*	1	*	0	0.0		

Source: RAM IFQ database, 2005-2006 through 2009-2010.

* withheld for confidentiality.

Note: blanks are inapplicable.

2.3.3 The processing sector

This section describes the processing sector in the fisheries. The section begins with a discussion of the distribution of processing shares under the program, then describes the processing practices and the operations of the sector.

Processor share holdings

PQS holdings are substantially more concentrated than catcher vessel owner QS holdings (Table 6). As with harvest privileges, concentration of processing privileges varies across fisheries. The Aleutian

Islands fisheries, which have the least participation, are the most concentrated. The Bristol Bay red king crab, Bering Sea *C. opilio*, and Bering Sea *C. bairdi* fisheries, which have the most participants, are the least concentrated. The regional distribution of shares differs with landing patterns that arose from the geographic distribution of fishing grounds and processing activities. In the Pribilof red and blue king crab fisheries, most historic processing occurred in the Pribilofs, resulting in over two-thirds of the processing allocations in those fisheries being designated for processing in the North region. Most processing in the St. Matthew Island blue king crab fishery occurred on floating processors near the fishing grounds in the North region. The Bering Sea *C. opilio* fishery allocations are split almost evenly between the North and South regions; while fewer than 5 percent of the Bristol Bay red king crab PQS are designated for North processing. All qualifying processing in the Eastern Aleutian Island golden king crab fishery occurred in the South region, resulting in all processing shares in that fishery (and in the Western Aleutian Islands red king crab fishery, which was based on the same history) being designated for processing in the South region. All processing allocations in the Western Aleutian Islands golden king crab fishery were split evenly with half required to be processed in the West region and half undesignated (i.e., can be processed anywhere). Bering Sea *C. bairdi* processing shares are also undesignated.

The relatively low median share holdings, largely unchanged from the initial allocation, suggest that a large portion of the historic processing was concentrated among fewer than 10 processors in the large fisheries (the Bristol Bay red king crab and Bering Sea *C. opilio* fisheries). In the smaller fisheries, fewer than 5 processors hold a large majority of the PQS pool. The maximum share holding in each fishery is in excess of twenty percent of the pool. In other fisheries, share holders, grandfathered at initial allocation, exceed the share cap. In the Western Aleutian Islands golden king fishery, the maximum share holding is slightly less than 30 percent of the pool, down from almost 60 percent (or double the excessive share cap) in the initial allocation, as the largest share holder divested its interests in the fishery. In the Eastern Aleutian Islands fishery, one share holding of approximately 45 percent of the pool, in excess of one and one-half times the cap. In only one other fishery, the St. Matthews Island blue king crab fishery, does a PQS share holding exceed the cap. In that fishery, slightly greater than 30 percent of the PQS are held by one processor. Since data do not show ownership at the individual level, they do not completely describe existing holdings of processor share interests.

Table 6 Processing quota share holdings by region

pqs

Fishery	Share holdings by region					Across regions			
	Region	QS holders	Mean holding	Median holding	Maximum holding	QS holders	Mean holding	Median holding	Maximum holding
Bristol Bay red king crab	North	3	0.85	0.23	2.31	16	6.25	4.39	22.98
	South	16	6.09	4.39	20.68				
Bering Sea *C. opilio*	North	8	5.87	5.51	15.46	19	5.26	3.42	25.18
	South	17	3.12	0.38	9.72				
Eastern Bering Sea *C. bairdi*	Undesignated	21	4.76	1.85	24.26	21	4.76	1.85	24.26
Western Bering Sea *C. bairdi*	Undesignated	21	4.76	1.85	24.26	21	4.76	1.85	24.26
Eastern Aleutian Island golden king crab	South	10	10.00	5.24	45.36	10	10.00	5.24	45.36
Western Aleutian Island golden king crab	Undesignated	8	6.25	0.97	29.64	10	10.00	3.41	29.98
	West	7	7.14	0.49	26.34				
Western Aleutian Island red king crab	South	8	12.50	4.03	32.99	8	12.50	4.03	32.99
St. Matthew Island blue king crab	North	6	13.06	8.92	29.94	10	10.00	6.87	32.67
	South	7	3.09	2.08	7.96				
Pribilof red and blue king crab	North	6	11.26	12.01	23.28	13	7.69	3.87	24.49
	South	10	3.25	1.09	13.85				

Source: NMFS Restricted Access Management IFQ database, crab fishing year 2009-2010.

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

The rationalization program provides communities with substantial processing history with the opportunity to designate an entity that is entitled to hold rights of first refusal on certain transfers of IPQ and PQS for use outside of the community in which processing occurred that led to the allocation of the PQS (the community of origin). The provision defines certain transfers that are exempt from the rights (including intra-company transfers), as well as criteria for determining whether a transfer is intended to move processing from the community of origin. In addition, if a PQS holder has used the yielded IPQ outside the community for a period of three consecutive years, the right lapses. Based on historical landings, the distribution of rights of first refusal varies across fisheries and regions (see Table 9).

Table 9 Distribution of rights of first refusal by community (2009-2010).

Fishery	Region	Right of first refusal boundary	Percentage of PQS pool
Bristol Bay red king crab	North	None	0.0
		St. Paul	2.5
	South	Akutan	19.7
		False Pass	3.7
		King Cove	7.4
		Kodiak	0.2
		None	12.2
		Port Moller	3.5
		Unalaska	50.7
Bering Sea *C. opilio*	North	None	16.0
		St. Paul	30.9
	South	Akutan	9.7
		King Cove	6.3
		Kodiak	0.0
		None	2.0
		Unalaska	35.0
Eastern Aleutian Island golden king crab	South	Akutan	1.0
		None	7.8
		Unalaska	91.2
Pribilof red and blue king crab	North	None	0.3
		St. Paul	67.3
	South	Akutan	1.2
		King Cove	3.8
		Kodiak	2.9
		Unalaska	24.6
St. Matthew Island blue king crab	North	None	64.6
		St. Paul	13.8
	South	Akutan	2.7
		King Cove	1.3
		None	0.0
		Unalaska	17.6

Source: RAM PQS data, 2009-2010

The limitations of the 'cooling off' provision prevented the movement of most IPQ subject to the right of first refusal from the community of origin in the first two years of the program. As a result, the lapse of rights of first refusal on PQS has been limited and delayed. One notable exception are the rights applying to shares arising from historic processing in St. George. The St. George harbor and its entrance were damaged by a storm in 2004. In the first two years of the program, that damage was found to have prevented processing in St. George. As a consequence, the right of first refusal lapsed on shares for which the Aleutian Pribilof Island Community Development Association (APICDA) holds rights of first refusal on behalf of St. George under the terms required by regulation. Despite these provisions, APICDA

is reported to have reached agreements with both holders of processing shares formerly subject to the right to protect interests of St. George, in some cases acquiring those shares.

Processing operations

Under the rationalization program, a large portion of the processing (and raw crab purchasing) is vested in the holders of processing shares. These share holders have used their allocations to consolidate processing activities in the fisheries, with plant participation in each fishery dropping by approximately one-third. Since the rationalization program was implemented, the number of processing plants participating in the two largest fisheries (the Bristol Bay red king crab and the Bering Sea *C. opilio* fisheries) has declined to between 10 and 12 annually. The average processing by the top 3 plants in these fisheries has increased to approximately 20 percent of the available landings, with the concentration of the different share types slightly higher (suggesting that the largest processors of the different share types differ). Ten or fewer plants participated in processing in the Bering Sea *C. bairdi* fisheries in the first five years of the program. Since these fisheries are directly prosecuted by few vessels and have relatively small TACs, the processing is slightly more concentrated than in the two largest fisheries. Five or fewer processors participated in the Eastern Aleutian Island golden king crab and Western Aleutian Island golden king crab fisheries in the first five years of the program, limiting the information that may be released concerning processing in those fisheries. Only two plants participated in the St. Matthew Island blue king crab fishery in the 2009-2010 season, the only season the fishery has been open in several years.

In the first two years of the program, a large portion of the IPQ pool was subject to the "cooling off" provision, which required processing to occur in the community of the processing history that led to the allocation of the underlying PQS. Consequently, few changes in the distribution of processing of Class A IFQ/IPQ landings occurred in the first two years of the program. Also, for most shares entities representing the community of origin hold a right of first refusal on the transfer of the PQS and IPQ for use outside the community. This right is relatively weak because intra-company transfers are exempt from the right and the right lapses, if the IPQ are used outside of the community of origin for a period of years. Despite the end of the cooling off period after the second year and the ease with which the right of first refusal may be avoided, most processing of IPQ landings have occurred in the community of origin. Discerning the degree of redistribution, however, is not fully possible, as landings on floating processors are often categorized as "at-sea". In many cases, these floaters operated within community boundaries, at times docked in the community harbor. In the fifth year of the program, with the lapse of the 'cooling off' provision requirements, some redistribution of processing of Class A IFQ landings is suggested (see Table 8). Dutch Harbor and Akutan, collectively, attracted fewer pounds of Class A IFQ landings than under the cooling off provision. King Cove and Kodiak, collectively increased their landings relative to the cooling off period requirements. Processing of A share IFQ in Akutan and Dutch Harbor in the Bering Sea *C. opilio* fishery also dropped relative to the cooling off period. Redistribution of these landings to other locations cannot be revealed because of confidentiality restrictions. The movements of landings suggest that with the cooling off provision expiring, it is possible to see some redistribution of landings among communities.

Table 8 Processing by share type and community (2009-2010)

2009-2010										
		Class A IFQ			Class B IFQ			C share IFQ		
Fishery	Community	Number of active plants	Pounds of share type processed	Percent of issued shares processed	Number of active plants	Pounds of share type processed	Percent of landings of share type	Number of active plants	Pounds of share type processed	Percent of landings of share type
Bristol Bay red king crab	Akutan	1	7,925,342	66.0	1	1,040,198	79.3	1	284,719	69.0
	Dutch Harbor	3			3			3		
	Floater	1	*	*	1	*	*	1	*	*
	King Cove	1	2,569,847	21.4	1	135,009	10.3	1	85,747	20.8
	Kodiak	2			4			2		
	St. Paul	1	*	*	1	*	*	1	*	*
Bering Sea *C. opilio*	Akutan	1	11,960,763	34.9	1	2,758,259	72.4	1	872,194	71.5
	Dutch Harbor	3			3			3		
	Floater	2	*	*	2	*	12.4	2	*	*
	King Cove	1	*	*	1	*	3.8	1	*	*
	Kodiak				1	*	3.1	1	*	*
	St. Paul	1	*	*	1	*	8.4	1	*	*
E. Aleutian Islands golden king crab	Dutch Harbor	3	2,353,325	99.9	3	261,701	100.0	3	83,934	100.0
W. Aleutian Islands golden king crab	Dutch Harbor	3	1,134,366	94.7	2	*	*	2	*	*
St. Matthew Island blue king crab	Dutch Harbor	1	*	*	1	*	*	1	*	*
	St. Paul	1	*	*						
Eastern Bering Sea *C. bairdi*	Akutan	1	*	*	1	*	*	1	*	*
	Dutch Harbor	3	437,788	44.2	3	83,414	75.9	3	12,311	42.7
	Floater	1	*	*	1	*	*	1	*	*
	King Cove	1	*	*						
	Kodiak				1	*	*	1	*	*
Source: RAM IFQ data and RCR permit file.										
* withheld for confidentiality.										
Note: For Class A IFQ shows percentage of IPQ pool.										

Processing share holders have achieved efficiencies under the program through consolidation of processing activities in fewer plants. A portion of this consolidation has been through traditional transfer of PQS and IPQ; but a substantial portion has also occurred through custom processing arrangements. Under these arrangements, a share holder contracts for the processing of landings of crab, while retaining all interests and obligations associated with the landed and processed crab.

The prevalence of custom processing relationships is evident in comparing the number of active IPQ accounts with the number of active processing plants (see Table 9). In the first year of the program, custom processing of IPQ occurred most prominently in the North region of the Bering Sea *C. opilio* fishery. Custom processing arrangements in that fishery expanded greatly in the second year of the program and declined in the third year and stabilized. The decline may have occurred as relationships between plants and share holders stabilized, with fewer share holders having relationships with more than one plant. Few custom processing arrangements existed in the Bristol Bay red king crab fishery until the third year of the program, when Dutch Harbor plants entered relationships with several buyers. Fewer custom processing arrangements exist in other fisheries; however, it is possible that extensive custom processing may have occurred under any of those arrangements. Confidentiality protections prevent revealing processing amounts subject to these arrangements because of the relatively few processing participants in the fisheries.

Table 9 Number of active IPQ holder (buyer) accounts and IPQ processing plants by fishery (2005-2006 through 2009-2010).

Fishery	Region	Community of Plant	2005 - 2006		2006 - 2007		2007 - 2008		2008 - 2009		2009 - 2010	
			Number of active IPQ holder accounts	Number of active plants	Number of active IPQ holder accounts	Number of active plants	Number of active IPQ holder accounts	Number of active plants	Number of active IPQ holder accounts	Number of active plants	Number of active IPQ holder accounts	Number of active plants
Bristol Bay red king crab	North	St. Paul	1	1	1	1	2	1	1	1	2	1
	South	Akutan	1	1	1	1	2	1	1	1	2	1
		Dutch Harbor	3	3	3	3	7	4	7	4	4	3
		King Cove	1	1	3	1	1	1	1	1	2	1
		Kodiak	2	2	2	2	2	2	2	2	2	2
		Floater	2	2	2	2	2	1	2	1	1	1
Bering Sea *C. opilio*	North	St. Paul	1	1	1	1	5	1	5	1	5	1
		Floater	6	3	14	2	3	1	2	1	2	1
	South	Akutan	1	1	1	1	1	1	1	1	1	1
		Dutch Harbor	5	4	7	3	4	3	3	3	4	3
		King Cove	1	1	1	1	1	1	1	1	1	1
		Kodiak	1	1	1	1	1	1	1	1		
		Floater	1	1			3	1	2	1	2	1
E. Aleutian Islands golden king crab	South	Akutan			1	1			1	1		
		Dutch Harbor	3	3	4	4	4	4	4	4	6	3
		Floater	1	1								
W. Aleutian Islands golden king crab	Undesignated	Adak	1	1								
		Dutch Harbor	2	2	2	2	2	2	4	3	4	2
		Floater							1	1		
	West	Adak	2	1	2	1	1	1	2	1		
		Dutch Harbor*									2	1
		Floater	3	2								
Eastern Bering Sea *C. bairdi*	Undesignated	Akutan	Fishery closed		1	1	1	1	1	1	2	1
		Dutch Harbor			5	3	4	3	3	3	5	3
		King Cove			1	1	1	1	1	1	2	1
		Floater			1	1	2	2	4	2	2	1
Western Bering Sea *C. bairdi*	Undesignated	Akutan	1	1	1	1					Fishery closed	
		Dutch Harbor	4	4	5	3	3	2	3	3		
		King Cove	1	1	1	1	1	1	1	1		
		Kodiak	1	1								
		St. Paul	1	1			3	1				
		Floater	4	2	1	1	3	2	3	2		
St. Matthew Island blue king crab	North	St. Paul	Fishery closed								5	1
	South	Dutch Harbor									1	1

Source: RAM IFQ data and RCR permit file.

* Processed under the exemption from regional delivery requirements.

2.3.4 Ex vessel and first wholesale pricing

Under the program, harvesters making deliveries of crab harvested with Class A IFQ can resort to an arbitration system to resolve any price disputes. Although arbitration is available to harvesters, it is rarely used. Notwithstanding this infrequent use, as the fallback for pricing settlements, the arbitration system (and particularly its standard) is the primary price determinant for landings of crab harvested with Class A IFQ. The arbitration standard calls upon the arbitrator to set an ex vessel price that is equal to the historic division of first wholesale revenues in a fishery, while considering other relevant factors (such as other delivery terms). An annually produced advisory formula sets out historic pricing and a methodology for deriving ex vessel prices. In the last two years, the formula has relied on regressions to express ex vessel prices as a function of first wholesale prices – the percentage of the first wholesale price that should be paid as the ex vessel price varies with the first wholesale price. Since this formula is the basis for most negotiations, first wholesale pricing is almost directly determinative of ex vessel pricing.

Crab harvested in program fisheries is sold in an international market in which landings from high-volume crab producing countries, such as Canada and Russia, largely determine world prices. Program fisheries have accounted for only a small percentage of the overall supply in their primary markets, Japan and the United States. Consequently, the Alaska crab industry has very limited ability to influence prices for Alaska product (Herrmann and Greenberg 2006).

For the past several years, the market and prices for Bristol Bay red king crab and Aleutian Island golden king crab have been especially affected by Russian king crab production. U.S red king crab competes directly with Russian red king crab, while U.S. golden king crab competes with Russian small red king crab that has been particularly abundant in the Far East fisheries. In the first season of the program (2005-2006), the Russian supply of king crab increased substantially, pushing prices for U.S. red and golden king crab down. As the increase in the crab supply caused by the expansion of Russian crab exports continued, prices generally declined in the years leading up to program implementation and bottomed out in 2006. A price increase that started in late 2006 was stimulated by a sharp drop in Russian production, together with a more aggressive Japanese market and growth of king crab as a promotion item by high-volume U.S. retailers. That recovery in prices continued in 2008 due to a persistent lack of Russian product (Urner Barry, 2008). In 2009, prices declined slightly as the effects of the financial crisis affected markets. Prices were bid up at the start of 2010 as demand began to improve and supplies (particularly supplies from Russian fisheries) remained low (Sackton, 2010).

U.S. *C. opilio* competes directly with Canadian *C. opilio*, which has been very abundant in recent years. In the first season of the program, the demand for Bering Sea *C. opilio* was poor in both the Japanese and U.S. markets, as buyers cut back purchases in response to high prices in 2005. Large inventories of unsold product from 2005, together with disruptions in important markets, caused prices to plummet in 2006. Moreover, increased Canadian shipments of *C. opilio* to the United States and record catches of West Coast Dungeness crab added to the downward price pressure. In early 2007, Bering Sea *C. opilio* prices rebounded, stimulated in part by strong demand from U.S. and Japanese retail buyers. Bering Sea *C. opilio* prices declined near the end of 2008 as inventories developed. Prices remained low throughout most of 2009. By the start of the 2010, inventories had declined and continued weak supplies from other areas led to a price increase shortly after the New Year. The 2005-2006 *C. bairdi* fishery was the first since 1996, causing some uncertainty over whether *C. bairdi* would draw a substantial premium over *C. opilio*, as it had historically. In the first few years of the program, *C. bairdi* prices have generally tracked closely with *C. opilio* prices, with *C. bairdi* drawing a price similar to large *C. opilio*. Although efforts are made to serve a specialty market, little of the recent catch from the Bering Sea fisheries is large enough to serve that market (Sackton, 2010).

Table 10 and Table 11 show ex vessel and first wholesale prices of U.S. red king crab, *C. opilio*, golden king crab, and *C. bairdi* from 2000 to 2009. Ex vessel prices were obtained from Commercial Operator's Annual Reports. In the COAR database, the location of the processor that purchased the fish is recorded by ADFG regulatory area, but harvest location is not reported. Crab harvested in one regulatory area may be sold to a processor in another area. Consequently, data for the Aleutian Islands golden king crab and Bristol Bay red king crab fisheries include deliveries from the Norton Sound red king crab fishery and relatively small fisheries in southeast Alaska. In addition, *C. bairdi* prices include prices for crab from fisheries other than the Bering Sea. In the years prior to 2005, *C. bairdi* prices are omitted, as the Bering Sea fisheries were closed for several years leading up to program implementation. The Bering Sea *C. opilio* fishery is the only *C. opilio* fishery in the state; therefore, those data are solely from the Bering Sea fishery. The tables display only first wholesale prices for shellfish sections, as shellfish sections represent a large majority of the production from program fisheries (both historically and currently) and generally provide a good overall measure of the change in markets for crab.

Table 10 Ex vessel prices by species, 2001 - 2009 (dollars/pound).

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Golden king crab	3.31	3.37	3.46	3.62	3.15	2.89	2.18	2.43	3.70	2.68
Red king crab	4.74	4.83	6.21	5.14	4.69	4.50	3.85	4.42	5.11	4.67
C. bairdi	2.64	2.16	2.20	2.46	2.59	1.85	1.52	1.82	1.86	1.77
C. opilio	1.85	1.55	1.39	1.85	2.07	1.81	1.15	1.74	1.77	1.45
Note: *C. bairdi* prices are omitted from 2000 through 2004, as the federal Bering Sea fisheries were closed during that year.										
Source: ADFG Commercial Operators Annual Reports.										

Table 11 First wholesale prices of crab species, 2000-2009 (dollars/pound).

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Golden king crab	7.20	6.95	7.58	7.89	6.02	6.00	4.35	5.55	6.94	5.37
Red king crab	9.11	8.93	11.58	9.82	9.25	8.52	7.49	8.60	9.77	8.96
C. bairdi						4.37	3.94	4.43	4.76	3.89
C. opilio	4.16	3.73	3.58	4.40	4.79	3.85	2.89	3.93	4.05	3.43
Note: *C. bairdi* prices are omitted from 2000 through 2004, as the federal Bering Sea fisheries were closed during that year. Prices are for shellfish sections only.										
Source: ADFG Commercial Operators Annual Reports.										

2.3.5 Communities

Over time, several communities have benefited from landings and processing activity in the crab fisheries. Potential redirection of landings by this action will affect these communities through redistribution of crab processing activity, tax receipts, and support business activity. To understand potential differences of these affects across communities, this section briefly profiles seven Alaska communities with direct links to the Bering Sea and Aleutian Islands crab fishery. These communities vary in their geographic relation to the fishery; their historical relationship to the fishery; and the nature of their contemporary engagement with the fishery. These profiles are largely summarized from the Social Impact Assessment of the Crab Rationalization Three Year Review (EDAW/NPFMC, 2008).

Unalaska

Commercial fishing and seafood processing play a significant role in the economic success of Unalaska. The community is home to the greatest concentration of processing and catcher vessel landings activity of any Alaska community. As a result, commercial fishing and seafood processing provide a significant number of jobs and income to the community.

Crab has the second highest wholesale value of processing in Dutch Harbor, behind pollock which has accounted for a substantial majority of total wholesale value of processing in Dutch Harbor in recent years. Dutch Harbor based processors received a substantial share of the processor share allocations in most crab fisheries under the rationalization program. These shares are subject to rights of first refusal of the Dutch Harbor community entity. These shares are unlikely to migrate out of the community, because crab processing at most facilities plays an important part in an integrated operation that serves several fisheries.

Unlike many of the crab ports in the region, Unalaska also has extensive support services for the Bering Sea and Aleutian Island fisheries. Services provided in Unalaska can support all range of services for any vessel class in the pollock, crab, and other groundfish fisheries. As a result, the support services are heavily dependent upon the success of the groundfish and crab fisheries. To some extent, the fleet

services also contribute to the diversification of the Unalaska economy, which insulates the community from negative changes in individual fisheries.

In summary, the community of Unalaska is more economical diversified than other crab ports in the region, but is still heavily dependent on the groundfish and crab fisheries in the North Pacific. Crab processing has played a substantial role in the economic success of the community.

King Cove

Once heavily dependent upon salmon, the community of King Cove is now more diversified, processing groundfish and crab from the Gulf of Alaska and Bering Sea and Aleutian Islands. The community is home to several large crab vessels, and a shore based processor. The plant processes salmon, crab, halibut, and groundfish. Approximately 80 percent of King Cove's work force is employed full time in the commercial fishing industry. Even so, this likely underestimates the dependency of the local economy on commercial fishing, since much of the remainder of the population supports commercial fishing indirectly.

For several years now, the amount of crab and the total value of the crab processed in King Cove have been declining, while groundfish has increased in volume and importance. The decline in crab production was due primarily to a decline in quotas related to reduced stocks. In addition, American Fisheries Act (AFA) sideboards limit processing of Bering Sea and Aleutian Islands crab at the local shore plant. Under the rationalization program, crab processing has remained an important component of the diversified processing undertaken at the shore plant in King Cove.

While only one locally owned vessel fishes in the crab fishery, the community is still heavily dependent Bering Sea and Aleutian Islands crab fishing for employment and income. Rapid fleet contraction under the rationalization program, particularly in the Bristol Bay red king crab and Bering Sea *C. opilio* fisheries, has affected King Cove. Between 10 and 15 crew jobs are estimated to have been lost in each of these two fisheries. In the first year of the program, fleet contraction was believed to have caused a drop in demand for harbor and moorage services and goods and services from fishery support businesses in King Cove (see Lowe, et al., 2006). Since the first year, the community is believed to have recovered a substantial amount of this business, as vessels that continue to fish in the crab fisheries have spent more time in the community, increasing demand for local goods and services (see EDAW/NPFMC, 2008).

Akutan

Similar to King Cove and Unalaska, the economy of Akutan is heavily dependent upon the groundfish and crab fisheries in the Gulf of Alaska and Bering Sea and Aleutian Islands. The community is located adjacent to one of the largest shore based seafood processing plants in the area, as well as a floating processor. The community also provides some limited support services to the fishing community. In addition, unlike King Cove and Unalaska, Akutan is a Community Development Quota (CDQ) community.

The vast majority of catch landed in Akutan comes from vessels based outside of the community. Most of those vessels focus primarily on pollock, Pacific cod, and crab. The shore processor is a multi-species plant, processing primarily pollock, Pacific cod, and crab. Given that the plant is an AFA-qualified plant with an associated pollock cooperative, pollock is the primary species in terms of labor requirements and economic value. However, the shore plant also accounts for a significant amount of the regional crab processing and provides for a significant amount of the processing value. As with plants in Dutch Harbor and King Cove, crab has remained an important part of a diverse operation at the shore plant in Akutan since implementation of the rationalization program.

A small number of Akutan residents – estimated at fewer than 5 currently – do participate in the crab fishing industry as crew members. The community is also an eligible CDQ community, which benefits from the allocation of Bering Sea and Aleutian Islands groundfish and crab TAC to the CDQ program. APICDA, which represents the community of Akutan and 5 other communities, has participated in the crab fishery through purchasing partial ownership in two crab harvest vessels, the Golden Dawn and the Farwest Leader, and has recently invested in crab processing shares. In addition, APICDA also has significant investments in both harvesting and processing sectors of the Bering Sea and Aleutian Islands groundfish fisheries.

Kodiak

Although the economy of Kodiak is more diversified compared to King Cove and Akutan, processing make significant contributions to the community's economy; however, Bering Sea and Aleutian Islands crab has been a minor component of seafood processing value in recent years. Species that typically contribute more than 10 percent of the total value are Pacific cod, pollock, and salmon. The processors located in Kodiak provide a large amount of diversity in size, volume, and species processed. The products produced by the shore plants range from large quantity canned salmon to fresh and fresh-frozen products.

Kodiak provides a wide range of support service businesses that cater, in whole or in part, to the commercial fishing industry. As a result, the support services are heavily dependent upon the success of the different fisheries. To some extent, the fleet services also contribute to the diversification of the Kodiak economy, which helps insulate the community from negative changes in individual fisheries.

The rapid fleet contraction under the crab rationalization program is also thought to have affected Kodiak. Kodiak crew are estimated to have lost 125 positions in the Bristol Bay red king crab and approximately 60 positions in the Bering Sea snow crab fishery in the first year of the program. Studies of the effects of the rationalization program on Kodiak under the program have found anecdotal evidence suggesting declines in spending at some businesses, but evidence of a broad decline in total local spending could not be identified. The study cautioned that effects may lag, so these findings should be viewed as preliminary (Knapp, 2006 and EDAW/NPFMC 2008).

St. Paul

Unlike King Cove, Akutan, Unalaska, or Kodiak, St. Paul is primarily dependent upon the processing of snow crab harvested in the North Pacific. Since 1992, the local shoreplant on St. Paul has been the primary processor for crab. A number of floating processors have also frequented the area.

During 1991 to 2000, snow crab accounted for 74 percent to 100 percent of the relevant BSAI crab processing in the northern region. During this same period, the northern region accounted for approximately 31 percent of the total processing value of the fishery. For the period 1995 through 1999, the northern region accounted for 43 percent of the total processing value of the fishery. The sharp decline in the GHL from 1999 to 2000 resulted in a drop in the harvest and drop in the percentage of the total snow crab processed in the northern region, from 49 percent in 1999, to 18 percent in 2000. Overall, the decline in snow crab stocks during that period had a disproportional effect on the community of St. Paul, compared to most other communities that process snow crab.

The shift away from St. Paul to other communities during this downturn in snow crab stock is estimated to be due to the slow down in fishing pressure during that period. Data from interviews with harvesters suggest that shorter seasons (and/or lower harvest levels), among other factors, resulted in a higher

proportion of crab being taken further away from St. Paul and the grounds to plants in the South region for processing. St. Paul is a primary beneficiary of the North/South regional distribution of shares in the rationalization program. This limitation on landings should ensure that a substantial portion of the processing in the Bering Sea *C. opilio* fishery is undertaken in St. Paul. In the long run, it is possible that St. George could obtain a greater share of North landings, but most participants currently prefer St. Paul's harbor facilities to those available in St. George.

St. George

As with St. Paul, St. George has depended primarily on processing of crab from the Bering Sea *C. opilio* fishery. Processing of crab in St. George has been exclusively by floating processors. Yet, since 2000, little or no crab processing has taken place in St. George. Prior to the rationalization program, the loss of processing activity is primarily attributable to the decline in crab stocks. Under the rationalization program, no processing has returned to St. George. Processing shares were subject to the 'cooling off' provision requiring the processing of landings with those shares to be undertaken in St. George. Yet, harbor breakwater damage caused by a storm has prevented deliveries to the community during the first two years of the program leading processors to move their operations to St. Paul during that period. Although processing has left the community, its CDQ group, APICDA, has reached agreements with the holders of all PQS subject to St. George based rights of first refusal that it believes adequately protect St. George interests. When (or whether) these arrangements will result in the return of crab landings to the community is not known.

Adak

The community of Adak, until recently, had no direct or indirect ties to commercial fishing because the island was home to a Naval Air Station since the 1940s. However, the U.S. Navy closed the air station in the late 1990s, opening the island to new local residents. As a result, efforts are being made to transform the island into a commercial fishing center in the Western Aleutians area of the Bering Sea.

Most commercial fishing deliveries to Adak are to a single processing plant. Cod, crab, halibut, and black cod are the primary species. Adak is in the process of developing support services capabilities for the commercial fishing fleet. The port facilities in Adak can support a wide variety of large vessels. At-sea processors have used the port for transfer of product in addition to a supply stop.

A few aspects of the rationalization program are structured specifically to support Adak. First, ten percent of the TAC in the Western Aleutian Islands golden king crab fishery is allocated to a community entity representing Adak. Adak is also an intended beneficiary of a regional designation on one-half of the shares in the Western Aleutian Islands golden king crab fishery, which require crab harvested with those shares to be processed west of 174º West longitude. Currently, Adak is the only community in the West region with a shore-based crab processing plant. Processing of the West region allocation in Adak is not a certainty, since the rules in the fishery permit processing of those landings in other communities and on floating processors. In addition, the Adak plant operator is engaged in a bankruptcy proceeding that has left the future of the plant uncertain. This uncertainty is compounded by the pending action to address Steller sea lion issues, which is likely to affect the harvests available in the Aleutians.

Atka

The community of Atka is the western most fishing community in the Aleutian chain. The economy of Atka is primarily based on subsistence, with support from commercial fishing. The community has a small shore-based processor, which takes delivery of halibut and sablefish, mostly from the local fleet. Although Adak was intended as the primary beneficiary of regionalization of the Western Aleutian Islands golden king crab fishery in the crab program, the Council was aware that Atka would be

positioned to benefit from the regionalization of that fishery, either through processing at the local shore plant (if the plant develops adequate processing capacity) or through processing on floating processors within the community's boundaries. In addition, APICDA, Atka's CDQ group, has acquired interests in QS and PQS in several fisheries, including the Western Aleutian Islands golden king crab fishery, which could be use to introduce crab processing to the community.

2.3.6 Deliveries in the fisheries

Prior to the rationalization program, seasons in all of the program fisheries, except the Western Aleutian Islands golden king crab fishery, were typically less than one month long. In the Bristol Bay red king crab fishery - which drew the most participants - seasons lasted less than one week in the years immediately preceding implementation of the rationalization program. Both the Bering Sea *C. opilio* and the Eastern Aleutian Islands golden king crab fisheries lasted for less than one month, both of which had progressively shorter seasons leading up to implementation of the program. Although the Western Aleutian Islands golden king crab fishery lasted several months, its seasons also shortened progressively leading up to implementation of the program.

Table 12 Season openings and closings in four years prior to August 2005 implementation of the rationalization program.

Fishery	Season	Season opening	Season closing
Bristol Bay red king crab	2001	October 15	October 18
	2002		October 18
	2003		October 20
	2004		October 18
Bering Sea *C. opilio*	2002	January 15	February 8
	2003		January 25
	2004		January 23
	2005		January 20
Eastern Aleutian Islands golden king crab	2001-2002	August 15	September 10
	2002-2003		September 7
	2003-2004		September 8
	2004-2005		August 29
Western Aleutian Islands golden king crab	2001-2002	August 15	March 30
	2002-2003		March 8
	2003-2004		February 2
	2004-2005		January 3

Source: ADFG Annual Management Report.

With very abbreviated seasons in the prerationalization fisheries, harvesters faced relatively fewer impediments to deliveries that might rise to the level of an unforeseeable event justifying the exemption as proposed by this action. Ice conditions, however, occasionally did impede deliveries, particularly in the Bering Sea *C. opilio* fishery that is prosecuted after the New Year. The extent of any impediment is uncertain, since under the limited entry program, participants in the fishery had the flexibility to deliver in any location of their choice.

The allocation of exclusive harvest shares allowed the seasons in the fisheries to be extended substantially. Currently, season limits are imposed for biological reasons. With this new latitude to schedule harvest activity, participants have dispersed catch substantially across the seasons (see Table

13).[16] For example, the 2005-2006 Bristol Bay red king crab season was prosecuted towards the 18.3 million pound TAC over the 3-month period following the October 15, 2005 season opening date; the first delivery was made on October 20, 2005 and the last delivery was made on the day after the regulatory closure date of January 15, 2006. In all of the fisheries, deliveries have been distributed over a period of several months; however, deliveries remain most concentrated in the Bristol Bay red king crab fishery. That season is only four months, substantially shorter than the season in other fisheries, and markets tend to be strongest at the year's end leading up to the holidays.

Table 13 Post-rationalization pattern of catcher vessel deliveries by fishery.

Fishery	Season	Season opening	Date of first delivery	Week of most deliveries (in pounds)		Date of last delivery	Season closing
				Weekending date	Percent of quota delivered		
Bristol Bay red king crab	2005-2006	October 15	October 20	November 5	28.6	January 16	January 15
	2006-2007		October 19	November 5	44.0	November 28	
	2007-2008		October 18	November 5	31.1	January 15	
	2008-2009		October 18	November 5	28.7	January 17	
	2009-2010		October 17	November 5	41.0	January 16	
Bering Sea *C. opilio*	2005-2006	October 15	October 27	February 4	11.0	May 27	May 15 (east) May 31 (west)*
	2006-2007		November 7	February 25	11.1	May 5	
	2007-2008		November 18	February 25	13.0	May 10	
	2008-2009		November 30	February 11	10.7	May 16	
	2009-2010		October 25	March 4	15.5	May 6	
Eastern Aleutian Islands golden king crab	2005-2006	August 15	August 30	September 19	14.1	March 28	May 15
	2006-2007		August 31	**	**	January 13	
	2007-2008		August 30	**	**	February 9	
	2008-2009		September 7	October 3	14.8	December 22	
	2009-2010		August 31	September 12	17.1	January 10	
Eastern Bering Sea *C. bairdi*	2006-2007	October 15	October 23	March 11	18.1	March 27	March 31
	2007-2008		October 20	March 24	7.0	April 2	
	2008-2009		October 19	**	**	March 11	
	2009-2010		October 17	November 19	22.7	March 1	
Western Aleutian Islands golden king crab	2005-2006	August 15	September 6	October 24	11.4	March 25	May 15
	2006-2007		September 10	**	**	May 6	
	2007-2008		September 14	**	**	May 21	
	2008-2009		September 13	**	**	May 12	
	2009-2010		September 5	**	**	May 18	
Western Bering Sea *C. bairdi*	2005-2006	October 15	October 27	March 25	7.9	May 3	March 31
	2006-2007		November 4	March 11	16.3	April 5	
	2007-2008		November 16	March 3	5.5	March 31	
	2008-2009		January 11	March 11	4.0	April 6	
St. Matthew Island blue king crab	2007-2008	October 15	October 23	November 19	14.4	December 7	February 1

Source: RAM IFQ landings data

* The boundary between the Eastern and Western Subdistricts is 173° W longitude.

** withheld for confidentiality.

To date, two conditions may have created impediments to deliveries in a region, ice conditions and a fire aboard a floating processor.[17] Ice conditions have been an obstacle to deliveries in every year since implementation of the program. Ice abutted St. Paul in each of the first five years and abutted St. George in four of those years (see Table 16). Depending on the severity of conditions, this ice may prevent deliveries of catch into St. Paul and St. George. Prior to rationalization, harvesters with catch on board could elect to make deliveries to processors in the South, which are unaffected by the ice. Under the rationalization program, deliveries required to be made to North region locations may be prevented by the ice. Whether a delivery is prevented may depending on the circumstances, including spatial distribution and type of ice, the specific vessel, the location of the vessel relative to the islands, the amount and

[16] The following tables concerning deliveries include only catcher vessel activity.

[17] Although the absence of processing in St. George caused deliveries to be redirected to St. Paul, that redistribution was permitted without exemption to the regional landing requirements. In addition, the circumstances that prevented deliveries into Adak prompting emergency rulemaking and provision for exemption from regional landing requirements in that fishery are beyond the scope of this action.

condition of crab on board, whether IFQ not subject to the North region landing requirement are available, and any factors affecting the willingness of the captain to wait for conditions to change. Historical data suggest that, in the first five years of the program, some deliveries may have been delayed or redirected using shares that allow delivery in the South by ice conditions. North deliveries were made in several of the weeks that ice abutted the islands. The most notable disruption to deliveries occurred in the third year of the program, when deliveries almost ceased in the 25th week. In the two following years (particularly in the 2009-2010 season), the fleet coordinated harvest of the North region IFQ, fishing that allocation early in the season before ice conditions reached their extreme (see Figure 1 and Figure 2). In the 2009-2010 season, this coordination allowed all deliveries of North region IFQ to be completed by the end of February.

Table 16 St. Paul and St. George ice conditions (1997-2008) and crab landings in the North region (2005-06 through 2009-10).

Season	Month	December		January				February				March				April				May			
	Week	51	52	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20
1997*	Ice conditions																						
1997-1998																							
1998-1999																							
1999-2000																							
2000-2001																							
2001-2002																							
2002-2003																							
2003-2004																							
2004-2005																							
2005-2006	North landings				2	7	19	15	8	6	8	7	8	9	9	10	6						
	Ice conditions																						
2006-2007	North landings								2	4	5	4	5	7	12	18	13	16	2				
	Ice conditions																						
2007-2008	North landings				1	11	14	18	18	13	8	9	11	8	3			5	8	13	3		
	Ice conditions																						
2008-2009	North landings						14	23	12	14	17	17	19	13				1	2	1	1	3	
	Ice conditions																						
2009-2010	North landings				13	15	17	18	15	17	13												
	Ice conditions																						

Note: Includes only all North region Class A IFQ landings.

Denotes ice abutting St. Paul Island during the week.

Denotes ice abutting St. Paul Island and St. George Island during the week.

* Includes only 1997 conditions.

Sources: RAM landings data (2005-6 through 2009-10) and National Ice Center Ice Charts (1997-2010).

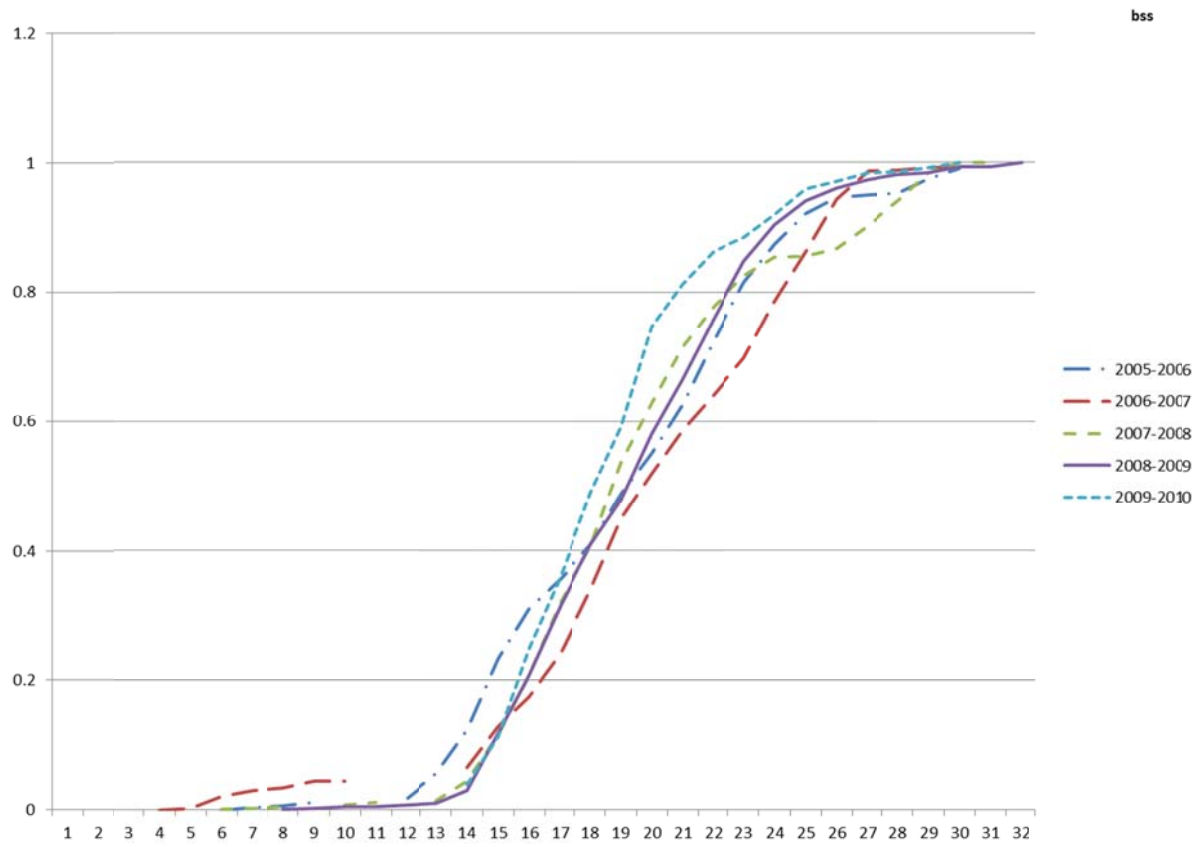

Figure 1 Post-rationalization cumulative deliveries in the Bering Sea *C. opilio* fishery (all landings).

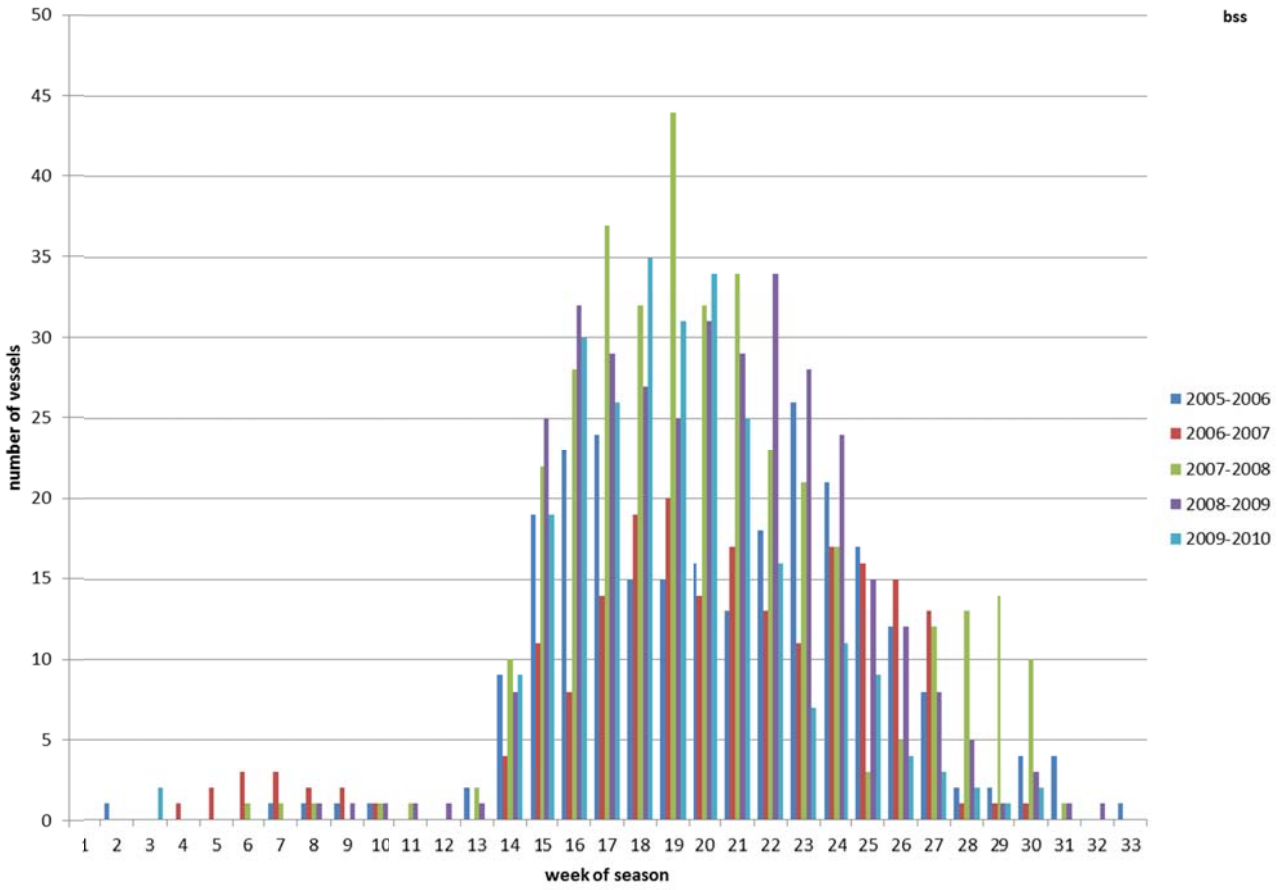

Figure 2 Vessels making deliveries by week in the Bering Sea *C. opilio* fishery (2005-2006 through 2007-2008).

The most severe delivery problems in the fishery occurred in the spring of 2007. In that year, icing problems were compounded by a disabling fire on one of the two floating processors scheduled to operate in the North region. With limited processing capacity scheduled for the North region, deliveries were delayed, and, at one point, three crab vessels were trapped in the ice temporarily outside St. Paul harbor. Travelling through ice no doubt poses threats to fishing vessels and crews. Vessels are not only at greater risk of loss, but also may suffer hull, propeller, and rudder damage. In some instances, this damage may not be easily detectable. Through the first five years of the program, several vessel owners have said that they believe their vessels suffered extraordinary wear and tear from traversing through ice to make North region deliveries. The extent to which the North region landing requirement has contributed to these safety risks is uncertain. Prior to implementation of the rationalization program, vessels periodically became trapped in the ice during the Bering Sea *C. opilio* season, particularly when attempting deliveries to St. Paul. In addition, most harvesters prefer to deliver catch in the Bering Sea *C. opilio* fishery to the Pribilofs to avoid the travel costs associated with deliveries to the South. Lastly, ice conditions that cause problems for deliveries to the Pribilofs are frequently accompanied by icing problems on the grounds. To the extent that harvesters are unable to make deliveries to St. Paul for an extended period, they may be unable to continue fishing. Harvesters unable to fish, however, may need to offload any crab onboard to avoid excessive deadloss.

2.4 Analysis of alternatives

This section analyzes the effects of the alternatives. For clarity, the analysis first examines the operation of the different alternatives and options under consideration. The analysis then goes on to examine the effects of the alternatives on different stakeholders (including harvesters, processors, and affected communities) and management and enforcement.

In each case, the analysis of alternatives first examines general effects. The analysis then goes on to consider how effects may differ across regions. Although general observations can be made concerning operation of the alternatives, some effects must be considered on a regional basis, since the amounts of crab that are subject to landing requirements and available processing capacity (or capacity that may be made available) differs across regions. These differences affect not only the potential for an impediment to deliveries, but also the potential effects of an impediment and the potential to mitigate effects.

2.4.1 Operation of the status quo

Under the status quo, holders of Class A IFQ and IPQ must comply with regional landing and processing requirements, respectively. If an event occurs that prevents compliance with these requirements, the IFQ and IPQ holders cannot obtain an exemption from the regional requirements, but must postpone use of their shares until the condition preventing delivery is removed or an alternative delivery arrangement compliant with the regional requirement is made. Alternative arrangements could be either an alternative location within the region or use of alternative IFQ that allows delivery outside of the region.

In general, an unanticipated event could prevent one or more scheduled deliveries after crab are harvested requiring harvesters to make some other arrangements for the deliveries. In some cases, this may be addressed through coordination of the deliveries with other processors in the region or the use of substitute IFQ allowing delivery in another region. In the worst cases, it is possible that no processor might be available to take the deliveries in the region and no substitute IFQ allowing deliveries elsewhere are available. In these instances, deadloss could be exacerbated, while the harvester waits for the circumstance to pass (or to be addressed).[18] Although these circumstances could occur, it may be possible to avoid this outcome.

The fleet could organize its deliveries so that IFQ are reserved to address a contingency preventing delivery required by a regional designation. With most IFQ held by cooperatives, it is possible that a cooperative may be able to substitute IFQ that allow deliveries outside of the region, when a regional delivery is prevented. In addition, with fewer than 20 cooperatives participating in any fishery, it is possible that a harvester without IFQ to support deliveries in another region could acquire those IFQ from another cooperative. Any redirected deliveries will require some cooperation from at least one processor; either the IPQ holder or another processor will be required to accommodate the delivery at a different plant. In some instances, this accommodation could require use of substitute IPQ. To date, participants in the fisheries have made these accommodations. In the first five years of the program, no IFQ are believed to have been left unharvested and no cases of extreme deadloss or discards are known to have occurred because of events preventing compliance with regional landing requirements, despite the occurrence of several unanticipated events that delayed or complicated attempts to deliver catches. These experiences suggest that even under the status quo, events that prevent or delay deliveries can often be addressed with adaptive industry responses.

[18] It is also possible that a harvester could return harvested crab to the water (with an indeterminate amount of associated handling mortality). Such discarding is a violation, as any crab place in a tank is only permitted to be offloaded to a registered receiver.

North region

Processing shares and catcher vessel owner shares in four fisheries are regionalized for landing and processing in the North region. In excess of 65 percent of these shares in the St. Matthew Island blue king crab and Pribilof red and blue king crab fisheries are subject to the North region landing requirement; approximately 47 percent of these shares in the Bering Sea *C. opilio* fishery are subject to the North region landing requirement; and approximately 3 percent of these shares in the Bristol Bay red king crab fishery are subject to the North region landing requirement.

In the North region of the Bering Sea *C. opilio* fishery, processing has historically occurred only in and around St. Paul Island and in St. George Island harbor. Processing occurred in St. Paul harbor in the first five years of the program. In addition, some processing occurred outside of the harbor on floating processors in the second year. No processing has taken place in St. George since 1999. Prior to the rationalization program, St. George processing ended with the decline in Bering Sea *C. opilio* TACs and the ensuing contraction of the processing sector. A storm that damaged the St. George harbor in 2004 prevented processing from returning to St. George on implementation of the program, as would have been required for the first two years under the 'cooling off' requirement. Since that time, damage to the St. George harbor entrance has been repaired, but some participants contend that the harbor cannot be accessed safely.

The primary impediment to deliveries in the North region has been ice. The timing of ice conditions that might prevent deliveries is relatively unpredictable, but ice typically occurs on or after the first of the year. Consequently, the Bering Sea *C. opilio* fishery - the only fishery prosecuted after the first of the year - is the only fishery in which North deliveries are likely to be affected by ice. Ice conditions are also spatially variable and can change quickly with changes in winds.

In the North region, processors may be expected to continue to operate in (or near) one of the two Pribilof Island communities. If processors are operating at both islands, it is possible that a delivery to one that is prevented could be made at the other; however, it is possible (at least in the near future) that processing might be occurring at only one location. So, ice conditions that prevent deliveries may not be avoidable by choosing an alternative delivery location in the region.

The extent to which ice conditions have prevented and might prevent future deliveries is debated by participants. Clearly, ice conditions have occurred that have prevented deliveries into St. Paul for periods of days. Some vessels operators have also indicated that they believe regionalization effectively requires them to access processing capacity in St. Paul, which at times creates an incentive to take unreasonable risks. To date, the ice conditions have not fully prevented compliance with regional landing requirements. Instead participants in the fishery have made accommodations by delaying offloads or using substitute IFQ (and possibly IPQ) to allow delivery outside of the North region. Although it might be debated whether ice conditions might fully prevent compliance with regional landing requirements in the future, participants in the fishery and interested parties all acknowledge that ice conditions in the fishery can pose safety risks to participants.

Although ice conditions are the most apparent impediment to North deliveries, it is also possible that other circumstances could prevent deliveries. For example, a fire disabled a floating processor in the second year of the program, preventing deliveries to that facility for a period of time. In addition, storm damage to the St. George harbor prevented deliveries to that location for a period of years. Despite these circumstances, participants have been able to shift deliveries and delay fishing to comply with the regional landing requirements. A destructive event that disables facilities for an extended period could prevent deliveries to that location. Whether such an event would prevent deliveries in the region in its

entirety would depend on the scope of the event and the availability of alternative delivery locations. Inaccessibility of the St. George harbor recently forced all North region deliveries into St. Paul. An event making St. Paul-based processors inaccessible might have prevented all deliveries in the region. Under the status quo, no exemption from the North delivery requirement would be made. Consequently, participants would need to find an alternative processing location in the North region to support landings of North region IFQ. The number of floating processors used in the fisheries historically suggest that it is possible that an alternative location in the North region could be found. The limited number of safe processing locations, however, could present a challenge. In addition, it is possible that deliveries would need to be delayed while a substitute platform undergoes any necessary reconfiguration and is positioned. Depending on the timing of the event, conditions in the fishery (including ice conditions and the availability of platforms), it is possible that a delay could interfere with full prosecution of the North IFQ in the fishery.

The potential for circumstances to prevent full prosecution of the fishery depend greatly on the timing and severity of the event, the extent of remaining harvests, and the response of industry to the event. If an event occurs late in a season and participants have delayed harvesting allocations, it is more likely that the harvest of the TAC would be prevented by facilities being inaccessible or inoperable because of an unanticipated event. Catch histories of the fleet in the first five years of the program suggest that the fleet can exert substantial catching power, when it is geared up to do so. In at least one week of each of the first five years of the program, deliveries of the Bering Sea *C. opilio* fleet exceeded 10 percent of the TAC. When considering that approximately 40 percent of the annual IFQ (including Class B and C share IFQ) in the Bering Sea *C. opilio* fishery are subject to North landing requirements, these catch rates suggest (that at current TACs) the entire North region share may be harvested in approximately one month. A substantial increase in the TAC could limit the ability of the fleet to meet such a goal, without the introduction of additional vessels to the fishery. Catch rates, however, can vary substantially with distribution of stocks. Also, timing and circumstances surrounding an event that prevents operations will also affect the ability of industry to respond. A late season event when a relatively large share of the North IFQ are unharvested would pose a substantially greater challenge than the same event earlier in the season or with a smaller share of the North IFQ unharvested. In any case, the ability to make substantial deliveries after an event will require both the fleet and processors to be prepared to respond to the event. Experiences from the first five years suggest that industry will respond to these events to fully harvest available IFQ, if alternatives are available.

The recent amendment to exempt of custom processing in the North region IPQ from the processing plant's use cap, allows for greater consolidation of IPQ processing, which should reduce the potential for an event to prevent delivery of all available North IFQ, by allowing additional flexibility. Yet, if processors use the provision to eliminate available capacity that could enter the fishery if an unanticipated event prevents processing on the available platforms, it is possible that the provision could reduce the ability of participants to address contingencies. Overall participants have demonstrated an ability to respond to events that present barriers to compliance with regional landing requirements. This experience suggests that few events are likely to prevent harvest of the North region IFQ under the status quo, provided options exist for delaying or redirecting landings within the region.

South region

Processing shares and catcher vessel owner shares in six fisheries are regionalized for landing and processing in the South region. In excess of 97 percent of the regionally designated shares in the Eastern Aleutian Island golden king crab, the Western Aleutian Island red king crab, and the Bristol Bay red king crab fisheries are subject to the South region landing requirement; slightly more than 50 percent of these shares in the Bering Sea *C. opilio* fishery are subject to the South region landing requirement; between 20

percent and 30 percent of these shares in the Pribilof red and blue king crab and the St. Matthew Island blue king crab fisheries are subject to the South region landing requirement.

Ice conditions are not believed to have ever interfered with deliveries of crab in the South region of the crab fisheries. Consequently, only other events should be considered as potentially preventing deliveries. Accidents or extreme environmental hazards (such as earthquake damage) have been mentioned as possible events that could prevent deliveries in the South. Whether such an event could cause disruption that would prevent deliveries in the South (requiring instead an out of region delivery to a North location) is uncertain.

Several processors receive deliveries in several locations in the South region, with deliveries in the two major fisheries concentrated in Dutch Harbor, Akutan, and King Cove. In addition, a substantial portion of the available IPQ has been used on floating processors, allowing for some mobility in the event deliveries in a specific location are prevented. The variety of locations that support processing in the fisheries and the mobility of participating floating processors can be used to redirect deliveries, if an event should prevent deliveries in the intended location. So, despite the large share of IPQ that are subject to South region delivery requirements, the potential for an event to prevent deliveries in the South region in any fishery is believed to be very limited.

West region

Only the Western Aleutian Islands golden king crab fishery has catcher vessel owner IFQ and IPQ subject to West region landing requirements. Fifty percent of these shares are subject to the West region landing requirement. As in the South region, ice conditions have not historically prevented deliveries of crab into West region locations. As a result, the only events likely to prevent West region deliveries are accidents, extreme events, or processor capacity issues.

In the first year of the program, processing in the West region occurred in the plant in Adak and on a floating processor. Since then all processing of West region IPQ has occurred in the plant in Adak. In addition, Aleutian Pribilof Island Community Development Association representatives have expressed interest in introducing crab processing to Atka, with floating processors initially, possibly followed by the addition of a crab line to the Atka shore plant. Although catch and delivery data in this fishery cannot be released because of confidentiality limitations, with a relatively small TAC in the fishery (less than 3 million pounds total), only a single plant is needed to handle all deliveries. In fact, most harvesting and processing participants in the fishery assert that the crab fishery alone is unable to support processing in the region. Instead, these participants assert that operation of an economically viable processor in the fishery requires both crab and groundfish landings. The Council accepted these contentions in developing a recent amendment that allows certain QS holders and PQS holders and the communities of Adak and Atka to unanimously agree to an exemption from the regional landing requirement. The exemption likely prevents any stranded West region IFQ, should an unanticipated event prevent compliance with that regional landing requirement. Consequently, even under the status quo, IFQ and IPQ are unlikely to be stranded, as a result of the West region designation and any event that might prevent deliveries in that region.

2.4.2 Operation of the exemption alternative

The alternative to establish an exemption would allow an IFQ holder who has reached one or more agreements with the matched IPQ holder and a regional or community representative to deliver a landing outside of the designated region on meeting certain conditions. Various options could be applied to define the requirement regional or community representatives required to be a party to the agreements. In addition, the requirements for the exemption could include not only attesting to agreement to the

exemption at the time the exemption is granted, but also, by a date certain, attesting to a "framework agreement", which could be used to preliminarily define the terms of the exemption (including any terms of compensation). Certain reporting requirements could also be applied, under which the parties to the reserve pool agreement and parties to any exemption framework agreement or exemption agreement would be required to provide a report to the Council concerning the operation of the reserve pool and application of the exemption.

This section begins with a brief examination of the community/regional parties to the exemption. An analysis of the reserve pool requirement follows, as that agreement is a prerequisite to the exemption. The analysis of the administration of the exemption follows. The analysis of the elements defining the exemption concludes with a discussion of the reporting requirements.

Community/Regional Parties to the Exemption Agreement

To qualify for the exemption proposed under this alternative, specifically defined parties would be required to enter certain agreements. These parties would include certain IFQ holders, certain IPQ holders, and certain community or regional representatives. This section examines the community or regional parties to the agreement. The following provision defines those required parties and agreements that would be necessary to qualify for the exemption:

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

(a) the entity holding or formerly holding the ROFR for the PQS,

(b) the entity identified by the community benefiting from (or formerly benefiting from) the ROFR,

*Option: The entity or entities determined by the Council to be the community representatives in a region shall develop an allocation or management plan for any PQS issued without a ROFR in that region by a date certain established by the Council. (**Note: This provision could be applied instead of (c), if (a) or (b) is selected as the primary means of determining regional representatives)**.*

(c) a regional entity representing the communities benefiting from the ROFR or formerly benefiting from the ROFR.

Under the first two options ((a) and (b)), the interests supported by regional landing requirement applicable to IPQ (and indirectly IFQ) are effectively transferred on to the community benefiting from the right of first refusal, by requiring that community's representative to be a party to any contract allowing an exemption to the regional landing requirement. Although IFQ and IPQ are tied to a region, the starting point for establishing regional and community interests related to the IPQ is the community in which processing occurred that led to the allocation of IPQ (the 'community of origin'). In the first instance, it is this community that was intended by the Council to benefit from the IPQ through the establishment of the rights of first refusal and the requirement to process in the 'community of origin' during the first two years of the program under the cooling off requirement. Although other communities in the same region may benefit from the regional designation on shares, the interest of the community of origin was a primary consideration when the program was implemented. Using this rationale, it seems reasonable to require that the compensation agreement include the IFQ holder, the matched IPQ holder, and the community of origin on the matched IPQ. The first two options for identifying the party to the exemption contract are based on this nexus between the community of origin and the shares.

Under the **first option (a)**, the regional representative in the contract would be the entity representing (or formerly representing) the community of origin in the right of first refusal. Since this entity already represents the community of origin through the right of first refusal on IPQ, that entity could be considered as the contracting entity for purposes of defining the exemption from regionalization (including compensation provisions). In the cases of St. George, St. Paul, False Pass, and Akutan the representative organizations are the local CDQ groups. In all other cases, the groups were designated by the community to hold the rights of first refusal. Use of the right holder as the regional entity would simplify administration by using parties that are already identified by and included in the rationalization program administration. The use of these entities may be justified, as they already represent community interests through their activities as right of first refusal holders. In most cases, this representation requires familiarity with community economic activity and a connection (formal or informal) with local government.

Some participants in the fisheries, however, have expressed concern that the right of first refusal holders (who are generally formed to hold shares in the fisheries) may not be appropriately positioned to represent community or regional interests in landings. It is suggested that some of these entities may not be fully engaged in all tax and economic development interests in the communities (beyond the fishing industries that they participate in). In addition, some of these entities hold interests in the fisheries through vessel ownership, plant ownership, QS holdings, and PQS holdings, they may in some instances have conflicting interests in considering whether exemptions are appropriate. To accommodate this circumstance, the **second option (b)** would allow the community benefiting from the right of first refusal on IPQ to select an entity to represent regional interests in any contract related to those IPQ. This option would allow the community to select the right holder, in the event that the community believed that the right holder would adequately represent the community's interests in the contract. It is possible that this option could result in the right of first refusal holder being a required party to exemption contracts. The community, however, would be allowed to select some other entity, if the community believed that the right holding entity did not appropriately represent the community interests with respect to the exemption. While this option has the benefit of allowing a community to select an entity that it deems most appropriate for representing its interests under the exemption, the option would add to administrative burdens at three different levels. First, in subject communities, it would require the community to engage in a process to identify the representative entity for the contract. Depending on the community, this could be a time consuming and contentious process. Second, if a community elects to identify a party other than the holder of the right of first refusal to represent its interests in the contract, the establishment of that entity as the representative could have some additional administrative burden and cost. Some administrative action may be required by the right of first refusal holder to manage the contract, but that burden could be greater for other entities, particularly if a community elects to develop a new entity for representing these interests. Third, NOAA Fisheries would likely have additional administrative requirements necessary to identify the entities to the contracts and their contracting authority. The extent of any of these added costs depends not only on whether communities choose to use other entities for the exemption contracts, but also the dynamics of the community and selected entity. Despite these added costs, communities may be better represented under this option, as it is possible that the community may conclude that the right holder is not be an appropriate party to manage its interests in the exemption. In cases where the community concludes that the right holder is the appropriate party, it is possible that little or no additional costs would arise from giving the community the latitude to select another representative.

It should be recognized that under either of these options, it is possible that a subset of the represented communities in a region may provide the exemption agreements, while others elect not to agree to the exemption. In general, this separation of regional interests might be appropriate, as it allows each community the opportunity to negotiate an arrangement appropriate to its interest in the fisheries. The

agreements may also provide a greater nexus between these communities and fishery participants than the existing structure. For example, St. George has had no landings since implementation of the program. St. George has maintained a relationship with St. Paul, under which St. Paul is reported to provide a portion of its crab tax revenues based on the amount of processing that once occurred in St. George that has moved to St. Paul. In addition, St. George's CDQ representative holds portions of the QS pool and PQS pool in some of the fisheries. It is possible that St. George could use independent representation as a required party to an exemption agreement to improve its circumstances in the fishery, possibly attracting landings in the future. In addition, other communities, with more multifaceted dependence on a fishery, may be less willing to consent to the exemption. These communities may choose not to jeopardize their stakes in the fishery by agreeing to the exemption. If a substantial portion of a cooperative's IFQ are subject to an exemption agreement, it may obtain adequate flexibility to address minor contingencies, despite the reluctance of all communities to agree to the exemption. In this manner, options that allow communities to have independent representation may be beneficial, to both communities and IFQ holders.

Although the first two options may be perceived as having a benefit of allowing communities to independently represent their own interests, **both of these first two options fail to fully identify parties for contracts for all shares.** In both options, the right of first refusal is used to identify the party to the contract; however, some regionally designated PQS and IPQ are not (and have never been) subject to rights of first refusal (see Table 15). In cases of the historical processing occurring outside of any community or in a community with minimal processing history, no rights of first refusal were established. **If either of these first two options is selected, an alternate method of identifying a community (or regional) party to the contract could be included for IPQ that are not subject to a right of first refusal. Alternatively, the Council could elect to apply the exemption only to shares that have (or formerly had) a right of first refusal.** The only fishery with regionally designated shares and a large portion of the fishery without rights of first refusal is the St. Matthew Island blue king crab fishery. The fishery has only been open in one year under the rationalization program. In addition, the catches in the fishery are historically, relatively small, never exceeding 5 million pounds since 1991. Historically, the fishery was prosecuted in a relatively short time period in the fall, with most landings processed on floating processors. These factors suggest that the lack of an exemption in the fishery may not be critical, as landings in the fishery are unlikely to be constrained by ice and may be handled by more flexible, mobile processing platforms, if necessary.

The motion, however, includes a provision that would allow the community representatives selected under (a) or (b) to devise a means of selecting a regional representative for any shares not subject to the right of first refusal. **The means of selecting such a representative are not specified in the motion. Without further direction, it is assumed that the community representatives would all need to consent to the arrangement. This provision follows the same structure as the third option for selecting a regional representative, so the analysis of (c) that follows is applicable to this provision, as well.**

The **third option (c)** could also be used to establish representation for shares never subject to a right of first refusal, by allowing each of the communities benefiting from a right of first refusal to select a regional entity to represent all regional interests in the exemption.

Table 15 Percent of PQS pool in regionally designated fisheries never assigned a right of first refusal.

NoROFR

Bristol Bay red king crab	Bering Sea *C. opilio*	Eastern Aleutian Island golden king crab	St. Matthew Island blue king crab	Pribilof red and blue king crab
2.7	2.9	0.9	64.6	0.3

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

Note: Eastern and Western Bering Sea *C. bairdi* and Western Aleutian Island golden and red king crab fisheries are not subject to regionalization.

Under the **third option**, the communities in a region that benefit (or formerly benefited) from rights of first refusal would collectively designate a single entity to represent the region in all contracts.[19] This provision could be used in a few different ways. It could be used to:

1) select a single regional representative for all fisheries or a separate representative for each fishery; or
2) select a regional representative for all shares or only for shares that never subject to a right of first refusal

If representation is administered on a fishery basis, for each fishery, those communities in each region with right of first refusal interests would select a regional representative. Selection of an entity for each fishery could increase negotiation and administrative costs, but may lead to a more clear representation of historical regional interests, particularly where those interests vary and are distributed differently across fisheries. Alternatively, all communities benefiting from a right of first refusal in a region in any fishery could collectively select a regional representative for all fisheries. Selecting a single regional representative would reduce administrative and negotiation costs associated with the exemption.

Similarly, have a region representative only for shares that were never subject to rights of first refusal and allowing each community to select its own representative for shares that it had a right of first refusal interest in could accommodate a broader variety of community interests. Each representative could agree to different terms allowing the contracts to better address community issues. Communities with more integral involvement in the fisheries might apply more stringent terms to their agreements. This, in turn, could lead to shares associated with other communities being prioritized for the exemption, should that necessity arise. This prioritization could provide more adequate protection of community interests. Use of a single entity to represent regional interests, however, could streamline the process by allowing IFQ holders and IPQ holders to negotiate with one entity that arguably represents regional interests more effectively. In adopting either of these structures, one should consider the degree to which regional representation might be appropriate, given the level of commonality (or diversity) of community interests and involvement in the fisheries. If community interests are believed to be diverse allowing each community to select its own representatives would be more appropriate.

The method of selecting a regional representative is likely to be important to protecting community and regional interests. Depending on the rules for selecting a representative, selecting a single regional

[19] **The Council could elect to adopt this option only with respect to shares that have not been subject to a right of first refusal. This would allow each community with a right of first refusal to negotiate its own terms for the exemption with respect to IPQ on which it holds (or held) a right of first refusal, and have the exemption collectively negotiated for IPQ designated for a region but to which no right of first refusal has applied.**

representative might either overweight or underweight interests of communities with a small stake in a single fishery. Development of a process for selecting a regional representative could be problematic. If selected by communities weighted by rights of first refusal, it is possible that communities with the rights on the most shares could dominate the selection process. If each community received equal representation, it might be possible for the communities with minor interests to control the selection process. In either case, the weight of each parties' interest in selecting the representative entity will need to be defined by the Council in a manner that balances interests within a region.

It should be noted that the administration of any option requiring one or more communities to identify a representative entity could result in a delay in selection of the representative, leaving the IFQ and IPQ holders without a party to contract with. These circumstances could be addressed in one of two ways. A requirement could be added that representatives be selected by a date certain or no regional representative would be required to be a party to the contract. Such a provision would force community representatives to designate a representative in a timely manner. Alternatively, the provision could be developed to simply require a regional designee to be a party to the contract without exception. In this case, a dispute over the selection of the representative would simply make the exemption inaccessible.

The third option also fails to identify the regional representative in the Western Aleutian Islands golden king crab fishery. While catcher vessel owner QS and PQS are subject to regional designations, that fishery does not have any rights of refusal, because the regional designations are not explicitly determined based on historic processing. As a result, rights of first refusal cannot be used to identify the regional representative for exemption contract in that region. In the years leading up to the program, Adak was the only community in the West region to host processing in the crab fisheries. Since the program was implemented, Atka has expressed an interest in developing local processing capacity, but no processing of crab is known to have occurred in Atka to date. Recently, the Council adopted an amendment that permits QS holders, PQS holders, and the communities of Adak and Atka to agree to an exemption to the West region landing requirement in the fishery. The Council should consider whether this action effectively resolves any issue related to the need for an exemption from the regional land requirement in that fishery. If not, a means of identifying regional representation for the agreement to the exemption should be considered.

An additional issue that could arise under any of the options is that the regional designee might also be an IFQ holder or IPQ holder that is subject to the regional landing requirement.[20] This could result in conflicting interests, as the regional interests could conflict with the interest in obtaining the greatest possible benefit from shares. This potential conflict could be addressed a few different ways. One option could be to identify a different representative, in cases in which the regional representative has any interest in IFQ or IPQ. In considering this approach, it should be noted that typically IFQ are held by a cooperative (rather than directly by a QS holder). Since cooperative held IFQ are not distinguishable by the underlying QS holder, any IFQ held by a cooperative to which to the regional representative belongs would be subject to the conflict and would need to be represented by a different representative. If the Council wishes to use this approach, it will need to specify a method of selecting the representative, which could increase administrative costs. Alternatively, a requirement could be added that the terms of any exemption and compensation may be no less restrictive than those applicable to any IFQ or IPQ holder. Requiring comparable terms may limit the potential for self dealing, without adding administrative burdens or complexity.

[20] This conflict is most likely under the first option, in which the regional/community representative is the entity that represents (or represented) the community under any right of first refusal. These entities (particularly the CDQ groups that hold rights of first refusal) are most likely to have QS or PQS holdings.

An additional consideration when selecting an option to identify the regional/community representative is the ability of the entity to enforce the agreement. Enforcement will require that the regional/community representative have adequate resources to pursue compensation. The wherewithal of these entities could vary under the different options and within options across regions. Any newly created entity may not have adequate resources to enforce compensation provisions. Established organizations with substantial assets (such as CDQ groups representing St. Paul and St. George with respect to rights of first refusal) on the other hand will have the financial ability to pursue others should they fail to comply with the compensation agreements. While newly created entities will have limited resources to pursue enforcement, it is possible that other more established entities in the region will recognize the importance of the compensation and support efforts to enforce compensation for its local benefits. As a result, it is possible that the financial ability of the regional entity itself to enforce compensation provisions may be unimportant, as others in the region may be inclined to step in.

Reserve pools

Under the exemption options, the Council motion suggests that IFQ holders wishing to obtain an exemption should establish a reserve pool. A well-administered reserve pool may address many of the contingencies that might otherwise prevent compliance with a delivery requirement. Under a reserve pool arrangement, it is anticipated that harvesters will coordinate harvests to address contingencies that might otherwise require a regional landing requirement exemption. In particular, harvesters are likely to coordinate effort early after the New Year in the Bering Sea *C. opilio* fishery to meet all North region landing requirements prior to ice dropping into the vicinity of the Pribilof Islands.

The specific statement in the motion is:

> *All framework agreements are expected to contain provision for a reserve pool. A reserve pool would be intended to provide industry wide, civil contract based delivery relief without regulatory or administrative intervention. Specifically, a reserve pool would be an agreement among holders of IFQ to certain arrangements in the use of their IFQ to reduce the need for exemptions from the regional landing requirement. It is believed that an effective reserve pool must 1) commit each participant in the pool to be bound by its rules; and 2) include not less than (**60%, 70%, 80%**) of the "A" share IFQ held by:*
>
> *(c) unaffiliated cooperatives and unaffiliated IFQ holders not in a cooperative,[21] in the aggregate; or*
>
> *(d) affiliated cooperatives and affiliated IFQ holders not in a cooperative, in the aggregate.*

This provision suggests that required parties to a framework agreement and exemption could reasonably withhold consent to the agreement based on the failure of IFQ holders to establish a satisfactory reserve pool agreement. A reserve pool would be intended to be formed among a broad-based group of IFQ holders to develop measures that prevent the need for an exemption. Exemptions are most likely when an IFQ holder is bound by a regional delivery requirement applicable to Class A IFQ (with no opportunity to substitute Class A IFQ designated for use outside the region or Class B IFQ or Class C IFQ). The development of a reserve pool arrangement would be intended allow for the coordinated use of IFQ among many participants to ensure that IFQ remain available for use outside of a designated region

[21] **It should be noted that IFQ holders other than cooperatives cannot transfer IFQ in season. This requirement would only affect the threshold level but would not bring those persons into an effective reserve pool agreement.**

should a circumstance prevent compliance with a regional landing requirement. A reserve pool might be expected to prioritize harvest of North region (Class A) IFQ and set aside a portion of the South region (Class A) IFQ (and possibly unrestricted IFQ (Class B and Class C IFQ)) that could be reserved against contingencies that might prevent compliance with a regional delivery requirement in season. A reserve pool might be expected to make efforts to set aside South (Class A) IFQ, to avoid using Class B or Class C IFQ to address contingencies. Class B and Class C IFQ provide more market flexibility to their holders, since they do not carry the regional or IPQ landing requirements. Consequently, efforts will likely be made to limit the extent to which Class B and Class C IFQ might need to be committed to the reserve pool.

The motion suggests that two reserve pools could be created: one among cooperative IFQ holders who are not affiliated with a processor and another among cooperative IFQ holders who have processor affiliations. To meet the motion's statement of intent, the reserve pool would need to meet a threshold membership level, defines as a specific percentage of the affiliated (or unaffiliated) IFQ. Possible thresholds are 60 percent, 70 percent, or 80 percent of the applicable IFQ (see Table 16). The relatively large proposed thresholds for formation of a reserve pool can be expected to result in a relatively large pool of shares to address contingencies. Having a pool with a large share holding should limit the need to set aside Class B and Class C IFQ for contingencies, as well as reduce the potential for minor disruptions to create a need for the exemption. In considering an appropriate threshold recommendation, the Council should consider that the regional distribution of share holdings differs across share holders. The effectiveness of a pool in addressing unanticipated contingencies may depend on the holdings of its members. Relatively large pools are more likely to have more diverse share holdings that allowing more effective actions to address barriers to regional deliveries.[22]

A few aspects of cooperatives and the possible reserve pools they could enter should be considered. First, "affiliated cooperatives" are those cooperatives that include persons with an affiliation with a PQS or IPQ holder (see 50 C.F.R. §680.2). These cooperatives may have members who do not have processor affiliations, but the IFQ issued to the cooperative as a whole would be counted toward meeting the threshold. In addition, it is possible that a reserve pool could have both affiliated cooperatives and unaffiliated cooperatives as members. In this case, the threshold might not be directly applied, but could be used as a benchmark for assessing whether the IFQ of reserve pool members represents a substantial enough portion of the IFQ pool to justify entering a framework or exemption agreement.

[22] Since shares are transferrable, holdings will differ over time. In addition, contingencies will vary with circumstances. These factors prevent any specific analysis of the effectiveness of any threshold in meeting objectives.

Table 16 IFQ allocations to affiliated and unaffiliated cooperatives (2010).

Fishery	Unaffiliated cooperatives					
	Number of cooperatives	Class A IFQ	Class B IFQ	Class C IFQ	Catcher processor IFQ	Total IFQ
Bristol Bay red king crab	3	9,032,322	1,135,000	345,209	372,001	10,884,532
Bering Sea *C. opilio*	3	26,985,474	3,279,023	1,033,401	1,803,735	33,101,633
EasternAleutian Islands golden king crab	1	1,974,414	222,450	58,944	133,003	2,388,811
Eastern Bering Sea *C. bairdi*	4	852,292	97,629	26,374	56,198	1,032,493
St. Matthew Island blue king crab	1	778,829	90,145	24,322	20,073	913,369
Western Aleutian Island golden king crab	2	1,197,824	133,091	44,009	1,176,576	2,551,500

Fishery	Affiliated cooperatives					
	Number of cooperatives	Class A IFQ	Class B IFQ	Class C IFQ	Catcher processor IFQ	Total IFQ
Bristol Bay red king crab	6	2,976,384	199,304	51,199	277,850	3,504,737
Bering Sea *C. opilio*	6	7,317,455	532,407	145,030	2,077,257	10,072,149
EasternAleutian Islands golden king crab	2	380,940	39,257	25,990		446,187
Eastern Bering Sea *C. bairdi*	4	137,210	12,322	2,971	25,541	178,044
St. Matthew Island blue king crab	3	116,865	9,341	1,301		127,507
Western Aleutian Island golden king crab						

Source: RAM IFQ database (2009-2010)

Exemption agreements

To qualify for the exemption, an IFQ holder, the matched IPQ holder, and a regional/community representative must attest to having entered one or two agreements. The following two options define those requirements:

Exemption and administration

Option 1: As a prerequisite to being eligible to apply for and receive an exemption from a regional landing requirement, the IFQ holders, the matched IPQ holders and the affected community entity or entities in the region for which the regional landing exemption is sought shall provide NMFS with an affidavit attesting to having entered into a non-binding framework agreement that addresses mitigation, a reasonable range of terms of compensation, and a reserve pool requirement to the satisfaction of the parties. The affidavit shall be delivered to NMFS:

Suboption 1: prior to the opening of the season.
Suboption 2: by a fixed date (to be determined).

To receive an exemption from a regional landing requirement the IFQ holders, the matched IPQ holders and the affected community entity or entities in the region for which the regional landing exemption is sought shall deliver to NMFS an affidavit attesting to having entered into an exemption contract that addresses mitigation, terms of compensation if appropriate, and a reserve pool requirement, to the satisfaction of the parties, prior to the day on which the exemption is sought. The exemption shall be granted upon timely submission of a framework agreement affidavit and subsequent filing of an exemption contract affidavit

Parties to the framework agreement (and the affidavit attesting to that agreement) may include several IFQ holders, several IPQ holders, and several community/regional representatives, including representatives from multiple regions.

Option 2: To receive an exemption from a regional landing requirement the IFQ holders, the matched IPQ holders and the affected community entity or entities in the region for which

the regional landing exemption is sought shall deliver to NMFS an affidavit attesting to having entered into an exemption contract prior to the day on which the exemption is sought.

Under the first option, these parties must enter a non-binding framework agreement at a time early in or before a season which addresses certain issues (such as reserve pool arrangements, mitigation requirements, and possible compensation) to the satisfaction of the parties. Although no specific requirements of the framework agreement are defined by the motion, it may be anticipated that the agreement would define circumstances that would qualify for the exemption, as well as prerequisites to an exemption (including reserve pool requirements and mitigation requirements intended to avoid the need for the exemption) and any consequences of the exemption (which could include compensation payments among the parties or commitments to subsequent deliveries in a region). To receive an exemption, the required parties would need to subsequently file a second affidavit attesting to an exemption for the out of region landings. On filing the second affidavit the exemption would apply to the amount of pounds identified in the affidavit. This two stage process would be intended to allow the parties to enter a season with a reasonable expectation concerning the actions that will be taken to avoid the need for an exemption, the circumstances that would qualify for an exemption, and actions that would be taken subsequent to exempt landings to address losses of affected parties.

Requiring a framework agreement can serve three primary purposes. First, the framework agreement could be intended to streamline the process for considering an exemption inseason, should an event arise that prevents deliveries in a region. By outlining the terms of an exemption, the framework agreement should facilitate relatively fast consideration of whether a circumstance merits an exemption (including whether parties have taken reasonable steps to avoid the need for an exemption). Periodic status reports could be provided inseason to monitor ongoing harvest of IFQ in accordance with the reserve pool agreement and to inform the parties of incidents that might justify a future request for an exemption. In addition, any subsequent actions (or compensation) that might be required in light of any redirected landings are likely to be defined by the framework agreement, simplifying the process that might follow. The framework agreement could also prevent the delay of a merited exemption from the potentially contentious negotiations that might arise concerning compensation. This streamlining of the process could be critical, if an exemption is needed to address safety concerns.

The framework agreement could also prevent parties from attempting to impose unreasonable terms on others when an exemption might be justified. It is possible that any party could be subject to duress or coerced, depending on the circumstance. For example, an IFQ holder that believes crew safety is jeopardized by a circumstance might be in a weak negotiating position in attempting to negotiate an exemption without a framework agreement. Likewise, a community/regional representative might be subject to undue pressure to agree to an exemption, if it believes that the consent would subject it to political retribution if a hazardous situation results in vessel damage or injuries. These factors all suggest that a framework agreement could be a useful tool for minimizing the potential exertion of undue influence in negotiating exemptions.

A third benefit of the framework agreement could be that, by allowing for the parties to address mitigation and reserve pool requirements, the framework agreement may lead parties to take steps that limit the need for the exemption. For example, a framework agreement requirement that IFQ holders maintain certain harvest capacity levels throughout the season could ensure that the fleet is able to stand down should ice conditions develop, without great risk of needing the exemption to ensure that IFQ can be fully harvested. This preseason planning may lead some parties to more readily agree to an exemption, as IFQ holders could demonstrate good faith efforts to avoid use of the exemption.

The second option requires only a single affidavit of the IFQ holder, holder of matched IPQ, and community/regional representative. This affidavit would attest to agreement to the exemption by its parties and could be filed at any time prior to an out of region landing, qualifying that landing for the exemption. Administratively, this second option is the same as the first option without the requirement of the framework agreement affidavit. Although it may be perceived that the second option could allow parties greater flexibility, nothing in the first option prevents the parties from modifying terms or conditions of an exemption from that agreed in the framework agreement. By removing the requirement of the framework agreement, the second option would allow the parties more time to agree to the terms of an exemption (as the affidavit is only required prior to the out of region landing). As such, the second option may allow for exemptions that could not occur under the first options, if the parties are unable to complete a timely framework agreement. This flexibility may be important, if a catastrophic event occurs, clearly justifying an exemption. It is not clear that the second option provides any benefit beyond this additional negotiation time. The absence of the requirement for a framework agreement, however, could, depending on the circumstances, remove the imperative for planning on the part of participants that might minimize use of the exemption, contribute to gamesmanship in last minute negotiations, and delay exemptions.

Administration of the exemption

The administration of the exemption under either of the contract options is simplified by the use of contracts and affidavits. Under either option, one or two affidavits filed by defined parties would qualify a certain number of pounds of IFQ (and matched IPQ) for the exemption.[23] On meeting the affidavit filing requirement, the exemption would be granted. The contents of the affidavit are specific allowing for an unambiguous determination of whether the exemption requirement has been met. Removing administrative discretion from the process should streamline administration of the exemption, allowing NOAA Fisheries to expeditiously process any exemption, minimizing disruptions that could occur under a system that would require administrative findings.

The use of contracts and affidavits for administration will allow the exemption to be implemented on a case-by-case basis by fishery participants and defined regional/community representatives to accommodate individual circumstances and situations. For example, ice conditions, which to date are believed to be the most likely event that would justify an exemption, vary greatly with location. Also, the ability to navigate through ice safely varies across vessels. The captain of a vessel, with whom the IFQ holder is expected to be in regular communication, is likely in the best position to make any decision of whether that vessel can safely traverse through local ice conditions to make a delivery. The use of contracts and affidavits for implementing the exemption would allow the IFQ holder to use information from the captain in determining whether the exemption is appropriate. Under the system of affidavits, NOAA Fisheries would summarily grant an exemption on receipt of a complete application. The use of affidavits in this manner could aid in overcoming several potential complications in administration and ensure that the best information available can be used to determine whether an exemption should apply.

Some stakeholders may oppose the use of a system of affidavits because it has the potential to simply create a system of negotiated exemptions (rather than a system that applies exemptions based on specific

[23] **It should be noted that post delivery transfers could not be used to cover exempt landings. Use of post delivery transfers of Class A IFQ and matching IPQ would overly complicate administration of the exemption. In addition, it is unclear that IFQ and IPQ holders could attest to a contract with a community/regional entity for an exemption for shares that they do not hold.**

criteria that are used to assess necessity). While this may be the case, it is possible that in some instances whether an exemption is appropriate may not be clear. The use of negotiated terms of the exemption will allow for greater flexibility in applying the exemption, including granting of the exemption in wholly unanticipated cases. While specificity in the definition of the criteria for an exemption may help limit the number of cases where the qualification for the exemption is uncertain, specificity could also prevent granting an exemption in an unanticipated circumstance in which the exemption justified. Over time, specificity could be achieved through contractual provisions. This specificity could be developed over time, while still allowing the parties to address unanticipated circumstances, should any arise.

Mitigation and compensation

The exemption alternative includes a requirement that the parties to the agreement attest that the agreement includes mitigation and compensation provisions that meet their satisfaction. No specific requirements are included. Since the provision requires only that the parties attest that the mitigation and compensation requirements meet their satisfaction, it is possible that the exemption could be granted without any mitigation or compensation. The requirement that the parties attest to these items, however, ensures that the parties have fully considered mitigation and compensation in the development of the exemption agreement. Both mitigation and compensation requirement could be effective deterrents to the abuse of the exemption provision by IFQ holders who might wish to redirect landings as a matter of convenience.

A variety of mitigation measures could be considered, in addition to the reserve pools directly mentioned in the Council's motion. In some cases (such as medical emergencies), mitigation may not be possible. In others, such as ice conditions that could be temporary, it might be possible to have a requirement that vessels first attempt to delay a landing, prior to redirecting the landing under an exemption. Given the required affidavit statement, it is likely that agreements will contain some mitigation provision that mandates IFQ holders exert efforts to avoid the need for the exemption. The extent of these requirements cannot be predicted, but will likely include reserve pool requirements and some effort to acquire IFQ from persons outside the reserve pool. These mitigation requirements may be tempered by contract provisions that do not require unreasonable efforts (such as those that might pose safety risks).

The affidavit's acknowledgement of satisfactory compensation provisions also allows the parties to tailor any compensation to the circumstance. In some instances, where IFQ holders have borne no additional cost (and may have realized significant savings) as a result of an exemption, it may be appropriate for the IFQ holder to pay compensation to a community that suffers a loss of local tax revenues. In others, where the IFQ holder has borne substantial expense in an attempt to avoid the need for an exemption, it is possible that compensation may be not be merited. As written, the requirement that the parties signify their satisfaction with mitigation and compensation terms in the agreements allows these factors to be discussed and given consideration in any negotiation. In addition, the parties can modify the requirements under these provisions based on experience. So, as new circumstances come to pass, agreements can be developed to address contingencies that might have been previously unforeseen.

Use of a contractual arrangement allows for flexibility to address changes in circumstances and improved information as the parties develop a better understanding of the scope of necessary exemptions and the consequences of those exemptions for the different stakeholders. Although it may appear the regional/community representative is in a weak position with respect to any negotiations concerning compensation, requiring the contract and making the regional/community representative a required party to the contract effectively provides that entity with the power to prevent any exemption. IFQ and IPQ holders would therefore be forced to negotiate terms for compensation to the community entity. The community entity might be willing to concede reasonable terms to avoid being cast or perceived as

extracting excessive compensation from IFQ and IPQ holders unable to comply with regional landing requirements without exposing their vessels and crews to unreasonable risks or bear excessive costs.

Compensation for costs and losses arising from the exemption could take on a few different forms. The simplest means of addressing the redistribution of benefits would be a system of cash payments. Yet, the amount of those payments may differ across stakeholders and circumstances. For example, a community that loses one landing from a season with several million pounds of deliveries may be fully compensated for any loss by reimbursement of lost tax revenues. Tax revenues, however, differ by community and can be difficult or impossible to track to specific landings. In general, local governments typically receive between 1.5 percent and 2.5 percent of the ex vessel revenue from each landing as shared fishery business taxes ('raw fish tax'). If the landing takes place in a city that is within a borough, any payment is shared evenly between the city and borough. In addition, a municipality may collect its own raw fish tax on landings. Municipal raw fish taxes vary by community, ranging from approximately 1 percent to 3 percent of ex vessel revenues. Based on these tax rates and tax sharing arrangements, local municipalities lose between approximately 2.5 percent and 5.5 percent of ex vessel revenues in tax revenues with a loss of landings. In addition, communities may be prevented from knowing ex vessel landings amounts and revenues by confidentiality protections, limiting their ability to rely on the provision. If the exemption is applied, IFQ holders and IPQ holders will bear a tax burden in another jurisdiction, where the IFQ landings take place. In some cases, the tax burden arising from using the exemption could exceed the tax burden in the absence of the exemption. Imposing an additional payment burden on persons using the exemption to address circumstances beyond their control may be viewed by some as unfair.

Providing the parties with the ability to negotiate compensation allows for more creative arrangements to compensate for the effects of the exemption. For example, when deliveries are prevented by unforeseeable circumstances a community may suffer losses in economic activity, in addition to losses of tax revenues.[24] Compensating the community for those losses by delivery arrangements for shares from designated for another region or unrestricted shares at some future time may be a more agreeable resolution to all parties than a payment to the regional entity (or its designee).[25] These delivery arrangements may impose less cost on IFQ and IPQ holders who may already bear unexpected costs arising from the disruption of their operating plans and more adequately compensate the community than simple payments to offset lost tax revenues. Depending on the timing of the exemption, it is possible that compensating landings could be made at two times. An IFQ holder could make compensating landings later in the same season, if IFQ come available at a later time in the season. Alternatively, the landings could be made in a later season. Although it is difficult to develop a single rule applicable to all compensating landings, it is possible that individual parties could agree to terms that allowing compensating landings (in lieu of payments) that would be equitable in the eyes of all parties involved. By allowing the parties to resolve the details of the compensation, timing issues and amounts of compensation can be deferred to the parties, who may be better positioned to address those details.

An added advantage to using a system of contracts to administer compensation is that NOAA Fisheries need not be involved in the administration of compensation. Instead, the parties can administer any

[24] The loss of a few deliveries over a few days is unlikely to substantially affect the community's economy, if the community is already supporting a fully staffed processing facility that is prepared for the redirected deliveries. Longer term exemptions, however, could have more substantial effects on economic activity in a community.

[25] It should be noted that to compensate a community or region with landings of shares designated for another region would require that the share holders have agreements with the regional representative for the shares used for compensation (and file the appropriate affidavits). Administratively, these compensating landings would be subject to the same procedure as the original exempt landing. Consequently, it may be expected that an agreement could have representatives from both regions in a fishery to allow for compensating landings.

compensation, with enforcement through civil actions between the parties to the compensation contract. Although settlement of claims through civil actions may increase costs to the parties if one party contests a claim, in most instances the private administration of claims will reduce costs and expedite claim processing by removing the administrative requirements that apply to agency processing of claims.

Operation of the exemption alternative by region

With large portions of the catcher vessel owner Class A IFQ pool subject to North region landing requirements in the St. Matthew Island blue king crab, the Pribilof red and blue king crab, and the Bering Sea *C. opilio* fisheries and few available processing locations, North region landings are the most likely to be redirected under the exemption alternative. The mostly likely cause of future redirected landings is ice. When ice descends to the Pribilof Islands, vessels may be unable to access processing locations in and around the islands. Since ice conditions occur in the winter months through April, potential exemptions based on ice conditions are likely only in the Bering Sea *C. opilio* fishery. Ice conditions may or may not occur in any given year. When present, ice can prevent deliveries for up to a period of weeks, intermittently. In these circumstances, ice frequently will cover a portion of the fishing grounds, preventing continued prosecution of the fishery. As a result, use of the exemption to avoid ice is likely to occur for a limited number of deliveries from vessels active in the fishery when the ice descends to the Pribilofs. Exemptions could be accessed periodically as vessels find themselves uncertain of their ability to safely access processing locations. The potential for the exemption to be used should be limited to the extent that IFQ holders are required to pursue alternatives to the exemption. If the exemption cannot be used if the IFQ holder has IFQ allowing delivery outside of the region and is required to take reasonable steps to avoid the exemption, it is possible that few exemptions will be required. Fishing may also be delayed to avoid need for the exemption.

In addition to ice conditions, North region deliveries could also be redirected under the exemption, in the event that only a single facility is operating in the North and that facility is disabled or inaccessible. In this case, it is likely that IFQ holders active at the time will wish to use the exemption to offload any crab onboard. If required to take steps to minimize use of the exemption IFQ holders will also delay fishing until the processing platform is accessible (or a substitute platform is made available). In most circumstances, use of the exemption is expected to be limited to deliveries from vessels active in the fishery at the time an event occurs.

In a rare circumstance (arising from either prolonged periods of ice or a processing facility being disabled or inaccessible for an extended period), it is possible that a substantial number of deliveries may need to be redirected under the exemption to allow for full harvest of the TAC. For example, one or more events that disabled both the St. Paul and St. George harbors for an extended period of time could lead IFQ holders to use the exemption for a large portion of the North region IFQ. The probability of such an occurrence is not known, but is believed to be small.

Although substantially more IFQ is subject to South region landing requirements, the potential for exemptions from regional landing requirements in the South is far lower than in the North. Several processing facilities are located in the South. If a single plant is disabled, it is likely that IFQ holders will be able to make arrangements for an alternative delivery location in the South. Only if several facilities are simultaneously inaccessible or disabled is it likely that any landings would need to be redirected North under the exemption. The probability of such a catastrophic event is believed to be small.

Half of the catcher vessel Class A IFQ in a single fishery (the Western Aleutian Islands golden king crab fishery) are subject to West region landing requirements. In recent years, a single shore plant has processed crab in the region, but preliminary planning is underway to introduce crab processing to a

second facility. In addition, a floating processor could be used to process West designated landings in the region. A provision exempting West region custom processing from processor share use caps will likely result in all West region processing occurring in a single facility. **As noted earlier, the Council recently adopted an exemption to regional landing requirements in that fishery. In developing this action, the Council should consider whether that action is sufficient to address any problem that might arise in the fishery.**

Operation of the reporting requirements

The exemption alternative also contains a requirement that IFQ holders that enter a framework agreement provide the Council with an annual report describing certain aspects of that agreement and factors related to exemptions. This report can be used by the Council to assess whether the exemption is functioning as intended and to initiate changes to the structure (should shortcomings be perceived).[26]

The report must describe the consistency of the framework agreement with the Council's intent for the exemption. This description would include reference to mitigation provisions (including any reserve pool or other and mitigation requirements, as well as provision for compensation). A description of the operation of the reserve pool would be required to be included in the report, as well as a description of other mitigation measures undertaken to avoid the need for an exemption. The report would catalogue any requests for exemptions and the use of any exemptions granted, as well as the effects of the exemption on participants. The report would also evaluate the need for the exemption in the year and its effects on participants.[27] The IFQ holder report is required to be delivered to the region/community representative that is a party to the framework agreement at least two weeks prior to delivery of that report to the Council. The region/community representative is permitted to provide a response to that IFQ report.

The reporting requirements are an important component of this action, as ensuring the Council's intent for this action is satisfied. The IFQ holder report will provide the Council with information concerning certain aspects of the privately administered exemption agreements. Through the reports, the Council should be able to discern whether various interests are represented in and protected by the agreements and their administration. In the absence of the reports, it is possible that the Council would have limited information concerning the implementation of the exemption, obtained only through public testimony. Requiring that region/community representatives receive the report two weeks prior to its delivery to the Council will also allow those representatives the opportunity to provide their perspective on the functioning of the exemption (should they disagree with the characterization of the exemption by IFQ holders). This additional opportunity for a possible contrasting comment should ensure that the Council receives a more balanced report, should region/community representatives perceive a bias in the IFQ holder report.

Operation of the excessive share caps

The application of excessive share caps provides that requirement that NMFS apply any IPQ used at a facility through a custom processing arrangement against the IPQ use cap of the owners of that facility. This action would affect caps as IPQ landings processed under the exemption that are custom processed would not be counted toward the cap of the processing cap. Exempting this processing from the cap of the processing plant is consistent with a limited regional landing exemption that is intended to be applied only in emergencies (or similar unanticipated situations). In the event that landings are redirected under

[26] The Council should consider whether the reporting requirement should be modified to apply to the alternative that omits the framework agreement. The modification would not

[27] The Council should clarify its intent in using the term "participants" to clearly define the subjects of this section of the report.

the exemption, the processor of the landing may have little notice and few platforms may be operational and prepared to accept the delivery. To avoid having excessive share caps preventing a delivery, processing of the landing would be exempted from the excessive share cap. The IPQ holder would continue to be subject to the excessive share cap.[28]

2.4.3 Effects on QS and IFQ holders

Under the program, most QS holders join cooperatives, which receive annual IFQ allocations based on the QS holdings of their members. This section discusses the effects of the alternatives on both QS holders and the cooperative IFQ holders who represent them. In addition, the section also considers the effect on the few QS holders who have elected not to join cooperatives, but harvest their own IFQ.

In general, cooperative IFQ holders use vessels of members to harvest their IFQ. Decision making with respect to harvests, however, varies across and within cooperatives. In the largest cooperative, which currently controls a majority of the IFQ in all fisheries except the Western Aleutian Islands golden king crab fishery, the cooperative allocation is subdivided into groups of members (or 'districts'), with each district generally responsible for the harvest of the cooperative IFQ yielded by the QS of its members. A large portion of the decision making concerning harvests is effectively deferred to the districts. In this arrangement, the district effectively operates as the IFQ holder, despite the nominal interest of the cooperative in the IFQ. Some portion of the authority is granted to the cooperative as a whole, and in the future more may be granted, as the reserve pool and mitigation requirements are likely to supersede any district authority. Management of harvests within districts varies with some districts centrally managing the harvest of all of the district's IFQ. Under this arrangement, the district maintains active oversight of the harvest of its IFQ. In this arrangement, the district will typically manage the harvest of all its IFQ in a manner intended to maximize the total returns to the cooperative. These benefits are then distributed to members based on their respective IFQ contributions to the district. Adjustments may be made to these distributions based on a variety of considerations, including the regional designations of IFQ, whether the QS holder actively harvests IFQ, and the relationships of the QS holder to IPQ holders. Disruptions in harvests in this structure are addressed through a district manager, who can redistribute landings and IFQ through coordination of vessels in the district's fleet. In other districts, QS holders may maintain control of their IFQ harvests. In this structure, some QS holders may reach agreements with vessel operators in the district to harvest IFQ arising from their QS. Each QS holder will arrange for the harvest of a portion of the district's IFQ allocation, either harvesting its own portion of the IFQ allocation or contracting for that harvest with another member. Disruptions in harvests must be addressed by the districts vessel owners, who may attempt to arrange IFQ transfers, if needed. Similar arrangements are believe to exist in other cooperatives that have formed, but without the additional administrative layer of the 'districts'. In these smaller cooperatives harvest of the cooperative's IFQ is generally centrally controlled by the cooperative or is determined by each QS holder (for the IFQ yielded the QS brought to the cooperative).

In addition to these two extremes, some cooperatives (and districts within the largest cooperative) likely have different degrees of coordinated management of harvest. For example, a cooperative member may coordinate the harvest of IFQ yielded by a subset of the cooperative's members. In this case, this portion

[28] The Council could also consider whether IFQ holders might need an exemption from vessel share caps arising from the redirection of harvests under the exemption. **In addition, the Council could consider whether it is appropriate to exempt transfers under an exemption from triggering the right of first refusal. The right might be triggered, if IPQ are transferred to allow their landing under the exemption. It should be noted that the right is triggered only if the IPQ are transferred after 20 percent or more of a holder's IPQ is used outside the community for than 3 years in a 5 year period. Given the time constraint on transfers to allow for an exemption, it is possible that applying the right could prevent the effective use of the exemption.**

of the cooperative's IFQ may be subject to coordinated harvest in a manner similar to a more centrally managed cooperative. In considering the effects of alternatives, this portion of the cooperative may be viewed as a centrally managed cooperative.

Under these described cooperative structures, the IFQ holders may be compelled to respond to circumstances that prevent compliance with delivery requirements. In the first case (vessel owners assuming responsibility for coordinating harvests of cooperative IFQ), each active vessel owner must respond to disruptions, despite the suggestion of coordination of harvests that arises from cooperative membership. In these cases, the vessel owner might need to make direct requests to member QS holders to harvest their IFQ, despite the appearance of a single common holding. A cooperative (or district) that manages IFQ harvests through a central manager may be more responsive to unexpected circumstances by coordinating harvest of a larger pool of IFQ. Although cooperative IFQ holders can respond to different circumstances, a cooperative that coordinates harvest of a larger amount of IFQ may be able to respond more quickly and with lower transaction costs.

Also under either cooperative (or district) structure, as circumstances on the water merit, the vessel captain will participate in decision making. Safety decisions are believed to be wholly at the discretion of the captain. Follow on decisions, once safety issues are addressed, however, are usually made in consultation with the vessel owner or cooperative manager, since it is those persons who remain responsible for the harvest of IFQ with both NOAA Fisheries and represented QS holders.

In the following analysis, the person actively coordinating the harvest of IFQ is referred to as the "IFQ manager". In cases of centrally coordinated cooperative IFQ harvests, the IFQ manager is the cooperative manager. In cases of less central coordination of IFQ harvests, the IFQ manager will typically be a vessel owner in the cooperative that has assumed responsibility for the harvest of a portion of the cooperative's IFQ. It should be noted that regardless of the cooperative arrangement for the harvest of its IFQ, the cooperative and its members remain jointly and severally liable for the cooperative's actions in the harvest of the IFQ, including any overage and any failure to comply with the terms of the IFQ privilege. In cases of a cooperative with multiple IFQ managers, each managing a portion of the cooperative's allocation, the IFQ managers will have responsibility to the cooperative to maintain its catch within the terms of the IFQ it oversees, as well as the liability for the acts of the cooperative that arises with cooperative membership.

Status quo

Under the status quo, no exemption to regional landing requirements on catcher vessel owner Class A IFQ is permitted. Consequently, an IFQ manager must organize the harvest of crab and use of IFQ to comply with the regional landing requirements associated with Class A IFQ. If a landing using regionally designated Class A IFQ is prevented by an unforeseeable circumstance, the IFQ manager must either delay the landing or arrange for delivery to an alternative location. As a first measure, an IFQ manager may choose to delay a delivery, possibly continuing fishing or waiting in a safe location until the circumstance passes. The ability to effectively delay a landing may be limited, if the circumstance is unlikely to pass quickly. For a lasting condition, an IFQ manager will need to find an alternative delivery location or wait until the condition subsides.[29]

[29] It is possible that an operator could discard crab to avoid excessive deadloss and counting that deadloss against IFQ at the time of landing. These discards would be a violation, as crab are considered to be harvested once they are put into a vessel's tank. Discards of this type are therefore believed to be very unlikely.

Alternative delivery arrangements can be made either by coordinating the delivery with another facility within the region or by accessing IFQ that would support the landing outside of the region (i.e., either Class B IFQ or C share IFQ that can be delivered to any location or Class A IFQ designated for delivery outside the region). If the delivery is to be made within the region, the IFQ holder must be certain that the recipient of the delivery is able to take delivery. Since Class A IFQ is subject to matching with IPQ, the IFQ originally intended to support the delivery will be committed to the originally scheduled receiver. A variety of arrangements could allow the redirection of the delivery within the region. It is possible to include a clause in the original IFQ/IPQ matching contract that would permit the IFQ manager to make delivery elsewhere in the region using the matched shares, in the event the delivery is prevented. This arrangement would likely need to include a commitment of the IPQ holder to use the IPQ to support the delivery (either by transferring the IPQ or by arranging their use at the alternative location). Absent an arrangement with the IPQ holder, it is possible that the IFQ manager could use other IFQ it holds to make the delivery within the region, if another facility is accessible and IFQ are available to support the landing. In this case, the use of substitute IFQ could reduce returns to returns to QS holders.

Under the status quo, if an IFQ manager is unable to address the circumstance preventing a delivery by arranging a delivery within the region, the IFQ manager may be able to arrange for the delivery outside of the region using other IFQ. In some cases, an IFQ manager may have an array of IFQ for the fishery that can support the delivery to a processor outside the region. If the IFQ manager does not have IFQ to support a delivery outside the region, it may acquire access IFQ to support such a delivery. Under current rules, only cooperatives are permitted to transfer IFQ, so individual IFQ holders would not be permitted to acquire IFQ in such a circumstance. In some cases, the cost of access to alternative IFQ to support a delivery could be high. To reduce these costs, it is possible that prior arrangements could be made among IFQ managers within a cooperative and among cooperatives to ensure that exorbitant prices will not be charged for IFQ needed to address deliveries redirected to address unforeseen circumstances. In addition, most share holders are likely to be reluctant to extract excessive share prices in these transactions to maintain good will that may be beneficial in future transactions. In addition to needing IFQ to support a delivery, the IFQ manager must also make arrangements with a processor (and possibly an IPQ holder) to make the delivery. Short notice delivery schedule changes can be complicated by other commitments and priorities. As a result, IFQ managers attempting to redirect landings may have limited price negotiating leverage. Despite the potential leverage that a processor might have, most processors are believed to have priced these landings similarly to other landings from the fisheries. As with IFQ holders, processors are believed to be reluctant to exert undue leverage to maintain good will that could be beneficial in future transactions.

In any case of a vessel being unable to comply with a regional landing requirement, the IFQ manager will be forced to assess the costs of these different choices. In general, an IFQ manager is likely to choose the alternative that imposes the least cost. IFQ managers, however, may also consider the risks associated with the different choices. For example, if ice conditions are preventing a delivery, an IFQ manager with a variety of shares may choose to immediately redirect a landing to an ice free location to avoid potential deadloss that would arise if ice conditions persist.

While circumstances preventing compliance with a regional landing requirement will increase costs to harvesters, the distribution of these costs between vessel owners and QS holders will vary across participants. It can be anticipated that a vessel owner will bear all costs associated with IFQ yielded by that vessel owner's QS holdings.[30] The distribution of costs between a vessel owner harvesting IFQ

[30] A portion of these costs may be passed on to crew depending on the terms of crew contracts, which may deduct some operating costs prior to the application of crew shares.

yielded by other persons' QS holdings will depend on the terms of the harvest agreement. In many cases these are believed to be simple lease arrangements, under which the vessel owner pays a portion of the ex vessel price to the QS holder. Over the first few years of the program, these arrangements have evolved so that some agreements deduct certain costs from lease payments. These arrangements that include cost deductions are believed to be more common in cooperatives (or districts of the large cooperative) that use a single IFQ manager that oversees harvest of all IFQ. In these cases, in which revenues of the cooperative are shared across QS holders, the vessel owner's incentives are better aligned with QS holders', as revenues and costs are shared. The terms of these arrangements are generally confidential and vary across participants, but agreements are believed to pass on a portion of most out-of-pocket costs associated with harvest costs to the QS holders. In most cases, vessel owners are believed to have responsibility for any deadloss. Some vessel owners maintain cargo insurance against deadloss, including deadloss arising from delays in offloading. In the case of a vessel owner that independently leases IFQ from QS holder at a fixed lease rate (rather than a IFQ manager overseeing harvest of all of a cooperative's allocation), that vessel owner may be more likely to address delivery complications with measures that pass the cost on to the QS holder, than the overall least cost approach to the problem. As a result, these arrangements are more likely to leave added costs of these offload delays to the vessel owner.

Effects of the status quo on IFQ managers, vessel owners, and QS holders are likely to vary somewhat across fisheries and regions. The North region of the Bering Sea *C. opilio* fishery is the region/fishery most likely to be affected by a circumstance that would prevent deliveries. In that fishery, ice conditions periodically prevent deliveries in to St. Paul. Other circumstances (such as a disabled facility, as happened in the second year of the program) could also impede deliveries in the North. IFQ managers facing any of these circumstance will need to assess their possible choices, but will not be able to obtain an exemption from the regional landing requirement under the status quo. With no processing currently available at St. George, an IFQ manager would need to use (and possibly acquire access to) IFQ allowing the delivery outside the region, delay the landing, or discard catch. The choice is likely to depend on the prospect of the condition passing and other costs associated with the choice. In the case of ice preventing a delivery, conditions are somewhat unpredictable.

In the St. Matthew Island blue king crab and Pribilof red and blue king crab fisheries, substantial portions of the Class A IFQ are required to be landed in the North region. Since these fisheries are prosecuted earlier in the year than the Bering Sea *C. opilio* fishery, the potential for ice interfering with deliveries is substantially lower. If circumstances were to prevent a delivery to a facility in the North, the potential for an alternative location in the North to be accessible could be small. Both fisheries have historically had relatively small TACs and may be supported by a single processing plant in the North region.[31] Consequently, a prevented North delivery would require the IFQ manager to either delay the delivery until the inaccessible plant (or a substitute plant in the North) is made available to take delivery or use IFQ that can support the delivery outside of the North region. Given the relatively small share of these fisheries that can be landed outside of the North region, it is possible that an IFQ manager may be have difficulty accessing IFQ to support landings outside the North region, if the IFQ manager does not retain those IFQ against the potentiality of an unanticipated circumstance preventing a North region delivery.

Also, if a delivery to a processing facility in the West region of the Western Aleutian Islands golden king crab fishery is prevented, harvesters are likely to have no alternative processing location available to take

[31] The Council recently adopted a provision that applicable in these two fisheries that would allow custom processing arrangements to consolidate all processing in the North region in a single facility without violation of the processor share use caps. Under small TACs, it is likely that processors would use this flexibility to consolidate all North processing in a single plant.

delivery within the region. In that region/fishery, only a single facility has operated since the program was implemented. The small amount of crab in the fishery is not believed to support multiple facilities in the region, which has limited amounts of other species available for processing. With few or no alternatives available for processing, if an unanticipated circumstance prevents a delivery in the West region, it is likely that the IFQ manager would need use the alternative regional exemption developed for that fishery or postpone the delivery, if arrangements cannot be made to use IFQ that permit use outside of the West region. With only two catcher vessels participating in the fishery in the first three years of the program, an IFQ manager will have limited opportunity to acquire additional IFQ to support a landing outside the region, in the event that the IFQ holder does not maintain IFQ against the potentiality of a circumstance preventing a delivery in the West region. Given this situation, it is likely that the parties would resort to the existing exemption to address any need to redirect landings out of the West region in that fishery.

The ability of an IFQ manager to redirect landings outside of one of these regions, if a circumstance prevents a compliance with a regional delivery requirement, may depend on the coordination of IFQ use throughout the season by that IFQ manager. IFQ managers who reserve IFQ that allow delivery outside of a region (through a reserve pool or other arrangement) will be better positioned to respond, if a vessel is prevented from complying with requirements to deliver in a region. The extent to which IFQ are reserved to address contingencies will likely vary across IFQ holders, fisheries, and circumstances under the status quo alternative.

Processor and harvester efforts to gain efficiencies could affect the ability of IFQ holders to respond to circumstances preventing compliance with regional landings requirements. For example concentration of activity on fewer vessels could limit the catch rate of the fleet and increase the time needed to make landings greater distances from the grounds. Likewise, concentration of processing in a few locations may leave few alternatives should one plant or location become inaccessible. While these effects are likely to occur, the effect on IFQ managers' abilities to redirect deliveries will depend on the circumstance.

For all South region landing requirements, the potential for an event preventing compliance with a regional delivery requirement appears to be low. Alternative locations and processing facilities could support deliveries, if a planned delivery to a processor is prevented. Since most of these facilities are open year round, the ability of IFQ managers to address contingencies without moving deliveries outside of the region is substantially greater than in the remote regions.

The exemption alternative

Under the exemption alternative, if a delivery is prevented by a circumstance, the holder of Class A IFQ subject to a regional landing requirement that has reached an exemption agreement with the holder of matched IPQ and the representative of the region would be permitted to obtain an exemption from regional landing requirements. The exemption agreement could provide specificity concerning the circumstances that would qualify for the exemption and the terms of the exemption, including reserve pool requirements, mitigation requirements, and compensation to affected parties.

By providing the IFQ manager with an additional choice when confronted with an obstacle to a delivery in a designated region, the exemption could, in some circumstances, reduce added harvester costs or risks that accompany a circumstance preventing a delivery within a region. The potential for use of the exemption will depend on several factors, including the cost of alternative means of addressing the obstacle to deliveries, mitigation and reserve pool requirements in the agreement, and the cost of any compensation required under the exemption agreement. These different influences are likely to change over time, as the parties gain experience with the exemption.

A likely condition of any exemption is that prior to using the exemption, the IFQ managers in a reserve pool are required to use all or most of the IFQ held by pool members that allow delivery outside of the region (including Class A IFQ designated for another region, Class B IFQ, and C share IFQ). A few effects could arise from this requirement. First, IFQ managers are likely to ensure that share matching contracts (under which Class A IFQ deliveries are committed to specific IPQ) and delivery commitments for Class B and C share IFQ contain clauses that allow for the use of matched or committed shares to address contingencies in the event a regional delivery is prevented. Second, increased coordination of the harvest of IFQ within a reserve pool is likely to occur. Currently, if an IFQ manager is required to use all commonly-held IFQ (which could include cooperative IFQ not subject to the IFQ manager's control), the exemption may be virtually inaccessible to some IFQ managers who do not have the ability to access other IFQ in their cooperatives prior to using the exemption. These IFQ managers would be effectively attempting to acquire access to IFQ through arm's length transactions from other IFQ managers in their cooperative. Although these other IFQ managers may be willing to assist, some will have commitments or lease arrangements that make them reluctant or unable to allow others to use the IFQ. To overcome this obstacle, cooperatives will likely include in their agreements (and in agreements with others that affect cooperative IFQ) provisions that allow the redistribution of the IFQ within the cooperative to address circumstances that prevent compliance with regional delivery requirements.[32] While returns from IFQ to members may vary within a cooperative, the more coordinated use of IFQ within cooperatives could slightly reduce any variation in pricing, as members will sacrifice some individual control of the use of the IFQ allocations arising from their QS. In addition, the need to make cooperative IFQ available to address contingencies to ensure eligibility for the exemption could lead to more coordinated use of IFQ within each cooperative over time. The extent (and timing) of any such transition will depend on the extent to which the exemption appears to be useful. Cooperatives active in the Bering Sea *C. opilio* fishery (where compliance with regional delivery requirements are most likely to be prevented) are most likely to be subject to the pressure to adapt, as the exemption might be most beneficial in that fishery.

In addition to using all or most IFQ in the reserve pool that can be landed outside of the affected region, the IFQ manager will also likely be required to exercise reasonable efforts to avoid using the exemption (including attempting to arrange delivery to another location within the region and attempting to acquire IFQ that allow delivery outside of the region). If an operating facility is available to receive the landing, the regional parties would likely not consent to the exemption.[33] If additional IFQ could reasonably be acquired by the IFQ holder to support the landing outside the region, the region representative would also not likely consent to the exemption. Beyond these more obvious means of overcoming the need for an exemption, the IFQ holder would be required to pursue any reasonable measures to accommodate the delivery without the exemption.

If the required parties are likely to consent to an exemption, the IFQ manager must still determine whether to use the exemption. In making that decision, the IFQ manager will compare the costs of making the landing under the exemption with the cost of other options, including waiting for the circumstance to pass.

[32] It should not be overlooked that this outcome is a bit paradoxical, since no exemption is available under the status quo. The exemption alternative may have the ironic effect of driving IFQ holders to take more actions to avoid the need for the exemption.

[33] It should be noted that allowing a community selected representative to act on behalf of a region, it is possible that the exemption could be granted if a delivery to the community is prevented, when other delivery locations are accessible in the region. Use of the exemption in this manner would likely be beyond the intent of the Council for this action, but might be permissible under the regulation.

Two factors are likely to be considered when determining whether to use the exemption. First, a vessel may have operational costs of travelling to and making delivery outside the region under the exemption. The most probable cases for exemptions will arise in remote regions that are close to fishing grounds (such as the North region of the Bering Sea *C. opilio* fishery). While remote region deliveries may be more likely to be affected by a circumstance preventing a delivery, deliveries in these remote areas (which are closer to fishing grounds) are also likely to be less costly, since a harvester may reduce costs of travelling to and from a more distant processing location. In cases of ice preventing the delivery, the longer trip could force the vessel to leave gear on the grounds for a longer period of time, which could jeopardize that gear, if advancing ice conditions are probable. On the other hand, some operational advantages may arise from travelling to the less remote processor for a delivery, if the vessel needs additional gear, fuel, or supplies, which may be more readily available and less costly in less remote locations. These various operational considerations could make the exemption more or less appealing depending on the circumstances of the vessel.

Compensation requirements will also affect the decision of the IFQ manager to secure exercise the exemption. In some cases, use of the exemption may require some compensation to an entity in the region (which could be a community) and/or to the holder of the matched IPQ. The level of compensation would be determined by the contract defining exemption eligibility among the IFQ holder, the IPQ holder, and the region representative. Since it is a negotiated compensation, the level of compensation cannot be determined. A few considerations could influence the negotiated amount of compensation. Compensation could take a few different forms. Substitute landings are one possible form of compensation. For example, an IFQ manager may be willing to direct landings of IFQ catch not subject to regional landing requirements to the region that lost landings under the exemption. Depending on the circumstance, these landings could come from a later season or a different fishery and may be made from Class B or Class C IFQ or, with the consent of the opposite region and an IPQ holder, from Class A IFQ designated for another region. The amount of any compensating landings would be negotiated and may differ from the amount redirected, particularly if made from a different fishery. These redirected landings could be used to address both an IPQ holder's potential losses (if the exemption was used to send landings to a different processor) and a community's potential losses (for any landings to a different region under the exemption). Redirected landings could have appeal, as they could be used to address losses of economic activity under the exemption and as well as losses of revenues to both IPQ holders and communities. The ability of any IFQ holder to commit to future landings could be questionable, as TAC changes and other landing commitments may prevent the IFQ holder from ensuring making those deliveries.

Alternatively, financial payments could be used for compensation to either regional entities or IPQ holders. For a regional entity, the first potential basis for determining compensation might be landing taxes. Landing taxes are a clear loss to a community that loses landings because of an unanticipated circumstance. Two sources of tax revenues can be lost – municipal taxes and shared fishery business taxes (the 'raw fish tax'). Tax revenues differ by community and can be difficult or impossible to track to specific landings. Local governments typically receive between 1.5 percent and 2.5 percent of the ex vessel revenue from the shared fishery business taxes. If the landing takes place in a city that is within a borough, any payment is shared evenly between the city and borough. In addition, a municipality may collect its own raw fish tax on landings. Municipal raw fish taxes vary by community, ranging from approximately 1 percent to 3 percent of ex vessel revenues. Based on these tax rates and tax sharing arrangements, local municipalities lose between approximately 2.5 percent and 5.5 percent of ex vessel revenues in tax revenues with a loss of landings. These values could serve as a starting point for negotiations of any exemption compensation payment. It should be noted that if an exemption is received, IFQ holders and IPQ holders will bear a tax burden in another jurisdiction, where the IFQ landings take place. In some cases, the tax burden arising from using the exemption could exceed the tax burden in the

absence of the exemption. On the other hand, regional entities may request payments in excess of the tax revenue loss, since a community derives economic activity in addition to tax revenues from a landing. These factors are likely to affect the amount of negotiated compensation, but their effects cannot be fully predicted and depend on the parties.

In effect, the exemption provides an IFQ manager with an additional choice, if confronted with a circumstance that prevents compliance with a regional delivery requirement. Although available, the exemption is only likely to be used only when it is more favorable than the other options, including waiting for the interfering circumstance to pass. Requiring consent of the matched IPQ holder and a community/region representative should prevent the frivolous use of the exemption. These parties are likely to require that the IFQ manager take all steps to avoid the exemption and possibly pay compensation, if the exemption is used. Despite these deterrents, an exemption will provide IFQ managers with an option, when faced with conditions that prevent compliance with regional delivery requirements.

QS holders will be affected by the exemption, since they likely bear some (or, in some cases, all) of the costs arising when compliance with regional delivery requirements are prevented by unforeseeable circumstances. To the extent that IFQ managers are able to reduce costs associated with these circumstances through use of the exemption, QS holders are likely to benefit from the exemption. Since the exemption will likely be available only in limited circumstances and may come at a cost of compensation to regional interests (and possibly the IPQ holder), the exemption is unlikely to result in substantial financial savings for QS holders, in most instances. Typically, the use of the exemption will have minor changes in operational efficiency. QS holders fishing the IFQ yielded by their QS will realize all of this savings, while a portion of this savings will be passed on QS holders that have lease arrangements for the fishing of IFQ yielded by their QS.

2.4.4 Effects on vessel operations and safety

The effects of the alternatives on vessel operations differ because the exemption alternative allows redirection of landings outside the Class A IFQ designated region, if certain conditions are met.

Status quo

Under the status quo, vessel operators must comply with regional landing requirements when using regionally designated catcher vessel owner Class A IFQ. In general, the effects of the status quo on vessel operations are that harvesters must make additional efforts to coordinate harvest activity with the regional landing requirements on Class A IFQ. When a landing is prevented by an circumstance, vessel operations must be adapted to comply with regional landing requirements without exception.

The need to full comply with all regional landing requirements increases the incentive for vessel operators (in conjunction with IFQ managers) to force deliveries, when circumstances may prevent vessels from safely making the deliveries. In all cases, the captain of a vessel is responsible for the safety of the vessel and may choose not to attempt to make a delivery to ensure the safety of the vessel. The captain, however, will have to balance the safety risk of attempting to make a delivery against the financial cost of redirecting or delaying the delivery. The most likely such circumstance that could pose a safety risk is that ice conditions could be an impediment to a delivery in the North region. While navigating a vessel through ice always poses some risk, in some circumstances a captain could reasonably choose to accept such a risk. The potential to (reasonably or unreasonably) accept the risk is likely greatest at the end of season when little or no unused IFQ would support a delivery outside of the designated region. In that case, a captain may be unable to substitute IFQ for the regionally designated IFQ. In addition, captains and crews are likely to have less patience for waiting out ice conditions and may be more inclined to

accept greater risks to complete their seasons. In these circumstances, the threat to safety will likely be the greatest. Risks associated with ice should not be underestimated, as conditions can change quickly and may be difficult to assess. In some instances in recent years, vessels have been temporarily stuck in the ice or have had to abort attempts to reach the harbor after traversing through ice for a mile or more. With changing ice and weather conditions, the potential for loss of a vessel and risk to crews should not be underestimated.

In the most recent Bering Sea *C. opilio* season harvesters coordinated fishing effort early after the New Year prioritizing deliveries of catches using North region IFQ. This coordination allowed most of those harvests to be completed prior to ice moving down in the vicinity of the St. Paul harbor. If ice conditions developed, it is likely that harvesters would shift landings away from that ice to South region ports. In addition, one floating processor operated in the vicinity of St. Paul Island, but outside of the harbor, creating an outlet for North region deliveries should ice limit access to the harbor. These types of coordinated efforts would likely continue in the future under the status quo, as harvesters and processors recognize the benefit of avoiding the dangerous ice conditions. These actions decrease the risk associated with North region deliveries in the fisheries, but it is unlikely that ice conditions can be fully avoided.

The exemption alternative

The exemption alternative provides an additional option to vessel operators that encounter impediments to complying with regional delivery requirements. The alternative could provide some vessel operators with an additional choice in some circumstances that could benefit operators and reduce some safety risks. Specifically, the ability of vessel operators to gain an exemption could relieve some of the financial pressure to accept the risks incumbent in making a delivery under questionable circumstances (such as when ice is present, but is arguably navigable) by providing a limited exemption from the regional landing requirement. Clearly, a vessel operator could still perceive a benefit to complying with the regional landing requirement, thereby avoiding any compensation that might be required in the event of an exemption. Yet, the outlet created by the exemption could be particularly important near the end of season when little or no unused IFQ would support a delivery outside of the designated region. In that case, a captain may be unable to use the regionally designated IFQ except by either receiving the exemption to the regional designation or accepting risks associated with the delivery. Late in the season, captains and crews are likely to have less patience for waiting out ice conditions and may be more inclined to accept greater risks to complete their seasons. The exemption may provide a alternative that could lead vessel operators to avoid risks associated with attempting lands despite obstacles.

Despite the availability of the exemption, by defining the exemption through contractual arrangements, the potential for the exemption to address safety issues is uncertain. It is likely that in some circumstances vessel operators will be compelled balance the burdens of mitigation requirements and the economic consequences of compensation requirements contained in exemption agreements against risks to their vessels and crews in determining whether to comply with the delivery requirement or use the exemption. Depending on the outcome of those choices, specifically whether vessels are damaged or lost or health and safety risks are realized, agreements and the incentives they create may change over time. Although it is uncertain, it is hoped that the potential to expose crews to risks will be a paramount consideration in the negotiation of agreements.

As under the status quo, some of the most significant improvements in safety are likely to arise from the actions of participants that will aid in compliance with the regional landing requirement. Harvesters are likely to continue the recently adopted practice of coordinating harvests to complete deliveries in the North region prior to ice conditions developing. The use of a floating processor outside of St. Paul harbor as an outlet for North region deliveries may also continue. Although these actions may be pursued by

industry participants even without an exemption agreement, it is likely that some of these measures (particularly the coordination of harvests and establishment of a reserve pool of shares) may be required by region/community representatives that are a party to the agreement.

2.4.5 Effects on PQS and IPQ holders and processors

Since Class A IFQ are subject to both IPQ and regional landing requirements, PQS and IPQ holder interests will be affected by any exemption to regional landing requirements. This section summarizes those potential effects.

Status quo

Under the status quo, no exemption to regional landing requirements is permitted. So, both regional landing requirements and IPQ commitments must be complied with. Processors will likely be idled in the event compliance with regional delivery requirements is prevented by an unforeseeable circumstance. If additional capacity is available within a region, IPQ holders may be able to make use of their IPQ by redirecting landings to another plant using custom processing arrangements. In some circumstances, compliance with regional landing requirements may require that an IPQ holder arrange for additional processing capacity in a region to receive deliveries under Class A IFQ/IPQ contractual agreements. Processors may incur additional costs through these arrangements. The extent of added processor costs will depend on the circumstance that prevents the delivery, as well as the responses of the parties to those circumstances. An extended event may be very costly, particularly if it requires the processor to maintain crews or make additional platforms available for processing to ensure that all IPQ are fully used (and delivery commitments are met). Costs from these delays will increase with the size of the plant's crab processing, assuming the plant has costs associated with maintaining crews and facilities until the circumstance passes.

To date, IPQ holders are believed to have maintained ex vessel pricing when deliveries have been rescheduled to accommodate circumstances preventing a delivery, effectively leaving harvesters and processors to cover their respective costs associated with the impediment to deliveries. Whether pricing changes will occur in the future is uncertain, and may depend on the parties' responses to circumstances preventing compliance with regional landing requirements. The distribution of added costs of the two sectors, however, may differ depending on the circumstances and the response to the impediment. For example, if a processing plant is disabled, postponing all deliveries while repairs are performed may reduce processor costs in comparison to deploying an additional processing platform to take deliveries. Without a change in ex vessel pricing, the difference between these two responses could greatly affect the distribution of costs between the parties. In the future, it is possible that price adjustments could be made to accommodate these differences. Clearly, a circumstance preventing compliance with regional landing requirements will increase costs to processors. Those cost changes will be dependent on the specific circumstances, the responses of both the harvesting and processing sectors, and any change in pricing that might be negotiated between the parties or driven by the arbitration system.

The distribution of costs among processing sector participants could also vary depending on the circumstances. IPQ use can occur through a few different means. Some IPQ are used by the holder of the underlying PQS. These persons would bear any processor costs associated with circumstance preventing compliance with a regional delivery requirement. It is not known whether a standard arrangement exists for the distribution of costs between the PQS holder and processor under lease and custom processing arrangements.

The exemption alternative

The exemption alternative allows a Class A IFQ holder to obtain an exemption from regional landing requirements, in the event that the matched IPQ holder and community/region representative agree to the exemption. The specific terms of the exemption, including possible compensation to the matched IPQ holder, will be defined by an agreement of those parties.

Since the matched IPQ holder is a required party to the exemption agreement, the potential for a processor to be unfairly disadvantaged by the exemption is limited. The agreement can be expected to define steps taken prior to exercising the exemption and possible compensation to the IPQ holder, once the exemption is exercised. Although IPQ holders may have custom processing arrangement to have their allocations processed, these agreements are likely to protect the interests of the processor.[34] These protections are unlikely to make the IPQ and processor whole in all cases, as circumstances may impose costs on all parties. Yet, costs imposed on IPQ holders and processor should not be unreasonable or unfair. IPQ holders and processors can ensure notice of an IFQ holder's use of the exemption. This notice should ensure that processors are not expending substantial efforts to overcome the circumstance, only to have an IFQ holder redirect the landing under the exemption. Likewise, a compensation requirement in the contract could be carefully drafted to protect an IPQ holder should an IFQ holder exercise the exemption in a manner that unreasonably imposes excessive cost on the IPQ holder. These two factors should limit the extent to which any circumstance imposes an undue burden on an IPQ holder, in the event a IFQ holder elects to use the exemption.

2.4.6 Effects on regions and communities

The regional landing requirements are intended to protect fiscal and economic interests in specific regions and the communities within those regions. The exemption could affect the extent to which regional landing requirements are protected by those landing requirements.

Status quo

Under the status quo, holders of Class A IFQ and IPQ holders must abide by regional landing requirements without exception. Consequently, the only circumstance under which a region will not benefit from a landing from a regionally designated IFQ is if the IFQ is not used. Without an exemption, IFQ could be left unharvested, should a circumstance prevent the harvest altogether or make the harvest cost prohibitive. In considering the effect of the status quo alternative, it should be noted that in most instances when landings are prevented by a circumstance, landings will be moved to another location within a region or delayed.

[34] Although the exemption would relieve the IFQ holder from delivering in the designated region, the IPQ holder would still need to arrange for receipt of the delivery (either at a plant operated by the IPQ holder or through a custom processing arrangement). **To receive a delivery, the IPQ holder would need to be registered as a crab receiver at the plant of the delivery.** Although this registration may be issued in season, if a delivery is made under emergency circumstances, an IPQ holder may have little time to establish a registration. As a result, it is advisable for IPQ holders who are parties to an exemption agreement to make arrangements, in the event an exemption is needed. In the absence of this planning, it is possible that the exemption would be ineffective, as the IPQ holder may be unable to accept the landing without a registered crab receiver account at the plant of the delivery. In some cases, it may be possible for an IPQ holder to transfer IPQ to another person registered to receive crab to overcome this requirement. This transfer would overcome the registration issue, provided that new IPQ holder, the IFQ holder, and the region/community representative have filed the appropriate affidavits to establish the exemption.

In considering the effects of regional landing requirements, it should be noted that those requirements provide no community specific benefit. As a result, regional landing requirements will only ensure that offloads and processing take place in the region. That activity may not benefit a community or even the regional economy, if the processing occurs outside the boundaries of a community.[35] Under the status quo, if an intended delivery is prevented and the IPQ holder simply delays processing in the same location, a community and regional benefit will arise comparable to that which might have occurred in the absence of the delay. If the IPQ holder arranges a delivery elsewhere in the region, but still within a community, the benefit of the landing will flow to that other community. Depending on the scope of processing and the tax regulations in the other community, it is possible that the benefit will differ. For example, if the landing is taken at a plant already operating, the benefit might be quite marginal. If the landing is taken at a plant that would not have operated but for the impediment to the delivery, the benefit could be more substantial than had the landing taken place as intended at a plant already gear up for the delivery. If the IPQ holder arranges for the delivery at a plant outside of a community, the benefit within the region could be quite minimal – substantially less than if the landing had occurred as originally intended. In the case of deliveries throughout a region that are prevented by an unanticipated circumstance, all benefit to the region (and any community within the region) would be lost.

The potential for landings to be redirected outside of communities differs across fisheries and regions. In the North region of the Bering Sea *C. opilio* fishery, where circumstances preventing deliveries might be most likely to arise, the potential to redirect landings away from communities is limited to some degree. Areas in the region that are outside of community boundaries are exposed, and likely cannot safely support extensive offloads and processing activities during the winter months when most processing occurs.[36] In the St. Matthew Island blue king crab fishery, locations near St. Matthew Island (and not within any community) provide some protection from weather for processors. Much of the processing in that fishery took place in these locations outside of any community. In the Pribilof Island red and blue king crab fishery, most processing occurred historically in and around the Pribilof Island communities. Since the fisheries are relatively small, it is possible that the North processing in the St. Matthew Island blue king crab fishery could be consolidated with processing in the Pribilof Island red and blue king crab fishery in the Pribilofs. The effect of any circumstances that prevents deliveries on the redistribution of processing within the North region in these fisheries cannot be predicted, but would depend on available resources. Although landings might be redirect the Pribilofs are the most likely location for processing.

In the Western Aleutian Islands golden king crab fishery, the only plant to receive deliveries under the program to date is in Adak. Some participants have suggested that processing could take place in Atka in the future. If deliveries are prevented to Adak or Atka by an unanticipated circumstance, it is likely that landings would move to a different location, if a plant is made available. This movement of landings could be simply between these communities, but also could result in a loss of benefits to communities in the region, if those landings move to a location outside of any community.

If a delivery into a South region processor is prevented by an unforeseeable circumstance, it is likely that the processing would move to a different facility. In Dutch Harbor/Unalaska and Kodiak, it is possible that the processing would simply move to another local facility, unless the entire community is inaccessible. Any other processing location in the South is likely to have processing moved to a different

[35] Communities in the region may benefit from shared tax revenues from the State of Alaska, depending on where the processor offloads.

[36] Processing on floating processors that commonly occurs in the fishery has typically taken place inside community boundaries.

community (or outside of any community) in the event that a delivery is prevented by an unforeseeable circumstance.

The exemption alternative

Under the exemption alternative, if an IFQ holder, a matched IPQ holder, and a community/region representative agree to an exemption, a delivery may be redirected outside of the designated region. Since the exemption requires the agreement of all three parties and contemplates the use of reserve pool arrangements, mitigation efforts, and possible compensation, it is unlikely to be used liberally or frequently. In cases when the exemption is applied, the community that would have hosted the landing and processing will lose tax revenues and could lose economic activity associated with the landing. In a few circumstances, the community's economic activity may be unaffected. For example, if the landing would have taken place at a floating processor within community boundaries, but with no interaction within the community, it is possible that only tax revenues would be affected. Also, if a platform in the community is inaccessible for a brief period, it is possible that the redirected landings are only a disruption of ongoing activity that do not affect the number of workers in the community or the community spending pattern of those workers or the plant.[37] In this case, economic activity in the community might be unaffected, but tax revenues would be lost. Only in the case of an obstacle to deliveries that would discontinue processing operations in the community for an extended period during which a plant closes are both tax revenues and economic activity in the community likely to be substantially affected. In these cases, the community impact could be dramatic.

The effects of any exemption will depend on the circumstances surrounding the redirected deliveries and the terms of the agreement between the IFQ holder, the holder of matched IPQ, and the region/community representative. In cases of a few redirected deliveries in the course of a relatively long processing period, it is possible that the community could suffer little loss of economic activity. If the compensation agreement makes up for lost tax revenues, it is possible that the community may be unaffected by the exemption. On the other hand, if the exemption is granted for a large share of a community's processing activity, it could have a very different effect on the community's economy. In small communities, in which crab processing dominates the economy for a portion of the year, the loss of a substantial portion of the IPQ processing could have profound effects. Even an agreement requiring substantial compensation to the community may ineffectively compensate for lost economic activity, since payments will have a different effect on the community than economic activity. Alternatively, an agreement may provide for compensating landings. These landings may be a better substitute for the lost landings than payments, but an IFQ holder might not be able to commit to those deliveries for any redirected landings. So, payments may be the only feasible compensation for some exemptions.

It should be noted that, in some instances, a community that would have received a landing but for an intervening circumstance could be better off under the exemption than with a strict requirement to comply with regional landing requirements. For example, under the status quo, IFQ may be either left unharvested or redirected to another community in a region by an IFQ holder that is unable to make a delivery to a community.[38] If the IFQ holder is able to use an exemption to redirect the landing to another region and is required to pay compensation to the community under the agreement, the community would be better off under the exemption. Arguably, movement of the processing within the region would leave the region unaffected, but redistribution of landings among communities will affect those local economies.

[37] It is possible that an interruption in processing could increase economic activity, if plant workers spend more time interacting with the community, as a result of a hiatus in processing.

[38] It may be possible to delay a delivery that would otherwise receive an exemption until processing capacity can be made available within a region.

Notwithstanding the case of movement of a small number of landings, it is also important to consider circumstances that affect a large portion of a community's processing being redirected under an exemption. In these instances, it is likely that processing in the community will have been prevented for an extended period. Obligations to exert efforts to avoid the exemption and compensation provisions in the exemption agreement should prevent IFQ and IPQ holders from redirecting landings for simple convenience. The provisions should also prevent excessive abuse of the exemption, in the event a single location within a region is unavailable for deliveries, while processors may be accessible in other locations (or a processor can be brought to a location to support deliveries). Assuming deliveries are prevented in a region, without the exemption, these landings would not occur. If they occur under the exemption, the community would receive any compensation prescribed by the agreement (or alternatively the regional interest protected by the compensation provision would receive that compensation).

It should be noted that in each case described, it is assumed that community interests are well represented by the regional entity. Under any of the options for defining region/community representation, it is possible that community and regional interests may not be aligned.

Under the first option, the right of first refusal holder would be given the contracting authority. Since IFQ may be used in a different location than the location holding the right of first refusal, it is possible that a different location may be represented in the contract. Overall, the distribution of interests among communities would parallel their historic processing interests in the qualifying years, but whether that distribution of interests continues (and whether it continues to apply to any specific shares) is uncertain. Consequently, it is possible that the community that benefits from the contract might be different from the community that loses processing because of the exemption. **At the extreme, if processing were to move from a historical processing community in a fishery, then the regional/community represented in the exemption agreement may derive a benefit from the fishery only through compensation that is paid when the exemption is exercised. This misalignment of interests could lead to the exemption being granted, despite reasonable alternatives for avoiding the exemption.**

In addition, it is possible that the interests of the right holder (which is selected to represent the community with respect to processor share purchases and holdings) may diverge from the interests of the community in tax revenues and economic activity. In some instances, the holder of the right (or former holder of the right) may be the holder of shares at issue. **The potential conflict is the most apparent when a PQS holder (that might have acquired shares under the right of first refusal) is also the regional/community representative with contracting authority related to the exemption. It is possible that the greatest value from the entity's PQS holdings would be realized under the exemption, while the community derives the greatest benefit through local processing activity. In this circumstance, having the PQS holder acting as the regional contracting authority for the exemption would seem inappropriate.**

Under the second option, the contracting authority is given to an entity selected by the community benefiting from the right of first refusal. This option could also suffer from the mismatch of interests that could arise, if shares are used outside of the community in which historic processing occurred. The option, however, attempts to address the potential misalignment of interests that could arise from the right holder (or possibly the PQS holder) representing regional interests in contracts defining the exemption.

Under the third option, a region representative would be selected by all communities that benefited from the right of first refusal in a region. This option would reduce the potential for conflicts by allowing all communities in a region that have historical interests under the program to influence the exemption

contract. If the distribution of landings changes in the long run, it is possible that the entity could be unrepresentative of the community interests in the fisheries.

A fishery and regional distinctions should be considered when evaluating these different options and community effects. In the North region, with only two communities benefiting from rights of first refusal, it is more likely that the communities could work together under an option that relies on a regional entity selected by the communities to negotiate exemption contracts. In addition, with only two communities likely to support processing in the region in the foreseeable future, it is also more likely that community interests will be well represented under any of the options.

It is not clear how any of the options would apply in the West region of the Western Aleutian Islands golden king crab fishery. No communities hold rights of first refusal in that region, although rights of first refusal are used to define regional contracting entities under all options.

In the South region, several communities benefit from rights of first refusal and support processing. It is unclear whether rights of first refusal will remain aligned with the distribution of processing for any extended period. Notwithstanding this potential misalignment of interests, the likelihood of an unforeseeable circumstance meriting an exemption is lowest in the South region, as that area has several available facilities and processing locations that can be used for redirected landings.

2.4.7 Effects on management, monitoring, and enforcement

The status quo requires monitoring of an absolute rule requiring compliance with regional designations on IFQ and IPQ. The exemption alternative allows for an exemption from those requirements creating a slightly different management burden. This section discusses those differences.

Status quo

Under the status quo, managers monitor use of regionally designated IFQ and IPQ through the elandings system. Since compliance with designations is required without exception, oversight is simplified. Any violation could be tracked and verified through the elandings monitoring system, which creates a record of landings including IFQ and IPQ usage by facility.[39]

The exemption alternative

Under the exemption alternative, NOAA Fisheries managers will be required to oversee a few additional aspects of share holdings and usage. In the first instance, NOAA Fisheries will be required to assess the proper party to contract on behalf of regions with respect to the exemption contract. Depending on the option selected, this duty could involve receiving additional documentation from communities in a region verifying the selection of the entity and documentation from the entity, including documents verifying its establishment and persons who have contracting and signatory authority. These activities are similar to those undertaken with respect to rights of first refusal and should impose only a minor additional burden on managers.

Since exemptions will only be granted for IFQ and IPQ for which one or two affidavits are received, NOAA Fisheries must also collect exemption affidavits from the parties. Since most IFQ holders will deliver to multiple IPQ holders, it is likely that each IFQ and IPQ holder that wishes to have the

[39] Current records of landings for floating processors do not always include a specific processing location, instead labeling some landings as "at-sea". Although this shortcoming is not believed to have caused any complications in monitoring regional landing requirements to date, the absence of a recorded location at the time of landing could complicate monitoring in the future.

exemption available will need to enter several contracts. The number of contracts could differ depending on the option selected for identifying the region representative. If regions have multiple representatives (such as each right of first refusal holder) more contracts will be required.

Once affidavits are filed, the exemption would be available for the number of pounds of IFQ and IPQ specified in the affidavits.[40] Any time an exemption is sought, NOAA Fisheries will need to process the affidavit(s) of the IFQ holder, IPQ holder, and community/region representative identifying the poundage subject to the exemption. When those shares are used, NOAA Fisheries would record their use against the applicable accounts and, if used outside of the designated region, NOAA Fisheries would then identify their use as permitted (despite non-compliance with the regional landing requirement). Beyond documentation of usage and eligibility for the exemption, other aspects of exemption oversight and enforcement would be shifted to participants (including the regional entity)., which may be landed outside of the designated region without violation. This structure removes discretion from NOAA Fisheries, simplifying and streamlining administration.

By shifting contract performance oversight to the parties, NOAA Fisheries burden for overseeing performance (particularly performance of compensation requirements) is limited. Enforcement of contractual provisions will be through civil proceedings. Although this will require greater diligence on the parts of parties to the contract, administrative enforcement burdens are reduced. Although the shifting of management burdens to participants should reduce agency administration costs, the costs to participants may increase. Parties will need to negotiate contracts defining the exemption and any compensation and will need to oversee performance of these contracts, such as possible obligations to land certain shares with certain processors or in certain communities as compensation for the exemption.[41]

In addition, NOAA Fisheries will be required to monitor the delivery of reports. The only reporting requirements are the delivery of the report to community representatives and to the Council. NOAA Fisheries will require the IFQ holder to verify timely delivery of the report to communities and delivery of the report to the Council. Failure to make timely delivery could result in an enforcement action.

3 Regulatory Flexibility Analysis

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

[40] **It should be noted that post delivery transfers could not be used to cover exempt landings. Use of post delivery transfers of Class A IFQ and matching IPQ would overly complicate administration of the exemption. In addition, it is unclear that IFQ and IPQ holders could attest to a contract with a community/regional entity for an exemption for shares that they do not hold.**

[41] Since performance requirements can be renegotiated, it is possible that some regional entities will have relatively straightforward compensation agreements, but would be willing to accept performance of other actions, depending on the circumstances. For example, an initial agreement may provide only for financial compensation. Yet, a regional entity could subsequently agree to waive those payments, but only after the IFQ and IPQ holder provide compensating deliveries (or some other satisfactory compensation).

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

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

The IRFA must contain:

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

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

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

3.1 Definition of a Small Entity

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

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

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

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

Affiliation may be based on stock ownership when: (1) A person is an affiliate of a concern if the person owns or controls, or has the power to control 50 percent 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 percent of the voting stock of a concern, with minority holdings that are equal or approximately equal in size, but the aggregate of these minority holdings is large as compared with any other stock holding, each such person is presumed to be an affiliate of the concern.

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

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

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

3.2 A description of the reasons why action by the agency is being considered

In the crab rationalization program, certain IFQ and IPQ are subject to regional designations that require that the landing and processing of crab using those shares occur in certain regions. It is recognized that certain natural conditions (such as icing conditions in the northern region) and man-made events could prevent deliveries in compliance with the regional landing requirement. This action would create a well-defined, limited exemption to the landing requirement to mitigate safety risks and economic hardships arising out of the strict regional landing requirement. The exemption would allow certain affected parties to define aspects of the exemption, including mitigation requirements and compensation, to limit any adverse effects of the exemption.

3.3 The objectives of, and the legal basis for, the proposed rule

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

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

The proposed rule will create an exemption to regional landing requirements for IFQ holders and IPQ holders who enter an agreement with a regional/community entity. In the 2009-2010 season, 9 entities held IFQ subject to regional landing requirements; three of these IFQ holders were small entities. In that same season, 14 of the 22 entities that held IPQ subject to regional landing requirements were small entities. The number of small community/regional entities regulated by this action will be estimated after the Council identifies the method of selecting community/regional representation.

3.5 A description of the projected reporting, recordkeeping, and other compliance requirements

Two types of reporting will be required by this action. First, the parties to any contract applying for an exemption will need to file affidavits reporting those contracts. Under one option, the parties will be required to file an affidavit attesting to a framework agreement defining mitigation, compensation, and reserve pool requirements. It may be anticipated that most IFQ holders will complete these affidavits and

underlying agreements, as the affidavit will be a prerequisite for an exemption. Under both options, these parties will need to file an additional affidavit to receive the exemption. The number of exemptions that might be granted is not known and will depend on circumstances, as well as the positions asserted by the parties in any negotiation.

The second reporting requirement will be annual reports of IFQ holders who are parties to a framework agreement. These reports will need to include descriptions of any reserve pool, the number of times an exemption was requested and used, mitigation measures, an evaluation of the need for exemptions and their effects, and a description of the consistency of the framework agreement with the Council's stated intent for this action. As with the required affidavits the burdens associated with this reporting requirement are likely to vary with conditions in the fisheries and the extent to which conditions are perceived to need the exemption. In some years, only a description of the reserve pool arrangements and the framework agreement (and its consistency with Council intent) are likely to be necessary. In years in which the exemption is used, a more extensive report will be required, including descriptions of mitigation used prior to requesting the exemption and an assessment of the effects of the exemption on others.

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

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

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

In addition to the preferred alternative, the Council also considered alternatives that would require NOAA Fisheries to administer the exemption, by making a factual determination of whether deliveries required to be made in a region are prevented. Such a factual finding requires not only a complete assessment of the factor that arguably prevents a delivery, but also of the potential availability of other processing facilities in the region to overcome the barrier to the delivery. These findings will require factual assessments of circumstances in remote areas. Such findings typically require time, which may jeopardize safety in emergencies. In addition, the need for administrative review of these findings could result in additional delays. Consequently, the Council elected to pursue alternatives that would not rely on agency administrative discretion. Instead, each of the defined affected parties would have discretion concerning when to consent to an exemption. This approach also allows the parties flexibility to develop mitigation and compensation requirements that would, in turn, minimize the need for the exemption and ensure that the parties harmed by the exemption receive reasonable compensation for their losses.

These alternatives comprise the suite of "significant alternatives" for purposes of the RFA.

4 National Standards and Fishery Impact Statement

4.1 National Standards

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

National Standard 1

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

Nothing in the proposed alternatives would undermine the current management system that prevents overfishing. The proposed alternatives would have no effect on conservation and management of crab in the Bering Sea and Aleutian Islands.

National Standard 2

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

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

National Standard 3

To the extent practicable, an individual stock of fish shall be managed as a unit throughout its range, and interrelated stocks of fish shall be managed as a unit or in close coordination.

The action has no effect on the definition of stocks for management purposes.

National Standard 4

Conservation and management measures shall not discriminate between residents of different states. If it becomes necessary to allocate or assign fishing privileges among various U.S. fishermen, such allocation shall be (A) fair and equitable to all such fishermen, (B) reasonably calculated to promote conservation, and (C) carried out in such a manner that no particular individual, corporation, or other entity acquires an excessive share of such privileges.

The proposed alternatives would treat all participants in the fisheries the same, regardless of their residences. The allocations in the fisheries among participants are unaffected by this action.

The total annual allocation in each fishery will be based on the fishery management plan that is developed to promote conservation of the resource. Any changes in a fishery, as a result of the Crab Rationalization Program, that impact conservation of the resource will be taken into account when setting the TACs in a year. This action will have no effect on that processor or the resource.

Limits on individual holdings or usage of allocations prohibit any individual from acquiring an excessive share of harvest privileges or controlling an excessive share of processing in the fisheries. The alternatives have no effects on the degree of consolidation in any sector.

National Standard 5
Conservation and management measures shall, where practicable, consider efficiency in the utilization of fishery resources, except that no such measure shall have economic allocation as its sole purpose.

The alternatives proposed should improve efficiency in use of the resource by prevented excessive costs and potential waste.

National Standard 6
Conservation and management measures shall take into account and allow for variations among, and contingencies in, fisheries, fishery resources, and catches.

Variations in fisheries, fishery resources and catches are addressed through changes in annual allocations. These changes in allocations will be used to ensure conservation of the resource in the future and are unaffected by this action.

National Standard 7
Conservation and management measures shall, where practicable, minimize costs and avoid unnecessary duplication.

The alternatives will have minor affects on management costs, but minimize costs to the extent practicable by relying on participants and affected parties to represent and defend their interests.

National Standard 8
Conservation and management measures shall, consistent with the conservation requirements of this Act (including the prevention of overfishing and rebuilding of overfished stocks), take into account the importance of fishery resources to fishing communities in order to (A) provide for the sustained participation of such communities, and (B) to the extent practicable, minimize adverse economic impacts on such communities.

Although the alternatives could affect community interests through the redirection of landings, adverse effects are minimized through allowing regional representatives to negotiate mitigation requirements to minimize redirected landings and compensation requirements, in the event landings are redirected. The impacts of the rationalization program on communities are generally addressed in the Crab EIS. No further effects arise out of this action.

National Standard 9
Conservation and management measures shall, to the extent practicable, (A) minimize bycatch, and (B) to the extent bycatch cannot be avoided, minimize the mortality of such bycatch.

The exemption will have no effect on bycatch.

National Standard 10
Conservation and management measures shall, to the extent practicable, promote the safety of human life at sea.

The exemption alternative should reduce the incentive for vessel operators to expose vessels and crews to safety risks by allowing for an exemption from regional landing requirements, in the event landings are prevented by an unanticipated circumstance.

4.2 Section 303(a)(9) - Fisheries impact statement

Section 303(a)(9) of the Magnuson-Stevens Act requires that any management measure submitted by the Council take into account potential impacts on the participants in the fisheries, as well as participants in adjacent fisheries. The impacts of the alternatives for allocation of QS and PQS in the *C. bairdi* fisheries on participants in the harvester sector (including LLP license holders and captains) and processor sector have been discussed in previous sections of this document. This action will have no effect on participants in other fisheries.

5 References

In re Appeal of Aleutian Pribilof Island Community Development Association v. Snopac Products, Inc. (May 2, 2008) National Marine Fisheries Service, Alaska Region, Office of Administrative Appeals (Appeal No. 07-0003).

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6 LIST OF PREPARERS

Mark Fina
Michael Fey, AkFIN

7 PERSONS CONSULTED

Gretchen Harrington
Glenn Merrill
Mateo Paz Soldan
Joe Sullivan
Heather McCarty
Lisa Ross
Everette Anderson
Steve Minor
Edward Poulsen
Jessica Gharrett
Brent Pristas