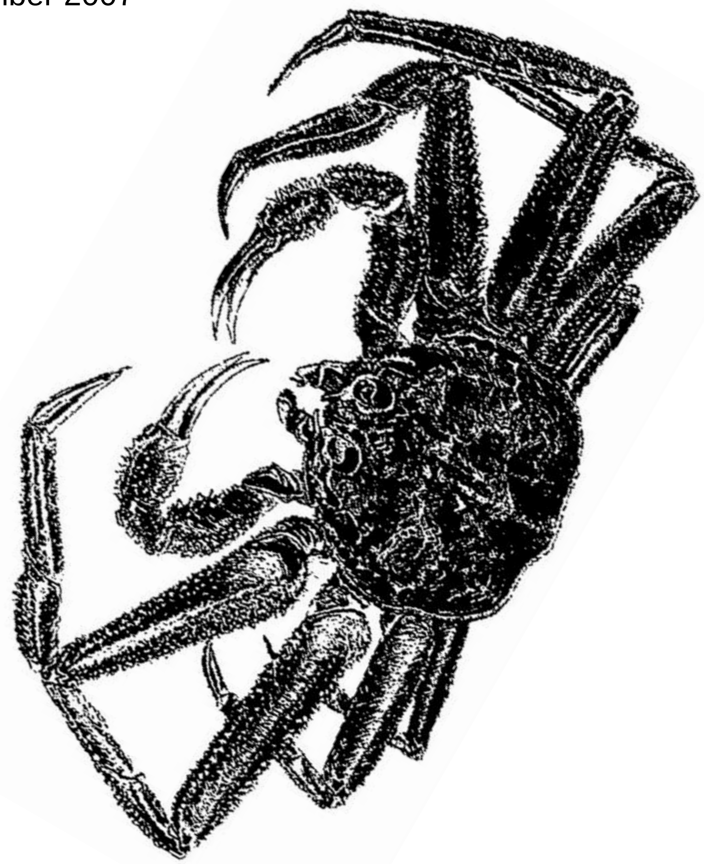
REGULATORY IMPACT REVIEW

For a proposed Regulatory Amendment to the Crab Rationalization Program to Implement the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006 and the Coast Guard and Maritime Transportation Act of 2006.

December 2007



Lead Agency:
Alaska Regional Office
National Marine Fisheries Service
Juneau, Alaska

Responsible Official:
Dr. James W. Balsiger
Administrator,
NMFS Alaska Region

For Information Contact:
Gretchen Harrington
National Marine Fisheries Service
Alaska Region
P.O. Box 21688
Juneau, Alaska 99802-1168
Ph. (907) 586 – 7228

Abstract: This action amends the regulations implementing the Crab Rationalization Program to comply with the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006 (MSRA) and the Coast Guard and Maritime Transportation Act of 2006 (Coast Guard Act). Section 122(a) of the MSRA requires that the Secretary of Commerce authorize an eligible entity and its commonly owned affiliates to combine catcher vessel owner quota shares and processor quota shares and exchange these shares for newly created converted catcher/processor owner quota shares. Section 417 of the Coast Guard Act mandates the Secretary of Commerce to issue processor quota share for the Bristol Bay red king crab and the Bering Sea snow crab fisheries to Blue Dutch, LLC, under specific conditions. This document addresses the requirements of the Presidential Executive Order 12866.

CONTENTS

REGULATORY IMPACT REVIEW

This document is an economic analysis of the proposed rule, addressing the requirements of Presidential Executive Order 12866 (E.O. 12866), which requires a cost and benefit analysis of Federal regulatory actions. This action amends the regulations implementing the Crab Rationalization Program (Program) to comply with the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006 (MSRA) and the Coast Guard and Maritime Transportation Act of 2006 (Coast Guard Act). Section 122(a) of the MSRA requires that the Secretary of Commerce authorize an eligible entity and its commonly owned affiliates to combine catcher vessel owner quota shares and processor quota shares and exchange these shares for newly created converted catcher/processor owner quota shares. Section 417 of the Coast Guard Act mandates the Secretary of Commerce to issue processor quota share for the Bristol Bay red king crab and the Bering Sea snow crab fisheries to Blue Dutch, LLC, under specific conditions.

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.

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.

This document incorporates by reference, and relies heavily on the information and analysis contained in, the Bering Sea Aleutian Islands Crab Fisheries Final Environmental Impact Statement/Regulatory Impact Review/Initial Regulatory Flexibility Analysis/Social Impact Assessment, August 2004 (available on the NMFS Alaska Region website at:
http://www.fakr.noaa.gov/sustainablefisheries/crab/eis/default.htm).

Throughout this analysis, that document is referred to as the "Crab EIS". Additional information concerning the Program and its impacts on the human environment are contained in that document.

Crab Rationalization Program

In January 2004, the U.S. Congress amended Section 313(j) of Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) to mandate the Secretary of Commerce implement the Crab Rationalization Program (Program) for the Bering Sea and Aleutian Islands crab fisheries, developed by the North Pacific Fishery Management Council (Council). On March 2, 2005, NMFS issued regulations to establish the Program (70 FR 10174). Crab fishing began under this Program on August 15, 2005.

In implementing the Program in 2005, NMFS initially issued processor quota share (PQS), catcher vessel owner quota share (CVO QS), and catcher processor owner quota share (CPO QS) to eligible applicants. In 2006, NMFS initially issued PQS to the Blue Dutch, LLC, under the requirements of section 417(a) of the Coast Guard Act. NMFS may initially issue additional quota share pursuant to ongoing appeal adjudications.

CVO QS represents an exclusive, but revocable privilege that provides the holder with an annual allocation to harvest a specific percentage of the total allowable catch (TAC) from a fishery. The annual allocations of TACs, in pounds, are referred to as individual fishing quotas (IFQs). Under the "regional" requirement, CVO QS is designated by landing region and harvests are required to be delivered either in the North or South region.

PQS represents an exclusive, but revocable privilege to receive deliveries of a specific portion of the annual TAC from a fishery. An annual allocation of PQS is referred to as individual processing quota (IPQ) and expressed in pounds of crab. PQS is regionally designated for processing in the North or South region.

CPO QS represents an exclusive but revocable privilege to harvest a percentage of the TAC and process that crab onboard. Under the Program, CPO QS do not have regional designations.

The regional designation of CVO QS and PQS are intended to preserve the historic geographic distribution of landings in the fisheries. Two regional designations were created for the Bering Sea snow crab (*Chionoecetes opilio*) and Bristol Bay red king crab (*Paralithodes camtschaticus*) fisheries. The North Region consists of all areas in the Bering Sea north of 56°20' N. latitude. The South Region encompasses all remaining areas. Crab harvested with regionally designated CVO QS is required to be delivered to a processor in the designated region. Likewise, a processor with regionally designated PQS is required to accept delivery of and process crab in the designated region.

Proposed Action

This action proposes to amend the regulations implementing the Program to comply with the MSRA and the Coast Guard Act. Section 122(a) of the MSRA requires that the Secretary of Commerce authorize an eligible entity and its commonly owned affiliates to combine CVO QS and PQS and exchange these shares for newly created converted catcher/processor owner quota shares (converted CPO QS). Section 417 of the Coast Guard Act mandates the Secretary of

Commerce to issue PQS for the Bristol Bay red king crab and the Bering Sea snow crab fisheries to Blue Dutch, LLC, under specific conditions.

Converted Catcher Processor Owner Quota Shares

On January 12, 2007, the President signed the MSRA, which added a new requirement in section 122(a) for the Secretary of Commerce to amend the Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs (FMP) to authorize conversion of CVO QS and PQS to converted CPO QS. On April 12, 2007, the Secretary of Commerce approved Amendment 25 to the FMP to satisfy the MSRA requirement. This proposed rule would implement Amendment 25.

The proposed action changes the regulations implementing the Program at 50 CFR 680 to authorize an eligible entity and its commonly owned affiliates to combine North PQS and North CVO QS and exchange these shares for newly created converted CPO QS. This proposed rule would authorize, on an annual basis, two types of quota share conversions and define the entities eligible to make those conversions.

First, an eligible entity holding PQS, along with its commonly owned affiliates, could elect to combine their North CVO QS with their North PQS and exchange them for converted CPO QS on an annual basis. Entities could do this under the following two conditions: (1) if NMFS initially issued the entity both CPO QS and PQS under the Program, and that PQS, in combination with the PQS of its commonly owned affiliates, is less than 7 percent of the total PQS pool for that year; or (2) if NMFS initially issued the entity CPO QS under the Program and PQS under the Coast Guard Act. Each eligible entity would be limited to converting only the PQS that it, along with its commonly owned affiliates, was initially issued by NMFS.

Second, an eligible entity holding CVO QS, along with its commonly owned affiliates, could elect to combine any North PQS with its North CVO QS and exchange them for converted CPO QS on an annual basis. The only entity that could do this would be an entity to which NMFS initially issued CPO QS and PQS under the Program, and that PQS, in combination with the PQS of its commonly owned affiliates, is more than 7 percent of the total PQS pool for that year. This eligible entity would be limited to converting only the CVO QS that it, along with its commonly owned affiliates, was initially issued by NMFS.

Additionally, the amount of converted CPO QS issued to each entity cannot exceed 1 million pounds during any calendar year. The proposed rule would implement the MSRA’s the area of validity for converted CVO QS by requiring that any crab harvested under a CPO IFQ permit derived from converted CPO QS must be offloaded in the Bering Sea subarea north of 56 degrees 20' N. latitude.

While the statutory language does not specifically define which fisheries are subject to this provision, NMFS would only create CPO QS for the Bering Sea snow crab and Bristol Bay red king crab fisheries, because these were the only fisheries for which the eligible entities were initially issued both North PQS and CPO QS.

Section 122(a) of the MSRA mandates the exchange rate for conversion and limits the total amount of shares that can be converted. Eligible entities will receive one unit of converted CPO QS in exchange for one unit of North CVO QS and 0.9 units of North PQS.

The proposed rule establishes that an eligible entity would elect, on an annual basis, whether to receive converted CPO QS and the amount of North CVO QS and North PQS they wish to convert by completing the annual application for converted CPO QS/IFQ permit by August 1 for that crab fishing year. Converted CPO QS and the resulting CPO IFQ would not be transferable. This restriction on converted CPO QS transfers is consistent with the MSRA. However, CPO IFQ derived from converted CPO QS may be issued to a cooperative.

Issuance of PQS and IPQ to Blue Dutch, LLC

On July 11, 2006, the President signed the Coast Guard Act which contained a provision mandating the Secretary of Commerce to issue PQS for the Bristol Bay red king crab and the snow crab fisheries to Blue Dutch under specific conditions. First, NMFS must issue Blue Dutch PQS equal to 0.75 percent of the total number of PQS units issued for each fishery. NMFS issued an Initial Administrative Determination (IAD) on July 31, 2006, to issue Blue Dutch 3,015,229 units of Bristol Bay red king crab PQS and 7,516,253 units of snow crab PQS. PQS units issued to Blue Dutch were be assigned a regional designation according to the procedures established in regulations. Blue Dutch cannot transfer the PQS issued under the Coast Guard Act.

Second, NMFS must issue IPQ for that PQS whenever the TAC for the fishery is more than 2 percent higher than the most recent TAC in effect for that fishery prior to September 15, 2005. Based on that formula, NMFS calculated the TAC threshold for these fisheries. The TAC used for this calculation is the total TAC, which includes the Community Development Quota (CDQ) allocation. NMFS will issue Bristol Bay red king crab IPQ to Blue Dutch when the TAC for that fishery is greater than 15,732,480 pounds (7,136.2 mt). NMFS will issue snow crab IPQ to Blue Dutch when the TAC for that fishery is greater than 21,350,640 pounds (9,684.6 mt). This proposed rule is necessary to specify in regulations the statutory thresholds for issuing IPQ to Blue Dutch to ensure the regulations implementing the Program conform to the Coast Guard Act.

Statutory authority for the proposed action

The proposed action is required by section 122(a) of the MSRA and section 417 of the Coast Guard Act.

MAGNUSON-STEVENS REAUTHORIZATION ACT of 2006
SEC. 122. CONVERSION TO CATCHER/PROCESSOR SHARES.

> *(a) IN GENERAL.—*
> *(1) AMENDMENT OF PLAN.—Not later than 90 days after the date of enactment of this Act, the Secretary of Commerce shall amend the fishery management plan for the Bering Sea/Aleutian Islands King and Tanner Crabs for the Northern Region (as that term is used in the plan) to authorize—*
> *(A) an eligible entity holding processor quota shares to elect on an annual basis to work together with other entities holding processor quota shares and affiliated with such eligible entity through common ownership to combine any catcher vessel quota shares for the Northern Region with their processor quota shares and to exchange them for newly created catcher/processor owner quota shares for the Northern Region; and*
> *(B) an eligible entity holding catcher vessel quota shares to elect on an annual basis to work together with other entities holding catcher vessel quota shares and affiliated with such eligible entity through common ownership to combine any processor quota shares for the Northern Region with their catcher vessel quota shares and to ex-*

change them for newly created catcher/processor owner quota shares for the Northern Region.

(2) ELIGIBILITY AND LIMITATIONS.—

(A) The authority provided in paragraph (1)(A) shall—

(i)(I) apply only to an entity which was initially awarded both catcher/processor owner quota shares, and processor quota shares under the plan (in combination with the processor quota shares of its commonly owned affiliates) of less than 7 percent of the Bering Sea/Aleutian Island processor quota shares; or

(II) apply only to an entity which was initially awarded both catcher/processor owner quota shares under the plan and processor quota shares under section 417(a) of the Coast Guard and Maritime Transportation Act of 2006 (Public Law 109–241; 120 Stat. 546);

(ii) be limited to processor quota shares initially awarded to such entities and their commonly owned affiliates under the plan or section 417(a) of that Act; and

(iii) shall not exceed 1 million pounds per entity during any calendar year.

(B) The authority provided in paragraph (1)(B) shall—

(i) apply only to an entity which was initially awarded both catcher/processor owner quota shares, and processor quota shares under the plan (in combination with the processor quota shares of its commonly owned affiliates) of more than 7 percent of the Bering Sea/Aleutian Island processor quota shares;

(ii) be limited to catcher vessel quota shares initially awarded to such entity and its commonly owned affiliates; and

(iii) shall not exceed 1 million pounds per entity during any calendar year.

(3) EXCHANGE RATE.—The entities referred to in paragraph (1) shall receive under the amendment 1 unit of newly created catcher/processor owner quota shares in exchange for 1 unit of catcher vessel owner quota shares and 0.9 units of processor quota shares.

(4) AREA OF VALIDITY.—Each unit of newly created catcher/processor owner quota shares under this subsection shall only be valid for the Northern Region.

COAST GUARD AND MARITIME TRANSPORTATION ACT OF 2006
SEC. 417. QUOTA SHARE ALLOCATION.

(a) IN GENERAL.— The Secretary of Commerce shall modify the Voluntary Three-Pie Cooperative Program for crab fisheries of the Bering Sea and Aleutian Islands being implemented under section 313(j) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1862(j)) to require that Blue Dutch, LLC, receives processor quota shares units equal to 0.75 percent of the total number of processor quota share units for each of the following fisheries: the Bristol Bay red king crab fishery and the Bering Sea C. opilio crab fishery.

(b) APPLICABILITY.—The modification made under subsection (a) shall apply with respect to each fishery referred to in subsection (a) whenever the total allowable catch for that fishery is more than 2 percent higher than the most recent total allowable catch in effect for that fishery prior to September 15, 2005.

(c) SAVINGS PROVISION.—Nothing in this section affects the authority of the North Pacific Fishery Management Council to submit, and the Secretary of Commerce to imple-

ment, changes to or repeal of conservation and management measures under section 313(j)(3)) of the Magnuson- Stevens Fishery Conservation and Management Act (16 U.S.C. 1862(j)(3)).
(d) REGULATIONS.—Not later than 60 days after the date of enactment of this Act, the Secretary of Commerce shall issue regulations to implement this section.

Purpose and need for action

The purpose of the proposed action is to comply with the MSRA and Coast Guard Act. Allowing conversion of quota shares would allow eligible entities to annually elect to harvest and process crab, currently designated for shore-side delivery and processing, onboard a catcher/processor vessel. This proposed rule would reduce each eligible entity's operating costs associated with purchasing crab, processing crab on land or in a stationary floater processor, and complying with the Program's arbitration system. Issuing IPQ to Blue Dutch when the Bristol Bay red king crab and/or snow crab TACs reach the threshold established in the Coast Guard Act would comply with the congressional mandate.

Description of the Alternatives

Alternative 1: No action

Under this alternative, the regulations would not be changed. Entities would not be allowed to combine North PQS and North CVO QS and exchange these shares for newly created converted CPO QS. The Program regulations would not specify the threshold for issuing IPQ to Blue Dutch.

Alternative 2: Revise regulations (preferred alternative)

Revise regulations to comply with section 122(a) of the MSRA and section 417 of the Coast Guard Act. This proposed rule would (1) authorize eligible entities and their commonly owned affiliates to annually elect to combine North PQS and North CVO QS and exchange these shares for newly created converted CPO QS, and (2) specify the thresholds for issuing IPQ to Blue Dutch.

Effects of the alternatives

The following analysis uses estimates derived from initial issuance data and 2006 quota share holding and affiliation data to provide an understanding of possible economic impacts. Affiliation can change on an annual basis, which would impact the amount of PQS and CVO QS that could be converted. Actual eligibility determinations and allocations would be made on an annual basis using information in the NMFS Official Record and provided by the entities on the annual application for converted CPO QS/IFQ permit.

The primary impacts of this proposed rule would take two forms. The first would be to permit the voluntary conversion of some crab processing in the designated North region from shore-side plants to catcher/processor vessels. Because this decision is "strictly voluntary", it would not take place unless the commercial entities subject to this rule change directly benefited from the conversion. The second result would accrue to the North region community (ies) linked to the PQS being converted. This impact would be incurred "involuntarily" and would result in the loss of a portion of the community's (ies') associated crab processing activity.

Effects on Eligible Entities

According to the NMFS Official Record, three individual entities are eligible for these new provisions, under the criteria in section 122(a) of the MSRA. Yardarm Knot, Inc, and Blue Dutch, LLC, would be eligible for the first type of conversion. Trident Seafoods would be eligible for the second type of conversion. NMFS cannot predict the annual amount of converted CPO QS that would be annually issued because the participants would voluntarily elect to exercise this provision, based upon their individual economic interests. And, if they choose to do so, they need not request conversion of all CVO QS and PQS held.

Since the eligible entities would have the opportunity to annually elect to make the share conversion, it is reasonable to assume that they would only do so if they believed they would benefit from the conversion. Whether the eligible entities exercise this option, or not, they would gain from the added operational flexibility provided them by this action.

No eligible entity, in practice, would be able to convert all of its share holdings to converted CPO QS because of the statutory provisions that limit conversions. Specifically, an eligible entity holding PQS that elects to combine any North CVO QS with its North PQS and exchange them for converted CPO QS would be limited to North PQS initially awarded to that entity and its commonly owned affiliates, under the Program or section 417 of the Coast Guard Act. An eligible entity holding CVO QS that elects to combine any North QS with its North CVO QS and exchange them for converted CPO QS would be limited to CVO QS initially awarded to that entity and its commonly owned affiliates. As a result, NMFS estimates that, for snow crab, the eligible entities could only convert up to a total of 3.05 percent of the PQS pool to converted CPO QS. Similarly, the eligible entities could only convert up to a total of 3.09 percent of the CVO QS pool to converted CPO QS. For Bristol Bay red king crab, the eligible entities could only convert up to a total of 0.24 percent of the PQS pool and the CVO QS pool to converted CPO QS. Note that these estimates could change based on affiliation information provided by the entities on the annual application for crab IFQ/IPQ or converted CPO QS permit.

Yardarm Knot

Yardarm Knot and its commonly owned affiliates Highland Light Seafoods, LLC, and Gulf Winds, LLC, own two large catcher processors, the Highland Light and the Westward Wind. The Highland Light primarily targets pollock and the Westward Wind participates in the Bristol Bay red king crab and Bering Sea snow crab and Tanner crab fisheries.

Yardarm Knot would only be able to combine and convert snow crab PQS and CVO QS because they were not initially issued Bristol Bay red king crab PQS. According the NMFS Official Record, Yardarm Knot and its commonly owned affiliates were initially issued 5.5 percent of the snow crab PQS pool and 0.40 percent of the snow crab CVO QS pool. Since they cannot convert more than their holdings, the total amount converted would be limited by their CVO QS holdings. If they elected to convert all of their CVO QS to converted CPO QS, they would convert 0.36 percent of their PQS and still have approximately 5.1 percent of the PQS pool remaining as PQS to process on shore in St. Paul.

Blue Dutch

Blue Dutch, LLC, operates vessels in the crab and groundfish fisheries in the North Pacific. Blue North Fisheries (an affiliate of Blue Dutch) has a fleet of seven catcher processors ranging in size from 124 ft. to 180 ft length overall. The fleet primarily participates in the hook-and-line Pacific cod fishery in the Bering Sea.

Blue Dutch, and its commonly owned affiliates Blue Attu, LLC, Blue Aleutian, LLC, Tempest Fisheries II, LLC, and Sultan, LLC, would be eligible to combine and convert snow crab and Bristol Bay red king crab PQS and CVO QS, because NMFS initially issued Blue Dutch CPO QS under the Program and PQS under the Coast Guard Act. According the NMFS Official Record, Blue Dutch and its commonly owned affiliates were initially issued 0.35 percent of the snow crab PQS pool and 0.97 percent of the CVO QS pool. Since they cannot convert more than their holdings, the total amount converted would be limited by their PQS holdings. If they elected to convert all of their snow crab PQS to converted CPO QS, they would convert 0.39 percent of their CVO QS and still have 0.57 percent of the CVO QS pool remaining as CVO QS to deliver to an on-shore processor in St. Paul. For Bristol Bay red king crab, Blue Dutch and its commonly owned affiliates hold 0.02 percent of the PQS pool and 0.14 percent of the CVO QS pool. If they elected to convert all of their Bristol Bay red king crab PQS to converted CPO QS, they would convert 0.02 percent of their CVO QS and still have 0.12 percent of the CVO QS pool remaining as CVO QS.

NMFS issued an IAD on July 31, 2006, to issue Blue Dutch 3,015,229 units of Bristol Bay red king crab PQS and 7,516,253 units of snow crab PQS. Table 1 provides the PQS units and region designations for the PQS issued to Blue Dutch. NMFS assigned a regional designation to the PQS units issued to Blue Dutch according to the procedures established in regulations.

Table 1 Blue Dutch PQS units and regional designations for Bristol Bay red king crab and snow crab fisheries.

Fishery	Region	Total Units
Bristol Bay red king crab	North	76,888
	South	2,938,341
Snow crab	North	3,532,639
	South	3,983,614

The Coast Guard Act requires NMFS to issue IPQ for that PQS whenever the TAC for the Bristol Bay red king crab or snow crab fishery is more than 2 percent higher than the most recent TAC in effect for the respective fishery prior to September 15, 2005. Based on that formula, NMFS calculated the TAC threshold for these fisheries.

For Bristol Bay red king crab, the most recent TAC prior to September 15, 2005, was the TAC for the October 2004 fishery of 15.4 million pounds. NMFS will issue Bristol Bay red king crab IPQ to Blue Dutch LLC whenever the TAC for that fishery is greater than 15,732,480 pounds (7,136.2 mt). The Bristol Bay red king crab TAC was below the threshold for the 2006/2007 crab fishing year, therefore, NMFS did not issue Bristol Bay red king crab IPQ to Blue Dutch. NMFS issued IPQ to Blue Dutch for the 2007/2008 crab fishing year because the TAC was above the threshold.

For snow crab, the most recent TAC prior to September 15, 2005, was the TAC for the January 2005 fishery of 20.9 million pounds. NMFS will issue snow crab IPQ to Blue Dutch when the

TAC for that fishery is greater than 21,350,640 pounds (9,684.6 mt). NMFS issued snow crab IPQ to Blue Dutch for the 2006/2007 and the 2007/2008 crab fishing years.

Trident Seafoods

Trident Seafoods operates three factory trawlers that primarily target pollock in the Bering Sea. Trident also owns seven at-sea processors that produce salmon, herring, crab, and groundfish products, eleven catcher vessels that target pollock and Pacific cod, and five catcher vessels that primarily catch Bristol Bay red king crab and Bering Sea snow crab and Tanner crab (*C. bairdi*). Trident operates large shore-side processing plants in Akutan, St. Paul, Kodiak, and Sand Point, in addition to smaller plants in other Alaska communities. The Akutan facility is the largest seafood processing plant in North America, and processes pollock, crab, and halibut. The St. Paul plant primarily processes crab, and the Sand Point and Kodiak facilities process Pacific cod, sablefish, crab, halibut, pollock, salmon, and other groundfish.

Trident Seafoods Corporation and its commonly owned affiliates Royal Viking, Inc, Norquest Seafoods, Inc, LLP 2941 Joint Owner, and Barbaras J., LLC, would be eligible to combine and convert snow crab and Bristol Bay red king crab PQS and CVO QS, because NMFS initially issued Trident CPO QS and PQS under the Program, and that PQS, in combination with the PQS of its commonly owned affiliates, is more than 7 percent of the total PQS pool.

According the NMFS Official Record, Trident and its commonly owned affiliates were initially issued 19 percent of the snow crab PQS pool and 2.28 percent of the CVO QS pool. Since they cannot convert more that their holdings, the total amount converted would be limited by their CVO QS holdings. If they elected to convert all of their snow crab CVO QS to converted CPO QS, they would convert 2.05 percent of their PQS and still have approximately 17 percent of the PQS pool remaining as PQS. For Bristol Bay red king crab, Trident and its commonly owned affiliates were initially issued 2.33 percent of the PQS pool and 0.22 percent of the CVO QS pool. If they elected to convert all of their Bristol Bay red king crab CVO QS to converted CPO QS, they would convert 0.22 percent of their PQS and still have approximately 2.1 percent of the PQS pool.

Effects on St. Paul

The Pribilof Islands village of St. Paul is the only community likely to be directly impacted by the proposed rule because all of the eligible PQS is tied to St. Paul through the Program's Right of First Refusal (ROFR) contracts.

The village of St. Paul is primarily dependent upon the processing of snow crab harvested in the North Pacific. According to ownership data, all crab deliveries to the Pribilof Islands are made by non-resident vessels. Since 1992, the local shoreplant on St. Paul has been the primary processor for crab in the community. As noted above, a number of floating processors have also frequented the area. Icicle, Norquest, Trident, and Stellar Seafoods own floaters that have recently processing crab in the Pribilof Islands. Other processors may also have used floaters to process crab in and around St. Paul over the years. Further description of the processing activity in the Pribilof Islands area cannot be included in the profile due to data confidentiality restrictions.

During the period from 1991 to 2000, snow crab accounted for between 74 percent and 100 percent of the relevant crab processing in northern region. During this same period, the northern region accounted for approximately 31 percent of the total processing value of the snow crab 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 guideline harvest level from 1999 to 2000 resulted in a drop in the harvest and, thus, a 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 other communities that processed snow crab.

The shift away from St. Paul to other communities during this downturn in the snow crab stock is believed to be due to the slow down in fishing pressure during that period. Information from interviews with harvesters would suggest that shorter seasons (and/or lower harvest levels), among other factors, result in a higher proportion of crab being taken to alternative ports for processing that are further from the traditional fishing grounds adjacent to St. Paul. Conversely, CDQ crab processed in the northern region appears to attract non-CDQ crab landings to northern region processors, which can counter some of the incentives for crab processing to occur elsewhere.

With the implementation of the Program in 2005, St. Paul was able to maintain processing activity that otherwise might have left the community. For the 2005/2006 crab fishing season, 90 landings were made in St. Paul, representing over 8 million pounds of crab landed and processed.

The Program contains community protection measures to maintain historic crab landings and processing, specifically benefiting St. Paul. The Program's regional delivery requirements for QS and PQS preserve the historic geographic distribution of landings in the fisheries. Crabs harvested with regionally designated IFQ are required to be delivered to a processor in the designated region. Likewise, a processor with regionally designated IPQ is required to accept delivery of and process crabs in the designated region. Communities in the Pribilof Islands, including St. Paul, were the intended prime beneficiaries of this regionalization provision.

A second community protection provision grants communities, such as St. Paul, a ROFR on the transfer of PQS and IPQ originating from processing history in the community, if the transfer will result in relocation or use of the shares outside the community. Table 2 shows the distribution of ROFR among communities in the crab fisheries included in the Program.

Table 2 Percent PQS/IPQ assigned to ROFR eligible communities

ROFR Community	Bristol Bay red king crab	Bering Sea snow crab	Pribilof Islands king crab	St. Matthew blue king crab
Akutan	19.9	9.8	1.2	2.7
False Pass	3.7	0	0	0
King Cove	12.8	6.3	3.8	1.3
Kodiak	3.8	0.1	2.9	0.0
None	2.7	2.1	0.3	64.6
Port Moller	3.5	0	0	0
St George	0	9.7	0	0
St Paul	2.6	36.6	67.3	13.8
Unalaska	51.1	35.3	24.6	17.6

In addition, the CDQ allocations in all crab fisheries covered by the Program increased from 7.5 to 10 percent of the TAC. The St. Paul CDQ group (APICDA) also may participate in the Program's IFQ/IPQ fisheries as holders of both QS and PQS.

The economic impacts of the proposed rule on St. Paul are expected to be minimal, since only up to 3.05 percent of the snow crab PQS and 0.24 percent of the Bristol Bay red king crab PQS could be converted to CPO QS. If the entities elected to convert shares, St. Paul could experience a slight decline in employment in the crab processing facilities and a decline in raw fish taxes. Additionally, the proposed rule would implement the MSRA's the area of validity for converted CVO QS by requiring that any crab harvested under a CPO IFQ permit derived from converted CPO QS must be offloaded in the Bering Sea subarea north of 56 degrees 20' N. latitude.

However, any anticipated impacts would be reduced by the other provisions of section 122 of the MSRA, which contain additional provisions to ameliorate these impacts. The MSRA includes additional requirements for fees and off-loading for converted CPO QS; however, the statute does not require these requirements to be part of Amendment 25 and, therefore, these provisions are not part of this proposed rule. Note that, according to the NMFS Official Record, all of the PQS eligible for conversion is tied to St. Paul through the ROFR contracts. The MSRA provides for the following:

- Section 122(b) requires the holder of converted CPO QS to pay a fee of five percent of the ex-vessel value of the crab harvested with those shares to any local governmental entities in the North Region, if the PQS used to produce the converted CPO QS were originally derived from the processing activities that occurred in a community under the jurisdiction of those local governmental entities.

Under this provision, the local government of St. Paul would receive this offsetting fee payment for crab processed with converted CPO QS.

- Section 122(c) authorizes State of Alaska to collect from the holder of the converted CPO QS a fee of one percent of the ex-vessel value of the crab harvested with those shares. Additionally, crab harvested with converted CPO QS shall be off-loaded in those communities receiving the local governmental entities fee revenue.

Since the MSRA requires crab processed with converted CPO QS to be off-loaded in St. Paul, economic activity generated through the offloads would also work to offset the loss of economic activity from the movement of processing offshore. The beneficiaries of this infusion of economic activity will not necessarily be those individuals incurring the loss associated with moving processing offshore. Furthermore, utilization of (and rents accruing to) infrastructure will be altered as a direct result of this conversion (e.g., processing plant infrastructure will be used less intensively, while stevedoring, wharfage, and cold-storage services may be in greater than historic demand). These shifts in physical plant demand may tax or exceed the existing capacity of a port facility, inducing capital expenditures (public and/or private) to meet the emergent need. It cannot be predicted, based upon available information, what form and how likely may be such investments, where they are most likely to occur, or whether they will be profitable and sustainable over the long run. Owing to the remoteness, and thus, high cost of construction in this region, and historic volatility of the crab fisheries in the northern region of the Bering Sea, major capital investments (public or private) face greater than average financial risk.

- Section 122(d) provides that, as part of its periodic review of the Program, the Council may review the effects of allowing the conversion to CPO QS on communities in the North Region.

Under this section, if the Council determines that Amendment 25 adversely affects St. Paul, the Council may recommend to the Secretary of Commerce, and the Secretary may approve, changes to the Program necessary to mitigate those adverse effects.

- Section 122(e) requires an additional FMP amendment and rulemaking to modify the use caps for processing North Region snow crab.

Under this section, custom processing arrangements do not count against any use cap for the processing of snow crab in the North Region by a shore-based crab processor. NMFS issued an enforcement policy on January 19, 2007, that provides guidance to the industry on NMFS' enforcement and interpretation of this section, which is effective until superseded by rule making. Although the effects of the exemption of custom processing from caps are uncertain, it is possible that processing efficiency gains, achieved through consolidation of processing activity, could limit the extent to which eligible entities elect to covert CVO QS and PQS into converted CPO QS under this action.

Conclusion

This proposed rule provides entities and their affiliates, who were initially allocated North CVO QS and North PQS, with the ability to annually combine those shares into converted CPO QS. The potential impacts of the action are likely to be limited because a limited number of entities and shares are potentially eligible for share conversion. Eligible entities are only permitted to combine shares received through the initial allocation. As a result, the total shares of snow crab that could be combined into converted CPO QS under this action are 3.05 percent of the PQS pool and 3.09 percent of the CVO QS pool. For Bristol Bay red king crab, the eligible entities could only convert a maximum of 0.24 percent of the PQS pool and the CVO QS pool to converted CPO QS.

The potential impact of the action is also limited because an eligible entity may choose not to convert all of its shares. The potential scope of conversion could be limited since all entities eligible to use the provision would continue to hold either CVO QS or PQS that are required to be used in the North region (i.e., that could not be converted to converted CPO QS). Since not all shares could be converted, the potential to gain efficiencies through share conversion would be limited. In some instances, the reduction in shore-based activity in the North region could increase operating costs by limiting the potential to achieve economies of scale in the shore-based operation. In addition, fee and tax provisions, which, although not part of this proposed action, nonetheless apply to share conversions, as well as the mandatory "port-of-origin" landing requirement for converted CPO QS, may diminish the economic value and operational incentive to exercise this shares conversion option by qualifying entities.

List of Preparers and Persons Consulted

Preparer
Gretchen Harrington, Sustainable Fisheries, Alaska Region, NOAA Fisheries
Mark Fina, Ph.D., Chief Economist, North Pacific Fishery Management Council Staff
Lewis Queirolo, Ph.D., Senior Regional Economist, Alaska Region, NOAA Fisheries

Persons Consulted
Ben Muse, Ph.D. Sustainable Fisheries, Alaska Region, NOAA Fisheries
Glenn Merrill, Sustainable Fisheries, Alaska Region, NOAA Fisheries
Jessica Gharrett, Restricted Access Management Division, Alaska Region, NOAA Fisheries
Toni Fratzke, Restricted Access Management Division, Alaska Region, NOAA Fisheries
Tracy Buck, Restricted Access Management Division, Alaska Region, NOAA Fisheries

Abbreviations

Legislation and Executive Orders:

Coast Guard Act	Coast Guard and Maritime Transportation Act of 2006
E.O. 12866	Presidential Executive Order 12866
Magnuson-Stevens Act	Magnuson-Stevens Fishery Conservation and Management Act
MSRA	Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006

Management programs and documents:

CDQ	Community Development Quota Program
Crab EIS	Bering Sea Aleutian Islands Crab Fisheries Final Environmental Impact Statement/Regulatory Impact Review/Initial Regulatory Flexibility Analysis/Social Impact Assessment, August 2004
FMP	Fishery Management Plan For Bering Sea/Aleutian Islands King and Tanner Crabs
Program	Crab Rationalization Program
IAD	Initial Administrative Determination
ROFR	Right of First Refusal

Quota types

converted CPO QS	converted catcher/processor owner quota share
IFQ	individual fishing quotas
IPQ	individual processing quota
CVO QS	catcher vessel owner quota share
CPO QS	catcher processor owner quota share
PQS	processor quota share
TAC	total allowable catch