

FINAL

Regulatory Impact Review for FMP and Regulatory Amendment for Community Development Quota Program Ownership Attribution

October 2017

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Abstract: The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires the North Pacific Fishery Management Council (Council) and the National Marine Fisheries Service (NMFS) to establish limitations on holding and use of limited access privileges (LAPs) to prevent the excessive consolidation of privileges. In response to this direction, the Council has developed different excessive share caps in each of the LAP programs implemented in Alaska's fisheries.

NMFS implemented the excessive share regulations for two LAP programs relevant to this analysis: the American Fisheries Act (AFA) Program in 2002 and for the Crab Rationalization Program (CR Program) in 2005. Based on direction provided by Congress in the Magnuson-Stevens Act and by the Council in developing the AFA and CR Programs, the regulations originally specified that NMFS will use two different methods to attribute holding and use of harvesting and processing privileges under the AFA and CR Programs. One method, called the "10-percent" rule, attributes 100 percent holding or use of LAPs to a person if that person owns or controls at least 10 percent equity in the QS holding entity. The second method is the "individual and collective" rule. Under the individual and collective rule, a person is attributed holding or use of LAPs proportionally to that person's ownership or control in other entity. Thus, under an excessive share limit, the individual and collective rule would allow a person to hold or use more LAPs than if the person was evaluated using the 10-percent rule.

In addition to their allocations under the Community Development Quota (CDQ) Program, CDQ groups participate in other LAP programs, including the AFA Program and the CR Program, by purchasing quota shares or through ownership of vessels and processors that participate in these fisheries. Prior to the 2006 revision of the Magnuson-Stevens Act, NMFS used the 10-percent rule for CDQ groups for use caps for harvesting and processing privileges in the AFA Program and for holding and use caps for processing privileges in the CR Program. In 2006, the Magnuson-Stevens Act was revised to direct that CDQ groups be subject to excessive share ownership, harvesting, or processing limitations using the individual and collective rule to attribute ownership and control for determining the holding and use of LAPs.

Since the 2006 amendment to the Magnuson-Stevens Act, NMFS has implemented the proportional ownership attribution method for CDQ groups to monitor excessive share caps in the AFA Program and the CR Program; however, the regulations for the AFA, the CR Program, and the Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs (Crab FMP) have not been revised to reflect this statutory change. This action would revise these regulations and the Crab FMP for consistency with the Magnuson-Stevens Act and current practice.

List of Acronyms and Abbreviations

| ACRONYM | DESCRIPTION |
|------------|---|
| ADF&G | Alaska Department of Fish and Game |
| AFA | American Fisheries Act |
| APICDA | Aleutian Pribilof Island Community Development Association |
| BBEDC | Bristol Bay Economic Development Corporation |
| BSAI | Bering Sea and Aleutian Islands |
| BSAI FMP | Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area |
| CBSFA | Central Bering Sea Fishermen's Association |
| CDQ | Community Development Quota |
| CFR | Code of Federal Regulations |
| Council | North Pacific Fishery Management Council |
| CR Program | Crab Rationalization Program |
| Crab FMP | Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crab |
| CVRF | Coastal Villages Region Fund |
| CVO | catcher vessel owner |
| DFA | directed fishing allowance |
| E.O. | Executive Order |
| EA | Environmental Assessment |
| EEZ | Exclusive Economic Zone |
| FMP | fishery management plan |
| ICA | Incidental catch allowance |

| ACRONYM | DESCRIPTION |
|----------------------|--|
| IFQ | Individual fishing quota |
| IPQ | individual processor quota |
| IRFA | Initial Regulatory Flexibility Analysis |
| LAP | limited access privilege |
| LLP | license limitation program |
| MARAD | Maritime Administration |
| Magnuson-Stevens Act | Magnuson-Stevens Fishery Conservation and Management Act |
| NMFS | National Marine Fishery Service |
| NOAA | National Oceanic and Atmospheric Administration |
| NPFMC | North Pacific Fishery Management Council |
| NSEDC | Norton Sound Economic Development Corporation |
| PQS | processor quota share |
| QS | quota share |
| RFA | Regulatory Flexibility Act |
| RIR | Regulatory Impact Review |
| SBA | Small Business Act |
| Secretary | Secretary of Commerce |
| TAC | total allowable catch |
| U.S. | United States |
| WACDA | Western Alaska Community Development Association |
| YDFDA | Yukon Delta Fisheries Development Association |

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1 Introduction

This document analyzes an action that would revise the regulations and the Crab FMP that govern the method NMFS uses to determine the amount of harvesting and processing privileges that are held and used by a CDQ group for purposes of monitoring the excessive share limits under the AFA Program and the CR Program (i.e., the ownership attribution method).

The Magnuson-Stevens Act specifies that if conservation and management measures allocate or assign fishing privileges, the measures must be carried out so that no particular individual, corporation, or other entity acquires an excessive share of such privileges (National Standard 4; 16 U.S.C. § 1851(a)(4)). Section 303A of the Magnuson-Stevens Act imposes additional requirements for regional fishery management councils to establish limited access privilege (LAP) programs. The Magnuson-Stevens Act requires the councils to establish excessive share limits, also called use caps, for LAP programs to prevent excessive accumulation of privileges by participants in the programs (16 U.S.C. § 1853a(c)(5)(D)). The intent of these caps is to prevent excessive consolidation in the harvesting and processing sectors in order to maintain an appropriate distribution of economic and social benefits for fishery participants and communities. Because determination of excessive shares must consider the specific circumstances of each fishery, the Council has developed and NMFS has approved different excessive share caps in each of the LAP programs implemented in Alaska's fisheries.

The AFA Program includes harvesting and processing use caps for the directed fishing allowance (DFA) of pollock. The CR Program includes holding caps and use caps for harvesting quota share (QS), processing quota share (PQS), and for the annual privileges NMFS issues for QS and PQS: individual fishing quota (IFQ), and individual processing quota (IPQ). To monitor these caps, NMFS determines what portion of a program's harvesting and processing privileges a person holds and/or uses to ensure that no person holds or uses more privileges than is authorized by the applicable excessive share cap. Businesses that hold and use privileges in the AFA and CR Programs are often composed of multiple owners that have ownership interests in multiple fishing businesses. In cases where a harvesting or processing privilege are held by a business entity with more than one owner, NMFS must apply the holding and use caps to each entity that has an ownership interest in harvesting vessels, processing plants, and quota share to monitor whether they exceed the established caps. Ownership attribution refers to the method NMFS uses to assess the relationships between different entities that participate in LAP programs.

NMFS implemented the excessive share regulations for the AFA Program in 2002 (67 FR 79692; December 30, 2002) and for the CR Program in 2005 (70 FR 10174; March 2, 2005). Based on direction provided by Congress in the Magnuson-Stevens Act and by the Council in developing the AFA and CR Programs, the regulations specify that NMFS will use two different methods to attribute holding and use of harvesting and processing privileges under the AFA and CR Programs.

The two methods for attribution of holding and use are the "individual and collective" rule and the "10-percent" rule. Under the individual and collective rule, a person is attributed holding or use of LAPs proportionally to their ownership in or control of the other entity. For example, if Company A owns 15 percent of Company B that holds LAPs, Company A would be attributed 15 percent of the holding or use of those privileges. In contrast, under the 10-percent rule, if Company A owns or controls 10 percent or more of Company B, then all of Company B's holdings of LAPs are attributed to Company A. The individual and collective rule is less restrictive than the 10-percent rule because a person is only attributed holding or use of LAPs in proportion to how much it owns or controls of other entities, rather than attributing 100 percent of the other entity's LAP holdings once the 10 percent threshold is met. Therefore, under an excessive share limit, the individual and collective rule would allow a person to hold or use more LAPs than if the person was evaluated using the 10-percent rule.

In addition to their groundfish, crab, and halibut allocations under the CDQ Program, CDQ groups participate in other LAP programs by purchasing quota or through ownership of vessels or processors that participate in the fisheries. Following implementation of the AFA and CR Programs, NMFS used the methods of ownership attribution specified in the regulations for CDQ groups and all other participants. In 2006, section 305(i)(1)(F)(i) of the Magnuson-Stevens Act was revised to direct that CDQ groups be subject to excessive share ownership, harvesting, or processing limitations using the individual and collective rule to attribute ownership and control for determining the holding and use of LAPs (16 U.S.C. § 1855(i)(1)(F)(i)). Prior to the 2006 revision in the Magnuson-Stevens Act, NMFS used the 10-percent rule for CDQ groups for monitoring both use caps for harvesting and processing privileges in the AFA Program and PQS and IPQ holding and use caps in the CR Program. Since the 2006 revision, NMFS has used the individual and collective rule for CDQ groups for monitoring use caps in both the AFA and CR Programs; however, the Crab FMP and the regulations for the AFA Program and the CR Program have not been revised to reflect this change. This action would revise these regulations and the Crab FMP to be consistent with this change.

This document is a Regulatory Impact Review (RIR). An RIR assesses the economic benefits and costs of the action alternatives, as well as their distribution. This RIR addresses the statutory requirements of the Magnuson-Stevens Act, Presidential Executive Order 12866, and the Regulatory Flexibility Act. An RIR is a standard document produced by the Council and the NMFS Alaska Region to provide the analytical background for decision-making.

2 Regulatory Impact Review

This RIR¹ examines the benefits and costs of a proposed regulatory and fishery management plan (FMP) amendment to revise the AFA Program and the CR Program excessive share limitations to specify the ownership attribution rules for the CDQ groups, as distinguished from other program participants, to fulfill the directive in section 305(i)(1)(F)(i) of the Magnuson-Stevens Act (i.e., to attribute CDQ group ownership proportionally for excessive share limitations).

The preparation of an RIR is required under Presidential Executive Order (E.O.) 12866 (58 FR 51735; October 4, 1993). The requirements for all regulatory actions specified in E.O. 12866 are summarized in the following statement from the E.O.:

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 nevertheless 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 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, the environment, public health or safety, or State, 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 Statutory Authority

Under the Magnuson-Stevens Act (16 U.S.C. § 1801, *et seq.*), the United States has exclusive fishery management authority over all marine fishery resources found within the exclusive economic zone (EEZ). The management of these marine resources is vested in the Secretary of Commerce (Secretary) and in the regional fishery management councils. In the Alaska Region, the Council has the responsibility for preparing FMPs and FMP amendments for the marine fisheries that require conservation and management, and for submitting its recommendations to the Secretary. Upon approval by the Secretary, NMFS is charged with carrying out these plans with regard to marine and anadromous fish.

¹ The proposed action has no potential to individually or cumulatively affect the human environment. This action is expected to have minimal effects, and any effects would be economic in nature by providing clarification for the regulated community, as analyzed in this RIR. As such, it is categorically excluded from the need to prepare an Environmental Assessment.

The pollock fisheries in the EEZ off Alaska are managed under the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (BSAI FMP). The proposed action would not amend the BSAI FMP, but would amend Federal regulations at 50 CFR part 679. Actions taken to implement regulations governing these fisheries must meet the requirements of Federal law and regulations.

The crab fisheries in the EEZ off Alaska are managed under the Crab FMP. The proposed action would amend the Crab FMP and Federal regulations at 50 CFR part 680. Actions taken to amend FMPs or implement regulations governing these fisheries must meet the requirements of Federal law and regulations.

2.2 Purpose and Need

This action would revise the AFA and the CR Program ownership attribution regulations and the Crab FMP to specify the requirements for the CDQ groups, as distinguished from other program participants, which is mandated by the Magnuson-Stevens Act (as amended by the Coast Guard Act). Specifically, this action would remove the application of the “10-percent” rule for the CDQ groups and replace it with the proportional “individual and collective” rule. Since the 2006 amendment to the Magnuson-Stevens Act mandating the use of the individual and collective rule for CDQ groups, NMFS implemented this modification in practice by using the individual and collective rule but has not revised the AFA or CR Program regulations or the Crab FMP. This action would revise the regulations and the Crab FMP to make them consistent with the Magnuson-Stevens Act and current practice.

2.3 History of this Action

The Coast Guard and Maritime Transportation Act of 2006 (Public Law 109–241; the Coast Guard Act) made substantial modifications to the structure of the CDQ Program and how it is administered under the Magnuson-Stevens Act. These revisions were designed to give CDQ groups and their communities greater autonomy, based on the recommendations of the State of Alaska’s Blue Ribbon Panel. The amendments to the Magnuson-Stevens Act were intended to promote the ability of CDQ groups to responsibly manage their allocations similar to the quota share allocations issued to most other participants in the BSAI fisheries, while promoting the goals of the CDQ Program (NMFS 2015a).

Specifically, the Coast Guard Act added a requirement to the Magnuson-Stevens Act that CDQ groups be subject to excessive share ownership, harvesting, and processing caps proportional to their ownership of entities holding and using such privileges. This requirement modified the existing ownership attribution methods used in the AFA and CR Programs. The Coast Guard Act revisions to the Magnuson-Stevens Act were intended to provide for more flexibility and opportunity for the CDQ groups to invest in these fisheries. The following is an excerpt from the Conference Report for the Coast Guard and Maritime Transportation Act of 2006 (H.R. Rep. No. 109–413, at 77-78 (2006) (Conf. Rep.):

The Conference substitute requires CDQ groups to comply with any excessive share limitations in the BSAI fisheries only to the extent of their proportional ownership in any other entities. This provision is intended to address the inherent conflict between excessive share limitations in the fisheries and the CDQ program goal to expand the economic base of the adjacent communities through investment in the fisheries.

The excessive share limitations imposed by the North Pacific Council, Secretary, and Congress are mainly intended to prevent for-profit entities and individuals from acquiring excessive shares of fishing privileges in the fisheries. The excessive share concept stems from National Standard

Four of the Magnuson-Stevens Act. It pre-dates the CDQ program and fails to take into account the unique characteristics of the CDQ program.

The Conference substitute would therefore exempt CDQ groups from the “attribution” requirements of the American Fisheries Act, the crab quota program, and other federal regulations. Under the “attribution” rules, an entity is attributed with the entirety of another entity’s harvesting or processing capacity even if the original entity only owns as little as 10 percent of the other entity. Under the substitute, if a CDQ group owns 25 percent of another entity, only 25 percent of the other entity’s harvesting or processing capacity would be counted against the CDQ group in determining compliance with any excessive share limitation. Similarly, if a CDQ group owns 77 percent of another entity, only 77 percent of the other entity’s capacity would be counted against the CDQ group. The provision is intended to allow the CDQ groups to continue to expand in the BSAI fisheries off their shores, while not completely exempting CDQ groups from excessive share limitations.

Several LAP programs managed by the Council and NMFS already use the individual and collective rule to apply the proportional ownership attribution method for all participants. In contrast, the regulations for the AFA Program and the regulations for the processing privileges (PQS and IPQ) holding and use caps for the CR Program stipulate that all entities are subject to the 10-percent rule for ownership attribution (see Table 2-1 for description of the ownership attribution method used for each LAP). At the time the Coast Guard Act was implemented, NMFS and the Maritime Administration (MARAD), which administers parts of the AFA Program, modified their methods of ownership attribution for CDQ groups consistent with the new statutory requirements. However, NMFS has not modified the Crab FMP and the regulations for the AFA Program and the CR Program for consistency with the requirements of the Magnuson-Stevens Act (as amended by the Coast Guard Act). This action would provide consistency for the CDQ groups and the public among the AFA and CR Program regulations, the Crab FMP, and the Magnuson-Stevens Act.

The Council received the Initial Review Draft of the analysis in February 2017. At that time, it adopted the purpose and need and established Alternative 2 as a preliminary preferred alternative. The Council requested the document be released for Public Review. In April 2017, the Council received the public review draft and recommended the action alternative, Alternative 2, as its preferred alternative (PA).

Table 2-1 Ownership Attribution Methods used in LAPs for Alaska fisheries.

| | Program | Ownership Attribution Method | Citation | Required changes for CDQ groups? |
|-----------------------------|--|-------------------------------------|--------------------------------|---|
| Pre-Coast Guard Act | Halibut and Sablefish Individual Fishing Quota Program QS use caps | Individual and collective | § 679.42(e) and (f) | No |
| | Halibut and Sablefish Individual Fishing Quota Program QS holding caps | Individual and collective | § 679.42(g) | No |
| | Halibut and Sablefish Individual Fishing Quota Program vessel use caps | Individual and collective | § 679.42(h) | No |
| | AFA Program excessive harvesting and processing limits | 10-percent | § 679.2 Affiliation | Yes |
| | CR Program QS/IFQ holding and vessel use ¹ caps | Individual and collective | § 680.42(a)(2), § 680.42(a)(3) | No |
| | CR Program vertical integration caps | Individual and collective | § 680.42(a)(4) | No |
| | CR Program PQS/IPQ holding and use caps | 10-percent | § 680.42(b) | Yes |
| Post Coast Guard Act | Amendment 80 Program QS holding and use cap | Individual and collective | § 679.92(a)(2) | No |
| | Central Gulf of Alaska Rockfish Program QS use cap | Individual and collective | § 679.82(a)(2) | No |
| | Central Gulf of Alaska Rockfish Program CQ use cap | Individual and collective | § 679.82(a)(3) | No |
| | Central Gulf of Alaska Rockfish Program vessel use cap | Individual and collective | § 679.82(a)(4) | No |
| | Central Gulf of Alaska Rockfish Program processor use cap | Individual and collective | § 679.82(a)(5) | No |

¹ 50 CFR § 680.42(a)(5) relieves the IFQ use cap if the IFQ is used by a crab harvesting cooperative.

2.4 Description of Alternatives

The Council formally established the following alternatives in February 2017. At the same time, it also established the action alternative, Alternative 2, as its preliminary preferred alternative.

Alternative 1. No action. No change to the regulations governing the ownership attribution method for CDQ groups for excessive share limitations under the AFA Program; no change to the regulations and the Crab FMP governing the ownership attribution model for CDQ groups for the PQS holding and IPQ use caps under the CR Program.

Alternative 2. (PA) Revise the regulations governing the ownership attribution model for CDQ groups for excessive share limitations under the AFA Program; revise the regulations and the Crab FMP governing the ownership attribution model for CDQ groups for the PQS holding and IPQ use caps under the CR Program to provide as directed in the Magnuson-Stevens Act.

2.4.1 Alternative 1, No Action

Section 305(i)(1)(F)(i) of the Magnuson-Stevens Act (16 U.S.C. § 1855(i)(1)(F)(i)) requires that CDQ groups “shall be subject to any excessive share ownership, harvesting, or processing limitations in the fisheries of the Bering Sea and Aleutian Islands Management Area only to the extent of the entity’s

proportional ownership....” NMFS interprets this provision as requiring it to attribute ownership for CDQ groups using only the individual and collective rule for purposes of monitoring excessive share caps under all LAP programs in the Bering Sea and Aleutian Islands.

Regulations at 50 CFR § 679.7(k)(6) and (7) prohibit an AFA entity from harvesting more than 17.5 percent and from processing more than 30 percent of the annual amount of the AFA directed pollock fishery allocation. An AFA entity is defined as a group of affiliated individuals, corporations, or other business concerns that harvest or process pollock in the Bering Sea directed pollock fishery (50 CFR § 679.2). If an individual, corporation, or other entity owns or controls 10 percent or more of an AFA entity, then all of the harvesting or processing by that AFA entity is attributed to each individual, corporation, or other entity that owns or controls the AFA entity to determine compliance with the harvesting or processing limitations (e.g., the use caps). NMFS and MARAD subsequently implemented into practice the proportional ownership method, also known as the “individual and collective” rule, after the 2006 Coast Guard Act revisions to the Magnuson-Stevens Act. Under the status quo, the regulations are not consistent with the statute; however, the statute supersedes the regulations and represents the current practice for ownership attribution for CDQ groups.

Under the CR Program, holders of license limitation program (LLP) licenses endorsed for a crab fishery were issued QS, which are long term shares, based on their qualifying harvest histories in that crab fishery. Each year, the holder of QS may receive an exclusive harvest privilege for a portion of the annual total allowable catch (TAC), called IFQ. Additionally, NMFS issued PQS under the CR Program to qualified processors. PQS are long term shares issued to processors. Each year, PQS yields annual IPQ, which represents a privilege to receive a certain amount of crab. For the CR Program, QS holding and IFQ harvesting use limitations for all participants, including CDQ groups, are calculated based on the individual and collective rule. However, PQS holding and IPQ processing use limitations in the CR Program fisheries under 50 CFR § 680.42(b) and Section 2.7.1 of the Crab FMP are calculated using the 10-percent rule. The PQS holder is attributed with one hundred percent of the PQS held or IPQ used by any entity in which the PQS holder has 10 percent or more ownership or control. Additionally, a “vertical integration cap” under 50 CFR § 680.42(b) imposes a limitation on the holdings of QS and IFQ by persons who hold PQS in the crab rationalization fisheries. While NMFS uses the 10-percent rule to determine association among persons holding and using such privileges to monitor the vertical integration cap, NMFS attributes holding and use to such persons under the individual and collective rule. As with the AFA, NMFS implemented in practice the individual and collective rule for CDQ groups for the PQS holding caps, IPQ processing use caps, and vertical integration caps in the CR Program after the Coast Guard Act was passed in 2006. Under the status quo, the regulations and the Crab FMP governing the PQS holding caps and the IPQ processing use caps are inconsistent with the statute; however, the statute supersedes the regulations and represents the current practice for ownership determination.

2.4.2 Alternative 2, Action, PA

Alternative 2 would revise the regulations so that under the AFA Program, CDQ groups are attributed harvesting and processing of AFA pollock proportionally to their ownership or control of vessels and processors active in those fisheries using the individual and collective rule. For example, if a CDQ group owns 15 percent of a company, under Alternative 2, the CDQ group would be attributed 15 percent of the AFA harvesting or processing of that company. NMFS currently uses the individual and collective rule to attribute ownership for CDQ groups under the AFA Program; however, the AFA regulations have not been revised to reflect this practice. Alternative 2 would update the regulations and the Crab FMP to be consistent with current practice and the Magnuson-Stevens Act.

Alternative 2 also would revise the regulations for the CR Program and the Crab FMP to specify that CDQ groups are attributed holding and use of PQS and IPQ based on their proportional ownership or

control of entities that hold and use PQS and IPQ based on the individual and collective rule. For example, if a CDQ group owns 15 percent of a company that holds PQS or IPQ that CDQ group would be attributed 15 percent of the holding or use of that company's PQS or IPQ. NMFS currently uses the individual and collective rule to attribute ownership for CDQ groups under the CR Program; however, the regulations and the Crab FMP have not been updated. Alternative 2 would update the regulations and the Crab FMP to be consistent with current practice and the Magnuson-Stevens Act.

2.5 Methodology for Analysis of Impacts

The evaluation of impacts in this analysis is designed to meet the requirements of E.O. 12866, which dictate that an RIR evaluate the costs and benefits of the alternatives, to include both quantifiable and qualitative considerations. Additionally, the analysis should provide information for decision-makers to “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; 58 FR 51735; October 4, 1993). The costs and benefits of this action with respect to these attributes are described in the sections that follow, comparing the no-action alternative, Alternative 1, with the action alternative, Alternative 2.

This analysis relies on previously published analyses for much of its data and background information. These analyses include the EA/RIR/IRFA for Amendment 111 to the BSAI FMP (NPFMC and NMFS 2016b) and the final RIR for the cost recovery program for the Amendment 80, CDQ, AFA, and Aleutian Islands pollock programs (NMFS 2015b). This analysis also draws information from the CDQ Program Summary available on the NMFS Alaska Region website (NMFS 2015a).

2.6 Description of the AFA Program

Congress passed the AFA² in October 1998 to implement additional U.S. ownership requirements for vessels harvesting fish from the EEZ. The purpose of the AFA was to tighten U.S. ownership standards that had been exploited under the Commercial Fishing Industry Vessel Anti-Reflagging Act of 1987 (Public Law 100–239) and to provide the BSAI pollock fleet the opportunity to conduct their fishery in a more rational manner (i.e., stopping the race for fish) while protecting non-AFA participants in the other fisheries. The AFA established sector allocations in the BSAI pollock fishery, determined eligible vessels and processors, allowed the formation of cooperatives, set limits on the participation of AFA vessels in other fisheries, and imposed special catch weighing and monitoring requirements on AFA vessels. The AFA also divided the available BSAI pollock directed fishing allowance among three harvesting sectors, after deducting the DFA for CDQ groups and the incidental catch allowance (ICA) (NMFS 2015b).

The AFA allocations were first implemented for the 1999 fishing year. Allocations are governed by section 206 of the AFA and by regulation. Currently the Bering Sea subarea pollock TAC, after subtracting the DFA for CDQ groups (10 percent) and then the ICA, which accounts for incidental harvest of pollock in other groundfish fisheries (currently 3 percent), is allocated as a DFA as follows:³

- 50 percent to the inshore sector,
- 40 percent to the catcher/processor sector, and
- 10 percent to the mothership sector.

² Enacted as Title II of Division C – Other Matters, of Public Law 105–277, approved October 21, 1998 (112 STAT. 2681, 2681-616), the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999.

³ Pursuant to 50 CFR § 679.20(a)(5)(i)(A).

2.6.1 AFA Entities

This section describes the entities that are eligible to participate in the AFA directed pollock fisheries. These entities include the three AFA harvesting sectors and the processors to whom they deliver their AFA pollock harvests.

2.6.1.1 AFA Catcher/processor Sector

Forty percent of the available AFA pollock TAC is allocated to the AFA catcher/processor sector after the deduction for CDQ DFA and ICA.

Catcher/processors

The AFA lists 20 unrestricted catcher/processors in section 208(e) as being eligible to harvest pollock from the AFA catcher/processor allocation. Section 208(e)(21) of the AFA specifies that catcher/processors not listed in the AFA but qualifying to fish for BSAI pollock under the AFA are prohibited from harvesting in the aggregate a total of more than one-half (0.5) percent of the pollock allocated to vessels for processing by offshore catcher/processors. One catcher/processor, the F/V *Ocean Peace*, subsequently met these criteria (NMFS 2015b).

Catcher Vessels Delivering to Catcher/processors

The AFA lists in section 208(b) seven catcher vessels that are eligible to harvest up to 8.5 percent of the DFA under section 206(b)(2) of the AFA, pursuant to a Federal fisheries permit. In section 208(b)(8), the AFA also provided the opportunity for a catcher vessel to qualify to harvest if that catcher vessel was determined by the Secretary to have delivered at least 250 metric tons and at least 75 percent of the pollock it harvested in the directed pollock fishery in 1997 to catcher/processors for processing by the offshore component and if that catcher vessel was eligible to harvest pollock in the directed pollock fishery under the license limitation program. No additional vessels have met those criteria (NMFS 2015b).

2.6.1.2 AFA Inshore Sector

The AFA inshore sector is defined at section 208(a) of the AFA. Fifty percent of the Bering Sea subarea pollock allowance (after CDQ DFA and ICA are deducted) is allocated to inshore cooperatives. In 2016, six inshore cooperatives applied for a pollock allocation. According to 50 CFR § 679.62(a)(1), the individual catch history for each inshore catcher vessel is equal to the vessel's best 2 of 3 years inshore pollock landings from 1995 through 1997, and includes landings to catcher/processors for vessels that made 500 metric tons or more of landings to catcher/processors from 1995 through 1997. Each vessel's catch history is annually assigned to the cooperative of which they are a member (NMFS 2015b).

2.6.1.3 Mothership Sector

The mothership sector is defined in section 208(c) and (d) of the AFA. The mothership sector is assigned 10 percent of the Bering Sea directed pollock quota by NMFS per section 206(b) of the AFA (after CDQ DFA allocations and ICA are deducted). Allocations within the sector are defined under the provisions of a cooperative agreement. All 19 vessels qualified to participate in the mothership sector are members of the Mothership Fleet Cooperative (MFC) and are bound by the terms of that cooperative's membership agreement. Only 15 of the 19 vessels belonging to the MFC participated in Alaska groundfish fisheries in 2015.

Three motherships were issued AFA permits to process pollock from the mothership allocation. The amount of pollock they are allowed to process depends on agreements they reach with catcher vessels in the MFC.

2.6.2 Role of Maritime Administration (MARAD)

The AFA designated MARAD (under the Department of Transportation) as the agency responsible for ensuring compliance with the requirements included under the AFA for U.S. citizen ownership and control of U.S. flagged fishing vessels 100 feet or greater in registered length. Prior to the AFA, these vessels were exempted from the U.S. citizenship requirements. Under the AFA, the requirements for U.S. citizen ownership and control were increased from 51 percent to 75 percent. MARAD is charged with determining whether vessels of 100 feet or greater in length are owned and controlled by U.S. citizens and eligible for documentation with a fishery endorsement. The changes in citizenship requirements caused the divestiture of some AFA participants and changes to business relationships of active vessels, and specifically an increase in CDQ group ownership of AFA vessels. Additionally, section 210(e)(3) of the AFA directs MARAD to review claims submitted by NMFS or the Council about individuals or entities believed to be in violation of the excessive harvesting or excessive processing limits in the AFA.

2.6.3 AFA Excessive Harvesting and Processing Limits

Section 210(e) of the AFA sets out excessive harvesting and processing limits for participants, discussed in more detail below. Section 210(e)(3) also established that any entity in which 10 percent or more of the interest is owned or controlled by another individual or entity shall be considered to be the same entity as the other individual or entity. This is referred to as the “AFA 10-percent” rule.

In 50 CFR § 679.2, NMFS defines an “AFA entity” as a group of affiliated individuals, corporations, or other business concerns that harvest or process pollock in the BS directed pollock fishery. The proposed rule to implement the AFA Program stated that the concept of “affiliation” is central to the definition of “AFA entity” (66 FR 65028, 65049; December 17, 2001). As the 2001 proposed rule explained, “affiliation” means a relationship between two or more individuals, corporations, or other business concerns in which one concern directly or indirectly owns a 10 percent or greater interest in the other, exerts 10 percent or greater control over the other, or has the power to exert 10 percent or greater control over the other; or a third individual, corporation, or other business concern directly or indirectly owns a 10 percent or greater interest in both, exerts 10 percent or greater control over both, or has the power to exert 10 percent or greater control over both. The proposed rule also stated that ownership and control are two overlapping concepts that may arise through a wide variety of relationships between two or more individuals, corporations, or other concerns. Affiliation may occur through various relationships, such as ownership, stock ownership, management control, or control over operations and manning.

As an example for the application of the AFA 10-percent model, we could look at fictional company A and the fishing vessel it owns, the F/V *Company A*. Company A also owns 30 percent of Company B, which owns the vessel F/V *Company B*. Additionally, Company A owns 9 percent of Company C, which owns the vessel F/V *Company C*. In 2016, the F/V *Company A* harvested 100 metric tons of BS pollock, the F/V *Company B* harvested 90 metric tons of BS pollock, and the F/V *Company C* harvested 20 metric tons. Under the AFA 10-percent model, Company A is attributed with the 100 metric tons from the F/V *Company A* and the 90 metric tons of pollock harvested by the F/V *Company B* but none of the pollock harvested by the F/V *Company C*. In total for 2016, Company A would be attributed with 190 metric tons of pollock.

Every year, members of the AFA inshore sector must complete and submit to NMFS an application for an AFA Inshore Catcher Vessel Cooperative Permit,⁴ which notifies NMFS of the catcher vessels applying for membership in the cooperative. NMFS maintains basic ownership information of AFA vessels and addresses from the AFA permit list supplemented with information from the Federal Fisheries Permit⁵ list. However, under the AFA, participants are not required to divulge company ownership structures to NMFS.

The Coast Guard Act did not prescribe how CDQ group subsidiaries should be treated with regard to excessive share limits. NMFS understands that MARAD currently extends the individual and collective rule to subsidiaries of CDQ groups. Additional questions concerning MARAD's application of the individual and collective rule to CDQ groups and subsidiaries should be directed to MARAD.

2.6.3.1 Excessive harvesting limits

Section 210(e)(1) of the AFA restricts an individual, corporation, or other entity from harvesting more than 17.5 percent of the pollock available to be harvested in the directed pollock fishery. This limit is codified at 50 CFR § 679.20(a)(5)(i)(A)(6). Every year, this limit is published in the annual harvest specifications. For 2016, the limit was set at 205,216 metric tons (81 FR 52367; August 8, 2016; *see also* 81 FR 14773; March 18, 2016 (final 2016-2017 harvest specifications)).

2.6.3.2 Excessive processing limits

Section 210(e)(2) of the AFA directed the Council to recommend for Secretarial approval conservation and management measures to prevent any particular individual or entity from processing an excessive share of pollock available in the directed pollock fishery. The Council and NMFS set this limit at 30 percent of the sum of the directed fishing allowances (67 FR 79692, 79698; December 30, 2002). This limit is codified at 50 CFR § 679.20(a)(5)(i)(A)(7). Every year, this limit is published in the annual harvest specifications. For 2016, the limit was set at 351,798 metric tons (81 FR 52367; August 8, 2016; *see also* 81 FR 14773; March 18, 2016 (final 2016-2017 harvest specifications)).

⁴ <https://alaskafisheries.noaa.gov/sites/default/files/afacoop.pdf>

⁵ <https://alaskafisheries.noaa.gov/sites/default/files/ffpapp.pdf>

2.7 Description of the CR Program

Nine BSAI crab fisheries are managed under the CR Program, which was implemented on April 1, 2005 (70 FR 10174; March 2, 2005). These fisheries are:

- Bristol Bay Red King Crab (BBR)
- Bering Sea Opilio (BSS)
- Eastern Bering Sea Tanner (EBT)
- Western Bering Sea Tanner (WBT)
- Eastern Aleutian Islands Golden King Crab (EAG)
- Western Aleutian Islands Golden King Crab (WAG)
- Saint Matthew Blue King Crab (SMB)
- Pribilof Islands Red and Blue King Crab (PIK)
- Western Aleutian Islands Red King Crab (WAI)

Under the CR Program, holders of LLP licenses endorsed for a crab fishery were issued QS, which are long term shares, based on their qualifying harvest histories in that crab fishery. As part of the CR Program, NMFS issued four types of QS: catcher vessel owner (CVO) QS, assigned to LLP license holders who delivered their catch onshore or to stationary floating crab processors; catcher/processor vessel owner QS, assigned to LLP license holders who harvested and processed their catch at sea; catcher/processor crew QS, issued to captains and crew on board catcher/processor vessels; and catcher vessel crew QS, issued to captains and crew on board catcher vessels. Each year, the holder of QS may receive an exclusive harvesting privilege for a portion of the annual TAC, called IFQ. The size of each annual IFQ allocation is based on the amount of QS held in relation to the QS pool in the fishery. For example, a person holding 1 percent of the QS pool would receive IFQ to harvest 1 percent of the annual TAC in the fishery.

NMFS also issued PQS under the CR Program. PQS are long term shares issued to processors. Each year, PQS yields annual IPQ, which represents a privilege to receive a certain amount of crab harvested with Class A IFQ. Only a portion of the QS issued yields IFQ that is required to be delivered to a processor with IPQ. QS derived from deliveries made by catcher vessel owners (i.e., CVO QS) is subject to designation as either Class A IFQ or Class B IFQ. Ninety percent of the IFQ derived from CVO QS is designated as Class A IFQ, and the remaining 10 percent of the IFQ is designated as Class B IFQ. Class A IFQ must be matched and delivered to a processor with IPQ. Class B IFQ is not required to be delivered to a specific processor with IPQ. Each year there is a one-to-one match of the total pounds of Class A IFQ with the total pounds of IPQ issued in each crab fishery.

2.7.1 CR Program Excessive Harvesting and Processing Limits

When the Council recommended the CR Program, it expressed concern about the potential for excessive consolidation of harvesting and processing shares. To address this concern, the CR Program includes limits on the amount of QS and PQS that a person can hold, the amount of IFQ and IPQ that a person can use, and the amount of IPQ that can be processed at a given facility (NPFMC and NMFS 2016a). Under 50 CFR § 679.2, “person” is defined as an individual, corporation, partnership, association, or other non-individual entity. For non-individual persons, NMFS requires holders of QS and PQS to annually submit information on their ownership structure, down to the individual level, and on each owner’s percentage holdings in the entity, to facilitate the monitoring of these caps.

NMFS receives annual ownership information on the Application for Annual Crab Individual Fishing Quota Permit⁶ and the Application for Annual Crab Individual Processing Quota Permit⁷. Figure 2-1 demonstrates how applicants are required to provide NMFS with ownership information. Additionally, NMFS requires harvesters to annually submit an Application for a Federal Crab Vessel Permit⁸. This application requires naming all owners of the vessel; however, owners are not required to divulge ownership percentages in the vessel.

Figure 2-1 Example of Ownership Information Collection on IFQ and IPQ application

| Name of Owner | % Interest |
|-----------------------------------|-------------------|
| Joe Potpuller | 25% |
| Alice Potpuller | 25% |
| Quotaholder Family Holdings, Inc. | 50% |
| C. Quotaholder | 25% (of 50%) |
| R. Quotaholder | 25% (of 50%) |
| A. Quotaholder | 25% (of 50%) |
| B. Quotaholder | 25% (of 50%) |

Source: NMFS Application for Annual Crab IPQ Permit (<https://alaskafisheries.noaa.gov/sites/default/files/crab-ipq-permit.pdf>)

2.7.1.1 Harvesting sector

Under the CR Program, limits on the amount of QS a person can hold and harvest are imposed in order to prevent excessive consolidation of shares under the program (50 CFR § 680.42). Different caps apply to CVO holdings and catcher vessel crew QS holdings. Individual use caps vary across program fisheries because of different fleet characteristics and the differences in historic dependency of participants on the different crab fisheries. In addition, any CR Program holdings by CDQ groups are subject to higher caps (50 CFR § 680.42(a)(3)). A “grandfather” provision exempted persons who received an initial allocation of QS in excess of the cap. The CR Program also limits use of QS (i.e., vessel use caps) in each fishery. However, the vessel use caps do not apply if the QS is harvested by a cooperative. NMFS currently applies holding and use caps on QS and IFQ using the individual and collective rule for all participants (NPFMC 2016b).

The CR Program also includes caps on vertical integration by processors to protect independent vessel owners and processors. A PQS holder’s QS holdings are limited to 5 percent of the QS pool on a fishery basis. NMFS currently applies the vertical integration cap using the 10-percent rule for determining whether the QS are held by a processor, and then the individual and collective rule for determining the extent of share ownership (NPFMC 2016b). For example, if Company A holds 15% of Company B which owns a processing facility, then Company A is determined to be affiliated with a processor and cannot hold and use more than 5 percent of the QS pool.

2.7.1.2 Processing sector

Section 2.7.1 of the Crab FMP and 50 CFR § 680.42 limit holding of PQS. A processing share cap prevents any person from holding in excess of 30 percent of the PQS in any program fishery unless that

⁶ <https://alaskafisheries.noaa.gov/sites/default/files/ifqannualapp.pdf>

⁷ <https://alaskafisheries.noaa.gov/sites/default/files/crab-ipq-permit.pdf>

⁸ <https://alaskafisheries.noaa.gov/sites/default/files/fcvppapp.pdf>

person received an initial allocation of PQS in excess of this limit. As with vertical integration caps, processor share caps are currently applied using the 10 percent rule for determining whether the shares are held by a processor (NPFMC 2016b).

Additionally, under the CR Program a person may not use more than 30 percent of the IPQ in any program fishery. The CR Program calculates a person's IPQ use cap by summing the total amount of IPQ that is 1) held by that person; 2) held by other persons who are affiliated with that person through common ownership or control; and 3) any IPQ crab that is custom processed at a facility an IPQ holder owns, with exemptions for specific crab fisheries (see 50 CFR § 680.42(b)(7)). The CR Program calculates the amount of IPQ used at a facility by adding all of the IPQ used by any person, whether custom processed or not, at a facility. The term "affiliation" is defined in 50 CFR § 680.2 as a relationship between two or more entities in which one directly or indirectly owns or controls a 10 percent or greater interest in, or otherwise controls, the other entities. An entity may be an individual, corporation, association, partnership, joint-stock company, trust, or other type of legal entity.

The Coast Guard Act's amendment of section 305(i)(1)(F)(i) of the Magnuson-Stevens Act did not prescribe how CDQ group subsidiaries should be treated with regard to excessive share limits. NMFS has applied the amendment on the individual and collective rule to determine holding and use of harvesting or processing privileges by CDQ groups but has not applied the individual and collective rule to entities connected to or related to CDQ groups. When NMFS reviewed the 2006 amendment, it concluded that the language of section 305(i)(1)(F) of the Magnuson-Stevens Act applied only to CDQ groups and expressed concern that certain CR Program provisions could be thwarted if NMFS applied the individual and collective model to non-CDQ entities connected to or related to CDQ groups (i.e., CDQ subsidiaries). Therefore, under the CR Program, NMFS currently applies the 10-percent rule to CDQ group subsidiaries when evaluating their PQS and IPQ holdings.

2.8 Description of the CDQ Program

The CDQ Program was established by the Council and NMFS in 1992, and in 1996, authorization for the Program was incorporated into the Magnuson-Stevens Act. The purpose of the CDQ Program is 1) to provide eligible western Alaska villages with the opportunity to participate and invest in fisheries in the BSAI, 2) to support economic development in western Alaska, 3) to alleviate poverty and provide economic and social benefits for residents of western Alaska, and 4) to achieve sustainable and diversified local economies in western Alaska (16 U.S.C. § 1855(i)(1)(A)). The CDQ Program consists of six CDQ groups representing different geographical regions in Alaska. The CDQ Program receives annual apportionments of TACs for a variety of commercially valuable species in the BSAI groundfish, crab, and halibut fisheries, which are in turn allocated among six different non-profit managing organizations (CDQ groups) (NMFS 2015b).

The six CDQ groups represent the 65 eligible villages in Western Alaska.

Aleutian Pribilof Island Community Development Association (APICDA) represents the villages of: Akutan, Atka, False Pass, Nelson Lagoon, Nikolski, and Saint George.

Bristol Bay Economic Development Corporation (BBEDC) represents the villages of: Aleknagik, Clark's Point, Dillingham, Egegik, Ekuk, Ekwok, King Salmon, Levelock, Manokotak, Naknek, Pilot Point, Port Heiden, Portage Creek, South Naknek, Togiak, Twin Hills, and Ugashik.

Central Bering Sea Fishermen's Association (CBSFA) represents: the village of Saint Paul on Saint Paul Island.

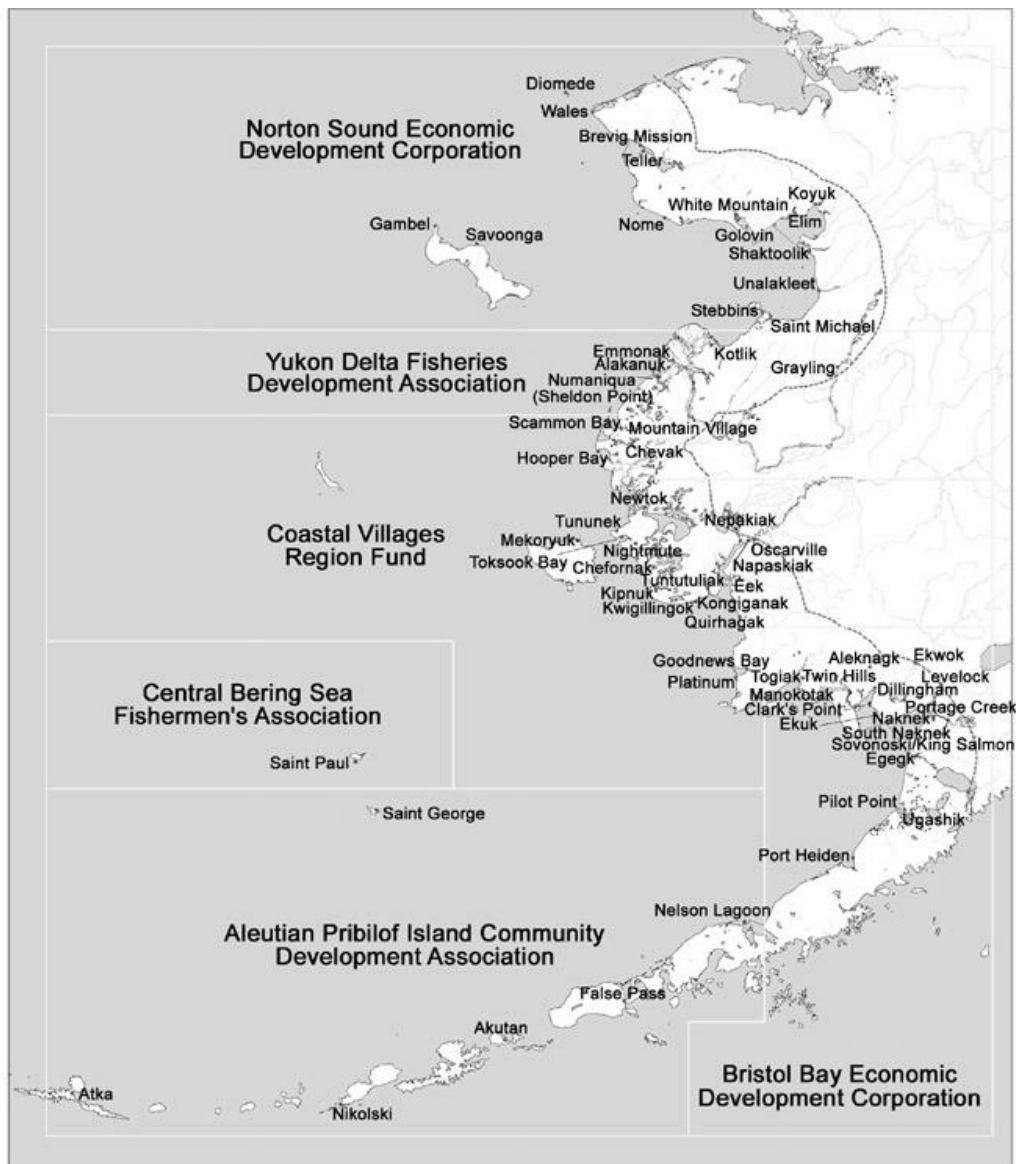
Coastal Villages Region Fund (CVRF) represents the villages of Chefornak, Chevak, Eek, Goodnews Bay, Hooper Bay, Kipnuk, Kongiganak, Kwigillingok, Mekoryuk, Napakiak, Napaskiak, Newtok, Nightmute, Oscarville, Platinum, Quinhagak, Scammon Bay, Tooksook Bay, Tuntutuliak, and Tununak.

Norton Sound Economic Development Corporation (NSEDC) represents the villages of Brevig Mission, Diomedes, Elim, Gambell, Golovin, Koyuk, Nome, Saint Michael, Savoonga, Shaktoolik, Stebbins, Teller, Unalakleet, Wales, and White Mountain.

Yukon Delta Fisheries Development Association (YDFDA) represents the villages of Alakanuk, Emmonak, Grayling, Kotlik, Mountain Village, and Nunam Iqua.

Geographically dispersed, the member communities extend westward to Atka, on the Aleutian Islands chain, and northward along the Bering Sea coast to the village of Wales, near the Arctic Circle (see Figure 2-2). In general economic terms, CDQ communities are remote, isolated settlements with few commercially valuable natural assets with which to develop and sustain a viable, diversified economic base. As a result, economic opportunities are few, unemployment rates are chronically high, and communities and the region are economically depressed (NMFS 2015a).

Figure 2-2 Western Alaska CDQ communities and groups.



Source: NOAA, Alaska Fisheries Science Center

CDQ fisheries management regulations have been developed incrementally since the creation of the CDQ Program in 1992. In 1991, the Council proposed the first CDQ allocation. As part of the original Bering Sea allocation action (“Inshore/Offshore I”), 7.5 percent of the annual TAC of BSAI pollock was allocated to the Program (57 FR 46139; October 7, 1992; 57 FR 46133; October 7, 1992 (proposed rules)). The Secretary approved regulations establishing the CDQ Program allocations (57 FR 54936; November 23, 1992), and this general regulatory framework remained in place until the Coast Guard Act amended the Magnuson-Stevens Act in 2006, which produced a significant shift in the administration of the CDQ Program towards greater autonomy for the CDQ groups. Under the original program design, each CDQ group prepared community development plans (CDPs), which were submitted to the Governor of the State of Alaska as applications for CDQ allocations. The Governor recommended approval of the CDPs and associated allocations to NMFS. The Council reviewed the Governor’s recommendations, and NMFS made the final decision about allocations among the CDQ groups (NMFS 2015b).

In 2006, Congress passed the Coast Guard Act (Public Law 109–241), which amended the CDQ Program to give CDQ groups and their communities’ greater autonomy, based on the recommendations of the State of Alaska’s Blue Ribbon Panel. Section 416(a) of the Coast Guard Act revised section 305(i)(1) of the Magnuson-Stevens Act by replacing the existing language in this section with new language that included significant changes to the management and oversight of the CDQ Program. The amendments to the Magnuson-Stevens Act were intended to promote the ability of CDQ groups to responsibly manage their allocations similar to the quota share allocations provided by NMFS to most other participants in the BSAI fisheries, while promoting the goals of the CDQ Program (NMFS 2015a).

The 2006 amendments to the CDQ Program mandated the continuation of allocations to the CDQ Program at current levels and with no sunset date, except that 1) multi-species groundfish CDQ would increase to 10 percent once/if quotas or sector allocations are implemented, and 2) the CDQ Program will get 10 percent of any new directed fisheries established in the BSAI. The Coast Guard Act mandated a 10-year review cycle for the allocations among the six CDQ groups, with the first review completed in 2012 (after the results of the 2010 U.S. Census became available) (NMFS 2015a).

Additionally, the Coast Guard Act revised section 305(i)(1)(F)(i) of the Magnuson-Stevens Act to specify that CDQ groups would be subject to excessive share ownership, harvesting, and processing limitations proportional to their ownership of entities holding such privileges (the “individual and collective model”). This amendment applies to any fishery program in the Bering Sea and Aleutian Islands with excessive share limits. The Coast Guard Act therefore superseded the way in which ownership is attributed for the purposes of excessive share limits for CDQ groups under the AFA Program and the CR Program.

CDQ groups may choose to directly fish their annual apportionments of groundfish, crab, and halibut TACs or lease the apportionments and collect royalties from harvesting partners. Additionally, although all participants in the CDQ Program are non-profit corporations, the accumulation of capital assets, such as commercial fishing vessels, is another way CDQ groups attempt to meet the economic and social goals of the CDQ Program. CDQ groups expend revenue earned through both royalties and capital assets on CDQ projects intended to support economic development and improve public welfare within the communities in their region. Since the implementation of the CDQ Program, individual groups have made large capital investments in vessels, infrastructure, processing capacity, and specialized gear. Local programs purchase LAPs in a fishery and acquire equity position in existing fishery businesses, including halibut, sablefish, and crab (NMFS 2015a).

CDQ groups have also invested in the Bering Sea pollock fishery and other fisheries by acquiring ownership interest in the at-sea processing sector and in catcher vessels. Such investments are made with the expectation of financial gain or expanding equity in the fishing fleet. Investments in subsidiaries, such as limited liability corporations, allow CDQ groups to wholly or partially own fishing vessels. These vessels provide revenue through the direct catch and sale of target species. In addition, investments in harvesting and processing capacity provide revenue through profit sharing, contractual agreements to harvest other CDQ groups’ quota, and chartering commercial fishing vessels to government agencies conducting stock assessment surveys. Vessel ownership varies by CDQ group, target species, and affiliation with subsidiary corporations (NMFS 2015a). The following sections describe current CDQ ownership of vessels, processing facilities, and subsidiary corporations.

2.8.1 Description of CDQ Vessel Ownership

Table 2-2 below displays the vessels currently active in the Federal groundfish and crab fisheries that are owned wholly or in part by a CDQ group. Some vessels are owned by more than one CDQ group and in those cases the percent of CDQ ownership is in list form. For the vessels that are participants in the AFA Program, the CDQ ownership percentages listed below would be used to determine the proportional

harvest of Bering Sea pollock for the purposes of managing the excessive harvest limitations under the AFA Program. For the vessels that are participants in the CR Program, the CDQ ownership percentages listed below would be used to determine the proportional harvest of CR Program crab QS for the purposes of managing the vessel use caps under the CR Program (see Section 2.7.1.1 for more information). However, if the QS is harvested under a cooperative, then the vessel use caps do not apply.

Table 2-2 CDQ Ownership in Vessels Active in Federal Groundfish and Crab Fisheries

| ADFG | Vessel Name | CDQ Group(s) | CDQ ownership | ADFG | Vessel Name | CDQ Group(s) | CDQ ownership |
|-------|---------------------|--------------|---------------|-------|------------------|--------------|---------------|
| 77470 | Arctic Prowler | APICDA | 25% | 59687 | Forum Star | CBSFA | 9.9% |
| 63333 | Bering Prowler | APICDA | 25% | 55301 | Katie Ann | CBSFA | 9.9% |
| 47952 | Exceller | APICDA | 100% | 56618 | Northern Eagle | CBSFA | 9.9% |
| 62424 | Farwest Leader | APICDA | 70% | 60202 | Northern Jaeger | CBSFA | 9.9% |
| 35687 | Golden Dawn | APICDA | 25% | 56987 | Ocean Rover | CBSFA | 9.9% |
| 39369 | Gulf Prowler | APICDA | 25% | 75473 | Saint Paul | CBSFA | 100% |
| 69625 | Konrad | APICDA | 100% | 76769 | Saint Peter | CBSFA | 100% |
| 43570 | Ocean Prowler | APICDA | 25% | 34931 | Starlite | CBSFA | 75% |
| 40920 | Prowler | APICDA | 25% | 39197 | Starward | CBSFA | 75% |
| 57621 | Starbound | APICDA | 20% | 33696 | Arctic Sea | CVRF | 100% |
| 8522 | US Liberator | APICDA | 20% | 56016 | Deep Pacific | CVRF | 100% |
| 44971 | Barbara J | APICDA | 50% | 63484 | Lilli Ann | CVRF | 100% |
| 41312 | Alaska Defender | BBEDC | 50% | 59376 | North Cape | CVRF | 100% |
| 62437 | Alaskan Leader | BBEDC | 50% | 36047 | North Sea | CVRF | 100% |
| 35844 | Aleutian Mariner | BBEDC | 40% | 60795 | Northern Hawk | CVRF | 100% |
| 57450 | Arctic Fjord | BBEDC | 40% | 8225 | Sea Venture | CVRF | 100% |
| 31792 | Arctic Mariner | BBEDC | 50% | 38989 | Alaska Rose | CVRF, NSEDC | 37.5%, 37.5% |
| 51672 | Bering Defender | BBEDC | 50% | 40638 | Bering Rose | CVRF, NSEDC | 37.5%, 37.5% |
| 74669 | Bering Leader | BBEDC | 50% | 60655 | Destination | CVRF, NSEDC | 37.5%, 37.5% |
| 70435 | Bristol Leader | BBEDC | 50% | 37660 | Great Pacific | CVRF, NSEDC | 37.5%, 37.5% |
| 8411 | Bristol Mariner | BBEDC | 45% | 35957 | Sea Wolf | CVRF, NSEDC | 37.5%, 37.5% |
| 64 | Cascade Mariner | BBEDC | 50% | 60407 | Alaska Ocean | NSEDC | 38% |
| 56676 | Defender | BBEDC | 50% | 5992 | Aleutian No. 1 | NSEDC | 100% |
| 38431 | Morning Star | BBEDC | 50% | 57228 | Arica | NSEDC | 9% |
| 32858 | Neahkahnie | BBEDC | 40% | 55921 | Cape Horn | NSEDC | 9% |
| 222 | Nordic Mariner | BBEDC | 45% | 34905 | Glacier Bay | NSEDC | 100% |
| 77393 | Northern Leader | BBEDC | 50% | 48075 | Northern Glacier | NSEDC | 38% |
| 7 | Pacific Mariner | BBEDC | 40% | 56991 | Pacific Glacier | NSEDC | 38% |
| 963 | Western Mariner | BBEDC | 50% | 35767 | Patricia Lee | NSEDC | 100% |
| 965 | Adventure | CBSFA | 100% | 51873 | Rebecca Irene | NSEDC | 9% |
| 50570 | Aleutian Challenger | CBSFA | 9.9% | 57211 | Unimak | NSEDC | 9% |
| 62152 | American Challenger | CBSFA | 9.9% | 24255 | American Beauty | YDFDA | 75% |
| 59378 | American Dynasty | CBSFA | 9.9% | 34855 | Baranof | YDFDA | 41% |
| 60660 | American Triumph | CBSFA | 9.9% | 35833 | Courageous | YDFDA | 90% |
| 103 | Early Dawn | CBSFA | 50% | 52929 | Golden Alaska | YDFDA | 30% |
| 55111 | Fierce Allegiance | CBSFA | 30% | 61154 | Kiska Sea | YDFDA | 45% |
| | | | | 32 | Ocean Leader | YDFDA | 75% |

Source: NPFMC and NMFS 2016b with updates from CDQ group annual reports for 2015.

2.8.2 Description of CDQ Processing

CDQ groups have invested in inshore processing plants for halibut, salmon, Pacific cod, and other species. For example, APICDA owns processing plants in False Pass and Atka, BBEDC holds 50 percent ownership in Ocean Beauty Seafoods, CVRF owns Coastal Villages Seafoods' salmon and halibut processing plants, NSEDC's Norton Sound Seafood Products operates processing plants and purchasing stations throughout the region, and YDFDA owns Kwik'Pak Fisheries and has provided funding for the Emmonak Tribal Council's fish processing plant. Capital investments in processing equipment have allowed plants to produce processed seafood products for sale in global seafood markets (NMFS 2015a).

2.8.3 Description of CDQ Subsidiaries

As described above, CDQ groups often own vessels through their investments in subsidiaries, such as limited liability corporations. Additionally, many CDQ groups hold LAPs in the various LAP programs under subsidiaries. CDQ subsidiaries generally do not carry the non-profit status of the CDQ group. Table 2-3 shows the subsidiaries of each CDQ group.

Table 2-3 Wholly-owned and partially-owned subsidiaries of CDQ groups.

| GROUP | MEMBERS | GROUP | MEMBERS | |
|--|------------------------------|--------------------------------|-----------------------------------|--------------|
| APICDA | APICDA Joint Ventures | BBEDC | Alaskan Mariner, LLC | |
| | APICDA Vessels, Inc. | | Aleutian Mariner, LLC | |
| | Atka Pride Seafoods, Inc. | | Arctic Mariner, LLC | |
| | F/V Barbara J, LLC | | Bristol Mariner, LLC | |
| | Bering Pacific Seafoods, LLC | | Cascade Mariner, LLC | |
| | F/V Exceller, LLC | | Nordic Mariner, LLC | |
| | F/V Farwest Leader, LLC | | Northern Mariner, LLC | |
| | F/V Golden Dawn, LLC | | Pacific Mariner, LLC | |
| | Alaska Longline, LLC | | Western Mariner, LLC | |
| | Starbound, LLC | | Dona Martita, LLC | |
| | Cannon Fish Company | | Arctic Fjord, Inc. | |
| | CBSFA | | 57 Degrees North, LLC | BBEDC |
| 170 Degrees West, LLC | | Alaskan Leader Fisheries, LLC | | |
| Village Cove Seafoods, LLC | | Alaskan Leader Seafoods, LLC | | |
| American Seafoods, L.P. | | Alaskan Leader Vessel, LLC. | | |
| Central Bering Sea Holdings, LLC | | Aleutian Leader Fisheries, LLC | | |
| St. Paul Fishing Company, LLC | | Bering Leader Fisheries, LLC | | |
| Star Partners, LLC | | Bristol Leader Fisheries, LLC | | |
| Starward, LLC | | Kodiak Leader Fisheries, LLC | | |
| Starlite, LLC | | Northern Leader, LLC | | |
| Central Bering Sea Vessels, LLC | | Ocean Beauty Seafoods, LLC | | |
| F/V Fierce Allegiance, LLC | | CVRF | Coastal Alaska Premier Seafoods | |
| F/V Early Dawn, LLC | | | Coastal Villages Pollock, LLC | |
| Bering Sea Partners, Inc. | | | Coastal Villages Crab, LLC | |
| Royal Aleutian Seafoods, Inc. | | | BSAI Partners, LLC | |
| Saint Boats, LLC. | | | Coastal Villages Holdings LLC | |
| Saint Paul, LLC | | | Coastal Villages Enterprises Inc. | |
| Saint Peter, LLC | | NSEDC | BSAI Partners, LLC | |
| Adventure, LLC | | | Norton Sound Seafood Partners | |
| Central Bering Sea Fishermen's Corporation | Glacier Fish Company | | | |
| Misty Islands Seafoods, LLC | Arctic Packer, LLC | | | |
| YDFDA | Kwik'Pak Fisheries LLC | | Siku Holdings, LLC | |
| | Yukon Delta Fisheries Inc | | Iquique US | |
| | Akulurak LLC | Siu Alaska Corporation | | |
| | Romanzof Fishing Company LLC | KDS, Inc. | | |

Source: NMFS 2015a and CDQ group annual reports.

2.9 CDQ ownership of CR Program QS and PQS

The CDQ groups hold CR Program QS and PQS directly as well as through subsidiaries. NMFS posts annual lists of these holdings on the NMFS website.⁹ Section 2.7 describes that NMFS applies the CR Program QS caps using the individual and collective rule for all participants. In many of the CR Program fisheries, the CDQ groups and their wholly owned and partially owned subsidiaries are right at the QS holding caps (see Table 2-4). Section 2.7 also describes that NMFS applies the CR Program PQS holding caps for CDQ groups using the individual and collective rule and the 10-percent rule for all non-CDQ participants. CDQ groups are well below the PQS holdings cap for most of the fisheries (see Table 2-5). The one exception is that APICDA is right at the PQS cap for the WAG fishery.

⁹ <https://alaskafisheries.noaa.gov/>

Table 2-4 QS holdings for 2015/2016 by CDQ group.

| Group | BBR | BSS | EAG | EBT | PIK | SMB | WAG | WAI | WBT |
|-------------------------------|------------|------------|-----------|-----------|-----------|-----------|------------|------------|-----------|
| APICDA | 2,280,075 | 6,502,817 | - | 2,293,046 | - | 294,551 | - | - | 2,293,046 |
| BBEDC | 19,399,999 | 47,576,475 | - | 8,651,668 | 1,096,626 | 1,739,189 | - | 2,606,962 | 8,651,666 |
| CBSFA | 15,273,743 | 33,593,228 | 485,000 | 4,920,367 | 638,450 | 1,037,927 | 469,191 | 409,688 | 4,920,367 |
| CVRF | 19,399,853 | 48,499,882 | 485,000 | 9,662,675 | 596,755 | 1,455,000 | 878,114 | 927,007 | 9,662,675 |
| NSEDC | 7,876,095 | 28,215,723 | 1,940,000 | 4,098,213 | 2,030,682 | 251,323 | 17,742,670 | 26,282,621 | 4,098,213 |
| YDFDA | 15,597,638 | 47,265,607 | - | 9,700,000 | 347,617 | 1,358,891 | 4,651,590 | 325,058 | 9,700,000 |
| QS Holding limit ¹ | 19,400,000 | 48,500,000 | 1,940,000 | 9,700,000 | 2,910,000 | 2,910,000 | 7,760,000 | 11,640,000 | 9,700,000 |

¹ QS holding limits for CDQ groups are found at 50 CFR § 680.42(a)(3)(i). Some CDQ groups were grandfathered in above the cap.

Table 2-5 PQS holdings for 2015/2016 by CDQ group.

| Group | BBR | BSS | EAG | EBT | PIK | SMB | WAG | WBT |
|--------------------------------|-------------|-------------|-----------|------------|-----------|-----------|------------|------------|
| APICDA | 6,316,945 | 56,976,258 | 701,249 | 7,276,863 | 738,827 | 1,300,562 | 12,000,000 | 7,276,863 |
| CBSFA | 49,341,379 | 172,281,361 | 939,521 | 29,689,974 | 3,991,464 | 5,822,312 | 558,611 | 29,689,974 |
| CVRF | 40,495,833 | 91,261,508 | - | - | - | - | - | - |
| PQS Holding limit ² | 120,000,000 | 300,000,000 | 3,000,000 | 60,000,000 | 9,000,000 | 9,000,000 | 12,000,000 | 60,000,000 |

² PQS holding limits for CDQ groups are found at 50 CFR § 680.42(b)(i).

Source: NMFS RAM Annual QS and PQS holdings data.

2.10 Comparison of Alternatives

Table 2-6 shows the difference between Alternative 1 and Alternative 2 for the regulations governing each of the types of caps under both the AFA and CR Programs. It is important to note that not every holding or use cap under each program would be affected by the action alternative.

Table 2-6 Comparison of how each alternative would affect the regulations governing CDQ ownership attribution under each type of cap.

| Program | Ownership Attribution Method | Citation | Would CDQ ownership attribution regulations change under Alternative 1? | Would CDQ ownership attribution regulations change under Alternative 2? |
|--|------------------------------|--------------------------------|---|---|
| AFA Program excessive harvesting and processing limits | 10-percent | § 679.2 Affiliation | No | Yes |
| CR Program QS/IFQ holding and vessel use ¹ caps | Individual and collective | § 680.42(a)(2), § 680.42(a)(3) | No | No |
| CR Program vertical integration caps | Individual and collective | § 680.42(a)(4) | No | No |
| CR Program PQS/IPQ holding and use caps | 10-percent | § 680.42(b) | No | Yes |

¹50 CFR § 680.42(a)(5) relieves the IFQ use cap if the IFQ is used by a crab harvesting cooperative.

2.11 Analysis of Impacts: Alternative 1, No Action

Alternative 1, the no-action alternative, would result in no change to the regulations and the Crab FMP governing the ownership attribution method used in excessive share limitations under the AFA Program and in PQS and IPQ holding and use caps under the CR Program. Statutes, such as the Magnuson-Stevens Act, supersede regulations. NMFS' current method of determining ownership for the purposes of monitoring excessive share limitations is consistent with the Magnuson-Stevens Act, as amended by the Coast Guard Act. NMFS evaluates CDQ group holdings using the individual and collective ownership attribution model, rather than the 10-percent model of ownership attribution, for the AFA and CR Programs. Therefore, under Alternative 1, the AFA and CR Program regulations and the Crab FMP are not consistent with the Magnuson-Stevens Act or the current method of ownership attribution for CDQ groups in the AFA and CR Programs. Having regulations that are inconsistent with statute and agency policy creates confusion for the public and requires dependence on informal documents for describing the process for evaluating and attributing ownership in these fisheries. Additionally, NMFS did not issue publicly available documentation of its change in practice after 2006; therefore, members of the public have had to individually pursue guidance from NMFS with regard to particular questions concerning the impacts of potential new business relationships with respect to excessive share limitations for the AFA and CR Programs. This confusion may have hindered CDQ groups looking to expand in the BSAI fisheries under the less restrictive individual and collective attribution model, consistent with the intent of the Coast Guard Act.

For the AFA under Alternative 1, CDQ groups and their subsidiaries would continue to be held to the excessive harvesting and processing limitations as determined using the individual and collective rule to evaluate ownership and control for determining the holding and use of LAPs. These limitations stipulate that no AFA entity may harvest more than 17.5 percent of the DFA across sectors or process more than 30 percent of the DFA.

For the CR Program under Alternative 1, CDQ groups would continue to be held to the limit on holding and processing no more than 30 percent of the PQS and IPQ pools using the individual and collective rule to evaluate ownership and control for determining the holding and use of LAPs.

2.12 Analysis of Impacts: Alternative 2, PA

Alternative 2, the action alternative, would revise 50 CFR §§ 679.2, 679.7(k)(6), 679.7(k)(7), 680.2, and 680.42(b). Additionally, Alternative 2 would revise Section 2.7.1 of the Crab FMP.

Alternative 2 would revise the regulations so that under the AFA, CDQ groups would only be attributed harvesting and processing of AFA pollock proportionally to their ownership of vessels and processors active in those fisheries using the individual and collective rule. For example, if a CDQ group owns 15 percent of a company, under Alternative 2, the revised regulations would clarify that the CDQ group would be attributed 15 percent of the harvest or processing of that company. NMFS has used the individual and collective rule for CDQ group ownership attribution in practice since enactment of the Coast Guard Act; however, the regulations have not been updated. Alternative 2 would update the AFA regulations to be consistent with current practice and the Magnuson-Stevens Act.

Alternative 2 would also revise the regulations for the CR Program and the Crab FMP so that CDQ groups would only be attributed holding and use of PQS and IPQ based on their proportional ownership of entities that hold and use PQS and IPQ. For example, if a CDQ group owns 15 percent of a company that holds or uses PQS or IPQ, the revisions to the regulations and the Crab FMP would clarify that the CDQ group would be attributed 15 percent of the holding or use of that PQS or IPQ. As Table 2-6 shows, Alternative 2 would not alter the regulations for the QS and IFQ holding and use caps under the CR Program. NMFS has used the individual and collective rule for CDQ group ownership attribution for the PQS and IPQ holding and use caps in practice since enactment of the Coast Guard Act; however, the regulations have not been updated. Alternative 2 would update the CR Program regulations and the Crab FMP to be consistent with current practice and the Magnuson-Stevens Act.

Alternative 2 would benefit CDQ groups and the public by clarifying the method NMFS uses to attribute holding and use of harvesting and processing privileges by CDQ groups for purposes of monitoring excessive share caps for the AFA and CR Programs. Alternative 2 would revise the AFA and CR Program regulations and the Crab FMP for consistency with the Magnuson-Stevens Act and the current method of ownership attribution for CDQ groups in the AFA and CR Programs.

2.13 Management and Enforcement Considerations

There would be no difference between the management and enforcement of the CDQ ownership attribution for the purposes of excessive share limitations under Alternative 1 as compared to Alternative 2. To monitor these caps, NMFS determines what portion of a program's harvesting and processing privileges a person¹⁰ holds and/or uses to ensure that no person holds or uses more privileges than is authorized by the applicable excessive share cap. Businesses that hold and use privileges in the AFA and CR Programs are often composed of multiple owners that have ownership interests in multiple fishing businesses. In cases where a harvesting or processing privilege is held by a business entity with more than one owner, NMFS must apply the holding and use caps to each entity that has an ownership interest in

¹⁰ 50 CFR 679.2 defines "person" as any individual (whether or not a citizen or national of the United States), any corporation, partnership, association, or other non-individual entity (whether or not organized, or existing under the laws of any state), and any Federal, state, local, or foreign government or any entity of any such aforementioned governments.

harvesting vessels, processing plants, and quota share to monitor whether the entity exceeds the established caps.

Under the AFA, participants are not required to divulge company ownership structures to NMFS. Additionally, the CDQ Program does not require CDQ groups to report ownership of subsidiaries. Pursuant to section 210(e)(3) of the AFA and MARAD regulations at 46 CFR § 356.55, either NMFS or the Council can request MARAD investigate entities for possible violations of the excessive harvesting and processing limitations under the AFA and NMFS regulations.

Under the CR Program, ownership interests are often indirect, with many persons holding overlapping interests in a variety of fisheries. These overlapping indirect interests create a complex web that must be fully assessed to monitor compliance with limits on shareholdings (NPFMC and NMFS 2016a). The CR Program requires participants to submit ownership information for non-individual persons holding PQS on the annual application for IPQ (see Figure 2-1). NMFS uses this information to evaluate whether an application for transfer of PQS would cause an individual to exceed the holding and use caps and either approves or disapproves the transfer as a result. However, it can be challenging for NMFS to monitor holdings and use of CR Program privileges with the information that is submitted annually because participants periodically change ownership interests in businesses related to crab fishing in the Bering Sea and Aleutian Islands and the ownership interests are often complex.

Nonetheless, while the proposed action will amend the regulations and the Crab FMP, NMFS will continue to apply the proportional method for ownership attribution for CDQ groups using the individual and collective rule, and thus NMFS does not anticipate the proposed action would cause a significant change in the management and enforcement of excessive share limits for CDQ groups in the AFA and CR Programs.

2.14 Summation of the Alternatives with Respect to Net Benefit to the Nation

The actions under Alternative 2 as compared to Alternative 1 would likely provide a small net benefit to the Nation for CDQ groups and the public because Alternative 2 would clarify the applicable regulations and the Crab FMP and because the regulations and the Crab FMP would be consistent with the Magnuson-Stevens Act and NMFS' current practice for attributing holding and use of harvesting and processing privileges for CDQ groups. Alternative 2 will likely have a net positive benefit because there are no identified costs, and a small benefit is expected to accrue compared to the no action alternative.

3 Magnuson-Stevens Act and FMP Considerations

3.1 Magnuson-Stevens Act National Standards

Below are the 10 National Standards as contained in the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) (16 U.S.C. § 1851), and a brief discussion of how the action alternative, Alternative 2, is consistent with the National Standards, where applicable. In recommending a preferred alternative, the Council must consider how to balance the national standards. Here, Congress has mandated that CDQ groups “shall be subject to any excessive share ownership, harvesting, or processing limitations in the fisheries of the Bering Sea and Aleutian Islands Management Area only to the extent of the entity’s proportional ownership.” (16 U.S.C. § 1855(i)(1)(F)(i)). While NMFS has implemented this directive in practice, the regulations and the Crab FMP have not been revised. The no-action alternative, Alternative 1, is therefore inconsistent with the Magnuson-Stevens Act, and NMFS does not examine that alternative for consistency with the National Standards. Nevertheless, this section analyzes how the action alternative, Alternative 2, is consistent with the National Standards.

National Standard 1 — Conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery for the United States fishing industry.

The overall amount of fish and shellfish allocated to and caught by the CDQ groups and the timing of the fisheries under the CDQ Program are not expected to change as a result of Alternative 2.

National Standard 2 — Conservation and management measures shall be based upon the best scientific information available.

No additional conservation and management measures are imposed under Alternative 2. Information previously developed on BSAI groundfish stocks and fisheries, as well as the most recent information available, is available in the BSAI stock assessment and fishery evaluation report (NPFMC 2016a). It represents the best scientific information available.

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 annual TACs are set for BSAI groundfish stocks according to the annual harvest specification process that is outlined in the BSAI FMP. NMFS conducts the stock assessments for these species based on the most recent catch and survey information. The assessment author(s), along with the Council’s BSAI Groundfish Plan Team and Science and Statistical Committee, recommends overfishing levels and allowable biological catches to the Council. The Council sets annual harvest specifications for these stocks based on those scientific recommendations.¹¹ Neither the process to set those specifications, nor the specifications themselves, will change as a result of Alternative 2.

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 United States 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.

¹¹ <http://www.afsc.noaa.gov/refm/stocks/assessments.htm>

Nothing in Alternative 2 would alter the residency criterion that was initially used to establish the CDQ Program. Therefore, no discrimination would be made among fishermen based on residency or any other criteria under Alternative 2. Alternative 2 does not change the structure of LAP programs in Alaska's fisheries, including the AFA and CR Programs, nor does it change the excessive share limits established in those LAP programs; Alternative 2 therefore does not impact other considerations, including those under (A) and (B). However, Alternative 2 would clarify regulations for monitoring excessive shares of privileges, as required by (C). Specifically, Alternative 2 clarifies the Crab FMP and regulations for the AFA and CR Programs that govern how NMFS determines the amount of LAPs held and used by CDQ groups for the purposes of managing excessive share limits under the AFA and CR Programs. This clarification likely will improve the monitoring of accumulation of excessive shares under (C) by providing clarity to the public and the CDQ groups and consistency between Magnuson-Stevens Act and the applicable regulations.

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.

Alternative 2 would not impact utilization of the resource. Alternative 2 would revise the regulations governing the CR Program and AFA Program to bring them into conformity with the directive of section 305(i)(1)(F)(i) of the Magnuson-Stevens Act; however, it would not affect current practice with regard to ownership attribution for CDQ groups as NMFS had already implemented that directive in practice.

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

Alternative 2 would not be expected to affect changes in the availability of the BSAI pollock or crab resource each year. Any such changes would be addressed through the annual allocation process, which is not affected by Alternative 2.

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

Alternative 2 would revise outdated text and would ensure consistency of AFA and CR Program regulations and the Crab FMP with the Magnuson-Stevens Act and current practice.

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 by utilizing economic and social data that meet the requirements of National Standard 2, 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.

Alternative 2 would have a positive effect on the communities involved in the CDQ Program because it would clarify regulatory requirements.

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.

Alternative 2 is not expected to impact bycatch or bycatch avoidance.

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

Alternative 2 is consistent with this standard because it would not change safety requirements for fishing vessels or timing of fisheries, and no safety issues have been identified that would result from Alternative 2.

4 Section 303(a)(9) Fisheries Impact Statement

Section 303(a)(9) of the Magnuson-Stevens Act requires that any plan or amendment include a fishery impact statement that shall assess and describe the likely effects, if any, of the conservation and management measures on A) participants in the fisheries and fishing communities affected by the plan or amendment; B) participants in the fisheries conducted in adjacent areas under the authority of another regional fishery management council, after consultation with such council and representatives of those participants, taking into account potential impacts on the participants in the fisheries, as well as participants in adjacent fisheries; and C) the safety of human life at sea, including whether and to what extent such measures may affect the safety of participants in the fishery (16 U.S.C. § 1853(a)(9)).

The proposed alternatives are described in the RIR. The impacts of these alternative actions on participants in the fisheries and fishing communities are addressed in Sections 2.10 through 2.14. The RIR prepared for this plan amendment analyzes this proposed action relative to the requirements of section 303(a)(9) for a fishery impact statement. The likely effects of the proposed action are analyzed and described throughout the RIR. Specifically, the effects on participants in the fisheries and fishing communities are analyzed in the RIR chapter of this analysis (Chapter 2). The effects of the proposed action on safety of human life at sea are evaluated in Section 3.1 under National Standard 10.

The proposed action affects the groundfish and crab fisheries in the EEZ off Alaska, which are under the jurisdiction of the Council. Any impacts on participants in the fisheries and fishing communities affected by the proposed action to amend the Crab FMP are expected to be minor and are expected to result in a small benefit through the clarification of the applicable regulations and the Crab FMP. Impacts on participants in fisheries conducted in adjacent areas under the jurisdiction of other regional fishery management councils are not anticipated as a result of this proposed action. Finally, because the proposed action will not change any safety requirements, the proposed action will have no impacts on the safety of human life at sea. Based on these reasons and based on the information reported in this section, there is no need to update the Fishery Impact Statement included in the Crab FMP.

5 Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), first enacted in 1980 and codified at 5 U.S.C. §§ 601–612, 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.

The RFA emphasizes predicting significant adverse economic impacts on small entities as a group distinct from other entities, and on the consideration of alternatives that may minimize such 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 economic effect on a substantial number of small entities, and support such a certification with a “factual basis,” demonstrating this outcome, or (2) if such a certification is not appropriate, prepare and make available for public review an Initial Regulatory Flexibility Analysis (IRFA) that describes, among other requirements, the potential adverse economic impacts of the proposed rule on directly regulated small entities and the steps the agency has taken to minimize those impacts.

At the proposed rule stage, the Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. As adopted, this final action revises regulations and the Crab FMP so that they are consistent with the ownership attribution method mandated by the Magnuson-Stevens Act for CDQ groups for monitoring limitations on the holding and use of harvesting and processing privileges in the AFA and CR Programs.

The CDQ groups are the directly regulated entities under the regulatory revisions. All six of the CDQ groups are non-profit corporations and are considered small entities under the RFA. NMFS, one of the agencies that manages these holding and use limitations, has already implemented these provisions of the Magnuson-Stevens Act in practice. Accordingly, this action is not expected to materially change how any small entities are regulated, nor is the proposed action expected to impose significant compliance costs or materially change how any small entities comply with the applicable regulations. Rather, this action will benefit CDQ groups and the public by clarifying the method NMFS uses to attribute holding and use of harvesting and processing privileges by CDQ groups for purposes of monitoring holding and use caps for the AFA and CR Programs. This action also ensures consistency with the mandate of section 305(i)(1)(F)(i) of the Magnuson-Stevens Act that NMFS use a particular ownership attribution method for CDQ groups.

This action therefore is not expected to have a significant economic impact on a substantial number of the small entities regulated by this proposed action—the CDQ groups. Because NMFS certified this action at the proposed rule stage, pursuant to 5 U.S.C. § 605, an initial regulatory flexibility analysis was not required, and none was prepared. At the proposed rule stage, NMFS requested comments on the decision to certify this action. No comments were received. As a result, a final regulatory flexibility analysis was not required, and none was prepared in this final rule, pursuant to 5 U.S.C. § 605.

6 Preparers and Persons Consulted

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