

REGULATORY IMPACT REVIEW

For an Emergency Rule to
Exempt Custom Processing from the Tanner Crab
Individual Processing Quota Use Caps

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Abstract: The Council has requested that NMFS promulgate an emergency rule to modify regulations governing individual processing quota (IPQ) use in the Bering Sea *Chionoecetes bairdi* Tanner crab fisheries. This emergency rule would allow, for the 2015/2016 crab fishing year, Tanner crab to be custom processed (processed on behalf of an IPQ holder) without that crab being applied against the IPQ use caps of facility operators. IPQ use caps limit the amount of crab a processor can process in a season. An emergency exists because, due to the consolidation of processors, the few processors available are constrained by IPQ use caps, resulting in more crab being available for harvest than can be legally processed. This will result in a substantial amount of Tanner crab remaining unharvested. Harvesters, shoreside processors, and communities that participate in these fisheries have limited alternatives to mitigate the resulting negative economic effects. The custom processing exemption would enable fishermen to harvest and deliver Tanner crab to processors able to process that crab. This document contains a Regulatory Impact Review to analyze the economic impacts of temporarily allowing a custom processing exemption for Tanner crab.

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1 INTRODUCTION

In August 2005, fishing in the Bering Sea and Aleutian Island (BSAI) crab fisheries began under a new catch share management program, the Crab Rationalization Program (Program). The Program is unique in several ways, including the allocation of processing quota shares (PQS) corresponding to a portion of the harvest quota share (QS) pool. Under the program, 90 percent of the annual catcher vessel owner harvest share allocation is issued as “Class A” individual fishing quota (IFQ), which must be delivered to a processor holding unused individual processing quota (IPQ).

When the North Pacific Fishery Management Council (Council) recommended the Program, it expressed concern about the potential for excessive consolidation of quota share. This concern related to the underlying revocable privilege that allows the holder access to a specific percentage of the total allowable catch (TAC): QS and PQS, as well as the temporary consolidation of the resulting annual pounds of IFQ and IPQ. Excessive consolidation could have adverse effects on crab markets, price setting negotiations between harvesters and processors, employment opportunities for harvesting and processing crew, tax revenue to communities in which crab are landed, and other factors. To address this concern, the Program limits the amount of QS that a person can hold, the amount of IFQ that a person can use, and the amount of IFQ that can be used onboard a vessel. Similarly, the Program limits the amount of PQS that a person can hold, the amount of IPQ that a person can use in one season, and the amount of IPQ that can be processed at a given facility in one season. These limits are commonly referred to as use caps.

At its December 2015 meeting, the Council voted 10 to 1 to request that NMFS promulgate an emergency rule to temporarily allow a custom processing exemption to the IPQ use caps for the 2015/2016 crab fishing year in the Bering Sea *Chionoecetes bairdi* Tanner crab fisheries: the eastern *C. bairdi* Tanner (EBT) and the western *C. bairdi* Tanner (WBT), respectively.

The Council determined that an emergency exists because recent unforeseen events present a serious management problem in the fishery. According to the petition for emergency action submitted to the Council by one of the crab harvesting cooperative, Inter-Cooperative Exchange (ICE), harvesters have already “share matched” with processors holding available IPQ as required by the regulations, and thus those harvesters reasonably concluded that they would be able to deliver under the matched shares. It was only made clear to harvesters after this process was complete that Icicle Seafoods stopped its crab processing operations and that the only Bering Sea processing facilities currently available for Tanner crab deliveries were constrained by the IPQ use cap. The result is that without this action it is likely that 10 percent of the Tanner crab Class A IFQ would be stranded. The complete petition for emergency action is in Appendix A.

The emergency rule would provide relief for the 2015/2016 crab fishing year and enable the fishery to continue while the Council considers an amendment to the Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs (FMP) to permanently address this situation. The Council plans to review a draft analysis at its April 2016 meeting that assesses alternatives to amend the FMP.

This document contains a Regulatory Impact Review (RIR) to analyze the economic impacts of an emergency rule allowing a custom processing exemption to the IPQ use caps for the Tanner crab fisheries.

2 REGULATORY IMPACT REVIEW

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

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

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

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

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

3 STATUTORY AUTHORITY

Under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) (16 USC 1801, *et seq.*), the United States has exclusive fishery management authority over all marine fishery resources found within its 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 fishery management plans and fishery management plan 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 the Federal mandates of the Department of Commerce with regard to marine and anadromous fish.

Fishing in the crab fisheries in the EEZ of the Bering Sea and Aleutian Islands is managed under the FMP. This emergency rule will temporarily amend Federal regulations at 50 CFR 680. Actions taken to amend the FMP or implement other regulations governing these fisheries must meet the requirements of Federal law and regulations.

Section 305(c) of the Magnuson-Stevens Act provides authority for the Secretary to promulgate regulations to address an emergency. Under that section, a Council may request emergency regulations, if it finds an emergency exists.

4 THE EMERGENCY

At its December 2015 meeting, the Council received a petition for emergency action from one of the crab harvesting cooperatives, ICE (see Appendix A). ICE is a crab harvesting cooperative that represents most of the Tanner crab QS holders and receives most of the Class A IFQ in the Tanner crab fisheries. The Council reviewed the available information and took public testimony on this petition.

The Council and NMFS have determined an emergency exists because the unforeseen exiting of one processor from crab processing, which resulted in a consolidation of processors to the extent that the few processors readily available are constrained by IPQ use caps. IPQ use caps limit the amount of crab a processor can process in a season. With the available processors constrained by the IPQ use caps, more crab can be harvested with IFQ than can be processed with IPQ. This will result in harvesters not being able to fully harvest and deliver all of their Tanner crab to readily available processors. Due to the inability for all of the IFQ crab to be delivered, approximately 10 percent of the Class A IFQ could remain unharvested, to the economic detriment of fishery participants. Harvesters, shoreside processors, and communities that participate in the Tanner crab fisheries have limited options to mitigate the resulting negative economic effects. Chapter 7 of this RIR provides a more detailed discussion of the impacts of the emergency.

NMFS policy guidelines (see NMFS Instruction 01-101-07 and 62 FR 44421, August 21, 1997) defines an emergency as a situation that:

- results from recent, unforeseen events or recently discovered circumstances;
- presents serious conservation or management problems in the fishery; and
- can be addressed through emergency regulations for which the immediate benefits outweigh the value of advance notice, public comment, and deliberative consideration of the impacts on participants to the same extent as would be expected under the normal rule making process.

Recent, Unforeseen Events or Recently Discovered Circumstances

The first criterion is met because this situation results from recently discovered and unforeseen events. One processing facility, Icicle Seafoods, that had operated in the Tanner crab fisheries, and that is not affiliated with the other processors operating in the Tanner crab fisheries (Maruha-Nichiro Corporation, Trident Seafoods, and Unisea Seafoods), unexpectedly terminated its 2015/2016 BSAI crab processing operations (see Table 3). This resulted in the remaining processors being constrained by the IPQ use caps to the extent that more IFQ is available for harvest than can be processed by the remaining processors.

The best available information indicates that harvesters with Class A IFQ have only recently become aware of the lack of processing facilities that are not affiliated with the Maruha-Nichiro Corporation, Trident Seafoods, or Unisea Seafoods. Harvesters with ICE notified the Council and NMFS in December that given these operational factors, the application of IPQ use caps in the Tanner crab fisheries could limit their ability to fully harvest their Class A IFQ allocations.

Harvesters with EBT and WBT Class A IFQ were not involved in the decisions of this processor to cease operations of this processing facility, and were not aware of the impact of this decision on IPQ use cap calculations and their ability to harvest and deliver their Class A IFQ. Harvesters with Class A IFQ have

stated, in public testimony before the Council, that they did not become aware of the lack of adequate processing capacity available within the limits imposed by the IPQ use caps until after the EBT and WBT crab fisheries opened on October 15, 2015. Consequently, harvesters with Class A IFQ did not foresee that the IPQ use cap would constrain them from delivering the full amount of their EBT and WBT Class A IFQ.

Section 680.20(h) requires Class A IFQ holders to “share match” with processors holding available IPQ before the season opens as a condition of making crab deliveries. Harvesters with Class A IFQ were able to share match their EBT and WBT Class A IFQ before October 15, 2015, and reasonably concluded they would be able to deliver to specific IPQ holders operating at specific facilities. The application of the IPQ use caps in the EBT and WBT crab fisheries constrain the ability for Class A IFQ holders to fully harvest and deliver their crab given the processing options available in the EBT and WBT crab fisheries. The fact that IPQ use caps constrain the ability for Class A IFQ holders to deliver their EBT and WBT crab is a recent and unforeseen event due to recently discovered circumstances outside of the control of Class A IFQ holders.

Serious Conservation or Management Problems in the Fishery

The second criterion is met because the current situation constitutes a serious management problem in the Tanner crab fisheries. The management problem is a result of a management structure under which consolidation and the IPQ use caps now prevent prosecution of a portion of the Tanner crab fisheries. Without custom processing exemptions, the IPQ use cap regulations would require a substantial portion of the Tanner crab go unharvested. With custom processing exemptions to the IPQ use caps, landings could be made in the operational processing facilities.

This current situation would result in harvesters being unable to harvest as much as 10 percent of the Class A IFQ for both the EBT and WBT crab fisheries, or 1,441,811 lb of crab, due to the lack of feasible processing facilities that can process Tanner crab and maintain IPQ use under the IPQ use caps. The lost revenue from this forgone harvest is estimated to be approximately \$3.4 million in ex-vessel value and \$4.95 million in first wholesale value, based on estimated ex-vessel and wholesale values of Tanner crab in 2014 (see Table 4).

Harvesters with Class A IFQ would be unable to harvest allocations provided to them due to limitations imposed on IPQ holders by the current IPQ use caps. Likewise, processors that receive EBT and WBT crab would not be able to fully process the EBT and WBT crab. Communities where Tanner crab are delivered would not receive benefits from labor payments and tax revenue for the forgone harvest.

Can be Addressed through Emergency Regulations for which the Immediate Benefits Outweigh the Value of Notice and Comment Rulemaking

The third criterion is met because the custom processing exemption to the IPQ use caps will address the problem, providing a clear and direct benefit to fishery participants who would otherwise be unable to complete the harvest of Class A IFQ. While the normal rulemaking process is the preferred avenue for making regulatory changes, as it provides interested parties the ability to comment, the cost of lost harvests outweigh the benefit of using the more protracted normal process that would be ineffective for addressing the immediate issue.

ICE presented the problem to the Council during the December 2015 Council meeting. Harvesters have been harvesting the EBT and WBT Class A IFQ since the fisheries opened on October 15. The EBT and WBT crab fisheries close by State of Alaska regulation on March 31, 2016. For the emergency rule to be effective in providing relief, these IFQ holders need to know they have a place to deliver the remainder of

their EBT and WBT Class A IFQ. Due to the unique nature of this fishery, harvesters will need as much time as possible to harvest the 1,441,811 lb of Tanner crab. Without the waiver of notice-and-comment rulemaking, Class A IFQ holders in the EBT and WBT crab fisheries will not have sufficient time to prosecute these fisheries as intended.

An emergency rule waives the notice-and-comment rulemaking period. Since normal notice-and-comment rulemaking cannot be accomplished in time to address the immediate circumstances, emergency rulemaking is the only available avenue to address this situation. A delay in implementing rulemaking will reduce or preclude opportunities to completely harvest EBT and WBT Class A IFQ. The fisheries that receive a custom processing arrangement exemption are specified in the FMP and applying the exemption to additional fisheries would require an amendment to the FMP. In order for the Council to recommend an amendment to the FMP, the Council would need to notice the public that such an action was being considered prior to a Council meeting consistent with established public notice requirements. Because the Council was not aware of this issue until shortly before its December 2015 meeting, no such notice could have been provided for the December 2015 Council meeting. The next scheduled meeting of the Council is February 2016, and that is the earliest date at which the Council could notice the public that it is considering amending the FMP.

Secretarial review of FMP amendments must follow the process set forth in section 304 of the Magnuson-Stevens Act, which requires more time to complete than is available to provide relief for the EBT and WBT crab fishery participants given the regulatory closure of the EBT and WBT crab fisheries on March 31, 2016. While the normal rulemaking process is the preferred avenue for making regulatory changes, as it provides interested parties the full ability to comment, the Council and NMFS have determined that in this case, the cost of the forgone harvest opportunity outweighs the benefit of using the more protracted, standard process because it would be ineffective for addressing the immediate issue. The Council initiated a typical FMP amendment process in December 2015 to address this situation in a more permanent manner.

While the benefit of the normal rulemaking process should not be diminished, the Council's recommendation came only after discussion of this emergency at its December 2015 meeting where the Council described the emergency rulemaking requirements and their applicability to the present circumstances. The Council received the emergency petition on the first day of its December 2015 meeting (December 9), and did not take action until the last day of the meeting (December 15). While not the normal process for Council decision making, this provided interested parties with notice of the possible recommendation and two opportunities to comment during the Council meeting. Representatives of EBT and WBT harvesters and processors provided comments in support of the recommendation for emergency regulations.

5 EMERGENCY RULE AND HOW IT ADDRESSES THE EMERGENCY

On December 15, 2015, the Council requested that NMFS promulgate an emergency rule to temporarily modify regulations governing IPQ use in Tanner crab fisheries. This emergency rule would directly address the emergency by exempting EBT and WBT Class A IFQ that is custom processed from being applied against the IPQ use caps of the processing facility owners. IPQ use caps limit the amount of crab processors can process in one season. Allowing crab that is custom processed to be exempt from IPQ use caps would enable harvesters to harvest and deliver EBT and WBT crab to processors able to process that crab under a custom processing arrangement. An emergency rule is needed to allow the complete harvesting and processing of the EBT and WBT fisheries during the 2015/2016 crab fishing year in order

to temporarily ameliorate unforeseen economic consequences due to the lack of sufficient processing facilities able to process Tanner crab in the region where the Tanner crab fisheries occur.

NMFS policy guidelines provide that the only prerequisite for such rulemaking is that an emergency must exist and that rulemaking can be justified by an economic emergency (see NMFS Instruction 01-101-07 and 62 FR 44421, August 21, 1997). Emergency rule making is intended for circumstances that are “*extremely urgent*,” where “*substantial harm to or disruption of the...fishery...would be caused in the time it would take to follow standard rulemaking procedures.*” If processors are constrained by the IPQ use caps and unable to process all of the crab that can be harvested, it will result in substantial economic harm to fishery participants unable to prosecute the fishery.

The guidance cautions that “*controversial actions with serious economic effects, except under extraordinary circumstances, should be undertaken through normal notice-and-comment rulemaking.*” The Council received no testimony in opposition to emergency rulemaking, thereby suggesting that the action would be non-controversial. This emergency rulemaking would result in benefits to the harvesters, processors, and communities that participate in the Tanner crab fisheries. No adverse economic impacts have been identified.

Without this emergency rule, harvesters with Class A IFQ would be unable to harvest allocations provided to them due to limitations imposed on IPQ holders. As much as 10 percent of the Class A IFQ for both the EBT and WBT crab fisheries, or 1,441,811 lb of crab, would be unable to be harvested due to the lack of sufficient processing facilities that can process Tanner crab and maintain IPQ use under the IPQ use caps. The lost revenue from this forgone harvest is estimated to be approximately \$3.4 million in ex-vessel value and \$4.95 million in first wholesale value, based on estimated ex-vessel and wholesale values of Tanner crab in 2014 (see Table 4). Likewise, processors that receive EBT and WBT crab would not be able to fully process the EBT and WBT crab without this emergency rule. Communities where Tanner crab are delivered would not receive benefits from labor payments and tax revenue without this emergency rule. This emergency rule is the only mechanism to restore the foregone harvest and lost revenue and there is no substitute for these losses.

This emergency rule utilizes an existing regulation for six other crab fisheries that exempt IPQ crab that are processed under a custom processing arrangement from applying to a person’s IPQ use. In 2009, the Council and NMFS determined that the custom processing exemption was appropriate for a number of crab fisheries to provide opportunities for more efficient and economically viable processing operations in fisheries with limited processing capacity, similar to the current situation in the EBT and WBT crab fisheries.

Implementation of this emergency rule will not create conservation issues for the Tanner crab stock. The emergency rule will allow Class A IFQ holders in the EBT and WBT crab fisheries to fully harvest their permitted allocations, but still limit the overall amount of harvest in these fisheries to the amounts that have been authorized for the 2015/2016 crab fishing year.

The Council has also initiated a typical FMP amendment process to address this situation permanently. The willingness of the Council to consider permanent action demonstrates its ongoing commitment to address this issue.

The Council and NMFS have identified the following two alternatives for this action:

Alternative 1: No action alternative (Status quo)

Existing regulations would remain and continue to apply EBT and WBT crab that is custom processed to the IPQ use caps for the 2015/2016 crab fishing year.

Alternative 2: Emergency Rule

NMFS would issue an emergency rule that would temporarily amend the Federal regulations to allow EBT and WBT IPQ to be subject to the custom processing exemption to the IPQ use caps. The ability for EBT and WBT IPQ crab to be custom processed in this manner and not be counted against a facility owner's IPQ use cap would apply to all EBT and WBT IPQ crab received by processors during the 2015/2016 crab fishing year under custom processing arrangements. The emergency rule would be effective until the end of the 2015/2016 crab fishing year on June 30, 2016.

Amendment 27 to the FMP and § 680.42(b)(7) already exempt IPQ crab that are processed under a custom processing arrangement from a person's IPQ use cap for six crab fisheries. In these six crab fisheries, NMFS does not apply any IPQ used at a facility through a custom processing arrangement against the IPQ use cap applying to the owners of that facility if there is no affiliation between the person whose IPQ crab is processed at that facility and the IPQ holders who own that facility.

With the emergency rule, NMFS proposes to add EBT and WBT IPQ crab (**in bold**) to the existing § 680.42(b)(7), to read as follows—

Any IPQ crab that is received by an RCR will not be considered use of IPQ by an IPQ holder who has a 10 percent or greater direct or indirect ownership interest in the shoreside crab processor or stationary floating crab processor where that IPQ crab is processed under § 680.7(a)(7) or paragraph (a)(8) of this section if:

(i) That RCR is not affiliated with an IPQ holder who has a 10 percent or greater direct or indirect ownership interest in the shoreside crab processor or stationary floating crab processor where that IPQ crab is processed; and

(ii) The following conditions apply:

(A) The IPQ crab is:

(1) BSS IPQ crab with a North region designation;

(2) EAG IPQ crab;

(3) **EBT IPQ crab received by an RCR during the 2015/2016 crab fishing year;**

(4) PIK IPQ crab;

(5) SMB IPQ crab;

(6) WAG IPQ crab provided that IPQ crab is processed west of 174 degrees west longitude; ~~or~~

(7) WAI IPQ crab; ~~and~~ or

(8) **WBT IPQ crab received by an RCR during the 2015/2016 crab fishing year;** and

* * * * *

Alternatives not recommended

The Council considered alternative ways to provide temporary relief from the IPQ use caps, including having NMFS convert stranded Class A IFQ into Class B IFQ. Class B IFQ does not accrue to the IPQ use caps when processed and can be delivered to any crab processor without the need for matching IPQ. While this alternative would provide relief from the IPQ use caps for the 2015/2016 crab fishing year, harvesters expressed concerns over the impacts this conversion would have on the price harvesters would be paid for delivering the Class B IFQ. Class B IFQ is not subject to the Program's specific price negotiation provisions under the arbitration system, and therefore harvesters could potentially not receive the same price for the crab harvested with Class B IFQ as they would have received for the Class A IFQ crab. Additional discussion of the harvester's concerns with this alternative is provided in the petition for emergency action from ICE

(see Appendix A). Further, it would not have been feasible for NMFS to temporarily change the arbitration system regulations without the potential for unintended consequences given the complex nature of the price negotiations and relationships developed under the current regulations, and the fact that much of the negotiations had already occurred for the 2015/2016 fishery before this issue arose.

Additionally, it would not be feasible for the State of Alaska to extend the Tanner crab fishing season after March 31, 2016. Under the FMP, the State of Alaska sets the fishing seasons to close fisheries during sensitive biological periods to protect crab from mortality cause by handling and stress when shells are soft.

6 DESCRIPTION OF THE FISHERY

This section describes the relevant existing conditions in the Tanner crab fisheries. The section begins with a brief description of the management of the fisheries under the Crab Rationalization Program, with a focus on the IPQ use caps and custom processing, followed by descriptions of the harvesting and processing sectors in the fishery, and information on communities that are currently involved in the Tanner crab fisheries that could be directly affected by this action.

6.1 Management of the Crab Fisheries

Nine Bering Sea and Aleutian Island crab fisheries are managed under the Crab Rationalization Program (Program), which was implemented on March 2, 2005 (70 FR 10174). Under the Program, holders of License Limitation Program (LLP) licenses endorsed for a fishery were issued QS, which are long term shares, based on their qualifying harvest histories in that fishery. Under the Program, NMFS issued four types of QS: catcher vessel owner (CVO) QS was assigned to holders of LLP licenses who delivered their catch onshore or to stationary floating crab processors; catcher/processor vessel owner QS was assigned to LLP holders that harvested and processed their catch at sea; captains and crew onboard catcher/processor vessels were issued catcher/processor crew QS; and captains and crew onboard catcher vessels were issued catcher vessel crew (CVC) QS. Each year, a person who holds QS may receive an exclusive harvest 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 Program. PQS are long term shares issued to processors. Each year, PQS yields annual IPQ which represent 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.

By design, the Program is very complex and contains many novel provisions to address issues unique to the BSAI crab fisheries. For this emergency, the important unique provisions are PQS/IPQ, custom processing arrangements, and the arbitration system (including “share matching”). These provisions were implemented because of the costs and logistical issues associated with processing crab in remote communities in the Bering Sea region and the need to maintain regional processing capacity balanced with economic viability for harvesters and processors. These novel provisions, and the challenges with

harvesting and processing crab in the BSAI that they were designed to address, are detailed in the Environmental Impact Statement (EIS, NMFS 2004) prepared for the Program. The Council and NMFS have also modified these provisions over time through various FMP amendments. Additional information on the Program and links to the EIS and all subsequent analyses prepared for the Program are available on the NMFS Alaska Region Web site.¹

6.1.1 General Background on IPQ Use Caps and Custom Processing

When the Council recommended the Program, it expressed concern about the potential for excessive consolidation of QS and PQS, and the resulting annual IFQ and IPQ. Excessive consolidation could have adverse effects on crab markets, price setting negotiations between harvesters and processors, employment opportunities for harvesting and processing crew, tax revenue to communities in which crab are landed, and other factors considered and described in the EIS and RIR prepared for the Program. To address this concern, the Program limits the amount of QS that a person can hold, the amount of IFQ that a person can use, and the amount of IFQ that can be used onboard a vessel. Similarly, the Program limits the amount of PQS that a person can hold, the amount of IPQ that a person can use, and the amount of IPQ that can be processed at a given facility. These limits are commonly referred to as use caps.

The Program is designed to minimize the potential that PQS and IPQ use caps could be evaded through the use of corporate affiliations or other legal relationships that would effectively allow a single person to use PQS or IPQ even if they are not the majority owner of that PQS or IPQ. In each of the nine BSAI crab fisheries under the Program, a person is limited to holding no more than 30 percent of the PQS initially issued in the fishery and using no more than the amount of IPQ resulting from 30 percent of the initially issued PQS in a given fishery with a limited exemption for persons initially receiving more than 30 percent of the initially issued PQS. However, no person in the EBT or WBT crab fisheries initially received more than 30 percent of the initially issued PQS in these fisheries. Therefore, the limited exemption to exceed 30 percent of the IPQ use cap does not apply to the EBT and WBT crab fisheries that are the subject of this emergency rule.

The 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 § 680.7(a)(7) and § 680.42(b)(3)). The 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 regulations at § 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, another, or a third entity directly or indirectly owns or controls a 10 percent or greater interest in, or otherwise controls, both.

The amount of IPQ that a person can use may include IPQ crab that are processed under a "custom processing" arrangement. A custom processing arrangement exists when one IPQ holder 1) has a contract with the owners of a processing facility to have his crab processed at that facility, 2) that IPQ holder does not have an ownership interest in the processing facility, and 3) that IPQ holder is not otherwise affiliated with the owners of that crab processing facility. In custom processing arrangements, the IPQ holder contracts with a facility operator to have the IPQ crab processed according to his specifications. Custom processing arrangements typically occur when an IPQ holder does not own an onshore processing facility or cannot economically operate a stationary floating crab processor.

¹ <https://alaskafisheries.noaa.gov/fisheries/bsai-crab-rationalization>

In six specific BSAI crab fisheries, § 680.42(b)(7) exempts IPQ crab processed under a custom processing arrangement from applying to a person's IPQ use cap. Section 680.42(b)(7)(ii)(A) lists the six BSAI crab fisheries for which the custom processing exemption applies: Bering Sea *C. opilio* with a North Region designation, Eastern Aleutian Islands golden king crab, Pribilof Island blue and red king crab, Saint Matthew blue king crab, Western Aleutian golden king crab processed west of 174° W. long., and Western Aleutian Islands red king crab.

This custom processing exemption became effective under regulations that implemented Amendment 27 to the FMP in 2009 (74 FR 25449, May 28, 2009; NMFS 2008). The preamble to the final rule implementing Amendment 27 provides additional information regarding the rationale for implementing this exemption, and the method for calculating how much IPQ applies to an IPQ use cap when those crab are processed under a custom processing arrangement. The specific exemptions implemented under Amendment 27 and § 680.42(b)(7) do not apply to IPQ crab processed under custom processing arrangements in the EBT and WBT crab fisheries. Section 6.2.1 provides more details on why Amendment 27 did not apply to the EBT and WBT crab fisheries.

For the six BSAI crab fisheries, §§ 680.7(a)(7) or (8) do not apply IPQ crab processed under a custom processing arrangement against the limit on the maximum amount of IPQ crab that can be used by an IPQ holder or processed at a facility if the person whose IPQ crab is processed does not have a 10 percent or greater ownership interest. These regulations effectively remove the IPQ use cap so that more than 30 percent of the IPQ could be processed at a facility if there is no affiliation between the person whose IPQ crab is processed at that facility and the IPQ holders who own that facility. NMFS does not apply any IPQ used at a facility through a custom processing arrangement against the IPQ use cap of the owners of that facility if there is no affiliation between the person whose IPQ crab is processed at that facility and the IPQ holders who own that facility. Effectively, § 680.42(b)(7) does not count IPQ crab that are custom processed at a facility owned by an IPQ holder against the IPQ use cap of the owner of the processing facility. A person who holds IPQ and who owns a processing facility is credited only with the amount of IPQ crab used by that person, or any affiliates of that person, when calculating IPQ use caps. In sum, Amendment 27 allows processing facility owners who also hold IPQ to be able to use their facility to establish custom processing arrangements with other IPQ holders to process more crab at their facilities than would otherwise be allowed under the IPQ use caps, thereby improving throughput and providing a more economically viable processing platform.

Section 680.42(b)(7)(ii)(B) exempts IPQ crab under custom processing arrangements in the six BSAI crab fisheries described above provided that the facility at which the IPQ crab are custom processed meet specific requirements. For these six BSAI crab fisheries, IPQ crab that are custom processed do not count against the IPQ use cap of persons owning the facility if the facility is in a home rule, first class, or second class city in the State of Alaska on the effective date of regulations implementing Amendment 27 (June 27, 2009) and is either a 1) shoreside crab processor, or 2) a stationary floating crab processor that is moored within a harbor at a dock, docking facility, or other permanent mooring buoy, with specific provisions applicable to the City of Atka. The specific provisions applicable to facilities operating within the City of Atka are not relevant to this emergency rule and are not addressed further. Additional information on the limitations on the facilities to which the custom processing facility requirements apply is found in the preamble to the final rule implementing Amendment 27 (74 FR 25449, May 28, 2009) and is not repeated here.

Regulations implementing Amendment 27 also provided specific exemptions that modify IPQ use cap calculations for IPQ crab subject to right-of-first-refusal (ROFR) requirements. The ROFR provisions provide certain communities with an option to purchase PQS or IPQ that would otherwise be used outside of the community holding the ROFR. However, ROFR requirements do not apply to EBT and WBT crab. Therefore, this exemption is not described further.

6.2 Tanner Crab Fisheries

Tanner crab are managed as two separate fisheries, east and west of 166° W long, and the State of Alaska sets a separate TAC for each area. The 2015/2016 Tanner crab fishing season opened on October 15, 2015, and will close on March 31, 2016, by State of Alaska regulation. See Table 1 for the Bering Sea District Tanner crab TACs for the 2015/2016 crab fishing year.

Table 1 TAC, IFQ, and CDQ for the 2015/2016 Tanner crab fisheries

	East of 166° W long (EBT)	West of 166° W long (WBT)
Individual Fishing Quota (IFQ)	10,144,800 lb	7,556,400 lb
Community Development Quota (CDQ)	1,127,200 lb	839,600 lb
2015/2016 TAC	11,272,000 lb	8,396,000 lb

Source: Alaska Department of Fish and Game.

As of December 24, 2015, 41 vessels had landed 6,096,372 lb of EBT (54 percent of the TAC). In the WBT fishery, as of December 24, 2015, 18 vessels had landed 2,684,831 lb (32 percent of WBT TAC). Often a mix of types of IFQ will be used to harvest crab on a single vessel. For example, CVC IFQ might be harvested alongside Class A IFQ. According to public testimony at the December 2015 Council meeting, fishery participants estimate 3 vessels are still fishing in the EBT fishery and 12 vessels are still fishing in the WBT fishery.

The Tanner crab fisheries were closed for the 2010/2011 and 2011/2012 crab fishing years and were reopened starting in the 2013/2014 crab fishing year. The TACs for EBT and WBT crab have increase since 2013/2014 (see Table 2).

Table 2 TAC for the 2013/2014 and 2014/2015 Tanner crab fisheries.

	EBT	WBT
2013/2014 TAC	1,463,000 lb	1,645,000 lb
2014/2015 TAC	8,480,000 lb	6,625,000 lb

Source: Alaska Department of Fish and Game.

NMFS has issued QS and PQS for the EBT and WBT crab fisheries. Unlike the QS and PQS issued for most other crab fisheries, the QS and PQS issued for the EBT and WBT fisheries are not subject to regional delivery requirements, commonly known as regionalization. Therefore, the Class A IFQ that results from EBT and WBT QS, and the IPQ that results from EBT and WBT PQS are not restricted for delivery and use within specific geographic regions. Class A IFQ can be delivered to, and the IPQ used at, any otherwise eligible processing facility within the State of Alaska. In addition, the PQS and resulting IPQ issued for the EBT and WBT crab fisheries are not subject to a ROFR provision.

Because the EBT and WBT crab fisheries are not subject to regionalization or ROFR provisions, crab harvested under a Class A IFQ permit in these fisheries can be delivered to a range of processors in a broad geographic area more easily than in crab fisheries subject to regionalization and ROFR provisions. The rationale for exempting the EBT and WBT crab fisheries from regionalization and ROFR provisions is discussed in the EIS and the final rule implementing the Program.

6.2.1 IPQ Use Caps and Custom Processing for the Tanner Crab Fisheries

As noted earlier, EBT and WBT IPQ crab that are processed under a custom processing arrangement will still apply against a person's IPQ use cap if that person owns the facility at which those IPQ crab are processed. Effectively, this means that a minimum of at least four persons who are not affiliated with each other must receive EBT or WBT IPQ crab to ensure that no person uses more than the amount of

IPQ resulting from 30 percent of the initially issued EBT or WBT PQS. Similarly, at least four facilities that are not affiliated through common ownership (i.e., a 10 percent or greater ownership interest) must be used to receive and process EBT and WBT IPQ crab to ensure that no facility receives more than the amount of IPQ resulting from 30 percent of the initially issued EBT or WBT PQS.

When the Council recommended and NMFS implemented Amendment 27 to the FMP, IPQ crab processed under custom processing arrangements for the EBT and WBT crab fisheries were not included in the exemption from calculation against IPQ use caps. The preamble to the proposed rule implementing Amendment 27 explains that the Council did not recommend exempting EBT and WBT IPQ crab processed under a custom processing arrangement from IPQ use caps because “Bering Sea *C. bairdi* crab are not subject to regionalization and therefore the need to exempt custom processing arrangements from the IPQ use cap does not appear necessary because crab can be effectively delivered to any processor with matching IPQ in any location” (73 FR 54351, September 19, 2008).

Since the implementation of Amendment 27, there has been additional consolidation in the BSAI crab processing sector. During the 2014/2015 crab fishing year, there were only three unique unaffiliated persons (processors) who received EBT crab, and there were four unique unaffiliated persons (processors) who received WBT IPQ crab at their facilities (Table 3). During the 2015/2016 crab fishing year, there appear to be only three unique unaffiliated persons (processors) who have received EBT and WBT IPQ crab at their facilities. These three processors are the Maruha-Nichiro Corporation, which operates processing facilities under the names of Alyeska Seafoods, Peter Pan Seafoods, and Westward Seafoods; Trident Seafoods; and Unisea Seafoods. It appears that these three processors also own and operate all facilities that have processed EBT crab and WBT crab during the 2015/2016 crab fishing year. Figure 1 shows the percent of the Tanner crab IPQ held by registered crab receivers in the 2015/2016 crab fishing year.

The net effect of this processor consolidation is that there are not at least four unique and unaffiliated processors active in the EBT and WBT crab fisheries. Therefore, only 90 percent of the Class A IFQ can be delivered to, and only 90 percent of the IPQ may be used at, facilities owned and operated by Maruha-Nichiro Corporation, Trident Seafoods, and Unisea Seafoods without causing the IPQ use caps to be exceeded. At least 10 percent of the EBT Class A IFQ/IPQ, or 826,322 lb in the 2015/2016 crab fishing year, and 10 percent of the WBT Class A IFQ/IPQ, or 615,489 lb in the 2015/2016 crab fishing year, must be delivered to processing facilities that are not affiliated with Maruha-Nichiro Corporation, Trident Seafoods, or Unisea Seafoods. In total, 10 percent of the Class A IFQ/IPQ for both the EBT and WBT crab fisheries equals 1,441,811 lb.

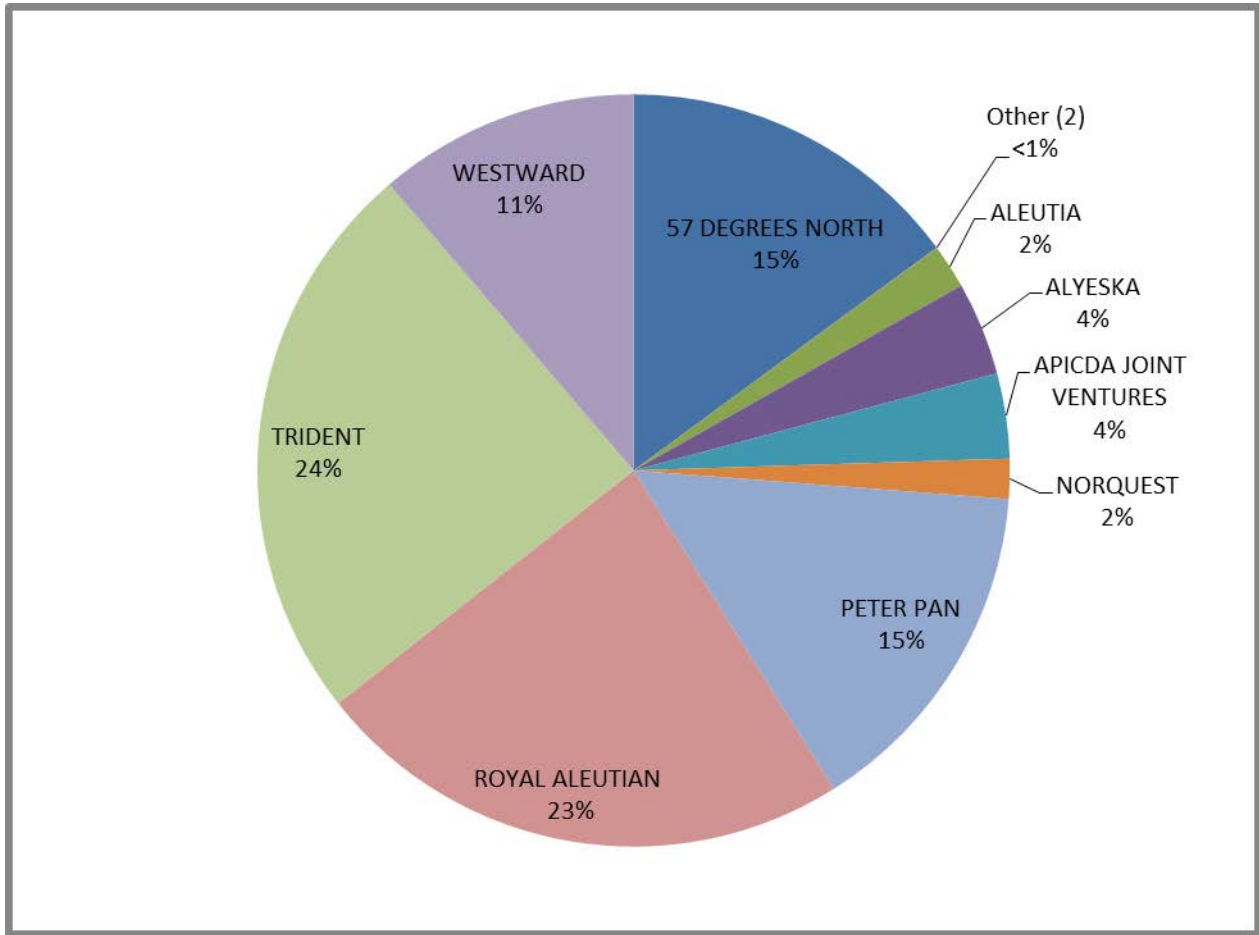
Processor consolidation is not unique to the EBT and WBT crab fisheries. Figure 2 shows the facilities that process all BSAI crab and the total percent of BSAI crab processed at each facility. The difficulties with processing crab and the barriers to entry are described in the RIR for Amendment 27 (NMFS 2008). For the three other processing facilities that process one percent of the BSAI crab, general information indicates that these may processors may focus on supplying live red king crab and golden king crab to specialized markets. However, this same emergency does not exist in the other crab fisheries because of the permanent custom processing exemption implemented under Amendment 27.

Table 3 Tanner crab processing companies, processing facilities, communities, and registered crab receivers in 2014.

Fishery	Company Ownership	Facility	Community	Registered Crab Receivers
EBT	Maruha Nichiro Group	Alyeska Seafoods	Dutch/Unalaska	Alyeska Seafoods, Inc.
		Peter Pan Seafoods	King Cove	Aleutia, Inc Peter Pan Seafoods, Inc.
		Westward Seafoods	Dutch/Unalaska	Alyeska Seafoods, Inc. Westward Seafoods, Inc.
	Nissui Global	Unisea, Inc.	Dutch/Unalaska	57 Degrees North, LLC
				Icicle Seafoods, Inc.
				Royal Aleutian Seafoods, Inc.
	Trident Seafoods	Trident Seafoods Corp.	Akutan	APICDA Joint Ventures, Inc.
				Norquest Seafoods, Inc.
			St Paul	Trident Seafoods Corporation
	WBT	Icicle Seafoods	R M Thorstenson	Other Ak
Maruha Nichiro Group		Alyeska Seafoods	Dutch/Unalaska	Alyeska Seafoods, Inc.
		Peter Pan Seafoods	King Cove	Aleutia, Inc Peter Pan Seafoods, Inc.
		Westward Seafoods	Dutch/Unalaska	Alyeska Seafoods, Inc. Westward Seafoods, Inc.
Nissui Global		Unisea, Inc	Dutch/Unalaska	57 Degrees North, LLC
				Icicle Seafoods, Inc.
				Royal Aleutian Seafoods, Inc.
Trident Seafoods		Trident Seafoods Corp.	Akutan	APICDA Joint Ventures, Inc.
				Trident Seafoods Corporation
			St Paul	Norquest Seafoods, Inc. Trident Seafoods Corporation

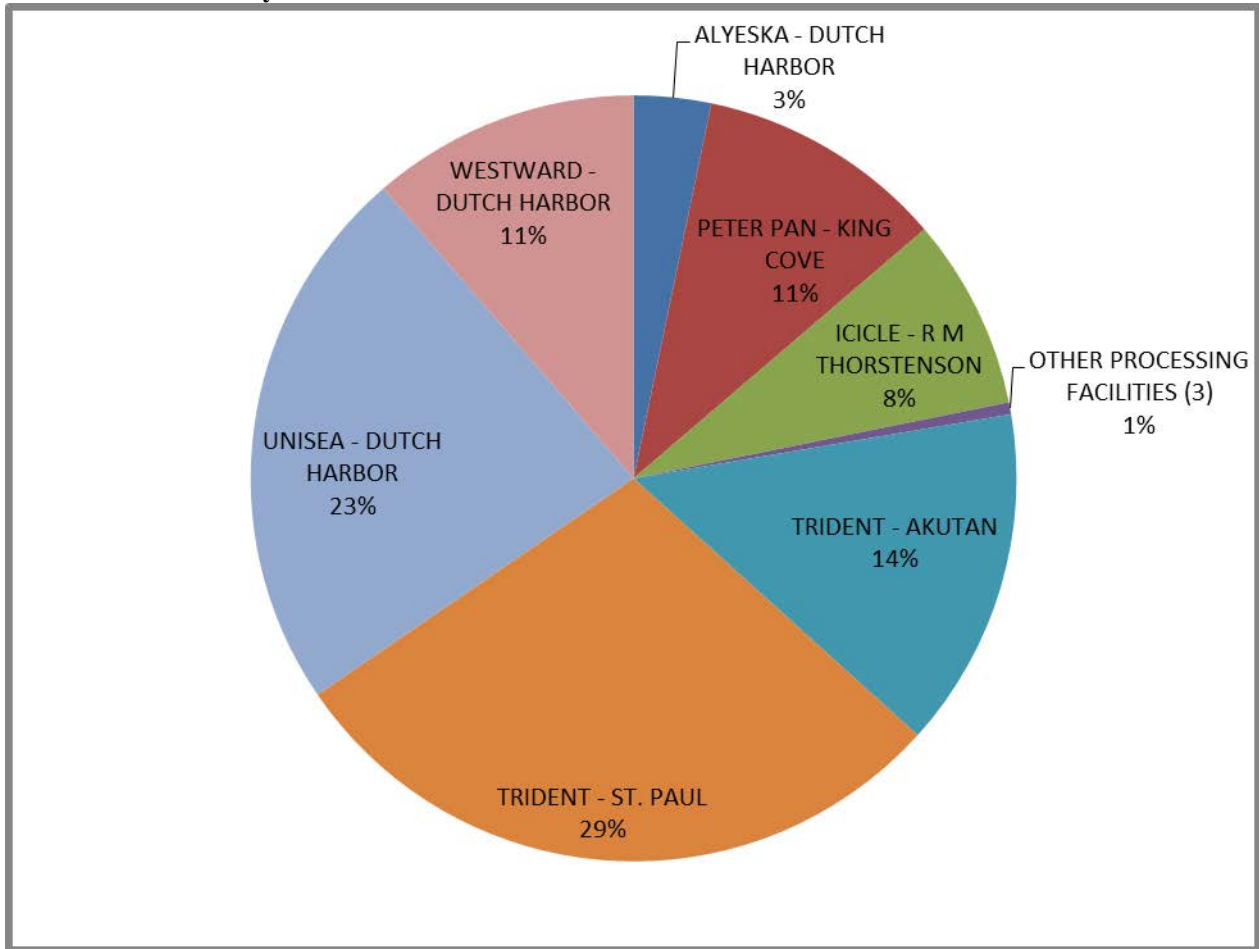
Source: NMFS Restricted Access Management (RAM) Division

Figure 1 Percent of Tanner crab (EBT and WBT) IPQ held by Registered Crab Receivers in 2015/2016.



Source: NMFS RAM Division

Figure 2 Facilities that process BSAI crab and the percentage of all BSAI crab processed at each facility in 2014.



Source: NMFS RAM Division

6.3 Economic Status of the Tanner Crab Fisheries

Table 4 and Table 5 briefly summarize the Tanner crab fishery economic status from 2009 through 2014, from the Crab Economic Status Report (Garber-Yontz and Lee 2015). This represents the most recent and best available data on the Tanner crab fisheries. This type of information is available through the Economic Data Report collection, submitted to NMFS by participants in the fishery on an annual basis. These data depict the economic character of different crab fisheries, by calendar year. For example, Table 4 demonstrates a significant change in ex-vessel and first wholesale value of the fishery in 2014 corresponding with a rise in TAC. Total gross ex-vessel EBT and WBT crab revenue has risen from \$4.91 million in 2009 to \$19 million in 2014. An increase in the labor needs required to cover the increasing catch limits, both in the harvesting and processing sectors, are demonstrated in Table 5. The reader is referred to the Crab Economic Status Report for more detailed information on the economic status of the Tanner crab fisheries.

This discussion of market conditions draws on the annual *Market Analyst Report on *Opilio and Bairdi**, prepared by John Sackton of Seafood Datasearch (Sackton 2015). The key to increasing Tanner crab's acceptance as a unique product, as it was in the 1990s, is to continue to produce enough Tanner crab for customers to generate real sales programs. Both retailers and some large food service chains have been interested in Tanner crab. Sackton (2015) reports that Tanner crab was able to differentiate as a unique product in the U.S. crab market because Tanner crab landings in 2014/2015 finally reached their potential, with 12.2 million lb landed. Tanner crab have now achieved a distinct market status, meaning that customers ask specifically for Tanner crab and sellers achieved a price differential between Tanner crab and large snow crab. In September 2015, wholesale prices were reported around \$5.90 to \$6.00 per pound for Tanner crab. Although we do not know the final harvest of Tanner crab in 2015/2016, the market should be on a good trajectory to continue to pay a premium. There is also a market for large Tanner crab in Japan, which command a better price.

Table 4 Tanner crab harvest and processing sector out-put—production volume, gross revenue, average price, 2009 through 2014

Year ¹	Harvester Sector: Ex-vessel Statistics			Processing Sector: First Wholesale Statistics			
	Vessels	Landed volume million lb	Gross revenue \$million	Average price \$/lb	Finished volume million lb	Gross revenue \$million	Average price \$/lb
2009	18	2.14	\$4.91	\$2.30	1.39	\$6.19	\$4.46
2010	4	0.37	--	--	--	--	--
2011-2012	CLOSED						
2013	22	1.19	\$3	\$2.66	0.82	\$6	\$6.82
2014	38	8	\$19	\$2.39	5.47	\$32	\$5.82

Source: Crab Economic Status Report, Garber-Yontz and Lee 2015. Note: See Garber-Yontz and Lee 2015 for details on these data.

¹ Information from Economic Data Reports is compiled by calendar year.

Table 5 Tanner crab fisheries crew and processing sector employment and earnings, 2010 through 2014

Year ¹	Crew Employment Earnings			Processing Employment and Earnings	
	Crew positions	Crew share payment, total \$million	Captain share payment Total, \$million	Processing labor hours, total 1000 hrs	Processing labor payment, total \$million
2010	--		--	6.43	\$0.07
2011-2012	CLOSED				
2013	156	\$0.48	\$0.22	16.58	\$0.18
2014	262	\$3.01	\$1.40	122.27	\$1.23

Source: Crab Economic Status Report, Garber-Yontz and Lee 2015. Note: See Garber-Yontz and Lee 2015 for details on these data.

¹ Information from Economic Data Reports is compiled by calendar year.

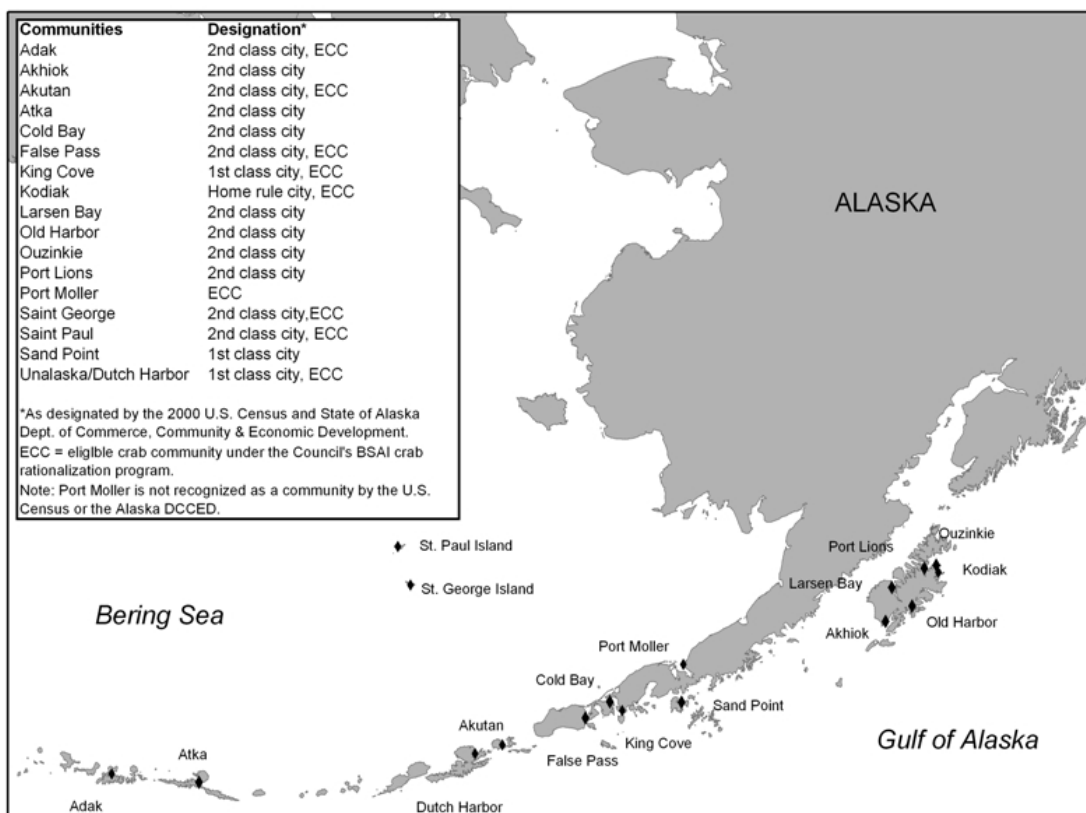
6.4 Communities

Several communities have historically been home to processors that have taken delivery of crab from the Bering Sea and Aleutian Islands crab fisheries. Limited information concerning the geographic distribution of processing in the crab fisheries can be released, owing to confidentiality constraints, because relatively few processors participate in the fishery in any location.

The following four communities had processors that took delivery of Tanner crab in 2014: Akutan, Dutch Harbor/Unalaska, King Cove, and St. Paul (see Table 3 and Figure 3). For more information on these communities, see the *Community Profiles for North Pacific Fisheries - Alaska* (Himes-Cornell et al 2013)

These communities vary in their geographic relation to the fishery; their historical relationship to the fishery; and the nature of their contemporary engagement with the fishery through local harvesting, processing, and support sector activity or ownership. Each of these factors influences the direction and magnitude of potential social impacts of the fishery.

Figure 3 Cities by type in the Bering Sea, Aleutian Islands, Alaska Peninsula, and Kodiak Island.



7 ANALYSIS OF ALTERNATIVES

For 2015/2016, NMFS issued IFQ for 10,144,800 lb of EBT crab and 7,556,400 lb of WBT crab. Under Alternative 1, without a custom processing exemption to the IPQ use caps, approximately 10 percent of the Class A IFQ, or 1,441,811 lb, cannot be feasibly processed and, therefore, will most likely not be harvested. This would result in direct economic losses to harvesters and processors. In addition, communities with processing capacity may forgo economic activity and revenues that could be accessible if custom processed EBT and WBT crab were exempt from applying to the IPQ use caps and all of the Tanner crab IPQ were permitted to be processed. Alternative 2, the emergency rule to exempt custom processed Tanner crab from applying to the IPQ use caps, would provide economic benefits to harvesters, processors, communities, and U.S. consumers (i.e., directly, through increased supplies and price effects for Tanner crab).

Many of the issues associated with processing BSAI crab, custom processing, and processor consolidation are analyzed in the RIR for Amendment 27 (NMFS 2008). That analysis is incorporated by reference. This emergency rule analysis is specific to the Tanner crab fisheries and the current emergency.

7.1 Effects on Harvesters

Under Alternative 1, status quo, harvesters would be expected to forego revenue from harvesting 826,322 lb of EBT crab and 615,489 lb of WBT crab that would otherwise be available through the remainder of the 2015/2016 crab fishing year. The lost revenue from this forgone harvest is estimated to be approximately \$3.4 million in ex-vessel gross revenue, using the 2014 ex-vessel value shown in Table 4. Forgone net revenues to the harvesters would be less than this total amount, because costs associated with harvesting the IFQ would be avoided. Harvesters would have limited alternatives to mitigate this substantial negative economic impact. Harvesters would experience this loss even though harvesters are not subject to the IPQ use caps and are not responsible for ensuring processing operations do not exceed IPQ use caps in accordance with applicable regulations.

Under Alternative 1, Class A IFQ holders cannot undertake actions that will allow them to fully harvest their EBT and WBT Class A IFQ without being constrained by regulations that require them to deliver their Class A IFQ to processors with IPQ. While harvesters can technically deliver EBT and WBT Class A IFQ to a range of processors in a broad geographic area under existing regulations, there do not appear to be other delivery options available for the otherwise stranded EBT and WBT Class A IFQ holders during the 2015/2016 crab fishing year.

As discussed in Section 7.2, an alternative stationary floating processor or shoreside processing facility, not affiliated with the Maruha-Nichiro Corporation, Trident Seafoods, or Unisea Seafoods, would not be a feasible processing option for the remainder of the 2015/2016 crab fishing year, which ends March 31, 2016. Even if an alternative processor was available and ready to process Tanner crab, it would not be optimal for harvesters because they would not be guaranteed the same price and delivery schedule for their Class A IFQ as negotiated under the arbitration system if they delivered to a new processing facility. A harvester hoping to secure an alternative shoreside processing facility or a stationary floating crab processor would have very little negotiating leverage with any unaffiliated processing facility given the amount of time available for the remainder of the EBT and WBT crab season and the costs associated with reconfiguring a facility to process the relatively small amount of crab available. Harvesters are concerned that the lack of negotiating leverage in establishing delivery terms and conditions could reduce revenues for harvesters and may make such deliveries uneconomic.

Transporting EBT or WBT crab to processors outside of the region, such as in Kodiak, Alaska, would result in longer trips with increased fuel and operating costs and result in lost fishing days while the crab are being transported. It would also increase the potential for deadloss (death) of crab which becomes increasingly likely the longer that the crab are held in storage tanks and transported, and which is inconsistent with the Council's conservation objectives for this fishery. Deliveries to alternative processing facilities would impose a substantial burden and cost on Class A IFQ holders, even though Class A IFQ holders are not responsible for ensuring compliance with IPQ use caps and the emergency situation.

Alternative 2, the emergency rule for a custom processing exemption to the IPQ use caps would be expected to provide a clear and direct benefit to IFQ holders, crew, and vessel owners that would otherwise be unable to complete the harvest of EBT and WBT Class A IFQ. Alternative 2 is anticipated to allow for harvest of most of the EBT and WBT Class A IFQ. Under Alternative 2, all EBT and WBT IPQ crab received during the 2015/2016 crab fishing year under custom processing arrangements at the processing facilities owned by the Maruha-Nichiro Corporation, Trident Seafoods, or Unisea Seafoods would not be counted against the IPQ use cap of the facility or the facility owners. The exemption would allow these processors to custom process crab for unaffiliated IPQ holders who have custom processing arrangements with the processors, thereby allowing harvesters with Class A IFQ to fully harvest and deliver their allocations of crab to IPQ holders with a custom processing arrangement at facilities operating in the EBT and WBT fisheries. The emergency rule would avoid the substantial adverse economic impacts to harvesters created by the unforeseen lack of adequate processing capacity that would otherwise result if the EBT and WBT crab fisheries could not be fully harvested during the 2015/2016 crab fishing year. Providing emergency regulations as soon as possible is likely to ensure that these crab can be harvested before the closure of the EBT and WBT crab fisheries on March 31, 2016, and provide the associated harvesting revenues.

We are not able to predict which specific harvesters (Class A IFQ holders) would be unable to fully harvest their EBT or WBT IFQ if this emergency rule were not granted. As noted earlier, Class A IFQ holders share match with IPQ holders, and deliver their crab according to fishing plans that accommodate both the harvester's and the processor's operational needs in a variety of ongoing crab (snow crab) and groundfish (Pacific cod) fisheries. NMFS is not party to, and has no direct knowledge of these fishing plans. Therefore, it is possible that some Class A IFQ holders would be able to fully harvest their EBT and WBT crab allocations if this emergency rule were not granted, whereas other Class A IFQ holders may not be able to harvest a majority of their allocations based on established fishing plans with share matched IPQ holders. Given the inability to quantify specific impacts on specific harvesters, NMFS can only state that the economic impacts on specific Class A IFQ holders are likely to differ, and not all Class A IFQ holders will be affected equally (i.e., not all Class A IFQ holders will lose the opportunity to harvest 10 percent of their Class A IFQ).

It should be noted that circumstances that are not mitigated by this action may prevent harvesters from fully harvesting the TAC. These include factors such as icing conditions that limit access to the fishing grounds, or poor catch per unit effort in the fisheries that make it uneconomic to fully harvest Tanner crab. Given past fishery performance, it is possible that the full Tanner crab TAC may not be taken. This emergency rule would not affect or alter these other circumstances.

7.2 Effects on Processors

Under Alternative 1, status quo, EBT and WBT IPQ holders would lose the potential profit from selling products from the approximately 1,441,811 lb of Tanner crab catch potentially forgone. IPQ holders are subject to the IPQ use cap, and IPQ holders are the parties responsible for ensuring processing operations do not cause IPQ use caps to be exceeded in accordance with applicable regulations. The lost revenue

from this forgone harvest is estimated to be approximately \$4.95 million in first wholesale value, using the 2014 first wholesale value in Table 4 and accounting for the ex-vessel value paid to harvesters. Forgone net revenues to the processors would be less than this total amount, because costs associated with crab processing would be avoided.

Under Alternative 1, status quo, processing facilities that are not affiliated with the Maruha-Nichiro Corporation, Trident Seafoods, or Unisea Seafoods would not be feasible options for processing the remaining 10 percent of the EBT and WBT Class A IFQ for the remainder of the 2015/2016 Tanner crab season. Although there are other shoreside processing facilities not affiliated with the Maruha-Nichiro Corporation, Trident Seafoods, or Unisea Seafoods, these facilities are either not configured to process Tanner crab or are located far from the Bering Sea fishing grounds. Figure 2 shows all of the facilities that process all BSAI crab. These are the same facilities that process Tanner crab, as shown in Table 3. No evidence indicates that there are additional facilities configured, staffed, and available to process Tanner crab in the BSAI region. Any possible processing facility would need to become equipped with crab lines for crab processing (cleaning, cooking, glazing, and freezing), storage, freezer capacity, and be able to economically accommodate the relatively small amount of the crab that would be processed. As explained in the RIR for Amendment 27, crab processing tends to be labor intensive, requiring relatively large crews. The cost of transporting, housing, and provisioning crews is asserted by IPQ holders to substantially drive up the cost of processing (NMFS 2008).

Since any alternative shoreside processing facility, regardless of its location, would have not provisioned or planned its processing operations, the few months remaining in the 2015/2016 season make it challenging to reconfigure a processing facility to accommodate a relatively small proportion of the EBT and WBT IPQ allocations (i.e., only 10 percent of the EBT and WBT IPQ) before March 31, 2016. The costs of provisioning a potential alternative shoreside processing facility for a relatively small amount of crab and without adequate planning would likely impose substantial additional costs relative to processing operations that were provisioned and planned prior to the start of the EBT and WBT crab fisheries. These factors indicate that the use of alternative shoreside processing facilities is not a viable option for the 2015/2016 EBT and WBT crab fisheries.

A stationary floating crab processor would not be a feasible processing option for the remainder of the 2015/2016 crab fishing year for either the IPQ holder or the owner of the stationary floating processor. Establishing a contract for custom processing with a stationary floating processor, outfitting the vessel with equipment and crew, and establishing a market for delivered Class A IFQ EBT and WBT crab would present many of the same logistical challenges that are present for alternative shoreside processing facilities given the very limited amount of time left to process EBT and WBT IPQ crab prior to March 31, 2016.

Finally, any IPQ holder hoping to secure an alternative processing facility or a stationary floating crab processor for custom processing will have very little negotiating leverage with an unaffiliated processing facility given the relatively small amount of Tanner crab and the short amount of time available for the remainder of the EBT and WBT crab season that closes on March 31, 2016.

Under Alternative 2, the emergency rule, EBT and WBT IPQ holders and processing facilities would earn the gross revenues from selling products from the approximately 1,441,811 lb of crab. The effect of this emergency rule is that all EBT and WBT IPQ crab could be processed at existing crab processing facilities owned by the Maruha-Nichiro Corporation, Trident Seafoods, or Unisea Seafoods without any of the IPQ holders who own those facilities exceeding their IPQ use caps. Processors and IPQ holders establish private contracts to receive the crab at specific facilities. NMFS is not party to, and has no direct knowledge of, these contracts. As a result, NMFS is not able to predict which specific facility, processor, or community would receive the 10 percent of the EBT and WBT IPQ under this emergency

rule that would otherwise remain unharvested. Therefore, the economic impacts on a specific processor cannot be quantified.

7.3 Effects on Communities

Under Alternative 1, status quo, communities would lose the potential economic activity and tax revenue from having a portion of the approximately 1,441,811 lb of Tanner crab catch processed in their community.

The effects of Alternative 2, the emergency rule, on communities and community sustainability are relatively small. In considering the effects of the emergency rule, it is important to distinguish effects arising out of the action from effects that would arise independent of the action. Alternative 2, the emergency rule, would likely result in an additional 1,441,811 lb of Tanner crab being delivered to processors at facilities owned by the Maruha-Nichiro Corporation, Trident Seafoods, or Unisea Seafoods in Bering Sea and Aleutian Islands communities in Table 3. This would increase economic activity, the income generated in these communities, and their tax revenues. Therefore, effects of Alternative 2 would likely be beneficial to communities with processors with EBT and WBT IPQ. Alternative 2 would have no direct economic effect on any other community because it is not feasible to process the otherwise stranded Class A IFQ in any other community, as explained in sections 7.1 and 7.2. As noted in section 7.2, we are not able to predict which specific facility, processor, or community would receive the 10 percent of the EBT and WBT IPQ under this emergency rule that would otherwise remain unharvested. Therefore, the economic impacts on a specific community cannot be quantified.

7.4 Effects on Consumers

Under Alternative 1, status quo, approximately 1,441,811 lb of Tanner crab would not be processed and available to the market.

Consumers may benefit from Alternative 2, the emergency rule, as it is likely to result in more crab available to the market than without the custom processing exemption to the IPQ use caps. This additional crab is relatively nominal and is unlikely, *a-priori*, to have any observable price effect. The additional supply may play a role in stabilizing Tanner crab prices (see Section 6.3).

7.5 Effects on Management and Enforcement

The effects of Alternative 2, the emergency rule, on management and enforcement burdens are minimal compared to Alternative 1, status quo. Monitoring and enforcement costs associated with the custom processing exemption to IPQ use caps are relatively minor and unlikely to substantially affect management and enforcement associated with the crab fisheries.

7.6 Net Benefits to the Nation

Alternative 2, the emergency rule, has the potential to have a small positive net benefit for the Nation as compared to Alternative 1. The circumstances that justified the IPQ use caps have temporarily changed and the IPQ use caps have unintended consequences with the unforeseen consolidation in processing facility ownership in 2015/2016. The constraint was originally justified on economic welfare and distributional grounds, and not by market failure considerations. Therefore, temporarily lifting the constraint should relieve an unnecessary and unanticipated burden on the region's economic activity, enhance resource management and conservation, facilitate the overall harvest in this fishery, and, thus, increase the value the Nation receives from the Tanner crab resource.

8 NATIONAL STANDARDS

Below are the ten National Standards as contained in the Magnuson-Stevens Act, and a brief discussion of the consistency of Alternative 2, the emergency rule, with each of those National Standards, as applicable.

National Standard 1

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

Neither of the alternatives would undermine the current management system that prevents overfishing. Alternative 2, the emergency rule, would remove a regulatory constraint and aid participants in the fishery in achieving optimum yield from the fishery by facilitating harvest of the entire Tanner crab TAC.

National Standard 2

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

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

National Standard 3

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

Both alternatives continue the management of individual stocks as a unit or interrelated stocks as a unit or in close coordination and are consistent with National Standard 3.

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.

The alternatives would treat all participants the same, regardless of their residence. Alternative 2, the emergency rule, would be implemented without discrimination among participants and is intended to contribute to the fairness and equity of the program by allowing participants to harvest and process their allocations of the TAC.

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, the emergency rule, improves efficiency of the fishery by allowing deliveries of Class A IFQ to processors with the capacity to process Tanner crab. The primary purpose of this action is to ensure that existing allocations of Tanner crab are fully utilized. Tanner crab was allocated under the Crab Rationalization Program for a number of reasons including resource conservation and benefits to the harvesters, processors, and communities involved in the BSAI crab fisheries.

National Standard 6

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

Neither of the alternatives would be expected to affect changes in the availability of Bering Sea and Aleutian Islands crab resources. Any such changes would be addressed through the annual TAC setting process, which is not affected by the alternatives.

National Standard 7

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

Alternative 2, the emergency rule, will minimize costs by providing an exemption to a restriction that prevents harvesters and processors from realizing the value of their IFQ and IPQ, respectively. Alternative 2 will not duplicate other actions.

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 paragraph (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, the emergency rule, accounts for the importance of fishery resources to fishing communities by providing the opportunity for 10 percent of the Tanner crab Class A IFQ to be processed in regional communities. Alternative 2 has no effect on other communities. Under Alternative 1, this crab would remain unharvested and unprocessed.

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.

Allowing the full harvest of the Tanner crab Class A IFQ under Alternative 2, the emergency rule, would result in some bycatch. However, this fishery is subject to measures that minimize bycatch, bycatch is monitored by observers, and managers consider bycatch in setting the TAC for this fishery.

National Standard 10

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

Alternative 2, the emergency rule, has no direct effect on safety of participants in the fishery. However, fishery participants have expressed concern that, without the emergency rule, it is possible that harvesters would race to make sure that crab harvested under their Class A IFQ is delivered and processed before a processor's IPQ use cap is reached and all available processors are unable to accept more deliveries. As such, there is a risk that harvesters may make decisions that decrease safety for their vessels and crew. The emergency rule would eliminate this risk.

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Appendix A: Petition for Emergency Action

Petition for Emergency Action

Submitted to the North Pacific Fishery Management Council for Recommendation to the
Secretary of Commerce by

Inter-Cooperative Exchange

December 9, 2015

Dear Chairman Hull,

Inter-Cooperative Exchange (ICE) is requesting the support of the North Pacific Fishery Management Council for an Emergency Action Management Measure, pursuant to Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA). We ask that the Council recommend that the Secretary of Commerce take emergency action to waive the 30% Individual Processing Quota (IPQ) use caps for custom processing of crab delivered under 2015-2016 Eastern and Western Bering Sea Tanner (BST or Bairdi) crab Catcher Vessel Owner (CVO) A share individual fishing quota (IFQ). If the requested emergency relief is not granted, a significant amount of Bairdi crab will be undeliverable.

Per its letter to the Council, ICE initially considered requesting emergency relief through a regulatory amendment converting stranded Bairdi A share IFQ into B share IFQ. However, on further consideration, it became clear that conversion would exclude the deliveries made under B share IFQ from binding arbitration in the event of a price dispute, and it is not clear how the arbitration system regulations could be amended to avoid that result, or whether it would be feasible to identify and amend the related arbitration filings and lengthy season agreements at this late date. ICE is therefore petitioning for the emergency regulatory relief described in the preceding paragraph.

Background

The Crab Rationalization Program (Program) allocated quota shares (QS) for nine Bering Sea and Aleutian Islands (BSAI) crab fisheries. Under the Program, 90% of the annual CVO IFQ pounds for each crab QS fishery are designated Class A IFQ. To make a delivery under Class A (or A share) IFQ, that IFQ must be matched on a pound for pound basis with corresponding IPQ.

Program regulations prohibit any person from using more than 30% of the IPQ pool for any crab QS fishery. (See 50 CFR 680.42(b)(1)(ii)). The IPQ use cap applies collectively to each person and all of its affiliates (as defined at 50 CFR 680.2), regardless of how many separate processing facilities or platforms that person and its affiliates may have. Specifically, the Program calculates a person's IPQ use by summing the total amount of IPQ that (1) is held by that person; (2) is held by other persons who are affiliated with that person through common ownership or control; and (3) is custom processed at a facility in which the IPQ holder has at least a 10 percent direct or indirect ownership interest. See Notice of Availability of Fishery Management Plan Amendment, Federal Register Volume 73, Number 177 (September 11, 2008), page 52807 (discussing Amendment 27).

Amendment 27 exempted custom processing of six crab QS species from the IPQ use cap calculation described above. See 50 CFR 680.42(b)(7). However, custom processing of Bairdi crab was not exempted, because Bairdi deliveries are not subject to regional landing requirements. See Amendment 27 Proposed Rule, Federal Register Volume 73, Number 183 (September 19, 2008), page 54351.

In the recent past, facilities owned by Trident Seafoods, Maruha-Nichiro (Aleyska/Westward/Peter Pan), Unisea, Inc. and Icicle Seafoods have accepted Bairdi A share deliveries. However, Icicle Seafoods is not processing crab this year. As a result, the only Bering Sea processing facilities currently available for Bairdi crab deliveries are controlled by three persons, i.e., Trident, Maruha-Nichiro and Unisea, each of which is subject to a 30% use cap limit. Therefore, the collective Bairdi IPQ use cap for the fishery is 90% of the total amount of Bairdi IPQ. As a result, 10% of the Bairdi CVO A share IFQ is effectively stranded.

As discussed below, ICE has concluded that the Trident, Maruha-Nichiro and UniSea facilities are the only viable Bairdi processing locations for the 2015/2016 season. The Bairdi fishery closes on March 31. Therefore, absent expedient emergency regulatory relief, ICE and other holders of Bairdi CVO A share IFQ will be prohibited from harvesting the full amount of Bairdi available.

Standard for Emergency Relief

Section 305(c) of the MSA allows the Secretary of Commerce to promulgate emergency regulations when the Secretary finds that an emergency exists involving any fishery. National Marine Fisheries Service (NMFS) policy guidance provides that such use “should be limited to extremely urgent, special circumstances where substantial harm to or disruption of the resource, fishery, or community would be caused in the time it would take to follow standard rulemaking procedures.” The phrase “an emergency exists involving any fishery” has been defined in NMFS policy guidance as a situation that results from “recent, unforeseen events or recently discovered circumstances” that present “serious conservation or management problems in the fishery” and can be addressed through emergency regulations for which “the immediate benefits outweigh the value of advance notice, public comment, and deliberative consideration of the impacts on participants to the same extent as would be expected under the normal rulemaking process.” See NMFS Instruction 01-101-07, Policy Guidelines for the Use of Emergency Rules, March 31, 2008.

An Emergency Exists

ICE believes that an emergency exists. ICE has been advised that IPQ holders are not able to receive and process more than 90% of the Bairdi Class A IFQ. As a result, 10% of the Bairdi Class A IFQ is stranded. As noted above, the Bairdi fishery closes on March 31. There is not sufficient time prior to that date to pursue regulatory relief through standard rulemaking procedures.

The Criteria for Emergency Action Have Been Met

ICE submits that each of the three criteria for emergency action are met.

(1) The situation results from recent, unforeseen events or recently discovered circumstances.

The present situation meets the “recent, unforeseen events or recently discovered circumstances” requirement. ICE did not anticipate that Icicle would terminate its 2015/2016 Bering Sea processing operations, nor could it have – it was not party to Icicle’s decision, and only heard about it after the fishery was underway. Consequently, ICE did not anticipate that the IPQ use cap would constrain its members and others from delivering the full amount of Bairdi available under their A share IFQ.

Regulations at § 680.20(h) require Class A IFQ holders to “share match” with processors holding available IPQ as a condition of making crab deliveries. ICE was able to share match its entire amount of Bairdi A share IFQ during the early season match period, and reasonably concluded it would be able to deliver under the matched shares. It was only informed to the contrary well after the 2015/2016 Bairdi fishery had opened and was being prosecuted by ICE member vessels.

(2) The situation presents serious conservation or management problems in the fishery

Stranding 10% of the Bairdi available under A share IFQ equates to a lost harvesting and processing opportunity of approximately 1,717,000 pounds of Bairdi crab, at an ex-vessel value of approximately \$5,100,000.00 (based on current pricing). This is a very important amount of revenue for the affected fleet. Taking into account reasonable multipliers associated with processing and selling the related product, the total financial impact is much greater.

During the 2014/2015 crab fishing year, the EBT IPQ was fully utilized, and notwithstanding a high Opilio total allowable catch (TAC) and difficult fishing conditions in the Western region of the Bairdi fishery, 78% percent of the WBT IPQ was used, as well. This year, the total allowable catch (TAC) for the critically important Opilio fishery is almost 40 percent lower than last year, and harvesters, processors and their crews are looking to the Bairdi fishery to offset that loss. Therefore, it is reasonable to assume that harvesters will exercise best efforts to fully harvest Class A IFQ in both the EBT and WBT fisheries this year, meaning there is a very high likelihood that the IPQ caps will be binding.

ICE has considered options which could obviate the need for emergency action, and does not believe there is a viable alternative.

To date, ICE has not been able to identify a Bering Sea shoreside facility or floating processor, other than those owned or controlled by Trident, Maruha-Nichiro or UniSea, that could process Bairdi deliveries for this season. Given the cost and logistical complexities associated with provisioning and staffing a processing facility at this late date, ICE has concluded that it is not feasible to have processing occur at an alternate Bering Sea location before the closure date of the fishery.

Delivering Bairdi crab to Kodiak has been suggested as an alternative. However, it is already a serious challenge to prosecute the Bairdi fishery on a commercially viable basis while

making deliveries in the Bering Sea. Notwithstanding the increase in the Bairdi TAC, the catch per unit of effort remains low, resulting in extended fishing trips and deliveries of partial loads (which are necessary to avoid excessive deadloss during an extended trip). The additional direct cost of running to Kodiak, the fishing days lost while making the run from the Bering Sea and back and the increased deadloss, taken together, prevent delivering in Kodiak from being a commercially viable alternative.

(3) The situation can be addressed through emergency regulations for which the immediate benefits outweigh the value of advance notice, public comment, and deliberative consideration of the impacts to the same extent as would be expected under the normal rulemaking process.

This situation could be addressed through an emergency rule that would waive the 30% IPQ use cap for custom processing of crab delivered under 2015/2016 EBT and WBT A share IFQ. All other aspects of the Program would be maintained, and the immediate benefit would be avoiding the losses identified above.

On the other hand, in order to provide a regulatory remedy through the normal Council process of notice-and-comment rule making, the following would need to occur within the next three months in order to permit the crab to be harvested: 1/9 ; 2/9 ; 3/9

- (a) the Council would have to produce an analysis with a range of alternatives and take action. Given the timing of Council meetings and the closure date of the EBT and WBT fisheries, this action would have to occur during the December Council meeting. However, no notice has been provided to the public, and no analysis has been initiated, much less completed.
- (b) NMFS would need to issue a proposed rule, provide a public comment period, assess those comments, and publish a final rule. NMFS typically requires at least a year to complete a final rule after the Council has taken final action. These regulatory steps certainly could not be completed in less than 3 months, even if the Council were able to take action at its December Council meeting.

ICE believes there is simply not enough time for the normal process to be followed without incurring the losses identified above. On the other hand, we note that emergency action is limited in duration, and unless this situation is resolved before emergency regulatory relief expires, we expect that the normal notice and comment process and deliberative consideration of the potential impacts would take place in connection with any further action. ICE therefore believes that the immediate benefits of emergency action outweigh the value of that process and deliberation at this time.

Emergency Relief is Justified

NMFS Policy finds that emergency action can be justified under one or more of the following situations: (1) ecological (to prevent serious damage to the fishery resource); (2) economic (to prevent significant direct economic loss or preserve a significant economic opportunity that otherwise might be foregone); (3) social (prevent significant community impacts

or conflicts); or (4) public health. ICE believes that there are both economic and social justifications for emergency action.

The economic loss of stranding 10% of the 2015/2016 Bairdi A share IFQ is described above. This loss would be suffered by ICE harvesters and their crews, and the related consequential losses would be suffered by processors, their employees and the communities that depend on this commercial activity.

Compliance with National Standards

As with any fishery policy or management measure incorporated into a fishery management plan, an emergency action must also comply with the MSA National Standards. Compliance with each National Standard is addressed below.

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

The requested emergency action will enable the entire EBT and WBT total allowable catches to be harvested, processed and marketed to achieve the optimum yield of this crab fishery. If the emergency action is not taken, it is likely that a substantial percentage of the TAC for the Bairdi fishery will be stranded, preventing achievement of optimum yield.

National Standard 2: Conservation and management measures shall be based on the best scientific information available

Nothing in the request alters or disrupts the BSAI Crab Plan Team's biological assessment of the EBT and WBT fisheries or the related TAC.

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 recommended action complies with National Standard 3 because no change to the management of the crab fisheries is contemplated or recommended.

National Standard 4: Conservation and management measures shall not discriminate between residents of different states. If it becomes necessary to allocate or assign fishing privileges among various U.S. fishermen, such allocations shall be: (1) fair and equitable to all such fishermen ; (2) reasonably calculated to promote conservation; (3) carried out in such a manner that no individual,, corporation, or other entity acquires an excessive share of such privileges

The recommended action complies with National Standard 4 because no direct allocation of any fishing privileges is being made. In fact, this emergency action request preserves the allocation structure adopted by the Council and implemented by the Secretary of Commerce.

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

The requested emergency action complies with National Standard 5 because waiving the IPQ use cap for the Bairdi fishery to the extent necessary to avoid stranding Bairdi A share IFQ promotes the efficient utilization of fishery resources. Further, this action is not allocative; it would merely allow the contemplated harvesting and processing to take place under allocations already made.

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

The requested emergency action complies with National Standard 6 in that the action is responsive to a fishery contingency that ICE did not foresee and could not have reasonably foreseen.

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

The recommended action complies with National Standard 7 because the requested action will not impose greater costs on the harvesters or processors. To the contrary, failure to grant the relief requested would likely result in unnecessary costs and economic harm.

National Standard 8: Conservation and management measures shall, consistent with the conservation requirements of the Magnuson-Stevens Act (including the prevention of overfishing and rebuilding of overfished stocks) take into account the importance of fisheries resources to fishing communities in order to: (1) provide for the sustained participation of such communities; and (2) to the extent practicable, minimize adverse economic impacts on such communities

A substantial amount of the stranded Bairdi A share IFQ and related IPQ is held by community development quota (CDQ) groups. If they cannot harvest and deliver under their QS, the resulting harm to their member communities will be significant. Similarly, the EBT and WBT processing activity occurs in communities that are dependent on crab fishery revenue.

National Standard 9: Conservation and management measures shall, to the extent practicable: (1) minimize bycatch; and (2) to the extent bycatch cannot be avoided, minimize the mortality of such bycatch

The requested action will not increase bycatch or bycatch mortality beyond the levels contemplated when the 2015/2016 Bairdi TAC was set.

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

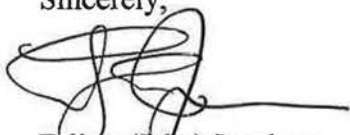
In the absence of the emergency action requested, it is quite possible that a “race” for processing cap room occurs. Because of the uncertainty when a processing cap might be reached, crab harvesters may rush to make sure that crab harvested under their Bairdi A share IFQ is delivered and processed, at increased safety risk to their vessels and crew. The emergency action will eliminate this risk.

Specific Request for Emergency Action

For the reasons provided above, ICE requests that the Council support an emergency rule that would waive the 30% IPQ use cap for custom processing of crab delivered under 2015/2016 EBT and WBT A share IFQ.

Thank you for your consideration.

Sincerely,



Erling (Jake) Jacobsen
Executive Director, ICE



C.L. (Louie) Lowenberg
President, ICE

cc Dr. James Balsiger, Regional Director, Alaska Region, National Marine Fisheries Service
Mr. Glenn Merrill, National Marine Fisheries Service
Mr. John Iani, North Pacific Crab Association