

## **DRAFT FOR FINAL REVIEW**

### **Regulatory Impact Review for a Proposed Amendment to the Fishery Management Plan for the Bering Sea/Aleutian Islands King and Tanner Crabs to**

### **Modify Certain BSAI Crab Rationalization Arbitration Rules and Clarify When IPQ and PQS Application Withdrawals are Allowed**

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**Abstract:** This Regulatory Impact Review (RIR) analyzes the impacts of regulatory actions to modify the requirements of the BSAI Crab Rationalization Program arbitration rules. These proposed changes are not mutually exclusive and can be adopted in combination with one another. The first proposed change would remove the requirement that the arbitrator can only select a remedy proposed by one side, meaning that it removes the requirement that the arbitrator use the last best offer arbitration model. The second proposed change would allow parties to an arbitration proceeding to receive a written report from the arbitrator that includes the rationale for the decision. The third option would remove the requirement to generate a Market Report to aid in selecting an ex-vessel price. The fourth option removes the requirement to use arbitration to enforce a contract when the other party has not complied with its terms. The fifth option reviews data submission regulations to determine whether they are still necessary. This RIR also analyzes the impacts of a regulatory action to clarify when individual fishing quota and individual processing quota applications can be withdrawn after being accepted as complete by the National Oceanic and Atmospheric Administration Fisheries.

*For definition of acronyms and abbreviations, see online list: <https://www.npfmc.org/library/acronyms>*

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## Executive Summary

This Regulatory Impact Review (RIR) analyzes a proposed regulatory action to modify aspects of the Bering Sea Aleutian Islands (BSAI) Crab Rationalization (CR) Program's arbitration structure and clarify rules regarding withdrawal of applications for individual fishing quota (IFQ) and individual processing quota (IPQ). The proposed action would not change other aspects of the CR Program or management of the BSAI crab fisheries under the authority of the State of Alaska. It is within the authority of the Secretary of Commerce to establish regulations governing the structure of the CR Program.

## Purpose and Need

The Council adopted a purpose and need statement in December 2024 as follows:

*The Bering Sea and Aleutian Islands (BSAI) Crab Rationalization Program was implemented in 2005. The viability of the BSAI crab fisheries for all participants is significantly affected by challenging global markets; poor marine ecosystem conditions for commercial crab species that have resulted in high annual uncertainty, fishery closures, and low TACs; and the challenging cost structure associated with processing severely reduced volume in remote communities. The original program regulations did not anticipate the level of processor quota shares that would be acquired by entities who do not own processing facilities and thus need to have active processors custom process their crab or the reduction in number of active crab processors that has occurred in recent years. The Council intends to consider limited revisions to the BSAI Crab Rationalization Program arbitration process and the annual individual fishing quota (IFQ) and individual processor quota (IPQ) application process to increase transparency, provide flexibility, and reduce program costs and burdens for participants without changing the overall program structure and objectives.*

## Alternatives

The Council adopted the alternatives below in December 2024 and modified them in June 2025. At the June 2025 meeting, it adopted a **preliminary preferred alternative, which is bolded below**. Still, the Council noted that the final preferred alternative could change based on the addition of Alternative 2, Option 5, and any new information available at the time of final action.

### Alternative 1: Status Quo

The No Action alternative would maintain all aspects of the current binding arbitration program structure and not provide further clarification on whether the CR Program allows an IFQ or IPQ application to be withdrawn after NOAA Fisheries Restricted Access Management (RAM) Division has accepted it as complete.

*Action alternatives are not mutually exclusive.*

### Alternative 2: Changes to the regulations governing the arbitration process.

*Options are not mutually exclusive.*

**Option 1. Remove the requirement that the arbitrator can only select a remedy proposed by one side. Allow the arbitrator to select an independent or compromise remedy based on the facts provided in the arbitration.**

Option 2. Require a written report and rationale from the arbitrator to the parties to the arbitration. The report should largely mirror the written report submitted by the Contract Arbitrator to NMFS to avoid external costs.

**Option 3. Remove the requirement for a Market Report.**

Option 4. Remove the arbitration option for non-performance after a contract has been established to define BSAI crab price, delivery, or other terms.

Option 5: Streamline the information submitted to NMFS in the Annual Arbitration Organization Report and notifications by removing requirements for information NMFS already has, information that has not changed, and any other information that is no longer necessary.

**Alternative 3. IFQ and IPQ application withdrawal: IFQ and IPQ applications can be withdrawn after being accepted by NMFS any time before BSAI crab rationalization species TACs are announced and within**

- 1) Option 1: 24 hours
- 2) **Option 2: 48 hours after the BSAI crab rationalization, species TACs are announced.**

The proposed actions would not modify other aspects of the CR Program.

**Summary of major changes after initial review**

Changes to the document	Location
Perspective of arbitrators regarding Last Best Offer (LBO) Arbitration, producing a written report, and how arbitration costs might change.	Section 3.10.2.1 Discussions with Arbitrators Option 1: Remove the Regulations for LBO Arbitration
LBO arbitration lessons learned.	Section 3.2.3
Added Alternative 2, Option 5	This option was added to various sections of the document, but the primary analysis of the option is presented in Section 3.12
Added information on what happens if no processors apply for IPQ	Section 3.10.3.3
Added information on what happens if a person cannot withdraw their IFQ/IPQ application	Section 3.10.3
Added additional discussion regarding processors and harvesters facing challenging economic conditions	Various places
Added discussion of unforeseen impacts of enforcing a contract. For example, what if a group does not have sufficient funds to pursue enforcing a contract in court	Section 3.10.2.4
Tables were added to describe the costs of various components of the proposed changes	Section 3.11
The net benefits section was incorporated	Section 3.14
The Affected Small Entities section was incorporated	Section 3.13
The preliminary preferred alternative was considered relative to the National Standards, Fishery Impact Statement and Council's Ecosystem Vision Statement	Section 4

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## Summary of Terms

**Terms used in this analysis (may not be formal definitions, see 50 CFR 680 for specific regulatory context)**

**Anti-trust concerns** = Several provisions of the CR Program, including issuance of IPQ and IFQ, publicly announcing a non-binding pricing formula, and circulating a Market Report could only be implemented and comply with antitrust laws if they were conducted within specific parameters. In general, anti-trust concerns have to do with anticompetitive practices, price-fixing and collusion.

**Arbitration System** = the system established by the contracts required by 50 CFR 680.20, including the process by which the Market Report and Non-Binding Price Formula are produced, the negotiation approaches, the Binding Arbitration process, and fee collection.

**Arbitration Organizations** = These organizations are parties to the contracts that define and govern the share matching and Arbitration System. They serve an administrative function in this process. NOAA Fisheries will not issue IFQ or IPQ in a program fishery until arbitration organizations representing enough QS and PQS holders to account for at least 50 percent of the A share QS and 50 percent of the PQS issued for a fishery, select the market analyst, formula arbitrator, a pool of contract arbitrators, and notify NOAA Fisheries of their selection. There are three types of Arbitration Organizations: one for PQS and IPQ holders; one for QS and IFQ holders that are affiliated with PQS and IPQ holders; and one for QS and IFQ holders who are not affiliated with a PQS or IPQ holder.

**Arbitration IFQ** = Class A catcher vessel owner (CVO) IFQ held by a person who is not a holder of PQS or IPQ and who is not affiliated with any holder of PQS or IPQ, and IFQ held by an FCMA cooperative. (50 CFR 680.2) Only holders of arbitration IFQ and holders of IPQ are eligible to use negotiations and Binding Arbitration (50 CFR 680.20(b)(2)).

**Binding Arbitration** = system designed to resolve contract terms fairly and efficiently if Arbitration IFQ holders and IPQ holders cannot agree regarding contract terms and the enforcement of those terms (processed defined at 50 CFR 680.20(h)(3)(v)), over non-performance (50 CFR 680.20(h)(10)) or quality disputes (50 CFR 680.20(h)(11)). The decision of the Contract Arbitrator for Binding Arbitration will be enforced by the parties to that arbitration.

**'LBO' (Last Best Offer) style of arbitration** = Also called 'Baseball arbitration'. It requires that both parties submit their proposed outcome. They must also provide evidence supporting their position. That outcome could be the ex-vessel price paid or other disputes (e.g., delivery terms). This structure limits the arbitrator's ability to select an outcome by taking one of two actions: accept the IFQ holder's proposal or accept the IPQ holder's proposal.

**Market Report** = required element of the arbitration system (50 CFR 680.20(f)(4)(i)). This report includes an analysis of product markets for a specific crab fishery and reports on activities occurring within three months before its generation. The report is intended to provide background information on each crab fishery, the products generated by each fishery, and the position of those products in the marketplace, discuss the historical division of wholesale revenue, and provide methods for predicting wholesale prices before the fishery occurs.

**Non-Binding Price Formula Report** = intended to serve as a starting point for negotiations between fishermen and processors, or as a starting point for an arbitrator in evaluating offers in an arbitration process based on the historical division of first wholesale prices. It is not binding. The report includes the Price Formula, where the ex-vessel price is the dependent variable in a regression formula.

**Formula Arbitrator and Market Analyst** = person hired by the Arbitration Organization(s) to produce the Market Report and Non-Binding Price Formula report annually. Can be the same person.

**Contract Arbitrator** = presides over any binding arbitration proceedings, making a final determination. Selected by the Arbitration Organizations.

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## Comparison of Alternatives for Decision-making

Alternative 1 is the status quo alternative. If Alternative 1 is selected, the current crab arbitration program structure at 50 CFR 680.20 would be unchanged and the rules for withdrawal of IFQ/IPQ applications would not be clarified.

Current regulations require that the **last best offer (LBO) arbitration method** be used when arbitration is triggered by Arbitration IFQ holders (50 CFR 680.20(h)(2)). LBO arbitration (also known as final-offer or baseball arbitration) requires that both parties submit their proposed outcome and provide evidence supporting the requested outcome. The arbitrator is then required to fully accept the proposal of one party and is not empowered to negotiate an agreement or apply terms outside one party's offer. In IFQ/IPQ arbitration, the issues that an offer must address could include the ex-vessel price paid, other contract terms in dispute (e.g., delivery terms), and other specific matters as the arbitrator requires. The arbitrator is selected from a pool of approved arbitrators, and the arbitrator's decision is final and issued without explanation of its reasoning. Regulations at 50 CFR 680.20(h)(7) state that the decision of the Contract Arbitrator for Binding Arbitration will be enforced by the parties to that arbitration.

When the CR arbitration system was implemented, the LBO system was selected while allowing only IFQ holders to initiate contract arbitration, as a structure to provide greater protection for the IFQ holders that were required to share match. The LBO structure is considered an efficient and often less costly dispute resolution system. This style of arbitration was initially selected as an efficient arbitration system by incentivizing members of the Arbitration Organizations to submit reasonable offers. Harvesters and processors were expected to submit offers that would increase the likelihood of their position being chosen by the arbitrator. If both offers were similar, selecting either would have fewer negative impacts on the side that did not prevail. It was also considered less costly than other forms of arbitration or dispute settlement.

When the current arbitration structure was implemented, it included certain standards to help ensure predictability and fairness for the parties involved. The regulations state that both the Non-Binding Price Formula and the contract arbitrator's decision must be based on the historical distribution of first wholesale revenues using arm's length first wholesale prices and ex-vessel prices. The language also states that the price should preserve the historical division of revenues in the fishery while considering several factors. Discussions with industry members indicate that the arbitrators have relied on the historical division of first wholesale prices without considering changes in the cost structures of the two sectors. If an arbitrator considers additional information, verifying that information is noted as important and a concern.

The regulations do not provide for the parties to the arbitration proceedings to receive **details or rationale for the decision** that was made to select one of the offers. A Contract Arbitrator Report must be submitted to NMFS if any arbitration occurs within a fishery (50 CFR 680.20(h)(6)). This report does not include the arbitrator's reasons for making the determination. When the Council was developing this program, it was concerned with the potential for antitrust violations associated with the release of information that could be used to alter negotiations between harvesters and processors.

Regulations at 50 CFR 680.20(f)(4)(i) state that a **Market Report** for each crab QS fishery must be produced not later than 50 days before the first crab fishing season for that crab QS fishery, unless the Arbitration QS/IFQ Arbitration Organizations and the PQS/IPQ Arbitration Organizations, by mutual agreement, include a provision in the contract with the Market Analyst to establish a different date for production of the Market Report for that crab QS fishery. This report includes an analysis of product markets for a specific crab fishery and reports on activities occurring within three months before its generation. The report is intended to provide background information on each crab fishery, the products generated by each fishery, and the position of those products in the marketplace, discuss the historical division of wholesale revenue, and provide methods for predicting wholesale prices before the fishery occurs.



Regulations at 50 CFR 680.20(h)(10) defines the process for resolving contract **performance disputes** through arbitration and largely matches the process for other arbitrations. It also states that if a party fails to abide by the arbitration decision in the performance dispute, a party to the arbitration may pursue other available contract remedies. Those options could include civil lawsuits. Regulations at 50 CFR 680.20(h)(11) describe the arbitration system for settling quality disputes. **The Council indicated that Alternative 2, Option 4 only applies to non-performance and would not change regulations relative to quality disputes.** When the two parties agree to a formula-based price for crab but cannot reach an agreement on the quality and price of the crab, the IPQ holder and the Arbitration IFQ holder(s) will receive their share of the value based on the contract. If the Arbitration IFQ holders prefer to use the actual ex-vessel price and not a formula-based price, and a dispute arises regarding crab quality and price, the dispute should be referred to an independent quality specialist firm to determine the quality of the crab.

Status quo regulations currently contain no guidance for **IFQ and IPQ application withdrawal** after they have been accepted as complete. RAM has considered and granted requests to withdraw previously approved applications for IPQ twice in recent history, both requests to withdraw the application were made well before TAC issuance.

**Alternative 2 would change the arbitration regulations and the options may be selected in combination with one another.**

**Alternative 2, Option 1** would remove the LBO arbitration structure. Regulations would not specify the type of arbitration used, but parties to arbitrations could agree on the arbitration structure and include that information in the report to NMFS that is required when arbitrations occur in a year. This would allow the arbitrator greater discretion to select the outcome from the issues in dispute, as supported by the available facts and arguments from each side. Possible outcomes could be within the range of proposed offers, independent of the proposed offers, or matching a proposed offer.

Moving to an arbitration structure that allows the arbitrator to select the best outcome independent of the offers submitted by the two parties could increase the cost and duration of arbitration. A decision in that case would be more complex, since it would require the arbitrator to reach an optimal decision, rather than select the better-supported of two possible outcomes. The increased costs of arbitration would be due to the additional information that an arbitrator may require to make the decision. The amount of information exchanged could increase. More information could help to make a party's case, since the arbitrator has more flexibility to select an outcome. It may take longer to consider all the information presented.

**Alternative 2, Option 2** would establish regulations requiring IPQ and Arbitration IFQ holders who were parties to that arbitration to receive a written report from the Contract Arbitrator and any rationale for their decision.

A primary concern with providing a written report is the potential for antitrust violations by reducing the independence of the information that might be used in price-setting and negotiations across members of each sector. Any antitrust violations are prohibited, and sharing information pertinent to the arbitration could be considered an antitrust violation. For that reason, the final rule implementing the CR Program (69 FR 63200, October 29, 2004) noted that "information sharing among IPQ and IFQ holders, collective negotiations, and release of arbitration results would be limited to minimize the antitrust risks of participants in the Program."

Appendix 1 is a memo from antitrust experts that reviewed the proposed structure of the original CR Program arbitration structure. The main concern with the CR Program structure expressed in that document focused on provisions regarding the exchange of information that would not be permitted in an unregulated, competitive environment. The legal opinion advised that several provisions, including publicly announcing a pricing formula, circulating a Market Report, and providing arbitrators with access to information from prior arbitration sessions, could be implemented and comply with antitrust laws if they were conducted within limited parameters. This legal opinion is from May 2004.

Other provisions of the CR Program being considered raised antitrust concerns. These include providing both harvesters and processors access to all information provided to their arbitrators, permitting processors to engage in discussions regarding pricing, and the unlimited publication of the arbitration results. To address the possible anticompetitive effects of these provisions, the memo recommended that the harvesters' and processors' access to information during an arbitration be limited to materials submitted directly by the parties. Access to the results of other arbitration sessions should be limited to arbitrators and non-affiliated harvesters that have not committed shares to a processor. As implemented at 50 CFR 680.20(h)(5), parties may only access information that the other party submitted to the arbitrator. Also, the arbitrator must keep information provided by other members of the fishery confidential from the parties and must keep all information received in arbitration confidential as to anyone other than a party, with the exception only for the final result and the report to NMFS under (h)(6).

**Alternative 2, Option 3** would remove the requirement that a Market Report be developed for each fishery each year. The intent of the report is to support the Arbitration System. The Market Report is an analysis of the market for products of a specific crab fishery and reports on activities occurring within three months prior to its generation. The information provided for each crab fishery includes the products generated by each fishery, the position of the products in the marketplace, the historical division of wholesale revenue, and methods for predicting wholesale prices before the fishery occurs.

The shared arbitration system costs are outlined in an annual Alaska Crab Processors Arbitration Organization (ACPAO) report submitted to NMFS and the Council by the participants. Arbitration costs are divided equally between the harvesters and processors based on a landings fee structure. The fee applied to landings has ranged between \$0.00 and \$0.01 per pound, depending on the year and carryover funds available. The 2023/2024 cost of the Market Report and Non-Binding Price Formula was estimated by NMFS in the report to Office of Management and Budget (OMB) at \$49,000. The cost is paid equally by harvesters and processors and the harvester portion of the cost is collected through a landings fee. Eliminating the requirement to produce a Market Report for each fishery would eliminate the portion of that cost associated with the production of the Market Report.

Harvester and processor representatives supported removing the requirement for a Market Report at the December 2024 Council meeting. The two parties indicated that sufficient information was available through other published sources to support arbitration hearings. They indicated that removing the Market Report would not have a meaningful impact on the availability or quality of the data used in the arbitration process.

**Alternative 2, Option 4** would remove regulations defining arbitration over contract performance. This issue was raised due to a concern for persons holding IPQ who did not operate a processing facility. If no processing facilities were available to custom process their share-matched IPQ, they may have limited control over fulfilling a contract. Arbitration for contract performance can be initiated by either IFQ or IPA holders based on either sector's failure to perform its contractual obligations.

While arbitration has not been used to resolve performance disputes in the CR Program, it has reportedly been used as a bargaining tool to help reach agreements. Removing the regulations would not prohibit the use of arbitration to resolve those disputes; however, the details of the arbitration structure would need to be agreed to by both parties or left to the arbitrator. If agreement could not be reached on using arbitration, the option of a civil trial would be available. Civil trials are often more expensive in terms of time and cost. The cost of a civil trial varies depending on the case's complexity. It is not possible to predict the cost of future civil cases that may be initiated.

Civil trial could also require that judges who are less familiar with the crab fisheries and the relationships between the harvesters and processors than the arbitrators render judgments regarding non-performance. This could increase uncertainty regarding the court's decision.

**Alternative 2, Option 5 would reduce the information that industry must provide NMFS by eliminating regulations that require the submission of redundant or unnecessary data.**

The analysis reviewed the regulations in §680.20 and provided a summary of the regulations that could be removed because they are no longer applicable or would not be relevant under the Council's preliminary preferred alternative.

There are more than 50 references to the Market Analyst or Market Report in these regulations. Table 3-18 provides a summary of the regulations that could potentially be completely removed. Other regulations would need to be modified to remove specific requirements that apply to the Market Analyst or the Market Report if Alternative 2, Option 3 is adopted. All the proposed changes would reduce the burden on industry and help NMFS to comply with E.O. 14276 Restoring American Seafood Competitiveness.

**Alternative 3 would create greater clarity by standardizing the parameters of the IFQ/IPQ application withdrawal process.**

The current regulations are silent on when and if IFQ and IPQ applications may be withdrawn after they have been accepted by RAM as complete. NOAA Fisheries has allowed applications to be withdrawn, but noted that if the Council wanted greater clarity on this issue, it could propose specific criteria for application withdrawals. This alternative would clarify whether IFQ and IPQ applications can be withdrawn after being accepted as complete, and the timing of the withdrawal. Implementing an option under this alternative would provide greater clarity for NOAA Fisheries, IPQ holders and IFQ holders.

This alternative may allow IFQ/IPQ holders to make more informed decisions when they initially apply for IFQ/IPQ. The current lack of guidance could cause them to contact RAM, discuss the possibility of withdrawal, and then wait to see if the request will be approved or denied. Conversely, it may result in a scenario where PQS holders do not apply for IPQ due to the risk of the unknown TACs and the uncertainty in whether they can withdraw an IPQ application. These withdrawals have been allowed in other years; however, decisions to allow withdrawal might not be consistently applied if staff or workloads change, or if other factors change treatment.

Knowing whether IPQ applications may be withdrawn may allow other IPQ holders to better plan for how any IPQ application withdrawals will impact the IPQ they are allocated. While processors would not be allowed to coordinate this activity, knowing that withdrawal is possible under certain conditions may allow strategic plans within a company to be formed.

Arbitration IFQ holders would have more information on how they would be impacted by IPQ holders withdrawing applications. The difference between the time when the TAC is announced and when the season opens is the amount of time RAM would have to determine who has applied for IPQ and IFQ, issue the permits, and publish them on NMFS's website. Using the 2024 Bering Sea Snow (BSS) fishery as an example, the Alaska Department of Fish and Game (ADF&G) announced the TAC on October 4th. The fishery was opened on October 15th. IFQ holders have 5 days to share match after quotas are issued. That year, RAM would have had about 5 days to determine the IPQ and IFQ allocations, issue the permits, and publish them on NMFS's website to allow share matching to begin prior to the fishery opening. The Sharematch.com website helps facilitate share matching, but decisions may need to be made by IFQ holders in a short time.

The option would also allow IFQ holders to withdraw their application under the same time constraints. Arbitration IFQ holders are assumed to be less likely to withdraw their applications. IFQ can be assigned to a cooperative and leased within cooperatives. Lease rates have been about 50 percent of the ex-vessel value for BSS and 65 percent for BBR (see Section 3.3). Given that leasing crab can generate an income stream with minimal expense, it is assumed that IFQ would be unlikely to withdraw their application. However, if PQS holders withdrew their IPQ applications within the established window and Class A IFQ holders were not satisfied with the available IPQ options for share matching, this amendment would provide them with an opportunity to withdraw their application as well.

A question related to this alternative was raised during the December 2024 Council meeting: how would NOAA Fisheries manage the fishery if all PQS holders withdraw their applications, no PQS holders apply for IPQ, or too few PQS holders apply for their allocation and exceed the processing limits? Section 3.10.3.3 in the analysis highlights that the CR Program regulations do not guide on how this issue would be resolved if it occurred. The regulations as well as the technical structure of the permitting systems for Class A IFQ are built around sharematching. There is no default alternative specified, thus adapting the current system on short notice is not feasible. NMFS staff have indicated that because of the requirements for share matching, class A quota shares would not be issued if they could not be share matched with IPQ. IFQ, of any class (e.g., B shares), for those shares would not be issued that year. The Council may wish to consider developing recommendations now or in the future for how to support the full harvest of Class A IFQ if a scenario like this were to arise.

**Table E-1 Summary of expected advantages, disadvantages, and other considerations from proposed alternatives and options**

Proposed Action	Advantages	Disadvantages	Other considerations
<b>Alternative 1</b> No action, status quo regulations	No change	No change	No change
<b>Alternative 2, Option 1</b> Remove the requirement to use LBO arbitration	May allow for more compromising solutions.	Likely more extreme offers will be submitted to start negotiations. Could decrease efficiency (takes longer to settle, requires more information), increased costs due to possible increased frequency in use and less efficiency in settlement. If it results in a lower ex-vessel price, this could also decrease harvesting crew shares.	Could have implications for the outcome, but unclear which sector may benefit or whether it would change the frequency of arbitrations long-term. An arbitrator might be more likely to consider factors other than the historical distribution of the first wholesale price.
<b>Alternative 2, Option 2</b> Require a written report and rationale from the arbitrator	May increase transparency in the process.	Scope would be limited based on anti-trust concerns and confidential data. A detailed explanation could open the door for the determinations to be contested, which they are not meant to be in arbitration.	
<b>Alternative 2, Option 3</b> Remove the requirement for the Market Report	Both harvesters and processors suggested it might not be necessary in this process. Highlighted access to other available market reports. Would reduce costs.	None highlighted in the analysis	
<b>Alternative 2, Option 4</b> Remove the option for arbitration for non-performance disputes	None highlighted in the analysis	Options available to both IPQ holders and IFQ holders for settling non-performance disputes are either civil action or if both IPQ holder and IFQ holders agreed, they could still use arbitration A civil action may require persons less familiar with crab fisheries to render judgments, potentially increasing time and expense, and uncertainty in outcomes.	This action would not invalidate existing contracts but could change how they are enforced. IPQ holders who custom process and may not know whether processing facilities will be available for them to fulfill the contract terms made with the IFQ holder they have share-matched with. However, this option does not change their contractual commitment with IFQ holders.
<b>Alternative 2, Option 5</b> Remove unnecessary data submissions to NMFS; housekeeping	This option would remove reporting requirements that NMFS deems unnecessary or that are in line with the PPA.	None highlighted in this analysis	
<b>Alternative 3</b> Allow IFQ/IPQ applications to be withdrawn after the TAC is announced	Would establish formal expectations and increase transparency around IFQ/IPQ issuance. Would be less likely to be in a situation where PQS holders chose not to apply due to the risk of low TAC, and as a result, miss out on operating in a year with a TAC that could have sustained their operation.	Might result in additional withdrawn IPQ in a given year, which could negatively impact harvesters and communities. However, the likelihood of this occurrence as a result of this Alt is unknown.	

# 1 Introduction

This Regulatory Impact Review (RIR)<sup>1</sup> evaluates the costs and benefits of regulatory actions to modify the Crab Rationalization (CR) Program by adjusting the arbitration system rules and clearly defining when Individual Fishing Quota (IFQ) and Individual Processing Quota (IPQ) applications that have been accepted by the National Oceanographic and Atmospheric Administration Fisheries (NOAA Fisheries or NMFS) may be withdrawn.

This action would not change any other aspects of the CR Program. The Secretary of Commerce (SOC) has the authority to establish regulations for the CR Program. The proposed actions would not affect the components of the Bering Sea Aleutian Islands (BSAI) crab fisheries that the State of Alaska manages.

An RIR evaluates the benefits and costs of alternatives, how impacts are distributed, and identifies small entities that might be affected. This RIR meets the requirements of Presidential Executive Orders (E.O.) 12866 as well as some parts of the Regulatory Flexibility Act. An RIR is a standard document created by the North Pacific Fishery Management Council (Council or NPFMC) and the National Marine Fisheries Service (NMFS) Alaska Region to provide the analytical basis for decision-making.

The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) authorizes the Council to make recommendations to the SOC regarding managing the BSAI crab fisheries. The SOC then decides whether to approve, partially approve, or disapprove the recommended actions.

## 1.1 Purpose and Need

The Council adopted a purpose and need statement for this action in December 2024 as follows:

*The Bering Sea and Aleutian Islands (BSAI) Crab Rationalization Program was implemented in 2005. The viability of the BSAI crab fisheries for all participants is significantly affected by challenging global markets; poor marine ecosystem conditions for commercial crab species that have resulted in high annual uncertainty, fishery closures, and low TACs; and the challenging cost structure associated with processing severely reduced volume in remote communities. The original program regulations did not anticipate the level of processor quota shares that would be acquired by entities who do not own processing facilities and thus need to have active processors custom process their crab or the reduction in number of active crab processors that has occurred in recent years. The Council intends to consider limited revisions to the BSAI Crab Rationalization Program arbitration process and the annual individual fishing quota (IFQ) and individual processor quota (IPQ) application process to increase transparency, provide flexibility, and reduce program costs and burdens for participants without changing the overall program structure and objectives.*

## 1.2 History of this Action

Before the CR Program was implemented, BSAI crab fisheries had a history of contentious price negotiations. Harvesters often acted collectively to negotiate an ex-vessel price with processors, sometimes resulting in the failure to fish at the start of the fishing season to raise pressure for price concessions. During the development of the CR Program, participants in both the harvesting and

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<sup>1</sup> NMFS has preliminarily determined this action does not have the potential to individually or cumulatively have a significant effect on the quality of the human environment and qualifies for a Categorical Exclusion under NEPA. The proposed action is expected to fall within Category A1 Trust Resource Management Action - an action that is a technical correction or a change to a fishery management action or regulation, which does not result in a substantial change in any of the following: fishing location, timing, effort, authorized gear types, or harvest levels. The action can be reviewed independently from other actions under NEPA, and there are no extraordinary circumstances that may require further analysis in an Environmental Assessment or an Environmental Impact Statement.

processing sectors were interested in ending that practice, particularly due to concerns that market power could be unbalanced by the rationalization of the fisheries.

During the development of the CR Program, both harvesters and processors expressed concern about how changes to the management of the fishery would affect market power between the sectors. To address these issues, the proposed system included one-to-one share matching between Class A harvesting IFQ and IPQ (shares are further defined in Section 3.2.1). In this share matching system, the concern of market power imbalance is heightened because the CR Program limits the pool of persons to whom a Class A IFQ holder may sell their catch. The problem is most acute for the last Class A IFQ/IPQ holders from each sector to commit their harvesting or processing shares. This “last person standing” problem, where the last harvesting Class A IFQ holder to contract deliveries would have a single IPQ holder to contract with, could effectively limit the ability to use other processor markets to negotiate leverage. It can also force harvesters to deliver to a processor that has not fulfilled its contract terms in the past.

Based on those concerns and directions from Congress, a binding arbitration system was designed to resolve contract terms fairly and equitably when Class A IFQ holders and IPQ holders cannot agree on them or their enforcement. Additionally, to ensure fair price negotiations and to compensate for complications arising from the creation of the quota share system, the CR Program includes the Arbitration System to settle price disputes between harvesters and processors in a timely manner to avoid harvest delays at the beginning of the fishing year. Those delays could idle processing plants that are staffed and supplied to start operations on a given date.

The Proposed Rule for the CR Program states that Last Best Offer (LBO) arbitration is the centerpiece of the Arbitration System (69 FR 63200). The following three paragraphs are taken, with some edits, from that Proposed Rule.

LBO arbitration is available under the current structure to resolve price and delivery disputes arising from open negotiations among Arbitration IFQ holders and IPQ holders, lengthy season approach to delay reaching an agreement, share matching, or performance disputes. In an LBO arbitration, the parties each would submit an LBO defining all the terms specified for inclusion in an LBO by the Contract Arbitrator. An Arbitration IFQ holder, a crab harvesting cooperative, could submit the LBO that defines the delivery terms for all its members. The Council chose to adopt the LBO arbitration structure with the intent that it would deter parties from exaggerating their offers in hopes of achieving a more favorable result, and be an efficient and less costly system to resolve disputes.

Prior to the submission of the LBO, the Contract Arbitrator would work with the parties to gather the information required to reach a decision. To minimize antitrust risk, only the parties to the arbitration and the Contract Arbitrators would have access to information provided directly by the parties to the Contract Arbitrator for that particular arbitration. To further preclude antitrust risk, the parties sign a confidentiality agreement stipulating they will not disclose any confidential information generated during the arbitration proceeding.

At its June 2004 meeting, the Council considered the antitrust risks of sharing the arbitration results among IPQ holders or affiliated IFQ holders or Arbitration IFQ holders that already have committed to an IPQ holder. The Council agreed that such information sharing would raise antitrust concerns regarding illicit price stabilization or collusion. To the extent that IFQ holders are members of a crab harvesting cooperative under the FCMA, they may share information with other members of the same cooperative and set prices with antitrust immunity. Sharing the results of arbitrations with IPQ holders or affiliated IFQ holders or Arbitration IFQ holders that already committed to an IPQ holder and so have no need to opt-in could create antitrust risks. If IPQ holders shared the results of completed arbitrations with other processing quota share (PQS) or IPQ holders, they would risk antitrust violations. Without antitrust immunity, sharing current pricing information could facilitate illicit price stabilization or collusion. Also, if IPQ holders shared the results of arbitrations before all arbitrations were completed, an IPQ holder could alter its final offer to the Contract Arbitrator to make it closer to the price in previous arbitrations in a

manner similar to what would occur if the IPQ holders coordinated on prices. So, the regulations allow the disclosure of arbitration results only to Arbitration IFQ holders that have not committed to an IPQ holder so they have access to the real-time results of completed arbitrations for purposes of determining whether to opt-in to a completed contract.

The binding arbitration system continues to be a source of dispute between BSAI crab harvesters and processors. Arbitration IFQ holders have generally supported the current binding arbitration structure; PQS holders have supported modifying it. Recent economic conditions in the fisheries have exacerbated the divide between harvesters and processors regarding whether the current arbitration structure is operating as intended.

The BSAI crab fisheries have undergone several regulatory changes in recent years. These Federal and State management changes are described in section 2.4 of the CR Program review (NPMFC 2024a). None of those changes directly addressed the proposed amendments in this analysis.

In **June 2024** the Council received the 17-year BSAI CR Program Review which comprehensively examined this rationalization program (NPFMC 2024a). After receiving this review, the Council requested that a discussion paper be developed to provide additional information on specific aspects of the program's arbitration components (NPFMC 2024b). This discussion paper was focused on information to help the Council consider whether potential changes to the Program's arbitration system might be prudent. The discussion paper focused on four issues of primary concern, 1) timing of joining an arbitration organization, 2) several details about the requirements of the binding arbitration system, 3) an initial evaluation of whether current regulations allow IPQ/ IFQ holders to withdraw their application for quota any time before issuance, and 4) considering alternative structures under low TAC levels in which binding arbitration would not apply, while still providing stability and protection to both harvesters and processors.

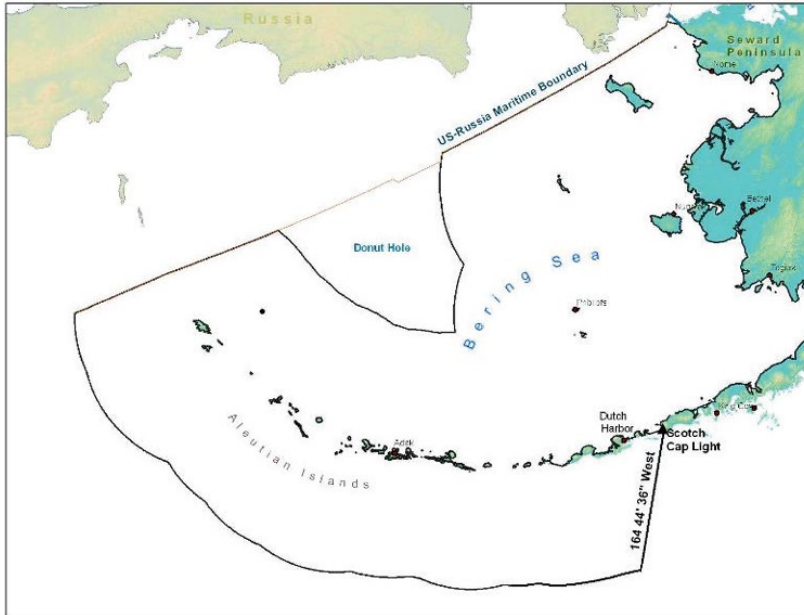
Review of that paper in **December 2024** led the Council to develop the purpose and need for this RIR, as well as the alternatives it wished to consider amending or clarifying.

At its **June 2025** meeting, the Council modified Alternative 2, Option 2, to more clearly define the written report that the arbitrator would submit to the parties to the arbitration. The Council also added Alternative 2, Option 5, which would streamline the information in the Arbitration Organization Annual Report by removing requirements to submit information that NMFS already has or the information is no longer necessary. The Council also selected a preliminary preferred alternative (PPA), but the Council emphasized that it is not bound by the PPA when taking final action on the proposed changes.

### **1.3 Description of Management Area**

This action would affect the BSAI area as defined in the Crab FMP. That area is shown in Figure 1-1 and is defined as the EEZ waters south of the Chukchi Sea statistical area as described in 50 CFR part 679, east of the 1990 U.S./Russian maritime boundary line, and extending south of the Aleutian Islands for 200 miles between the convention line and Scotch Cap Light.

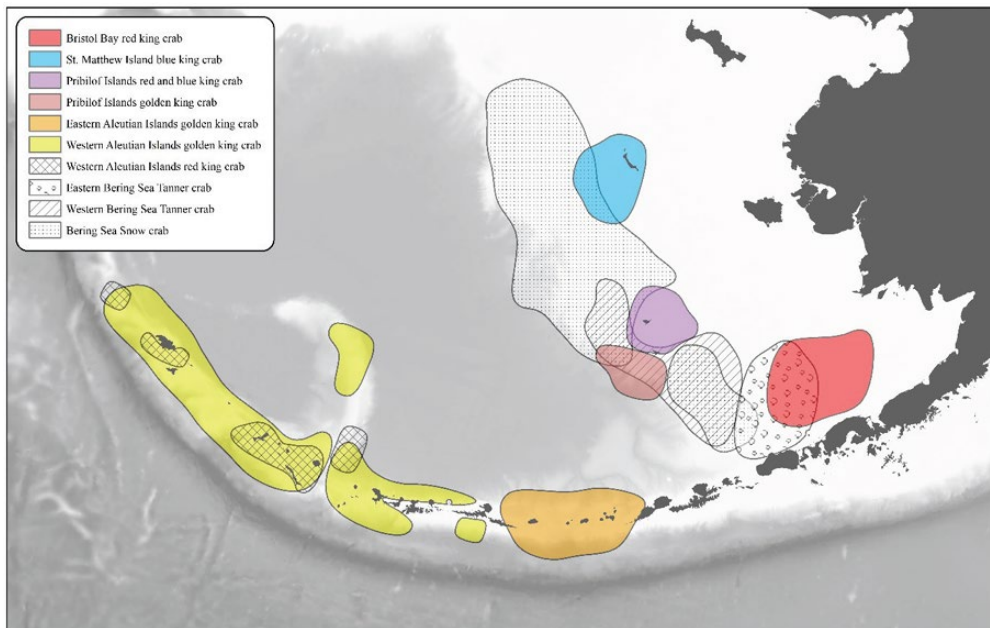




**Figure 1-1 BSAI Crab FMP Management Area**

Source Crab FMP Figure 3-1

Table 1 to 50 CFR 680 describes each BSAI (Bering Sea and Aleutian Islands) crab management area. Figure 1-2 shows the general locations of BSAI Crab commercial harvests over a recent 5-year period. The status of the nine CR Program crab fisheries stocks is detailed in the annual SAFE report (NPFMC 2024c). Information on the fisheries is also provided in Section 3.2 of this document.



**Figure 1-2 Approximate locations of commercial crab harvested in the BSAI**

Source: Crab FMP Figure 4-1

## 2 Alternatives

The Council adopted alternatives in December 2024 and modified the alternatives at its June 2025 meeting. The Council noted that the changes to Alternative 2 were within the scope of the current purpose and need for this action. The purpose and need statement was not altered at the Council's June 2025 meeting. In addition to the No Action alternative, the action alternatives include five options to modify the CR Program arbitration requirements and one alternative to clarify current regulations regarding the withdrawal of IPQ/IFQ applications for consideration. A preliminary preferred alternative was identified in June 2025, shown in **bold**, and the Council recommended releasing the analysis for final action at that time.

Alternative 1: Status Quo

*Action alternatives are not mutually exclusive.*

**Alternative 2: Changes to the regulations governing the arbitration process.** *Options are not mutually exclusive.*

**Option 1. Remove the requirement that the arbitrator can only select a remedy proposed by one side. Allow the arbitrator to select an independent or compromise remedy based on the facts provided in the arbitration.**

Option 2. Require a written report and rationale from the arbitrator to the parties to the arbitration. The report should largely mirror the written report submitted by the Contract Arbitrator to NMFS to avoid external costs.

**Option 3. Remove the requirement for a market report.**

Option 4. Remove the arbitration option for non-performance after a contract has been established to define BSAI crab price, delivery, or other terms.

Option 5: Streamline the information submitted to NMFS in the Annual Arbitration Organization Report and notifications by removing requirements for information NMFS already has, information that has not changed, and any other information that is no longer necessary.

**Alternative 3. IFQ and IPQ application withdrawal.**

**IFQ and IPQ applications can be withdrawn after being accepted by NMFS at any time before BSAI crab rationalization species TACs are announced and within (option 1: 24 hours and option 2: 48 hours) after BSAI crab rationalization species TACs are announced.**

### 2.1 Alternative 1, No Action

The No Action alternative would maintain the current binding arbitration program structure. It would also not provide further clarification on whether the CR Program allows an IFQ or IPQ application to be withdrawn after RAM has accepted it as complete, or the requirements or considerations RAM might apply for granting withdrawal, including the time frame of the request.

Regulations for the CR Program Binding Arbitration System are defined at 50 CFR 680.20. Those regulations require using an **LBO arbitration method** (50 CFR 680.20(h)(2)), also commonly referred to as "baseball" arbitration. LBO arbitration requires that both parties submit their proposed outcome on the issues in dispute (such as ex-vessel price paid or delivery terms) and provide evidence supporting the requested outcome. The arbitrator is only empowered to select the better of the two proposed outcomes. Here they must accept the IFQ holder's proposal or accept the IPQ holder's proposal. The arbitrator is not empowered to negotiate an agreement other than the outcome requested by the Class A IFQ holders (Arbitration IFQ holders) or the IPQ holders. The decision of the arbitrator is final and issued without explanation of the rationale.

The regulations do not provide for the **parties to the arbitration proceedings to receive a written report that describes why the decision was made**. A Contract Arbitrator Report must be submitted to NMFS if any arbitration occurs within a fishery (50 CFR 680.20(h)(6)). That report must include:

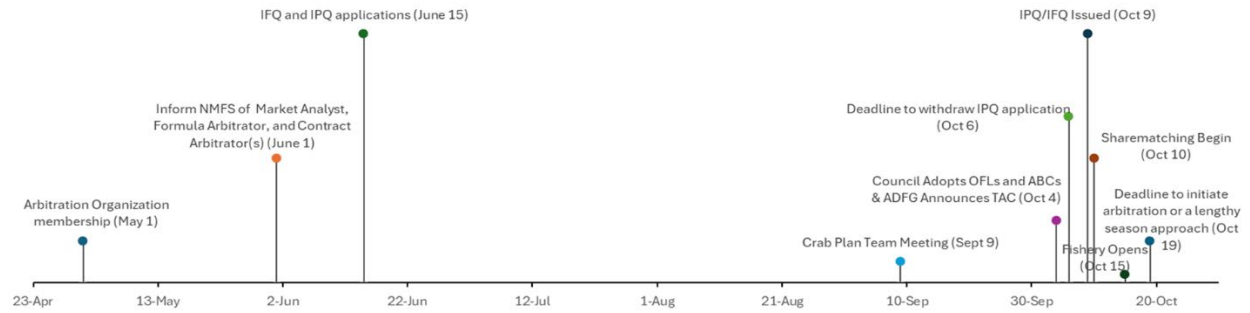
1. A copy of any minutes from any meeting attended by that Contract Arbitrator between or among any PQS or IPQ holders concerning any negotiations under this section;
2. Any LBOs made during the Binding Arbitration process, including all contract details, the names of other participants in the arbitration, and whether the Contract Arbitrator accepted the bid; and
3. A copy of any information, data, or documents given by the Contract Arbitrator to any person who is not a party to the particular arbitration for which that information was provided. The Contract Arbitrator must identify the arbitration to which the information, data, or documents apply, and the person to whom those information, data, or documents were provided.

That report is currently not made available to arbitration participants or the public. Information presented in the minutes of the meetings may include matters that could raise anti-trust concerns. Any information determined to raise that concern would need to be removed or redacted before release. The report also does not include the arbitrator's reasoning for making the decision.

Regulations at 50 CFR 680.20(f)(4)(i) states that a **Market Report** for each crab QS fishery must be produced annually, not later than 50 days before the first crab fishing season for that crab QS fishery. The Arbitration QS/IFQ Arbitration Organizations and the PQS/IPQ Arbitration Organizations can establish a different date for production of a fishery's Market Report by including such a provision in the contract with the Market Analyst. The contract with the Market Analyst defines how the information for the report is collected and reported (50 CFR 680.20(f)(2)). This report includes an analysis of product markets for a specific crab fishery and reports on activities occurring within three months before its generation. The purpose of this report is to provide background information on each crab fishery, the products generated by each fishery, and the position of those products in the marketplace, discuss the historical division of wholesale revenue, and provide methods for predicting wholesale prices before the fishery occurs.

Regulations at 50 CFR 680.20(h)(7) state that the decision of the Contract Arbitrator for Binding Arbitration will be enforced by the parties to that arbitration. 50 CFR 680.20(h)(10) defines the process for resolving contract **performance disputes** through the arbitration process. It also states that if the parties to the arbitration fail to abide by the arbitration decision, a party to the arbitration may pursue other available contract remedies. Those options could include civil lawsuits. Regulations at 50 CFR 680.20(h)(11) describe the arbitration system for settling quality disputes. When the two parties agree to a formula-based price for crab but cannot reach an agreement on the quality and price of the crab, the IPQ holder and the Arbitration IFQ holder(s) will receive their share of the value based on the contract. If the Arbitration IFQ holders prefer to use the actual ex-vessel price and not a formula-based price, and a dispute arises regarding crab quality and price, the dispute should be referred to an independent quality specialist firm. This independent quality specialist firm will determine the quality of the crab, and that information will be used as the basis for subsequent price determinations. The two parties share the cost of hiring the specialist firm and agree to abide by its findings.

The status quo also defines the timeline for submitting complete IFQ applications at 50 CFR 680.21(b)(1) and the same date (June 15) is established for IPQ applications. This is well before the TACs are established for most of the CR Program fisheries that open in October. Regulations do not address whether an application may be withdrawn or the requirements for withdrawing an application.



**Figure 2-1 Timeline of annual binding arbitration dates and deadlines**

Source: Regulations at 50 CFR 680

## 2.2 Alternative 2: Changes to the Regulations Governing the Arbitration Process

Options considered under Alternative 2 and Alternative 3 are not mutually exclusive. Any or all of them may be selected as part of the preferred alternative.

### 2.2.1 Option 1. Remove the requirement that the arbitrator can only select a remedy proposed by one side and allow the arbitrator to select an independent or a compromise remedy based on the facts provided in the arbitration (selected as part of the PPA)

This option would change the fundamental structure of the crab arbitration system by eliminating the requirement to use the LBO arbitration model. The 14 separate references to LBO arbitration in Federal regulations would be amended, including the reference at 50 CFR 680.20(h)(2) that states the Contract Arbitrator will comply with the LBO arbitration method. Regulations may specify the type of arbitration used to establish prices, other contract terms, or resolve performance disputes when other negotiation methods fail to reach a compromise agreement. Parties to the arbitration process may agree on the arbitration program structure or the arbitrator would have full latitude to adjudicate. That information would be included in the report to NMFS. Changing the arbitration program model would not change which parties may trigger the arbitration process. Currently, only Arbitration IFQ holders are allowed to initiate arbitration to establish contract terms as stated in regulation at 50 CFR 680.20(h)(3)(v), though either party may initiate performance dispute arbitration or quality dispute resolution. Allowing either party to initiate contract arbitration without limitations on the arbitration structure is not included in the Council’s December 2024 motion.

### 2.2.2 Option 2. Require a written report and rationale from the arbitrator to the parties to the arbitration. The report should largely mirror the written report submitted by the Contract Arbitrator to NMFS to avoid external costs.

Option 2 would establish regulations requiring IPQ and Arbitration IFQ holders who were parties to that arbitration to receive a written report from the Contract Arbitrator, including rationale for making that decision. The written report would be structured based on the information that must be submitted to

NMFS, with the addition of the Contract Arbitrator's rationale. A separate report would be created for each arbitration.

A primary concern with this option is the potential to create antitrust issues. Any antitrust violations are prohibited, and the sharing of certain information pertinent to the arbitration could be considered antitrust violations. For that reason, the final rule implementing the CR Program (69 FR 63200, October 29, 2004) noted that "information sharing among IPQ and IFQ holders, collective negotiations, and release of arbitration results would be limited to minimize the antitrust risks of participants in the Program." See Section 3.9.2.2 for analysis of antitrust concerns.

### **2.2.3 Option 3. Remove the requirement for a Market Report (selected as part of the PPA)**

Option 3 would remove the requirement to produce an annual Market Report for each CR Program fishery that is open. Members of the harvesting and processing sectors feel that the information required to support the arbitration process is available and published in other readily available sources. Eliminating this requirement could reduce industry costs while not negatively impacting information that is necessary to make informed decision on current market conditions. The regulations in 50 CFR 680.20 reference the Market Report in 17 places. All those references would either need to be deleted or modified.

### **2.2.4 Option 4. Remove the arbitration option for non-performance after a contract has been established to define BSAI crab price, delivery, or other terms**

This option would remove the requirement that disputes over the parties' obligations to perform specific contract provisions be submitted for arbitration. Unless a new regulation specifies, the parties would have no special remedies or methods for resolution of performance disputes. As with any civil contract dispute over non-performance that cannot be resolved through negotiation, adjudication in civil court using civil contract law, procedures, and interpretations would be the default means of resolution. Parties could still agree to alternative dispute resolution methods such as mediation, non-binding arbitration, and binding arbitration, but any such methods would occur independently, outside the CR Program's arbitration structures and terms in 50 CFR 680.20.

Current regulations 50 CFR 680.20(h)(10) require the use of arbitration to settle performance disputes, and 50 CFR 680.20(h)(11) define the regulations for quality disputes. **While both could be considered performance disputes, the Council has indicated that only performance disputes defined under 50 CFR 680.20(h)(10) should be considered under this action.** The regulations would then be silent on whether arbitration or civil trials would be used to settle performance disputes.

Selecting this option would also remove regulations that define how the cost to settle performance disputes would be divided and paid. These regulations are at 50 CFR 680.20(e)(2)(v)(A) and state that Arbitration Organizations would share the cost of performance disputes, but it is within the arbitration structure. The Council likely lacks the authority to set the cost structure for civil lawsuits.

### **2.2.5 Option 5: Streamline the information submitted to NMFS in the Annual Arbitration Organization Report and notifications by removing requirements for information NMFS already has, information that has not changed, and any other information that is no longer necessary.**

This option would reduce the reporting burden and costs imposed by regulations on industry and the federal government by eliminating the submission of information related to the crab arbitration program that NMFS already possesses or is unnecessary to perform its mission. Implementation of this option will help the agency comply with [Executive Order \(EO\) 14192: Unleashing Prosperity Through Deregulation](#), signed January 31, 2025.

## **2.3 Alternative 3 IFQ and IPQ Application Withdrawal**

This alternative would clarify that IFQ and IPQ applications can be withdrawn after being accepted as complete. The timing of the withdrawal would be any time before the BSAI CR Program species TACs are announced and within:

Option 1: 24 hours or

**Option 2: 48 hours (selected as part of the PPA)**

after the BSAI CR Program species TACs are announced.

Selecting an option is required to clarify the rules regarding application withdrawals, ensuring that RAM has adequate time to issue IFQs and IPQs to the remaining applicants. The current regulations are silent on when and if IFQ and IPQ applications may be withdrawn after they have been accepted by RAM as complete. NOAA Fisheries has allowed applications to be withdrawn on two occasions in recent years, but applied case-by-case consideration and noted that if the Council wanted greater clarity on this issue, it could propose specific criteria for application withdrawals.

A related question raised during the December 2024 and June 2025 Council meeting discussions was how NOAA Fisheries would manage the fishery if all PQS holders withdraw their applications, no PQS holders apply for IPQ, or too few PQS holders apply for their allocation and exceed the processing limits. A complete review of this issue is not provided in this analysis, because the CR Program regulations do not guide how this issue would be resolved if it occurred. The regulations as well as the technical structure of the permitting systems for Class A IFQ are built around sharematching. There is no default alternative specified, thus adapting the current system on short notice is not feasible. NMFS staff have indicated that because of the requirements for share matching, class A quota shares would not be issued if they could not be share matched with IPQ. **The Council may wish to consider developing recommendations now or in the future for how to support the full harvest of Class A IFQ if a scenario like this were to arise.**

### 3 Regulatory Impact Review

This Regulatory Impact Review (RIR) examines the benefits and costs as well as the distribution of impacts of a regulatory amendment to modify the CR Program’s arbitration structure and to clarify regulations for the withdrawal of IFQ/IPQ applications after they have been accepted by RAM.

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

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

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

- Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, territorial, 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 E.O. 12866.

#### 3.1 Statutory Authority

The Federal government and the State of Alaska manage BSAI crab fisheries. The FMP for the commercial king and Tanner crab fisheries in the BSAI establishes a State/Federal cooperative management regime that defers BSAI crab management to the State of Alaska (State) with Federal oversight. State regulations are subject to the provisions of the FMP, including its goals and objectives, the Magnuson-Stevens Act National Standards, and other applicable federal laws.

The FMP specifies three categories of management measures for the king and Tanner crab fisheries in the BSAI (Table 3-1). Category 1 measures are fixed in the FMP and require an FMP amendment to change. These measures include all regulations established under the CR Program. Category 2 measures are framework-type measures that the State can change following criteria set out in the FMP. Category 3 measures are under the discretion of the State of Alaska.

**Table 3-1 BSAI king and Tanner crab management measures by category**

Category 1 (Fixed in the FMP)	Category 2 (Frameworked in the FMP)	Category 3 (Discretion of the State)
Legal Gear	Minimum Size Limits	Reporting Requirements
Permit Requirement	Guideline Harvest Levels/ Total Allowable Catch	Gear Placement and Removal
Federal Observer Requirements	In-season Adjustments	Gear Storage
Limited Access	Districts, Subdistricts, and Sections	Vessel Tank Inspection
Norton Sound Super Exclusive Registration	Fishing Seasons	Gear Modifications
	Sex Restrictions	Bycatch Limits (in Crab Fisheries)
Essential Fish Habitat	Pot Limits	State Observer Requirements
Habitat Areas of Particular Concern	Registration Area	Other
	Closed Waters	

Source: Fishery Management Plan for Bering Sea/Aleutian Islands king and Tanner crabs (NPFMC 2021)

The FMP applies to all Federal crab fisheries in the BSAI. The CR Program covers the following subset of the FMP crab fisheries.

- BBR** Bristol Bay red king crab (*Paralithodes camtschaticus*)
- BSS** Bering Sea snow crab (*Chionoecetes opilio*)
- EBT** Eastern Bering Sea Tanner crab (*C. bairdi*) – East of 166° W
- WBT** Western Bering Sea Tanner crab – West of 166° W
- PIK** Pribilof Islands blue (*P. platypus*) and red king crab
- SMB** Saint Matthew Island blue king crab
- WAG** Western Aleutian Islands (Adak) golden king crab (*Lithodes aequispinus*) – West of 174° W
- EAG** Eastern Aleutian Islands (Dutch Harbor) golden king crab – East of 174° W
- WAI** Western Aleutian Islands (Petrol Bank District) red king crab – West of 179° W

The proposed amendments and clarification only apply to the fisheries managed under the CR Program.

## 3.2 Description of Fisheries

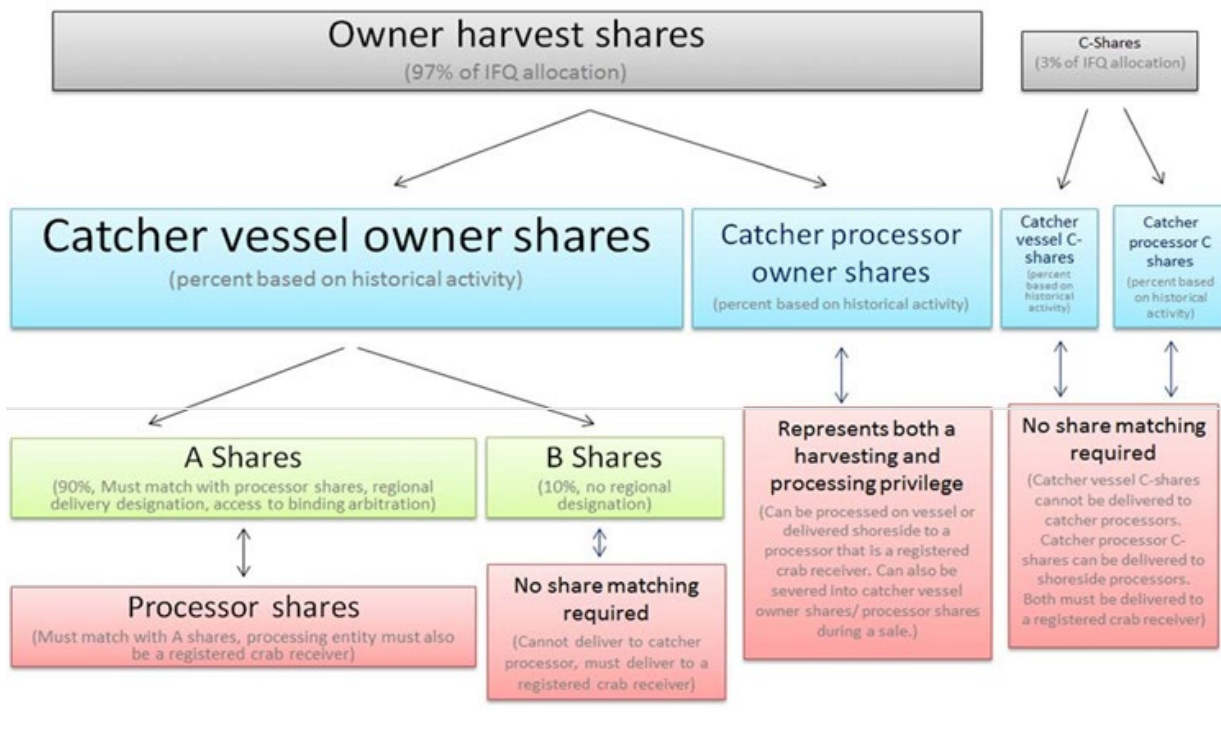
This analysis section provides background information on the BSAI crab fisheries managed under the CR Program. Information on the biological condition of the BSAI CR Program crab stocks is provided in the most recent Crab SAFE (NPFMC 2024c). Economic information on these fisheries is presented in the Economic SAFE document (NPFMC 2024d). Additional information is provided in the most recent CR Program review (NPFMC 2024a) and the Crab Arbitration discussion paper (2024b). The information in these reports is included in this paper by reference.

### 3.2.1 Background on the BSAI CR Program Crab Fisheries

After the TACs are established, deductions are made to provide for the CDQ and Adak development programs as required in regulations. Harvesting quota shares (QS) are issued for each CR Program fishery (Figure 3-1). The corresponding annual allocations, issued in pounds, are IFQ. The annual IFQ allocation to a person is based on the percentage of the QS pool held by that person, multiplied by the annual IFQ TAC in the fishery. Legal discards are not counted against an IFQ holder’s account.



## Crab Fishery TAC - 10% for CDQ & Adak = IFQ allocation



**Figure 3-1 Crab TAC allocations under CR Program**

Source: 10-year review

Harvesting QS are designated as either catcher vessel owner (CVO) QS or catcher processor owner (CPO) QS. Approximately 97 percent of the QS (referred to as “owner QS”) in each program fishery were initially allocated to LLP license holders based on their catch histories in the fishery. The remaining 3 percent of the QS, referred to as “C shares” or “crew QS”, were initially allocated to captains based on their catch histories in the fishery. The proposed action in this analysis would not directly affect C shares or IFQ derived from CPO because there is no share-matching requirement for this harvesting quota. These quota are not part of the Arbitration System, although they may be held by people who also hold CVO subject to the Arbitration System.

Two classes of CVO IFQ are issued, with an overall ratio of 90% issued as Class A IFQ and 10% as Class B IFQ. Class B IFQ can be delivered to any processor and thus is not part of the Arbitration System. Crab harvested using Class A IFQ must be delivered to a processor holding unused IPQ. Share matching is used to establish which harvesters will deliver Class A quota to which processors. If a CVO QS holder has no affiliation with PQS, they are issued a combination of Class A and Class B IFQ. If a CVO QS holder holds (or are affiliated with) IPQ they will be issued exclusively Class A IFQ up to the amount of IPQ they hold.

Those associated with Class A QS, A Class IFQ, PQS and/or IPQ are eligible to join an arbitration organization and participate in the Arbitration System. However, those eligible to use negotiations and Binding Arbitration procedures are only those that hold Arbitration IFQ and IPQ. Arbitration IFQ is a specific type of Class A IFQ and the focus of this analysis. **Arbitration IFQ is defined as: Class A CVO IFQ held by a person who is not a holder of PQS or IPQ and who is not affiliated with any holder of PQS or IPQ. In addition, the IFQ must be held by a Fishermen’s Collective Marketing Act of 1934 (FCMA; 15 U.S.C. § 521 et seq.) cooperative.**

Table 3-2 shows the IFQ TACs established for CR Program species in recent years. The IFQ TAC excludes the CDQ allocation, but does not further divide the IFQ TAC to show only Class A IFQ.

**Table 3-2 IFQ TACs for the Crab Rationalization Program Fisheries (excludes CDQ), 2005 through 2024**

Year	BBR	BSS	EAG	EBT	SMB	WAG	WBT	
2005	16,496,100	33,465,600	2,700,000			0	2,430,000	1,458,000
2006	13,974,300	32,909,400	2,700,000	1,687,500		0	2,430,000	984,600
2007	18,334,700	56,730,600	2,700,000	3,100,500		0	2,430,000	1,958,400
2008	18,327,600	52,695,000	2,835,000	2,486,700		0	2,551,500	1,383,300
2009	14,408,100	43,215,300	2,835,000	1,215,000	1,050,300		2,551,500	0
2010	13,355,100	48,852,900	2,835,000	0	1,440,000		2,551,500	0
2011	7,050,600	80,004,600	2,835,000	0	2,123,100		2,551,500	0
2012	7,067,700	59,715,000	2,979,000	0	1,467,000		2,682,000	0
2013	7,740,000	48,584,700	2,979,000	1,316,700		0	2,682,000	1,480,500
2014	8,987,400	61,155,000	2,979,000	7,632,000	589,500		2,682,000	5,962,500
2015	8,976,600	36,549,900	2,979,000	10,144,800	369,900		2,682,000	7,556,400
2016	7,622,100	19,413,000	2,979,000	0	0		2,011,500	0
2017	5,940,900	17,064,900	2,979,000	0	0		2,011,500	2,250,180
2018	3,877,200	24,822,900	3,470,400	0	0		2,250,000	2,195,100
2019	3,417,300	30,617,100	3,879,000	0	0		2,583,000	0
2020	2,383,200	40,500,000	3,285,000	0	0		2,664,000	2,113,200
2021	0	5,040,000	3,249,000	0	0		2,088,000	990,000
2022	0	0	2,988,000	1,046,700	0		1,557,000	765,000
2023	1,935,000	0	3,348,000	684,000	0		1,629,000	1,188,000
2024	2,310,000	4,720,000	3,760,000	1,770,000	0		1,120,000	4,500,000

Source: AKFIN and State of Alaska Reports for 2024 (e.g., [https://www.adfg.alaska.gov/static/fishing/PDFs/commercial/bering\\_aleutian/2024\\_2025\\_aleutian\\_gking\\_crab\\_tac\\_review.pdf](https://www.adfg.alaska.gov/static/fishing/PDFs/commercial/bering_aleutian/2024_2025_aleutian_gking_crab_tac_review.pdf))

### 3.2.2 The Arbitration System

The Arbitration System<sup>2</sup> is a component of the CR Program that serves several important purposes. Those include the dissemination of information to facilitate negotiations, the coordination of matching Class A IFQ held by harvesters to IPQ held by processors, and the opportunity to use the binding arbitration process to resolve terms of delivery. Most of the Arbitration System is regulated through private contracts among QS/IFQ holders and PQS/IPQ holders through mandatory Arbitration Organizations. These organizations are parties to the contracts that define and govern the share matching and Arbitration System. NOAA Fisheries will not issue IFQ or IPQ in a program fishery until arbitration organizations representing enough QS and PQS holders to account for at least 50 percent of the A share QS and 50 percent of the PQS issued for a fishery, select the market analyst, formula arbitrator, a pool of contract arbitrators, and notify NOAA Fisheries of their selection. This requirement is intended to ensure that the Arbitration System is in place before the start of the fishery. Arbitration organizations serve an administrative function, allowing shareholders to achieve efficiencies without compromising their competitive position or operational aspects of their businesses.

<sup>2</sup> See 50 CFR 679.20 for a complete description of the regulations describing the arbitration system.

The Arbitration System begins with the dissemination of information. The two sectors (harvesters and processors) jointly select a “market analyst,” who produces a Market Report, and a “formula arbitrator,” who develops a price formula specifying an ex-vessel price based on a portion of the first wholesale price. The two sectors (i.e., the Arbitration Organizations) also choose a pool of “contract arbitrators,” who preside over any binding arbitration proceedings<sup>3</sup>. The price formula is intended to inform negotiations; the Market Report is intended to provide baseline information and a signal of a reasonable price. When the contract arbitrator selects a price, (s)he must consider several factors, including current ex-vessel prices, consumer and wholesale prices, innovations and developments, efficiency and productivity, quality, and financial health and stability within the fishery. The arbitrator must also identify factors relevant to price determination, including delivery timing and location; however, the arbitrator is not required to consider these factors in setting the ex-vessel price.

Reasons the arbitration program was initially included in the CR Program are described in the 2004 Environmental Impact Statement (NMFS 2004), the Proposed Rule (69 FR 63200), and the Final Rule (70 FR 10174). Reasons cited in those documents include resolving price disputes between harvesters and processors that have delayed fishing in past years, being a cost-effective system to settle disputes, being less time-consuming than alternative dispute resolution methods, and addressing antitrust concerns associated with price negotiations.

### **3.2.3 LBO Arbitration and Lessons Learned**

The LBO arbitration structure is assumed to provide incentives for both parties to submit reasonable offers and is considered an efficient and less costly form of arbitration. The LBO system helps to disincentivize extreme stances, since the arbitrator would be expected to choose the more reasonable offer. Alternatively, in seeking a compromise resolution, parties may present a more extreme offer, understanding that the outcome may not represent their offer, but in the hopes that the outcome would lean more towards their interests (Appendix 1 p. 16). In LBO arbitration parties to the arbitration must also provide evidence supporting their position. The arbitration procedures, such as the presentation of evidence, are virtually identical to standard arbitration. However, the arbitrator is only empowered to accept the IFQ holder’s proposal or the IPQ holder’s proposal. The arbitrator is not empowered to negotiate an agreement or issue a compromise or independent decision other than the outcome requested by the IFQ holders or the IPQ holders. The arbitrator's decision is final and issued without explanation of the rationale.

The use of LBO arbitration has expanded in recent years and is currently used to settle disputes in several public and private negotiations. The fact that its use has expanded may indicate that, in some situations, it has been a useful negotiating tool. However, obtaining information on specific outcomes and the justification used for selecting specific remedies is often unavailable to the public.

LBO arbitration is also called baseball arbitration because it has been used to settle salary disputes between Major League Baseball (MLB) owners and players under specific conditions since 1974. Specifically, it is used to determine the salary of players who are not yet eligible for free agency but have accrued enough service time (typically three or more years of MLB service) to be considered for salary negotiation outside of their initial rookie contracts. With LBO arbitration in place, the owners have won a higher percentage of the arbitrations than the players, and the gap has increased over time<sup>4</sup>. But it has been stated that players who went through arbitration were generally granted higher salaries than those who did not.

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<sup>3</sup> This could include contract arbitration and non-performance arbitration. Both of these arbitration types are considered in this RIR.

<sup>4</sup>[https://sabr.org/journal/article/file-and-trial-examining-valuation-and-hearings-in-mlb-arbitration/#:~:text=Monhait%20\(2013\)%20builds%20on%20these,entering%20a%20hearing%20in%202013.](https://sabr.org/journal/article/file-and-trial-examining-valuation-and-hearings-in-mlb-arbitration/#:~:text=Monhait%20(2013)%20builds%20on%20these,entering%20a%20hearing%20in%202013.)

LBO arbitration is also used by some states to resolve public sector salary disputes, especially when strikes are not permitted. For example, police, fire, state hospital, and other essential state employees may be covered under LBO arbitration to settle disputes. At the state level, each state has enacted arbitration legislation (e.g., the California Arbitration Act in California), which applies to arbitrations seated in that state (to the extent not preempted by section 2 of the Federal Arbitration Act)<sup>5</sup>.

New York State uses LBO to resolve disputes over out-of-network medical billing<sup>6</sup>. The No Surprises Act protects people covered under group and individual health plans from receiving surprise medical bills. It also establishes an independent dispute resolution process for payment disputes between plans and providers. It also provides new dispute resolution opportunities for uninsured and self-pay individuals when they receive a medical bill that is substantially greater than the good-faith estimate they get from the provider.

The construction industry has used LBO for employment disputes that involve two parties (an employer and an employee). However, it was noted that it is not well-suited for more complex disputes that have multiple claims or when multiple parties are involved in the dispute<sup>7</sup>.

### 3.2.4 Past Arbitrations

A summary of past arbitrations conducted under the CR Program is presented in Table 3-3. Three arbitrations have been reported since the 2012/2013 fishing year. They occurred in the Aleutian Islands golden king crab fishery in 2013/2014 and in the Bering Sea snow crab and Bering Sea Tanner crab fisheries in 2021/2022.

Regulations at 50 CFR 680.20(h)(3)(v) only allow an Arbitration IFQ holder to initiate the Binding Arbitration procedure to establish contract terms. The arbitration procedure must start not later than 360 hours (15 days) after NMFS issues IFQ and IPQ for that crab QS fishery in that crab fishing year. Binding arbitration is initiated after the committed Arbitration IFQ holder notifies a committed IPQ holder and selects a Contract Arbitrator. Limitations on the timing of Binding Arbitration proceedings do not include proceedings that arise due to the lengthy season approach, performance disputes, or quality disputes.

Participants who have used the binding arbitration process have tended to avoid arbitration when possible by relying on the lengthy season approach, whereby parties can agree to delay resolution of specific contract terms until later in the crab fishing year. The lengthy season approach discourages a situation where harvesters refuse to fish until delivery terms and price are negotiated, but the selection of this approach requires agreement between the parties.

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<sup>5</sup> <https://www.arnoldporter.com/~media/files/perspectives/publications/2017/11/comparative-legal-guide-united-states-arbitration.pdf#:~:text=At%20the%20state%20level%2C%20each%20state%20has,thus%20are%20broadly%20similar%20to%20each%20other.>

<sup>6</sup> <https://www.cms.gov/newsroom/fact-sheets/no-surprises-understand-your-rights-against-surprise-medical-bills#:~:text=The%20No%20Surprises%20Act%20protects,know%20about%20your%20new%20rights.>

<sup>7</sup> [https://www.americanbar.org/groups/construction\\_industry/publications/under\\_construction/2019/spring/resolving-dispute-baseball/](https://www.americanbar.org/groups/construction_industry/publications/under_construction/2019/spring/resolving-dispute-baseball/)

**Table 3-3 Summary of past arbitrations**

Season	Number of Proceedings	Fishery	Issue	Outcome
2005/06	2	BSS, BST	Crab costs/ delivery terms	Contract arbitrators selected harvesters' offers.
2006/07	5	BBR, BSS, WBT, WBT	Crab costs/ delivery terms	Contract arbitrators selected harvesters' offers.
2007/08	2	All fisheries	Procedural: clarify specific timing of price dispute resolutions	Lengthy season approach selected; no further arbitration to resolve price, quality, or other disputes.
2008/09	1	BBR	Procedural: Crab costs/ delivery terms	An issue of a processor's use of a two-tier price structure was settled and a price issue was resolved in favor of the harvester.
2009/10	3 (1 dispute)	AIG, BSS	Procedural (golden king crab); Crab costs/ delivery terms	For the golden king crab fishery, arbitrators selected a later lengthy season arbitration filing date. For the snow crab fishery, contract arbitrators selected the processor's offer.
		AIG	Crab costs/ delivery terms	Two post-season crab costs and terms of delivery disputes: one settled outside of arbitration, and arbitrators resolved issues in favor of harvester.
2010/11	1 (2 disputes)	AIG	Crab costs/ delivery terms	Arbitrators selected the processor's offer for WAG crab.
		AIG	Crab costs/ delivery terms	WAG price and terms of delivery dispute settled outside of arbitration.
2011/12	2 disputes (number of proceedings unknown)	AIG	Crab costs/ delivery terms	Outcome unknown
2012/13	0 (reported)			
2013/14	1	AIG	Crab costs/ delivery terms	Arbitrators selected the harvester's offer for WAG.
2014/15	0 (reported)			
2015/16	0 (reported)			
2016/17	0 (reported)			
2017/18	0 (reported)			
2018/19	0 (reported)			
2019/20	0 (reported)			
2020/21	0 (reported)			
2021/22	2	BSS & BST	Crab cost/delivery terms	Arbitrators selected the harvester's offer
2022/23	0 (reported)			
2023/24	0 (reported)			
2024/25	0 (reported)			

Source: Arbitration Organization reports to NMFS and personal communication with Jake Jacobsen (2024/2025)

### 3.2.5 Entities Assigned IFQ in Most Recent Year

Persons who hold harvest QS assign the IFQ that results from that QS to cooperatives. Cooperatives that formed in 2024/2025 are shown in Table 3-4. The table also shows the percentage of IFQ allocated to the cooperative by share class. Arbitration IFQ represents Class A IFQ held by unaffiliated entities that are part of an FMCA cooperative. ICE is the only FCMA cooperative. As noted earlier, there are different rules regarding FCMA and other types of cooperatives' ability to bargain for members and to trigger contract arbitration.

**Table 3-4 Percentage of total Class A and Class B IFQ assigned to each cooperative 2024/2025**

Quota Class and Cooperative	BBR	BSS	EAG	EBT	WAG	WBT	Grand Total
<b>Class A quota</b>	<b>90.00%</b>	<b>90.00%</b>	<b>90.00%</b>	<b>90.00%</b>	<b>90.00%</b>	<b>90.00%</b>	<b>90.00%</b>
ALEUTIAN ISLAND COOPERATIVE	4.16%	4.68%	0.00%	2.33%	0.00%	0.00%	2.00%
ALTERNATIVE CRAB EXCHANGE (ACE)	5.12%	0.00%	0.00%	3.61%	0.00%	0.00%	1.04%
COASTAL VILLAGES CRABBING COOPERATIVE	9.55%	15.13%	0.00%	9.86%	0.00%	0.00%	6.18%
CPH ASSOCIATION	4.06%	4.56%	0.00%	0.38%	0.00%	0.00%	1.76%
DOG BOAT COOPERATIVE	0.00%	0.00%	0.00%	0.00%	3.79%	0.00%	0.14%
INTER-COOPERATIVE EXCHANGE (ICE)	55.63%	55.26%	75.30%	73.82%	86.21%	89.99%	71.46%
R & B COOPERATIVE	4.84%	5.19%	14.70%	0.00%	0.00%	0.00%	5.17%
TRIDENT AFFILIATED CRAB HARVESTING COOPERATIVE	6.64%	5.19%	0.00%	0.00%	0.00%	0.00%	2.23%
<b>Class B quota</b>	<b>10.00%</b>	<b>10.00%</b>	<b>10.00%</b>	<b>10.00%</b>	<b>10.00%</b>	<b>10.00%</b>	<b>10.00%</b>
ALEUTIAN ISLAND COOPERATIVE	0.52%	0.36%	0.00%	0.45%	0.00%	0.00%	0.21%
ALTERNATIVE CRAB EXCHANGE (ACE)	0.63%	0.00%	0.00%	0.00%	0.00%	0.00%	0.08%
COASTAL VILLAGES CRABBING COOPERATIVE	0.18%	1.33%	0.00%	1.43%	0.00%	0.89%	0.74%
CPH ASSOCIATION	0.65%	0.53%	0.00%	0.00%	0.00%	0.00%	0.22%
INTER-COOPERATIVE EXCHANGE (ICE)	8.00%	7.26%	8.72%	8.12%	10.00%	9.11%	8.33%
R & B COOPERATIVE	0.00%	0.16%	1.28%	0.00%	0.00%	0.00%	0.32%
TRIDENT AFFILIATED CRAB HARVESTING COOPERATIVE	0.02%	0.36%	0.00%	0.00%	0.00%	0.00%	0.10%
<b>Total</b>	<b>100.00%</b>	<b>100.00%</b>	<b>100.00%</b>	<b>100.00%</b>	<b>100.00%</b>	<b>100.00%</b>	<b>100.00%</b>

Source: <https://www.fisheries.noaa.gov/sites/default/files/akro/2425cratifqholder.csv>

Table 3-5 shows the number of Class A IFQ holders in each cooperative and the total number of unique IFQ holders. At the species level, the sum of the cooperative IFQ holders in each cooperative equals the total, indicating that for each species, no Class A IFQ holder assigned quota to more than one cooperative.

**Table 3-5 Number of unique Class A IFQ holders in each cooperative that formed for 2024/2025**

Cooperative	BBR	BSS	EAG	EBT	WAG	WBT	Total
ALASKA KING CRAB HARVESTERS COOPERATIVE	1	1		1	1	1	1
ALEUTIAN ISLAND COOPERATIVE	7	7		7		7	9
ALTERNATIVE CRAB EXCHANGE (ACE)	114	120	2	109	4	110	138
COASTAL VILLAGES CRABBING COOPERATIVE	6	7	1	7	1	7	7
CPH ASSOCIATION	12	20		16		15	22
DOG BOAT COOPERATIVE	10	12	6	10		10	16
INTER-COOPERATIVE EXCHANGE (ICE)	61	73	6	51	2	52	88
R & B COOPERATIVE	7	6	4	3	3	3	8
TRIDENT AFFILIATED CRAB HARVESTING COOPERATIVE	15	11		18		18	19
<b>Total</b>	<b>233</b>	<b>257</b>	<b>19</b>	<b>222</b>	<b>11</b>	<b>223</b>	<b>305</b>

Source: [https://www.fisheries.noaa.gov/sites/default/files/akro/2425cratqsunits\\_with\\_serial.csv](https://www.fisheries.noaa.gov/sites/default/files/akro/2425cratqsunits_with_serial.csv)

### 3.2.6 PQS and IPQ Holdings

Across all fisheries, 27 entities were initially issued PQS for the 2005/2006 season. As in the harvest sector, the concentration of initial allocations of processing privileges varied across fisheries. The Aleutian Islands fisheries, which had the least participation during the qualifying period, were the most concentrated. The BBR, BSS, and BST fisheries, which had the most participants during the qualifying period, were the least concentrated.

### 3.2.6.1 Regional Designations

The CR Program's design was intended to protect community interests by regionalizing certain fisheries. In most CR Program fisheries, a regional allocation designates all Class A (delivery restricted) harvest shares and all corresponding processing shares limits their use to a specific region. In these CR Program fisheries, regionalized shares are either North or South, with North shares designated for delivery in areas on the Bering Sea north of 56° 20' north latitude and South shares designated for any other area, including Kodiak and other areas on the Gulf of Alaska. In the WAG (Adak) fishery, the designation is based on an East/West line to accommodate a different distribution of activity in that fishery. Share designations are based on the historic location of the landings and processing that gave rise to the shares.

In the PIK fisheries, most historic processing occurred in the Pribilof Islands, resulting in over two-thirds of the processing allocations in those fisheries being designated for processing in the North region. Most processing in the SMB fishery occurred on floating processors near the fishing grounds in the North region. The BSS crab fishery allocations are split almost evenly between the North and South regions. Less than 5 percent of the BBR PQS is designated for North processing. All qualifying processing in the EAG fishery occurred in the South region, resulting in all processing shares in that fishery (and in the WAI fishery, which was based on the same history) being designated for processing in the South region. All processing allocations for the WAG fishery were split evenly, with half required to be processed in the West region and half undesignated, which can be processed anywhere. BST crab processing shares are also undesignated.

### 3.2.6.2 Processing Caps

The CR Program established PQS caps that apply individually and collectively to both an entity's PQS holdings and the IPQ used at an affiliated processing plant each fishing year. A processing share cap prevents any person from holding more than 30 percent of the outstanding PQS in any program fishery, unless that person received an initial allocation of PQS more than this limit. In the WAG fishery, the maximum allocation was more than 60 percent of the pool, double the shareholdings cap. This entity was 'grandfathered' based on historical processing. In the EAG fishery, one allocation of approximately 45 percent of the pool was more than 1.5 times the cap. In only one other fishery, the SMB fishery, did an initial allocation exceed the cap. In that fishery, slightly more than 30 percent of the quota was allocated to one processing entity. PQS holdings are structured within various corporate entities, ranging from smaller limited liability partnerships to large corporations. The underlying distribution of PQS holdings among individual shareholders is somewhat obscured by the complexity of corporate structures under which PQS is held. Currently, PQS is reported to be held by the entities listed in Table 3-6.

**Table 3-6 PQS Holders by Fishery in Most Recent Year 2024/2025**

PQS Holder	BBR	BSS	EAG	EBT	PIK	SMB	WAG	WAI	WBT
57 DEGREES NORTH LLC	12.3%	17.2%	4.8%	14.9%	13.3%	19.4%	0.0%	0.0%	14.9%
ADAK FISHERIES LLC	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	5.4%	5.4%	0.0%
ALASKA LIVE SHELLFISH	0.1%	0.0%	0.0%	0.0%	0.3%	0.0%	0.5%	0.5%	0.0%
APICDA JOINT VENTURES INC.	1.6%	5.7%	6.9%	3.7%	2.5%	4.3%	30.0%	0.0%	3.7%
ARCTIC SEA HOLDINGS INC	14.6%	8.3%	0.0%	1.9%	0.0%	0.0%	0.0%	0.0%	1.9%
ATXAM CORPORATION	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	17.2%	30.0%	0.0%
B & N FISHERIES COMPANY	0.0%	0.0%	0.0%	0.0%	0.0%	3.5%	0.0%	0.0%	0.0%
BLUE DUTCH LLC	0.7%	0.7%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
COASTAL VILLAGES REGION FUND	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
DEEP CREEK CUSTOM PACKING INC.	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
GKC HOLDINGS LLC	0.0%	0.0%	6.9%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
KODIAK FISHERIES DEVELOPMENT ASSOCIATION	3.5%	0.1%	0.0%	1.8%	0.8%	0.0%	0.0%	0.0%	1.8%
NORQUEST SEAFOODS INC.	0.0%	3.4%	0.0%	1.7%	0.0%	0.0%	0.0%	0.0%	1.7%
NORTH PACIFIC SEAFOODS INC	0.0%	0.0%	0.0%	0.0%	1.0%	0.0%	0.0%	0.0%	0.0%
OCEAN2TABLE ALASKA LLC	0.0%	0.0%	5.7%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
PETER PAN SEAFOODS INC.	12.5%	15.5%	0.0%	14.8%	14.5%	24.2%	0.0%	0.0%	14.8%
RAS II LLC	0.7%	0.2%	0.9%	9.3%	13.9%	8.0%	0.4%	27.1%	9.3%
ROYAL ALEUTIAN SEAFOODS INC.	0.0%	0.0%	45.4%	0.0%	0.0%	0.0%	14.1%	0.0%	0.0%
SANKO FISHERIES LLC	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
STUART DOUGLAS	0.0%	0.0%	0.0%	0.0%	0.1%	0.0%	0.0%	0.0%	0.0%
TRIDENT SEAFOODS CORPORATION	23.2%	25.2%	1.0%	24.4%	25.5%	32.7%	1.0%	1.0%	24.4%
UNISEA INC.	13.5%	10.7%	0.0%	12.1%	18.3%	2.1%	1.4%	2.6%	12.1%
WESTWARD SEAFOODS INC.	17.4%	12.9%	28.4%	15.3%	10.0%	5.8%	30.0%	33.3%	15.3%
WHITTIER JOHN W	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
<b>Total</b>	<b>100.0%</b>	<b>100.0%</b>	<b>100.0%</b>	<b>100.0%</b>	<b>100.0%</b>	<b>100.0%</b>	<b>100.0%</b>	<b>100.0%</b>	<b>100.0%</b>

Source: <https://www.fisheries.noaa.gov/sites/default/files/akro/2425cratpqsunitswithserial.csv>

### 3.2.6.3 IPQ Holders in Most Recent Year

IPQ is issued to a subset of the PQS holders as well as entities that lease IPQ based on the application for IPQ (Table 3-7). IPQ holders are primarily entities associated with CDQ/community groups and PQS holders who operate physical processing plants. Persons who do not own a physical plant but hold IPQ rely on other entities to process their crab, typically through custom processing arrangements.



**Table 3-7 IPQ Holders by Fishery in Most Recent Year, 2024/2025**

IPQ Holder	BBR	BSS	EAG	EBT	WAG	WBT
57 DEGREES NORTH LLC (CBSFA)	225,984	582,852	134,691	268,813		683,420
APICDA JOINT VENTURES INC. (APICDA)	9,863				141,992	
COASTAL VILLAGES CRAB LLC (CVRF)	86,240	142,653				
GKC HOLDINGS LLC (50% NSEDC)			219,566			
KEYPORT LLC	20,202	192,541	354,383	66,539	109,486	169,166
NORQUEST SEAFOODS INC.		115,525				
NORTH PACIFIC SEAFOODS INC (P)		373		99		253
PETER PAN SEAFOOD COMPANY LLC	937					
ROYAL ALEUTIAN SEAFOODS INC.	413,278	514,425	1,275,186	419,992	75,103	1,067,773
TRIDENT SEAFOODS CORPORATION (P)	425,788	854,033	28,648		4,878	
WESTWARD SEAFOODS INC. (P)	550,151	966,661	798,999	543,239	141,754	1,381,113
<b>Grand Total</b>	<b>1,732,443</b>	<b>3,369,063</b>	<b>2,811,473</b>	<b>1,298,682</b>	<b>473,213</b>	<b>3,301,725</b>

Source: <https://www.fisheries.noaa.gov/sites/default/files/akro/2425cratipqholder.csv>

Note: Royal Aleutian Seafoods Inc. was purchased by Unisea in 2005. Unisea operates the crab processing plant.

Processing capacity = P. Entities that do not operate a physical plant or are owned by a firm that operates a physical plant do not have a P listed by their name.

### 3.3 Transfers of Quota

The information provided in this section is based on discussions with Dock Street Brokers staff<sup>8</sup> and transfer data from the EDR files. The information was first reported in the 2024 CR Program review (NPFMC 2024a), and the reader is referred to that document for additional information. Information is presented to help describe the overall economic health of the fishery for both harvesters and processors.

Market activity (transactional volume) was reported to be stable through 2021 for BSS. Since then, transfers have been “pretty much at a standstill.” Given the current market conditions, shareholders have difficulty finding a middle ground for prices because of the TACs (and associated values), although some smaller transactions for BST and BBR have been made.

The closed fisheries make it difficult for buyers and sellers to agree on a price that reflects the long-term profit stream of the fisheries. Two or three stable years of open fisheries to help set the market value may increase sales. As a result, a primary driver of the slow quota market has been the uncertainty created by low TACs and closed fisheries. Closed seasons provide limited information about future revenue potential, so sellers are holding their BSS quota until there are clearer market signals. Transactions are complicated when there is debt service because the quota is generating no revenue when the fishery is closed, limiting its value as collateral for loans.

Some BBR crab quota has been sold, but at a discounted rate relative to 2020. BSS reached its highest price in 2021, but the buyers generally feel they overpaid for the quota given current fishery and market conditions. Some of those who bought BSS in 2021 are reportedly having difficulty covering the cost of the quota.

Current market conditions have buyers willing to wait to make purchases. The willingness to wait is reinforced by the BSS rebuilding plan, which signals that short-term improvements in the BSS fishery may be limited.

Lease transactions occur within cooperatives so limited information is available. However, WBT crab lease rates were relatively high in 2024 (estimated 65 percent lease rate). Because relatively few vessels participate in the fishery, these vessel operators tend to lease a lot of the crab. If harvesting the quota is

<sup>8</sup> Personal communication with Aaron Overland March 4, 2024

difficult because of the TAC relative to CPUE or the number of vessels available in the fishery (quota per vessel), it could increase the risk to the harvesters. For example, the fleet only harvested 62 percent of the WBT 2.1 million lbs. TAC in 2020/21.

Lease rates have been identified as an area of Council concern in the past and cooperatives have asked members to limit lease rates. Markets may drive down lease rates if TACs are higher and there are insufficient vessels to harvest the crab being offered for lease. Dock Street staff noted this type of market change in some sablefish fisheries, where lease rates declined from 50 percent to 20 percent of ex-vessel value as TAC increases outpaced harvesting capacity.

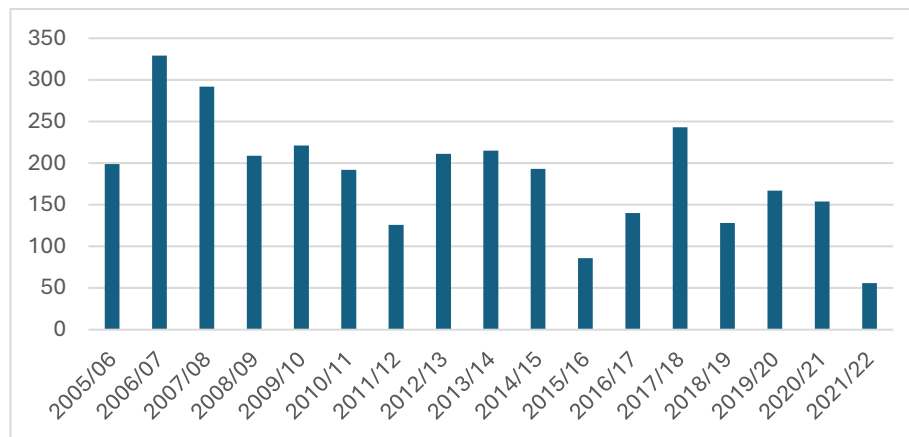
Crab vessel sales and the number of vessels on the market have been impacted by consolidation in the crab fisheries. Holding a vessel that is no longer necessary to fish requires expensive repair and maintenance, so these vessels are often sold, and quota held by the vessel owner is leased through cooperatives. Crab boats that are sold are often repurposed as tenders. The impact of consolidation was an expected outcome of the CR Program as emphasis is placed on quota ownership/use and not investing in greater harvesting capacity.

Crew QS transfers (CVC and CPC) have been impacted by a general lack of qualified buyers who satisfy the 365-day landing requirement. Crew members who meet the requirement often are not fiscally able to buy quota and/or do not think the purchase is an economically viable asset under current conditions. For the crew quota market to improve, it will be important to create a large enough pool of buyers who foresee the purchase to be a viable asset in the long term.

All of the market signals discussed above are indications of the difficult economic conditions faced by the harvesting and processing sectors. Other signals are described in other sections of this analysis. For example, the decline in the number of active processors is an indicator that, under recent conditions, some processors determined that the risk of opening the plant to process crab outweighed potential benefits. As a result, only two shoreside processors were actively processing crab during the 2024/2025 fishing year.

### 3.3.1 QS Transfers

Figure 3-2 shows the number of harvest QS sales on an annual basis across all CR Program fisheries. The number of transfers was greatest in the years following the program’s first year. Since the 2007/08 fishing year, the annual number of transfers has ranged from 56 to 243, with the lowest and highest numbers occurring since the last program review. The number of transfers within a year is driven by a variety of factors, which make it challenging to attribute increases or decreases to specific causes or economic conditions.



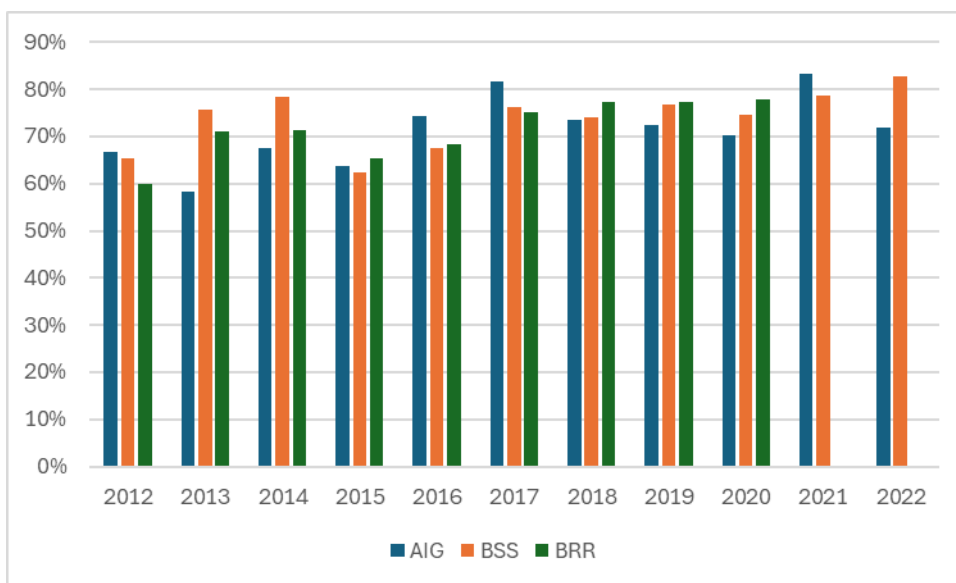
**Figure 3-2 Number of Harvest QS Sales 2005/06 through 2021/22**

Source: 2024 Crab Economic SAFE

### 3.3.2 Annual Transfers of IFQ

In the first year of the CR Program, many crab harvesting cooperatives were formed by vessel and QS owner entities. To take advantage of IFQ leasing provisions, the industry began pooling IFQ within larger cooperatives. Since the 2009/10 crab season, virtually all IFQ has been pooled within larger harvest cooperatives. That change means that almost all IFQ lease transactions registered with NMFS take place within harvest cooperatives. Beginning with the 2009/10 crab season, the ICE harvest cooperative was formed. For the 2023/24 season, 59 percent of crab IFQ was issued to ICE. The Dog Boat Cooperative was the next largest cooperative, in terms of percentage of total IFQ held, with over 22 percent. All the Dog Boat Cooperative quota was for the EAG and WAG fisheries.

The formation of large cooperatives to facilitate transfers means that almost all quota transfer information is derived from the EDR data. EDR data collection for the 2012 calendar year implemented newly revised data collection protocols under Amendment 42 to the BSAI King and Tanner Crabs FMP (78 FR 36122, June 17, 2013); before the implementation of EDR revisions, data collected regarding EDR lease activity and costs did not differentiate between transfers of quota between independent entities that were priced at competitive market rates from non-arm's length transactions (i.e., those between affiliated entities or other types of non-market transfers characterized by nominal prices or in-kind compensation). For this reason, EDR quota lease data collected for 2005-2011 fisheries are not presented. Data associated with 2012 and later fisheries, use market-rate or negotiated-price transfers (based on EDR instructions). EDRs collect the total pounds purchased and the amount paid, but do not identify the seller or the number of sellers of IFQ or CDQ during the year. Because the EDRs are based on calendar years and not crab fishing seasons (July-June seasonal calendar) the annual data may not be exactly representative of the fishing year data. In general, the percentage of IFQ and CDQ leased has shown a variable but increasing trend over the period, ranging from about 60 percent to 80 percent of the total TAC.



**Figure 3-3 Percentage of TAC (CDQ plus IFQ) leased, 2012 through 2022**

Source: EDR data as presented in the Crab SAFE and annual TACs.

For lease rates to decline based solely on market forces it is expected that the supply of quota available for lease would need to outpace the demand for leasing quota. For that to occur TAC would need to increase to a level that the available fleet would reach, or be close to, its harvesting capacity. Rates tend to be high because harvesters are willing to pay to bid up the price to about variable costs unless constrained by external forces (e.g., Council oversight). As of mid-April 2024, using the sablefish fishery for some classes

of quota and areas is an example of where lease rates are lower because of the supply and demand impacts on the market. Aleutian Islands class B shares rates were reported as low as \$0.75 per pound and in the Bering Sea for C shares rates were as low as \$0.50 per pound. For other areas and classes of quota offer rates typically ranged from \$5.00 per pound to \$10.00 per pound. In general, there has been an increase in equity interest in crab QS pools held by CDQ and non-profit groups<sup>9</sup> and trust/estate entities, the increase has predominantly come from a decline in equity held by individuals and non-divisible corporate entities. Holdings by trusts/estates have increased due to the passage of time since the program was implemented (the greying of the fleet). Meaning that more deaths of QS holders have occurred, and other QS holders have developed estate plans that assign specific assets to trusts for a variety tax and estate planning purposes. Increased holdings by CDQ groups and related entities indicate that groundfish and crab CDQ programs have provided opportunities for groups representing Western Alaskan communities to expand investments and participation in fisheries off their coast. Investing in fishing operations is an objective of the CDQ program. Increasing the CDQ crab allocations from 7.5 percent to 10 percent of the CR Program species likely helped facilitate that expansion.

### 3.3.3 Transfers of PQS

Discussions with Dock Street Brokers' staff indicated that they are typically not involved in facilitating PQS sales. Discussion with them did note that the pool of buyers and sellers is small and well-known. Sales that do occur typically involve buyers and sellers contacting each other directly.

Table 3-8 provides a detailed summary of processing quota transfers that have occurred under the CR Program. In the first two years of the program, a large portion of the IPQ pool was subject to the "cooling off" provision, which required processing to occur in the community of the processing history that led to the allocation of the underlying PQS. Consequently, few changes in the distribution of processing of Class A IFQ/IPQ landings occurred in the first two years of the program. The cooling-off period likely accounts for the increased number of transfers occurring in 2008/09 fishing year. Since that season, a limited number of processor quota transfers have taken place. Transfers have not occurred each year, with most completed before the 2018/19 fishing season. The limited number of transfers by fishery and year results in the number of units and QS prices being masked to preserve confidential information for most years and fisheries.

Effectively measuring changes in ownership of PQS over time is difficult. That is, movement of PQS may occur through a traditional transfer, in which a PQS transfer application is submitted to NMFS, identifying a quantity of PQS shares being transferred from one PQS-holding entity to an eligible buyer.

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<sup>9</sup> Additional information on the Non-profit groups listed in this table is discussed in Section 8. These are primarily Tribal entities that have purchased QS.

**Table 3-8 Transfers of processor quota 2008/09 through 2021/22**

Fishery	Year	Transfers (transferors, transferees)	Total units transferred (1,000)	Median units per transfer (1,000)	Median price per QS unit
BBR	2008/09	4(4,3)	31,159.18	4,680.19	0.11
	2009/10	1(1,1)	*	*	*
	2014/15	3(1,1)	*	*	*
BSS	2008/09	2(2,2)	*	*	*
	2009/10	2(1,1)	*	*	*
	2013/14	1(1,1)	*	*	*
	2014/15	3(1,1)	*	*	*
	2017/18	1(1,1)	*	*	*
EAG	2005/06	1(1,1)	*	*	*
	2008/09	3(2,2)	*	*	*
	2014/15	1(1,1)	*	*	*
	2017/18	1(1,1)	*	*	*
WAG	2008/09	8(4,3)	18,921.69	979.27	0.08
EBT	2008/09	5(5,4)	12,152.78	1,645.50	0.05
	2014/15	1(1,1)	*	*	*
	2017/18	1(1,1)	*	*	*
	2018/19	1(1,1)	*	*	*
	2021/22	1(1,1)	*	*	*
WBT	2008/09	5(5,4)	12,152.78	1,645.50	0.00
	2014/15	1(1,1)	*	*	*
	2018/19	1(1,1)	*	*	*
SMB	2012/13	3(2,1)	*	*	*
	2014/15	2(1,1)	*	*	*

Source: Crab Economic SAFE (Table 4.28)

### 3.3.4 Summary of Leasing and Custom Processing Arrangements

Under the CR Program, a large portion of the processing (and raw crab purchasing) is vested in the holders of processing shares. To achieve processing efficiencies, many holders of processor shares have used custom processing arrangements to handle substantial portions of the landings in the fisheries. Under these arrangements, an IPQ holder/crab buyer contracts for the processing of crab landings, while retaining all interests and obligations associated with the landed and processed crab. The processor of the crab receives offloaded crab from vessels purchased by the crab buyer and provides processing services as contracted, ultimately passing on the finished product to the crab buyer. The buyer is obligated to pay both the fisherman for the crab and any landings taxes.

Short-term transfers under leases and custom processing arrangements are the primary means by which PQS holders in the crab fisheries have achieved consolidation under the rationalization program. Custom processing has increased in most fisheries since the program was implemented with the greatest increase in percentage terms in the EAG and WAG fisheries. The extent of these leases in all fisheries suggests that some holders choose not to actively process each year but instead lease their IPQ to gain the benefits of consolidation. In addition to traditional leasing transactions, some of these leases are believed to improve efficiency among active processors. For example, an IPQ holder operating a plant in the North might exchange its South IPQ for another IPQ holder's North IPQ to enhance efficiency and consolidate processing of its holdings.

As discussed in the 10-year Review, custom processing arrangements are particularly attractive to IPQ holders who have identified markets for sales and wish to achieve processing efficiencies. Under these arrangements, the IPQ holder may not own a processing facility but can contract for processing services, maintaining its interest in the crab and processed products. Custom processing relationships are also beneficial for processing in remote regions, where an IPQ holder may be obligated to process and where few fully operational shore plants exist. In these areas, a cost-effective approach is for IPQ holders to consolidate processing in one or two plants, reducing capital and labor costs (including the costs of moving crews and supplies to the remote location). Custom processing is also utilized more frequently as more PQS are purchased by entities that do not own processing capacity.

Custom processing relationships are evident in comparing the amount and percent of custom processing in each fishery. In the first year of the program, custom processing of IPQ occurred most prominently in North region of the BSS fishery and in the EAG fishery. Few custom processing arrangements existed in the BBR fishery until the third year of the program, when Dutch Harbor plants entered relationships with several buyers. The most recent year that fishery was open the percentage of crab custom processed was about 40 percent of the total processed. The EAG and WAG fishery have both been above 60 percent custom processing since 2016, with amounts over 80 percent in recent years. In terms of quantity custom processed the BSS is much larger than other fisheries, which is in part due to the historical TAC for that fishery relative to the other fishery TACs.

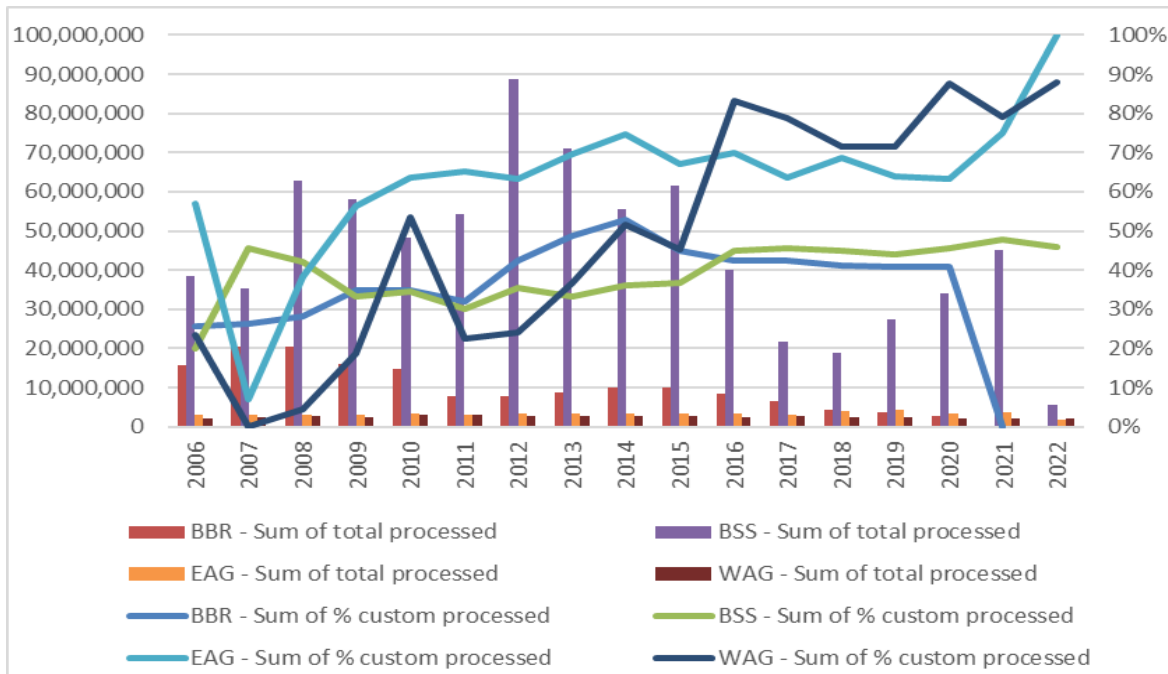


Figure 3-4 Whole pounds processed and percent custom processed by fishery and year

Source: EDR Data provided by AKFIN

### 3.4 Share Matching

Share matching regulations are established at 50 CFR 680.20(h)(3)(iv). Share matching requires that Class A CVO IFQ shares may only be delivered to a processor with available IPQ. Equal amounts of Class A CVO and IPQ are issued each year for each CR Program crab fishery. Within five days after NMFS issues IFQ and IPQ for a fishery, harvesters and processors may match uncommitted IFQ shares with uncommitted IPQ shares. The holder of uncommitted IFQ that is not a Fishermen’s Collective Marketing Act of 1934 (FCMA; 15 U.S.C. § 521 et seq.) cooperative must offer at least 50 percent of the IFQ

holder's total uncommitted CVO A shares or an amount equal to the total amount of uncommitted IPQ available from that processor, whichever is less. If the Class A shareholder is an FCMA cooperative, it must commit at least 25 percent of the holder's total uncommitted Class A IFQ, or an amount of equal to the processor's uncommitted IPQ, whichever is less. After five days, any holder of uncommitted IPQ must accept all commitments to deliver Class A CVO shares, up to the amount of its uncommitted IPQ. The share match is established upon receipt of notice from the IFQ holder. During this period, Class A CVO shareholders have sole discretion over who they will match shares with for delivery.

After matching shares, the IFQ holder and IPQ holder may decide to enter mediation to reach an agreement on contract terms. The IFQ holder and IPQ holder may request a Contract Arbitrator to act as a mediator. If the mediation proves unsuccessful or if mediation is not selected, the IFQ holder may initiate Binding Arbitration. Arbitration may begin immediately with the same Contract Arbitrator. If the Contract Arbitrator serves as a mediator in an unsuccessful mediation, the IFQ holder may request another Contract Arbitrator for the Binding Arbitration.

Throughout the share matching process, holders of uncommitted IPQ must report the amount of uncommitted shares held to holders of uncommitted IFQ (updating that report within 24 hours of any change). To help meet the share matching timeline, the harvester arbitration organization has developed an internet-based system for matching shares—sharematch.com—to facilitate real-time commitment of shares and the timely exchange of information concerning uncommitted shares. This system has benefited participants by creating a single forum for matching uncommitted shares.

Holders of harvest shares that are affiliated with holders of processing shares are required to join an arbitration organization for purposes of facilitating share matching and administration. Due to antitrust concerns, these “affiliated harvesters” are not permitted to join an organization that includes unaffiliated harvesters and cannot use a binding arbitration proceeding to settle delivery terms.

As noted in the discussion under Alternative 3, because share matching is required for Class A quota, if no IPQ for a species is issued during a year, share matching cannot occur. This market failure would result in no Class A quota for that species being issued or fished that year.

### **3.5 Communities**

A concern for harvesters is the steady decline in the total number of active processors and the number of communities with active crab processors. In 2022, eight active processors were reported in the data, the lowest number of active processors over the 2003 through 2022 period. The Council has attempted to address some aspects of this concern by modifying processing caps and excluding custom processing from counting towards the cap.

Current market conditions and low TACs appear to be the primary drivers of reductions in the numbers active processors. As noted earlier, there was only two active shorebased processors of crab during the 2024/2025 fishing year. Both of those processors were located in Dutch Harbor/Unalaska. Some harvesters have also expressed frustration regarding the requirements to share match when there are concerns about the financial stability of a processor. During the 2023/24 crab season some harvesters were required to share matched with an IPQ holder and have not been paid for the crab delivered.

Table 3-9 provides information on the 2023/2024 CVO and CPO QS distribution by community of ownership address for communities, CDQ groups, and western Alaska Tribal entities. The table also shows changes in the distribution of QS units among communities, CDQ groups, and western Alaska Tribal entities compared to initial allocations by means of color coding. Green shaded cells indicate higher values than those at initial allocation (2005/2006 fishing season), orange cells indicate values lower than at initial allocation, and blue cells indicate values that are equal to those at initial allocation.

**Table 3-9 Crab Fisheries Community Engagement Summary: CV and CP QS Units Distribution, 2023/2024 (with directional change from initial allocation shown)**

Community	CVO, CVC, CPO, and CPC QS Ownership Combined		CVO QS Ownership		CVC QS Ownership		CPO QS Ownership		CPC Ownership	
	Unique Owners	Quota Units Held	Unique Owners	Quota Units Held	Unique Owners	Quota Units Held	Unique Owners	Quota Units Held	Unique Owners	Quota Units Held
Kodiak	45	151,216,950	35	144,686,434	16	6,374,111	1	33,960	4	122,445
Anchorage	21	101,393,719	14	57,719,324	9	3,485,607	1	39,993,149	1	195,639
Homer	12	21,683,351	7	18,772,118	6	2,840,531	--	--	1	70,702
Wasilla	6	11,118,774	5	11,102,514	1	16,260	--	--	--	--
Petersburg	3	9,325,732	3	9,325,732	0	0	--	--	--	--
Kenai	2	7,567,618	1	7,549,411	1	18,207	--	--	--	--
Unalaska/Dutch Harbor	5	5,947,205	4	5,766,244	1	180,961	--	--	--	--
Yakutat	1	4,014,849	1	4,014,849	--	--	--	--	--	--
Sand Point	1	216,749	1	208,284	1	8,465	--	--	--	--
King Cove	1	32,053	1	32,053	0	0	--	--	--	--
Seldovia	0	0	0	0	--	--	--	--	--	--
Soldotna	0	0	--	--	0	0	--	--	--	--
Valdez	0	0	--	--	0	0	--	--	--	--
Western AK Tribal Entities	35	76,050,724	35	76,050,724	--	--	--	--	--	--
CDQ - CVRF (ANC)	1	92,839,222	1	79,441,943	--	--	1	13,397,279	--	--
CDQ - YDFDA (ANC)	1	82,630,961	1	53,454,049	--	--	1	29,176,912	--	--
CDQ - CBSFA (SNP)	1	53,245,826	1	40,027,319	--	--	1	13,218,507	--	--
CDQ - NSEDC (ANC)	1	47,395,074	1	38,143,271	--	--	1	9,251,803	--	--
CDQ - BBEDC (DLG)	1	45,686,716	1	45,686,716	--	--	--	--	--	--
CDQ - APICDA (JNU)	1	5,167,767	1	5,167,767	--	--	--	--	--	--
<b>Alaska Total</b>	<b>110</b>	<b>715,533,290</b>	<b>85</b>	<b>597,148,752</b>	<b>35</b>	<b>12,924,142</b>	<b>6</b>	<b>105,071,610</b>	<b>6</b>	<b>388,786</b>
Seattle MSA	212	855,734,506	160	769,097,333	56	22,426,478	13	63,682,172	5	528,523
Other Washington	35	106,697,419	25	96,579,087	10	3,708,062	3	4,466,098	5	1,944,172
<b>Washington Total</b>	<b>247</b>	<b>962,431,925</b>	<b>185</b>	<b>865,676,420</b>	<b>66</b>	<b>26,134,540</b>	<b>16</b>	<b>68,148,270</b>	<b>10</b>	<b>2,472,695</b>
<b>Oregon Total</b>	<b>44</b>	<b>182,277,145</b>	<b>27</b>	<b>171,828,330</b>	<b>20</b>	<b>9,860,743</b>	<b>2</b>	<b>224,816</b>	<b>4</b>	<b>363,256</b>
<b>Other U.S. Total</b>	<b>43</b>	<b>109,174,542</b>	<b>31</b>	<b>102,836,591</b>	<b>18</b>	<b>4,989,167</b>	<b>1</b>	<b>937,289</b>	<b>4</b>	<b>411,495</b>
<b>Unknown</b>	<b>3</b>	<b>239,843</b>	<b>--</b>	<b>--</b>	<b>2</b>	<b>59,179</b>	<b>--</b>	<b>--</b>	<b>1</b>	<b>180,664</b>
<b>GRAND TOTAL</b>	<b>447</b>	<b>1,969,656,745</b>	<b>328</b>	<b>1,737,490,093</b>	<b>141</b>	<b>53,967,771</b>	<b>25</b>	<b>174,381,985</b>	<b>25</b>	<b>3,816,896</b>

Notes: (1) Green shaded cells indicate higher values than those at initial allocation (2005/2006 fishing season), orange cells indicate values lower than at initial allocation, and blue cells indicate values that are equal to those at initial allocation.

(2) Communities that had no initial allocation of quota shares in 2005/2006 and held no quota shares in 2023/2024, including communities that may have held shares in intermediate years, are not listed in this table.

(3) CDQ groups holdings are attributed to the CDQ groups themselves (and to the Alaska total) rather than the community of ownership address as shown in the data used in for this analysis as CDQ ownership benefits are shared across Alaska regions encompassing multiple communities (except for the CBSFA, which is affiliated with St. Paul only). Community abbreviations shown in parentheses after each CDQ group acronym shows the community of ownership address listed in the data used for this analysis, which sometimes, but not always, corresponds to the location of the group's corporate business/administrative office (ANC = Anchorage, DLG = Dillingham, JNU = Juneau, SNP = St. Paul).

(4) "Western AK Tribal Entities" are Tribes in the BBEDC and CVRF regions that have some percentage of ownership interest in one or more of the Mariner LLCs that own rationalized BSAI crab fisheries CVO quota shares. As information on ownership percentages by individual LLC by individual Tribal and CDQ entities is not currently available, all Mariner LLC QS holdings are attributed to all involved Tribal entities combined. This overstates ownership interest in these QS holding LLCs by Tribes and understates CDQ ownership interest in these same LLCs, but the combined total for the two involved CDQ groups and the 35 involved Tribal entities is accurate. See text for additional detail.

Source: <https://www.fisheries.noaa.gov/sites/default/files/akro/2223cratqsunits.csv>

Several trends are apparent in the table. First, combined CVO, CVC, CPO, and CPC QS holdings in Alaska have increased and those in Washington have decreased over time. Alaska combined QS unit holdings more than doubled from the initial allocation to 2023/2024. At initial allocation, Alaska accounted for 17 percent and Washington accounted for 70 percent of all CVO, CVC, CPO, and CPC QS share units for all geographies combined. By 2023/2024, Alaska accounted for 36 percent of the total, and Washington accounted for 49 percent of the total.

Second, combined CDQ and Western Alaska Tribal entity CVO and CPO QS holdings have increased over time. At initial allocation CDQ groups held approximately 13 percent of all CVO and CPO QS units attributed to Alaska. In 2023/2024, CDQ groups and Western Alaska Tribal entities together held



approximately 56 percent of all CVO and CPO QS units attributed to Alaska. It is known that this is an understatement of combined CDQ holdings as ownership decomposition information is not available for some of the QS unit holding entities that are, in turn, owned in whole or in part by CDQ groups or their subsidiaries. It is known from a combination of available data and interviews, for example, that in 2023/2024 four of the five unique CVO QS holders attributed to Wasilla are CBSFA-related entities and of the 14 unique CVO QS quota holders attributed to Anchorage two are CVRF related entities and one is an NSEDC related entity, which has resulted in an overstatement of non-CDQ QS holdings in these two communities and an understatement of total combined CDQ and western Alaska Tribal entity holdings.

Third, within Alaska, outside of CDQ groups and Tribal entities, fewer communities are participating in the BSAI rationalized fisheries than were at initial allocation as measured by local ownership address of combined CVO and CVC QS holdings, but there are differences between the holdings of CVO and CVC QS units. Of the nine Alaska communities that had CVO shares at initial allocation, one has retained the same number of QS units (Sand Point), four have seen a decrease QS units held but some have remained in the community (Homer, Petersburg, Yakutat), and in one case all QS units have left the community (Seldovia). Of the five Alaska communities that gained in the number of CVO QS units held (Unalaska/Dutch Harbor Kodiak, Anchorage, Wasilla, and Kenai).

Table 3-10 provides information on average annual total shore-based processor dependency on BSAI rationalized crab (all shore-based processors in the communities that had at least one shore-based processor that accepted BSAI rationalized crab deliveries, not just the shore-based processors that participated in those fisheries). That data is compared to all area and species fishery landings processed by all processors in the community(ies) for the years 2001-2005, 2006-2010, 2011-2015, and 2016-2022, within the constraints of confidentiality restrictions, as measured by first wholesale gross revenue associated with those landings. This table and discussion were taken from the CR Program review (NPFMC 2024a). Up until 2024/2025 the shorebased processing of CR Program crab was centered in Dutch Harbor/Unalaska and Akutan. Some CR Program crab was delivered to Kodiak. Other communities that had shorebased processor during the time considered do not currently have active processors of CR Program. While the revenue data are not yet available, all active shorebased processors were located in Dutch Harbor/Unalaska for the 2024/2025 fishing year. Floating processors are still active in the fisheries, but the numbers have declined, and it is not possible to determine where they operated from using the Catch Accounting System data.

**Table 3-10 First Wholesale Value Diversification for Communities with Processors of Rationalized Crab, 2001-2022 (2022 real dollars)**

Years	Community	Annual Average Number of Processors Participating in Rationalized Crab	Annual Average Number of All Commercial Processors in those Same Communities	Annual Average Rationalized Crab First Wholesale Value (millions 2022 dollars)	Annual Average Total	First Wholesale Value of Rationalized Crab as a Percentage of Total Community Wholesale Value Annual Average
					First Wholesale Value from All Areas, Gears, and Species Fisheries for the Community (millions 2022 dollars)	
2001-2005	Unalaska/Akutan	9.5	10.2	131.5	915.3	14.36%
	Kodiak/King Cove	6.3	11.8	29.4	398.0	7.39%
	Other*	25.8	136.1	112.2	974.5	11.51%
	<b>Total</b>	<b>37.1</b>	<b>158.0</b>	<b>273.0</b>	<b>2287.8</b>	<b>11.93%</b>
2006-2010	Unalaska/Akutan	6.0	9.2	176.7	980.8	18.02%
	Kodiak/King Cove	5.0	14.0	37.3	545.1	6.84%
	Other*	8.4	93.4	116.8	993.2	11.76%
	<b>Total</b>	<b>18.6</b>	<b>116.6</b>	<b>330.8</b>	<b>2519.1</b>	<b>7.75%</b>
2011-2015	Unalaska/Akutan	5.2	10.8	241.4	1104.2	21.86%
	Kodiak/King Cove	3.8	15.0	39.2	625.0	6.28%
	Other*	5.8	141.8	178.8	1923.9	9.30%
	<b>Total</b>	<b>14.6</b>	<b>167.6</b>	<b>459.4</b>	<b>3653.0</b>	<b>12.58%</b>
2016-2022	Unalaska/Akutan	3.9	13.8	178.8	1117.4	16.00%
	Kodiak/King Cove	2.4	11.1	23.9	524.1	4.55%
	Other*	4.0	134.4	85.7	1984.1	4.32%
	<b>Total</b>	<b>10.3</b>	<b>159.3</b>	<b>288.4</b>	<b>3625.6</b>	<b>7.95%</b>

Source: ADFG/CFEC Fish Tickets, data compiled by AKFIN in Comprehensive\_FT

\* Other includes St. Paul, Adak, Sand Point, Cordova, Kenai, Ninilchik, Nome, Sitka, Wasilla, Floating Catcher Processors, Inshore Floating Processors, Floating Domestic Mothership, Unknown/Missing Value. After 2005, this category includes only St. Paul, Adak, Floating Catcher Processors, and Inshore Floating Processors.

### 3.6 Vessel Gross Earnings and Operating Costs

The Crab EDR program collected specific information on earnings and expenditures for vessels operating in the CR Program fisheries. Those data are summarized in the annual Crab Economic SAFE document. Due to the Crab EDR collection structure, the data are reported by calendar year and not fishing year. In this section, reported dollar values are adjusted for inflation to a 2022-equivalent value.

Fleet-level monetary and percentage statistics are calculated across all vessels that submit an EDR. Data reflect total commercial volume and value across all management programs (LLP/open access, IFQ, CDQ, ACA) inclusive of all harvesting sector production; approximation of ex-vessel sale value of catcher processors and catcher-seller volume is incorporated in revenue total by multiplying volume of retained catch by the weighted average ex-vessel sale price sourced from CV sector EDR data.

Cost information reported in the Crab EDR data collection program does not include all variable costs and fixed cost and capital expenditures are entirely excluded. As a result, estimated gross profit does not account for fixed, overhead, finance/interest, and associated costs and is not a complete measure of net income or economic profit.

A summary of the CR Program fleet’s revenue and costs are provided in Table 3-11. Data for the 2013 through 2017 calendar years are shown as the mean value. Data for 2018 through 2022 are the most recent data available. All dollar values are reported in millions of real 2022 dollars. The closures and TAC reductions realized in recent years are first reflected in 2022 data. Changes in the fishery in more recent years are anticipated to impact the cost and revenue in the years 2023 through 2024, which are not currently available.

**Table 3-11 Vessel level mean operating costs and revenue residuals for all CR Program fisheries in aggregate, 2018 to 2022.**

	2013-2017	2018	2019	2020	2021	2022
<b>All</b>						
Number of active vessels	114	67	67	64	65	51
Pounds landed, millions	657	451	574	667	763	216
Quota pounds leased, thousands (% of landed)	345: (0.41%)	357: (0.79%)	452: (0.79%)	510: (0.77%)	627: (0.82%)	186: (0.86%)
<i>Monetary values in \$1000 (\$2022)</i>						
Gross ex-vessel revenue	\$ 2,174	\$ 2,719	\$ 3,332	\$ 3,629	\$ 4,729	\$ 1,672
Quota lease cost	(678): (0.23%)	(1,090): (0.4%)	(1,326): (0.4%)	(1,399): (0.39%)	(1,830): (0.39%)	(635): (0.38%)
Gross residual after lease cost	\$ 1,502: 0.78%	\$ 1,628: 0.6%	\$ 2,006: 0.6%	\$ 2,229: 0.61%	\$ 2,900: 0.61%	\$ 1,037: 0.62%
Provisions	(15): (0.01%)	(16): (0.006%)	(17): (0.005%)	(24): (0.007%)	(22): (0.005%)	(15): (0.009%)
Bait	(33): (0.02%)	(39): (0.014%)	(50): (0.015%)	(51): (0.014%)	(47): (0.01%)	(36): (0.021%)
Fuel	(129): (0.06%)	(112): (0.041%)	(123): (0.037%)	(135): (0.037%)	(145): (0.031%)	(132): (0.079%)
Non-labor vessel cost (Total)	(178): (0.09%)	(167): (0.06%)	(191): (0.06%)	(209): (0.06%)	(215): (0.04%)	(183): (0.11%)
Gross residual (non-labor)	\$ 1,324: 0.69%	\$ 1,461: 0.54%	\$ 1,816: 0.54%	\$ 2,020: 0.56%	\$ 2,685: 0.57%	\$ 854: 0.51%
Labor cost	(482): (0.26%)	(537): (0.2%)	(652): (0.2%)	(739): (0.2%)	(961): (0.2%)	(345): (0.21%)
Harvesting cost (Total)	(1,337): (0.58%)	(1,794): (0.66%)	(2,169): (0.65%)	(2,348): (0.65%)	(3,005): (0.64%)	(1,162): (0.7%)
Gross ex-vessel profit	\$ 842: 0.43%	\$ 924: 0.34%	\$ 1,164: 0.35%	\$ 1,281: 0.35%	\$ 1,724: 0.36%	\$ 509: 0.3%

Source: 2024 Crab Economic SAFE, Table 5-23.

### 3.7 Crew Employment and Remuneration

Information in this section focuses on fishing crew and captain employment and compensation. Consolidation of the crab fleet following rationalization in 2005/06 resulted in fewer vessels fishing and longer fishing seasons (Table 3-12). The number of crew positions was reduced and working conditions changed, resulting in longer periods of active work in the fisheries for fewer crew members and captains. The crew share system typically used to determine crew compensation is substantially determined by the price and market value of landed crab, as well as prices of other factor inputs (i.e. fuel and quota lease costs). Changes in arbitration outcomes due to the proposed amendments could impact crew compensation. The quantity and royalty cost of IFQ leased by a vessel, and how lease costs and other deductible operating and crew-related expenses are treated in crew settlements, have a large effect on vessel earnings and crew earnings, as do supply and demand for these positions. Lease royalty costs are included as an operating cost, and share payments to crew and captain are typically paid on the basis of the gross residual revenue after lease royalty costs, with additional deductions for vessel and personal expenses.

**Table 3-12 Crew data pre-CR Program through 2008**

Fishery	Year	Number of vessels	Total crew positions	Mean crew size	Mean vessel harvest (pounds)	Mean days at sea	Captain pay (\$)		Mean crew pay (excluding captain)	Crewmember pay (\$)	
							Mean	Median		Mean	Median
All CR Fisheries	1998	212	1266	6.0	1,017,733	96	117,276	115,785	249,780	40,249	39,744
	2001	211	1251	5.9	199,825	52	61,540	40,973	123,271	19,936	14,625
	2004	235	1395	5.9	192,605	32	73,609	66,613	154,847	25,541	22,138
	2005	169	1007	6.0	320,039	37	78,770	55,911	152,893	25,903	20,264
	2006	101	640	6.3	628,448	68	86,828	75,006	174,865	28,204	26,858
	2007	86	572	6.7	758,928	68	134,958	129,146	283,763	45,274	42,429
	2008	94	632	6.7	1,069,194	90	175,376	175,115	383,915	59,896	56,582

Source: 10-year review Table 5-21, EDR data

The Council raised concerns regarding crew compensation in the 5-Year Review and that concern resulted in subsequent work developing alternatives for regulatory measures to address these concerns. The Council ultimately elected to pursue measures coordinated by and implemented through harvest cooperatives voluntarily (Council motion on C-4(a)-(c), February 2013). This resulted in the ICE harvest cooperative's development of initiatives to encourage QS holders to voluntarily limit the rate of compensation charged for leased crab IFQ (to 50 percent of ex-vessel value for BSS, and 65 percent for BBR) and promote transfers of QS to active crew members and equity owners of active fishing vessels. ICE's initiatives were subsequently adopted by other harvest cooperatives, as demonstrated in cooperative reports submitted to the Council, and EDR lease cost data reported by vessel owners.

### **3.7.1 Overview of Crew Employment and Compensation Changes**

EDR data related to the compensation of crew and captains during calendar years from 2009 through 2022 are presented in this section. Data are presented for CR Program fisheries that have been open to fishing since the last CR Program review. Information focuses on harvest crew positions, crew and captain compensation in dollars, and the percentage of gross share of catcher vessel revenue paid to captains and crew members.

**Table 3-13 Crew positions and compensation by CR Program fishery, 2009 through 2022**

Fishery/Year	Harvest crew positions	Mean harvest crew positions per vessel	Total harvest crew pay (Millions real 2022 \$)	Total captain pay (Millions real 2022 \$)	Catcher vessel gross share to crew (median)	Catcher vessel gross share to captain (median)	Catcher vessel gross share to labor (median)
<b>WAG and EAG</b>							
2009	35	7.00	\$2.37	\$1.40	0.12	0.05	0.18
2010	35	7.00	\$3.99	\$2.27	0.11	0.05	0.16
2011	36	7.20	\$4.99	\$2.71	0.12	0.05	0.16
2012	46	7.67	\$4.35	\$2.24	0.13	0.05	0.18
2013	44	7.33	\$4.14	\$1.88	0.13	0.05	0.18
2014	35	7.00	\$3.99	\$1.73	0.13	0.06	0.19
2015	35	7.00	\$4.40	\$2.01	0.13	0.07	0.19
2016	36	7.20	\$5.38	\$2.46	0.15	0.06	0.21
2017	36	7.20	\$5.50	\$2.32	0.16	0.07	0.24
2018	37	7.40	\$6.03	\$2.81	0.15	0.07	0.22
2019	37	7.40	\$7.42	\$2.70	0.15	0.06	0.21
2020	35	7.00	\$8.78	\$2.95	0.16	0.06	0.23
2021	37	7.30	\$11.27	\$4.35	0.16	0.06	0.21
2022	36	7.20	\$6.08	\$2.46	0.16	0.06	0.21
Mean	37.1	7.21	\$5.62	\$2.45	0.14	0.06	0.20
<b>BSS</b>							
2009	536	6.96	\$16.23	\$7.19	0.15	0.07	0.22
2010	444	6.53	\$11.70	\$5.25	0.15	0.07	0.22
2011	453	6.66	\$25.01	\$11.19	0.14	0.07	0.21
2012	502	6.97	\$33.81	\$15.22	0.14	0.07	0.21
2013	481	6.77	\$27.40	\$12.47	0.13	0.06	0.2
2014	480	6.86	\$21.75	\$9.76	0.13	0.06	0.2
2015	491	7.01	\$20.61	\$9.33	0.13	0.06	0.2
2016	463	6.81	\$17.58	\$7.85	0.13	0.06	0.2
2017	441	7.00	\$14.60	\$6.19	0.14	0.07	0.2
2018	436	6.92	\$11.66	\$5.00	0.14	0.07	0.2
2019	428	7.02	\$16.61	\$7.18	0.13	0.07	0.2
2020	417	7.07	\$20.22	\$8.89	0.14	0.07	0.21
2021	448	7.22	\$32.25	\$13.49	0.14	0.06	0.19
2022	298	7.08	\$4.95	\$2.16	0.13	0.06	0.19
Mean	451.3	6.92	\$19.60	\$8.66	0.14	0.07	0.20
<b>EBT and WBT</b>							
2009	102	7.29	\$0.67	\$0.41	0.15	0.07	0.21
2010	21	5.25	\$0.16	\$0.09	0.18	0.1	0.28
2013	156	7.09	\$0.55	\$0.26	0.17	0.08	0.24
2014	279	6.80	\$3.79	\$1.76	0.15	0.07	0.21
2015	365	6.63	\$7.23	\$3.36	0.15	0.07	0.23
2016	296	6.42	\$5.85	\$2.67	0.17	0.08	0.24
2017	100	6.25	\$1.14	\$0.51	0.15	0.07	0.22
2018	211	7.03	\$1.61	\$0.69	0.15	0.07	0.22
2019	139	7.69	\$1.04	\$0.47	0.16	0.07	0.23
2020	163	6.52	\$0.43	\$0.18	0.15	0.07	0.22
2021	149	7.45	\$0.93	\$0.94	0.14	0.07	0.22
2022	142	6.76	\$1.14	\$0.60	0.15	0.06	0.22
Mean	198.0	6.78	\$3.40	\$1.58	0.15	0.07	0.23
<b>BBR</b>							
2009	443	6.33	\$11.91	\$5.64	0.12	0.06	0.2
2010	422	6.48	\$16.43	\$7.82	0.12	0.06	0.18
2011	413	6.66	\$13.41	\$6.22	0.13	0.07	0.19
2012	428	6.68	\$9.99	\$4.50	0.14	0.06	0.2
2013	418	6.63	\$9.32	\$4.44	0.12	0.06	0.18
2014	422	6.70	\$9.48	\$4.37	0.12	0.06	0.18
2015	441	6.89	\$11.17	\$5.24	0.11	0.06	0.17
2016	423	6.71	\$13.59	\$5.88	0.13	0.06	0.19
2017	419	6.86	\$8.35	\$3.79	0.12	0.06	0.18
2018	365	6.64	\$5.74	\$2.64	0.12	0.05	0.17
2019	370	6.61	\$5.58	\$2.56	0.10	0.05	0.15
2020	333	7.09	\$3.95	\$1.82	0.10	0.05	0.15
Mean	408.1	6.69	\$9.91	\$4.58	0.12	0.06	0.18

Crew pay per vessel day has also been considered as a method to measure crew and captain compensation. Data in Table 3-14 shows daily employee compensation by crab fishery from 2018 through 2022 (the most recent year these data are available). Data through 2022 for crew and captains share payments are reported in the 2024 Crab Economic SAFE by fishery in Table 5.16. Figure 1.2 in the 2024 Economic SAFE shows that the weighted average of crew shares declined in 2022, similar in scale to the decline in production efficiency achieved by active vessels during 2022.

**Table 3-14 Average Crab Industry Employee Compensation per day, 2018 through 2022**

Fishery/Employee	2018	2019	2020	2021	2022	Average
AIG						
Processing Employee	\$164	\$172	\$201	\$209	\$222	\$194
Vessel Captain	\$4,277	\$4,154	\$3,928	\$5,337	\$3,315	\$4,202
Vessel Crew	\$1,434	\$1,784	\$1,949	\$2,195	\$1,322	\$1,737
BBR						
Processing Employee	\$169	\$171	\$201			\$180
Vessel Captain	\$4,217	\$3,541	\$3,840			\$3,866
Vessel Crew	\$1,626	\$1,376	\$1,368			\$1,457
BSS						
Processing Employee	\$167	\$176	\$200	\$207	\$220	\$194
Vessel Captain		\$2,646	\$2,365	\$2,829	\$2,081	\$2,480
Vessel Crew		\$1,017	\$886	\$1,087	\$784	\$944
BST						
Processing Employee	\$159	\$174	\$204	\$197	\$223	\$191
Vessel Captain	\$1,369				\$1,198	\$1,283
Vessel Crew	\$530				\$395	\$462

Source: AKFIN summary of EDR data

### 3.8 Processor Labor Costs

The current EDR program only collects cost data from processors for labor, custom processing, and raw crab purchases. Labor costs have been noted, by representatives of the processing sector, as an input that has caused costs to increase in recent years. The BSAI Crab SAFE – Table 5.10 (NPFMC 2024d) provides a summary of CR Program processing labor costs through 2022 (Table 3-15). It shows that while total labor costs have decreased in recent years, along with reduced production, the cost per hour and cost to process 1,000 lbs. of raw crab have increased for all CR Program crab fisheries. For example, the combined CP and shorebased cost for labor \$13.30/hour in 2009, the first year of combined sector labor, since it needed to be combined to preserve confidential information. Increased to \$18.73 / hour in 2022, the most recent year data were available when this report was drafted. That represents a 40% increase the cost of an hour of processing labor. Labor for non-processing employees increased from \$50,000 to \$81,000 per employee from 2012 through 2022 (NPFMC 2024d - Table 5.11). Changes in the way EDR data were collected prevent comparing 2009 through 2022 as was done for processing labor.

**Table 3-15 Processing Labor Hours and Pay, CR Program Fisheries**

		Processors	Processing labor hours			Labor Payments (\$1,000)		Processing wages, median (\$)	
			Total (1,000)	Median per plant (1,000)	Median per 1000 pounds (raw)	Total	Median per plant	per hour	per 1000 pounds (raw)
CP	98/01/04	24(11)	-	-	-	\$ 1,623.00	\$ 206.00	-	*
	2005	8	-	-	-	\$ 1,126.00	\$ 94.00	-	*
	2006	5	-	-	-	\$ 1,397.00	\$ 231.00	-	*
	2007	5	-	-	-	\$ 1,659.00	\$ 287.00	-	*
	2008	5	-	-	-	\$ 2,334.00	\$ 454.00	-	*
SF	98/01/04	62(32)	1,357	33.21	12.83	\$ 19,618.00	\$ 506.00	\$ 14.64	\$ 190.68
	2005	17	551	23.68	12.87	\$ 7,574.00	\$ 341.00	\$ 13.75	\$ 169.95
	2006	13	687	58.59	13.48	\$ 9,142.00	\$ 736.00	\$ 13.50	\$ 183.88
	2007	14	810	47.46	13.13	\$ 11,175.00	\$ 687.00	\$ 14.15	\$ 184.32
	2008	13	1,022	48.64	12.93	\$ 16,020.00	\$ 1,133.00	\$ 14.54	\$ 204.12
	2009	17	884	69.15	14.62	\$ 13,021.00	\$ 566.00	\$ 13.30	\$ 174.30
	2010	15	832	53.59	14.03	\$ 11,971.00	\$ 706.00	\$ 12.71	\$ 172.60
	2011	16	725	46.45	13.47	\$ 10,836.00	\$ 586.00	\$ 13.18	\$ 170.91
	2012	16	1,262	71.66	15.84	\$ 18,038.00	\$ 753.00	\$ 12.94	\$ 184.58
	2013	14	956	53.70	12.75	\$ 12,331.00	\$ 694.00	\$ 12.59	\$ 155.15
	2014	11	905	103.11	11.06	\$ 11,714.00	\$ 742.00	\$ 12.26	\$ 149.34
	2015	11	1,179	112.90	15.88	\$ 16,231.00	\$ 1,305.00	\$ 12.82	\$ 197.40
	2016	10	788	95.46	14.17	\$ 11,818.00	\$ 869.00	\$ 14.60	\$ 225.65
2017	11	426	31.95	13.41	\$ 6,084.00	\$ 361.00	\$ 14.07	\$ 186.40	
2018	10	382	29.90	11.01	\$ 5,457.00	\$ 215.00	\$ 13.67	\$ 167.52	
2019	9	452	51.95	12.07	\$ 7,050.00	\$ 414.00	\$ 14.53	\$ 183.04	
2020	9	486	56.43	12.96	\$ 8,667.00	\$ 619.00	\$ 16.73	\$ 221.18	
2021	8	534	74.54	10.91	\$ 9,991.00	\$ 985.00	\$ 17.17	\$ 179.00	
All CR	SF+CP	2022	7	159	30.17	\$ 3,115.00	\$ 395.00	\$ 18.73	\$ 246.39

Note: Data are shown for all CR Program crab fisheries by calendar year. All dollar values are adjusted for inflation to 2022-equivalent value.

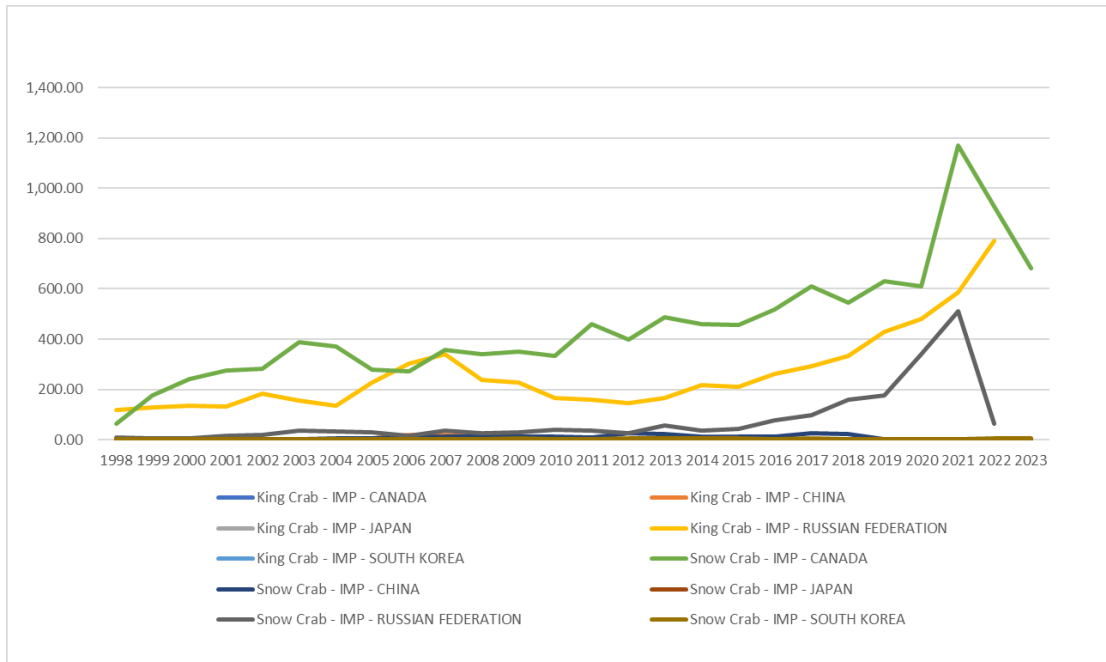
Source: NMFS AFSC BSAI Crab Economic Data Report (EDR) database and eLandings

### 3.9 Processor Markets and Prices

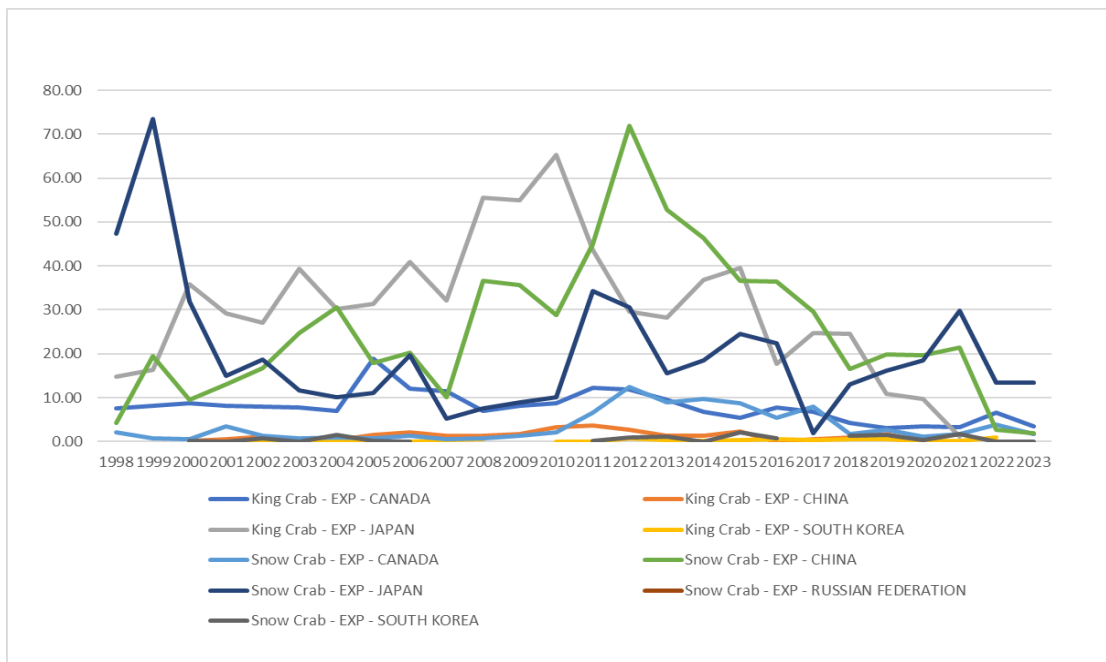
This section presents historical trends in first wholesale crab markets and prices. Section 3.2.6.3 describes the IPQ holdings in the most recent year. While the number of IPQ holders have shown smaller numbers of changes, it is worth noting that in the 2024/2025 fishing year, there were only two active crab shorebased processors. This reflects the difficult economic conditions that processors are facing, as are harvesters and communities, which are stakeholders in the BSAI crab fisheries. These economic conditions are a primary reason why the potential changes in this amendment are being considered to the Crab Rationalization Program.

#### 3.9.1 Wholesale Crab Markets for King and Snow Crab

The king crab and snow crab imports and exports are provided in Figure 3-5 and Figure 3-6 with a breakout by country the U.S. sold to or bought from during the years 1998 through 2023. It is possible that some of the substantial increase in king crab imports during 2021 was the result of buyers preparing for the anticipated Russian ban on imports and the snow crab increase was due to the low TACs in the U.S. and high catch limits in Canada.



**Figure 3-5 U.S. Imports of King Crab and Snow Crab, 1998 through 2023**



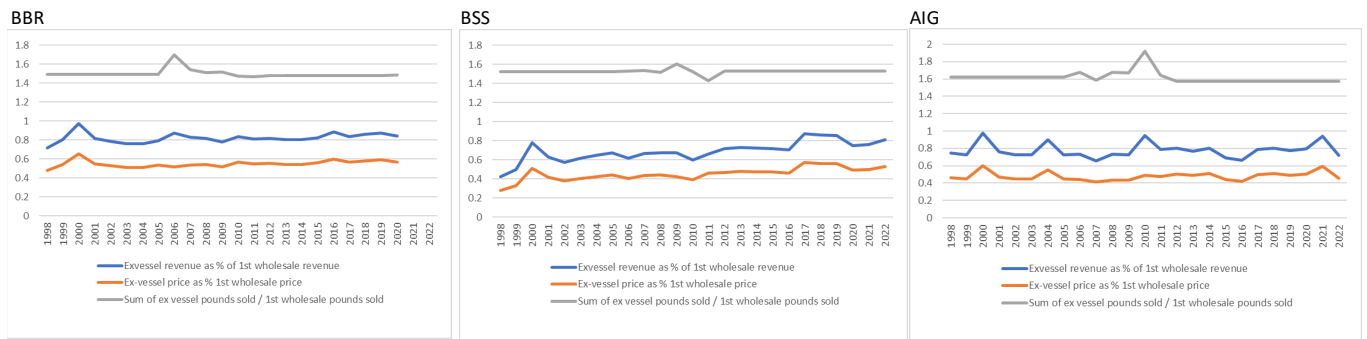
**Figure 3-6 U.S. Exports of King Crab and Snow Crab, 1998 through 2023**

### 3.9.2 Ratio of Ex-vessel to First Wholesale Price

Prices paid to harvesters are a substantial component of processors’ costs. Figure 3-7 shows the ex-vessel price and revenue as a percentage of first wholesale price and revenue. It also shows the ratio of whole crab weight purchased relative to the first wholesale pounds sold. That ratio accounts for the weight lost from turning whole crab into frozen sections or other products produced. It also is reflected in the ratio of



ex-vessel to first wholesale revenues being greater than the ratio of ex-vessel price to first wholesale price, although, in general, they follow a similar trend.



**Figure 3-7 Ratio of ex-vessel to first wholesale revenue, price, and pounds sold in the BBR, BSS, and AIG fisheries 1998 through 2022**

Source: CRSAFEEXEC01 - BSAI Crab SAFE: harvesting and processing sector output - product volume, gross revenue, and average price, 1998-present

The division of revenues is affected by more factors than the aggregate arm’s length ex-vessel price divided by the aggregate first wholesale price. Changes in costs of production for harvesters and processors impact profitability. Several of these costs are discussed in this document. However, using labor costs as an example, processing labor is paid an hourly rate (including overtime pay) that has increased substantially in recent years. Harvesters typically pay the crew a share of the ex-vessel value of crab sold after certain costs are deducted from the gross revenue. Deductions vary by firm but normally include lease payments up to 50 percent for BSS and 65 percent for BBR crab<sup>10</sup> and can include other major expenses, such as fuel and provisions.

### 3.9.2.1 Delivery Terms and Pricing Under the LLP

Much of the information in this section is derived from the ten-year review (NPFMC 2017). Before the CR Program, harvests in most BSAI crab fisheries were consolidated over a short season. Pricing practices differed somewhat between crab fisheries with relatively short seasons and a relatively high number of participants (such as the BBR and BSS fisheries) and fisheries with fewer participants and longer seasons (such as the AIG fisheries). Differences in ex-vessel pricing across fisheries are highlighted.

#### ***BBR and BSS Fisheries***

In the years leading up to the implementation of the rationalization program, harvesters in the BBR and BSS fisheries coordinated most price negotiations. Since the early 1990s, the Alaska Marketing Association (AMA) represented a substantial share of harvesters in price negotiations in the largest crab fisheries (BBR, BSS, and BST).

Approximately one month before each season opening, AMA representatives met with each of the major crab processors to informally discuss the markets for crab products. Based on these discussions and information gathered through its own market research, AMA representatives would determine an expected price for crab, which it would communicate to the processors. The AMA would then solicit price offers from each processor and submit those offers to its members for a vote. This process of soliciting prices would continue until a price offer acceptable to AMA members was received. Since deliveries were unrestricted, once an acceptable offer was received from a processor all other processors usually matched

<sup>10</sup> A recent DOG boat cooperative report noted that lease rates were somewhat more for quota held by a CDQ group, but only the noted limits were deducted when calculating crew payments.

that offer to maintain market share. Prices generally remained constant over the short seasons. In 2001, AMA members created an incentive for higher price offers in the BBR fishery by informally agreeing to reward the processor that offered the accepted price with additional deliveries. AMA members made a similar agreement for the 2002 BSS fishery.

If an acceptable price was not received before the seasoning opening, catcher vessels would not begin fishing. For example, in both the 2000 and 2001 Bering Sea snow crab seasons harvesters did not begin fishing until several days after the announced opening because no processor had offered an acceptable price during pre-season price negotiations. Although not all vessel owners were members of the AMA, the entire catcher vessel fleet remained at port until an acceptable price was received by the AMA.

Catcher processors, on the other hand, did not abide by these “stand downs” but began fishing at the opening of the season. These vessels were unaffected by the price negotiations because they process the crab they harvest. Fishing by catcher processors, however, had the potential to weaken the negotiating position of catcher vessels by reducing the amount of crab available for harvest after a price agreement was reached.

The pricing process in the fisheries typically established two prices—the main price applied to higher value, new shell crab (grade 1) and a secondary, lower price was established for lower value, old shell crab (grade 2). The price differential reflected the differences in prices the two grades brought in wholesale and retail markets. The ex-vessel price difference between grades often varied substantially across processors. In general, the price difference averaged approximately 25 percent of the grade 1 price (\$1.00 per pound for red king crab and \$0.25 for snow crab), but in some instances, the price difference was much greater.

Although this informal system established a single price for each grade of crab, price competition among processors existed on a minor scale. Occasionally, some processors offered small bonuses (e.g., \$0.05 per pound) or used different grading practices to attract additional vessels. In addition, a few harvesters preferred to handle their own price negotiations rather than be represented by the AMA.

Ex-vessel pricing could also vary regionally for several reasons. In fisheries where vessels made multiple deliveries, the availability of goods and services in a delivery location can be important to harvesters. Food, bait, fuel, and good port facilities could make a processor more attractive to vessels wishing to offload harvests. Processors in locations that offer fewer goods and services were, at times, compelled to pay a price premium to induce harvesters to sell their catch. Processors more distant from grounds might also be required to pay a higher price to compensate harvesters for increased transit time and costs and higher risk of deadloss (and possibly for time away from the grounds if harvesters made midseason deliveries). Proximity to markets could also influence ex-vessel prices. Processors with less access to markets sometimes paid slightly less for crab because they were required to bear a higher cost to transport the crab to markets.

### **3.9.2.2 Delivery Terms Under the CR Program**

Several aspects of the CR Program's structure have influenced delivery terms and pricing since its implementation. The different catcher vessel IFQ types may impact prices due to varying restrictions on their use and the arbitration system's effect on Class A IFQ landing prices. Negotiations over prices and delivery terms occur separately for each share type to prevent potential violations of the statute that prohibits processors from using IPQ to leverage Class B IFQ deliveries. That statute specifically states:

*If the Secretary determines that a processor has leveraged its Individual Processing Quota shares to acquire a harvester[']s open-delivery 'B shares', the processor's Individual Processor Quota shares shall be forfeited.*

For these reasons, the price setting and delivery terms for Class A IFQ were discussed separately from those for Class B and C share IFQ in the ten-year review. That review provided a section that began with a

detailed discussion of the pricing of Class A IFQ landings (including the Arbitration System) and concluded with a discussion of Class B and C share IFQ and distributional issues related to the use of those shares. The reader is referred to the ten-year review for a more comprehensive discussion.

### **3.10 Analysis of Impacts**

This section considers the information provided in previous sections in terms of the impacts of the current program and proposed CR Program changes.

#### **3.10.1 Alternative 1 (No Action)**

##### **3.10.1.1 Current State of the CR Program Fisheries**

The current environmental and economic conditions in the BSAI CR Program fisheries primarily drive proposed changes in this RIR. As described in Section 3.2.1, two of the most important crab fisheries in terms of value and catch have been the BBR and BSS fisheries. Each of these fisheries has been closed to fishing in two of the four years from 2021 through 2024. When those fisheries have been open during this period, the allowable catch was set at some of the lowest levels during the 2005 through 2024 period.

Low TACs and higher operating costs have led to decreased participation in active harvesting and processing by both sectors. The most recent CR Program review (NPFMC 2024b) and Table 3-7 in this analysis note that of the IPQ holders, only four operate a physical processing plant<sup>11</sup>. Information presented by the public at the June 2025 Council meeting noted that of those four plants, only two were currently processing crab. The other plant operators had decided not to participate in processing crab due to projected losses in the fisheries. While recent Council changes to the CR Program, excluding custom processing from the processing cap, have helped processors, the low number of active processors and the consolidation of processing into a single community remain a concern for managers, policymakers, and stakeholders in the CR Program fisheries. These concerns have led some individuals to ask the Council to consider actions that would more fundamentally alter the CR Program beyond the changes considered in this action (see discussion paper; NPMFC 2024b).

In terms of CVs active in the CR Program fisheries, the numbers have also declined based on information reported in the most recent Economic SAFE document for the BSAI Crab fishery (NMFS 2024d). The BSS fishery and BBR fishery have seen participation levels at approximately half of their historic levels which has had broad implications for current and former crab crew, vessel owners, and associated communities.

##### **3.10.1.2 Summary of Relevant CR Program Elements**

The CR Program changed how harvesters and processors negotiated ex-vessel prices and contract terms. The arbitration system played a central role in those changes. While it was designed to resolve price, delivery terms, performance standards, and other disputes fairly and equitably if class A IFQ and IPQ holders are unable to reach an agreement, there is still disagreement regarding how well the system has met those objectives.

The LBO was selected because granting arbitrators greater discretion may make arbitrator selection more contentious and place greater pressure on arbitrators when determining an outcome. The authority to choose only an outcome submitted by the two parties was anticipated to limit the offers from being too divergent.

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<sup>11</sup> Note that Royal Aleutian was purchased by Unisea, which operates the crab processing plant.

Submitting an LBO involves significant risks for both harvesters and processors if their offer is rejected. Representatives of the harvesting sector have stated that the LBO system has forced them to submit offers at the low end of current prices to improve their chances of acceptance. Processors have pointed out that the LBO system does not consider market changes throughout the year or shifts in production costs, particularly labor costs, over time. Therefore, they have expressed concerns that the LBO system, as viewed in this case by the arbitrators, fails to address a sufficiently broad range of factors in the fishery when determining an outcome. This concern appears to have been exacerbated but poor economic conditions in the fishery that have been realized by all sectors.

CR Program arbitration to establish contract terms may only be triggered by Arbitration IFQ holders that have joined a CR Program arbitration organization. IPQ holders are prohibited from initiating the arbitration process to establish contract terms. Because only IFQ holders may initiate the LBO arbitration process, they have control over the years and fisheries utilizing arbitration. It also means that Arbitration IFQ holders are most likely to initiate the arbitration process in fisheries and during the years they anticipate a benefit from the process, either by prevailing at arbitration, or inducing a better result from the IPQ holders' offer at arbitration.

The shared **arbitration system costs** are outlined in an annual report submitted to NMFS and the Council by participants in the Alaska Crab Processors Arbitration Organization (ACPAO). Arbitration costs are divided equally between harvesters and processors under a landings-fee structure. Because costs are incurred and fees are collected at different times, the processor pays the arbitration costs and is reimbursed through the funds collected under the fee. Both parties agree to the fee and structure and the contract describes how shortfall and excess funds are addressed. The Alaska Crab Processors Arbitration Organization (ACPAO) report identified the shared arbitration system costs.

- The cost to produce the annual Market Report and non-binding pricing formula for each fishery;
- The third-party data provider (Sharematch.com) costs for each fishery;
- The contract arbitrators' costs for each fishery;
- General liability insurance, and directors' and officers' insurance for each arbitration organization;
- The fees and expenses necessary for the participation in the Council's CR Program review process incurred by any arbitration organization authorized representative; and
- Arbitration organization's attorney fees to prepare, negotiate and administer the above contracts, obtain and review the above insurance, pursue Department of Justice antitrust review of the implementation of the arbitration system, contribute to and participate in the Council's CR Program review process, and otherwise implement the arbitration system, as amended from time-to-time by NOAA regulation. Attorney's fees associated with the formation and administration of each arbitration organization are borne by each arbitration organization.

The fee per pound has varied annually, ranging from \$0.00 to \$0.01 per pound depending on the estimated arbitration costs and the amount of carryover funds held in reserve (2005 through 2022 fishing years). Fishing year costs have ranged from about \$325,000 early in the program to as low as about \$80,000 in recent years. The average over the past seven years, since the last program review, was about \$110,000.

A requirement associated with the arbitration process that has not proven adaptive to economic and environmental changes in the fishery is the Market Report. Production of the Market Report (and the expenditures associated with its development) is required before TACs are established, so the report may be produced when the parties anticipate a fishery, even when the TAC set later in the year does not support a fishery.

The Market Report and Price Formula report were estimated to cost \$49,000 in total for the 2023/2024 fishing year<sup>12</sup>. The Market Analyst produces two **Market Reports** annually. The first report is for all crab QS fisheries anticipated to be open except for WAG and EAG. The second report is for the WAG and EAG fisheries. As described earlier, the Market Report analyzes the market for products from a specific crab fishery and reports on activities occurring within the 3 months preceding its generation. Data must be sufficiently aggregated in the report so as not to identify any individual's price information. The report provides background information on each crab fishery, the products it produces, and the position of those products in the marketplace. The Market Report also discusses the historical division of first wholesale revenue and provides a methodology for predicting wholesale prices before the fishery occurs. In addition, the Market Report examines trends in both ex-vessel prices and wholesale prices.

The **Non-Binding Price Formula Report** is designed to serve as a starting point for negotiations between fishermen and processors, or for an arbitrator evaluating offers in an arbitration process. It is not binding. The recommended formula is not considered the only possible formula for all fishermen and processors; negotiations between individual fishermen and processors may find that other price formulas work better for their specific needs. The Non-Binding Price Formula Report for each crab fishery presents complete documentation of how each formula was developed and detailed analysis of the elements in each Non-Binding Price Formula calculation.

The CR Program does not require that parties to a binding arbitration proceeding receive a written report from the arbitrator explaining **the rationale for a decision**. The parties are informed of the arbitrator's decision. Regulations state that the decision is binding and issued without explanation of the reasoning. Arbitrators are typically not required to explain the reason for their decisions unless the parties request a written report in the arbitrator's contract. Current regulations would not prohibit that clause from being included in the contracts if the information requested was allowed under antitrust rules. Generally, the award consists of a summary of determination. According to American Arbitration Organization, a private non-profit arbitration provider, one reason for a limited report is that written opinions could provide opportunities to challenge the award in court.<sup>13</sup> While courts may not be willing to review an arbitrator's decisions based on the case's merits, thoughts expressed in a written opinion could obstruct or delay enforcement of the award. That organization felt that obligations to the parties are better fulfilled when the award leaves no room for challenge.

Disputes arising from **non-performance of contracts** are submitted to Binding Arbitration under the current regulations. Binding arbitration is generally considered less costly than civil trials to settle disputes. While the option is available, stakeholders have indicated that arbitration has never been used to settle non-performance disputes. Instead, the possibility of initiating arbitration has been utilized to help reach an agreement.

Under Alternative 1, these components of the Arbitration System would continue as they are currently established. The costs of those provisions would continue. Retaining those regulations is expected to maintain current divisions of first wholesale revenue and the division of costs that are required under the CR Program.

Regulations are silent on whether RAM may **allow annual IFQ/IPQ applications that have been accepted as complete to be withdrawn**. The ambiguity of the regulations requires NOAA Fisheries staff to determine on a case-by-case basis whether an application may be withdrawn. Not knowing the parameters of that decision process creates uncertainty for the IPQ holders that may wish to withdraw their applications after additional information regarding the fishery is available (e.g., the TAC).

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<sup>12</sup> <https://omb.report/icr/202402-0648-001/doc/139606500>

<sup>13</sup> [https://www.adr.org/sites/default/files/document\\_repository/A%20Guide%20for%20Commercial%20Arbitrators.pdf](https://www.adr.org/sites/default/files/document_repository/A%20Guide%20for%20Commercial%20Arbitrators.pdf)

## 3.10.2 Alternative 2

### 3.10.2.1 Option 1: Remove the Regulations for LBO Arbitration

This option would change the fundamental structure of the crab arbitration system for establishing contract terms by eliminating the requirement to use the LBO arbitration model. The 14 references to LBO arbitration would be amended in Federal regulations, including the reference at 50 CFR 680.20(h)(2) that states the Contract Arbitrator will comply with the LBO arbitration method. Regulations would not specify the type of arbitration used to establish prices and other contract terms when other negotiation methods fail to reach a compromise agreement. Parties to any future arbitrations must agree on the arbitration structure or use the arbitrator's default structure and include that information in the report to NMFS. However, because the amended language would allow the arbitrator to select a compromise position between the two offers submitted or an independent result, the arbitrator would not be prevented from selecting one of the offers submitted by the parties to the arbitration.

LBO arbitration was initially selected because it is an efficient arbitration system. The structure incentivizes members of Arbitration Organizations to submit reasonable offers and to avoid gaming of the arbitration process by submitting extreme offers. Harvesters and processors were expected to submit reasonable offers to increase the likelihood that their position would be chosen by the arbitrator, who is required to select the better of the two positions, as supported by consideration of various factors specified in the regulation. If both offers were similar, selecting either would have fewer negative impacts on the side that did not prevail.

When the current arbitration structure was implemented, it included certain standards to help ensure predictability and fairness for the parties involved. The regulations state that both the Non-Binding Price Formula and the contract arbitrator's decision must be based on the historical distribution of first wholesale revenues using arm's length first wholesale prices and ex-vessel prices. The language also states that the price should preserve the historical division of first wholesale revenue in the fishery while considering several factors. Discussions with industry members indicate that the arbitrators have relied heavily on the historical division of first wholesale prices without considering changes in the cost structures of the two sectors. Representatives of the processing sector have argued that the arbitrator should consider factors beyond the historic division of first wholesale revenue that was established more than two decades ago using data that they feel may be flawed. If additional data were brought into the calculus for determining ex-vessel prices, verifying all the relevant costs incurred by both sectors was noted as a concern. Verifying that data to a level that would make both parties confident in its accuracy is expected to increase costs. The amount of the cost increase is unknown. It would depend on the type of data submitted, the level of detail required, and the verification process (audit) that would be required by the members of the Arbitration Organizations and the arbitrator.

Granting arbitrators greater discretion to select an intermediate position may make arbitrator selection more contentious and place greater pressure on arbitrators when determining an outcome. As described in this document, there has recently been three arbitrators in the pool. The pool of arbitrators has been relatively stable, but the number of arbitrators has been reduced after one arbitrator retired. An arbitrator is selected from that pool during a year in which the harvesting Arbitration Organization determines that arbitration to establish contract terms is necessary. The authority to choose an intermediate position could result in the requested outcomes by the two parties being more divergent, as a strategy to affect the result. Arbitration IFQ holders and IPQ holders may decide that if they submit an offer that is more advantageous to their side, the arbitrator may select an outcome closer to that offer when finding a middle ground. Whether arbitrators are willing to consider factors other than the current formula based on the division of first wholesale revenue will remain an important determinant of their ultimate decisions.

The following sections highlight several changes that may occur from shifting away from the LBO structure of binding arbitration, including a summary of the opinions of arbitrators who are under contract with the Arbitration Organizations.

### **Discussions with Arbitrators**

The three arbitrators currently under contract and retained by the Arbitration Organizations were contacted to provide input on the potential impacts of proposed changes to the arbitration structure. Discussions with arbitrators primarily focused on changing the LBO arbitration structure and implementing a requirement to provide a written report with a rationale. Since not all three arbitrators have conducted arbitrations for the crab fishery, not all arbitrators in the pool felt they had sufficient information and therefore preferred not to comment on specific issues.

In the opinion of these professionals, LBO arbitration was thought to be a more economical system:

- The two parties are incentivized to submit their best offer, which are likely to be closer than when the arbitrator is granted the authority to select a settlement other than one of the two proposals.
- LBO makes it incumbent on the parties to do more work to ensure their request is supportable.
- Less time may be required to reach a decision after offers are presented to the arbitrator and other party as a final written proposal (laydown of offers), especially when they are relatively close offers.
- The structure moves people towards a middle ground to increase the likelihood of their offer being accepted by the arbitrator.
- Information provided by the parties to the arbitration does not give the arbitrator perfect information to calibrate a decision within a small range.
- Increased effort by the arbitrator would be needed to determine the “right decision” when more divergent starting points are offered, to choose and verify a decision.
- Costs would increase, but the “quality” of the outcome may not.
- Arbitrators generally do not like to grant summary judgments. A "summary judgment" in arbitration is a procedure that allows an arbitrator to issue a final ruling on a claim without a full hearing, if there are no genuine disputes of material fact and one party is clearly entitled to win as a matter of law.

Impact of requiring a written report:

- Requires additional time to produce the report
- Arbitrators producing a written report would require them to spend additional time documenting that a reasoned and fair outcome was reached, based on the facts provided by the parties, and that the information included in the report is accurate and logical.

### **Change in the Number of Arbitrations**

Arbitration to establish contract terms has occurred less frequently over the recent years of the CR Program (Table 3-3). Limiting the arbitrator’s option to select one of the offers increases the risk of entering arbitration and creates a disincentive to arbitrate. Fewer arbitrations could also be due to only triggering arbitration when Arbitration IFQ holders thought they would prevail. Arbitration IFQ holders have noted that the cost of LBO arbitration is a deterrent to arbitration. The cost of arbitration is weighed against the potential increase in ex-vessel price and the probability of prevailing in the arbitration. For

Arbitration IFQ holders to proceed with arbitration, they must feel relatively confident they will prevail. Fewer arbitrations in recent years could also be due to more predictable outcomes, and therefore, a willingness to settle terms outside of arbitration when the two offers are relatively close.

LBO is considered very efficient at reducing the information required for an arbitrator to select a compromise position and is assumed to reduce the cost of arbitration. Harvester representatives have indicated that in past arbitrations, it was common for harvesters to request a price equal to the lowest agreement or an average of the prices paid. Under an arbitration structure that gives the arbitrator greater flexibility to determine the award, harvesters may be compelled to seek a higher price, and processors, a lower one, than they could have under an LBO model. If harvesters prevailed or received a beneficial award, it could incentivize additional arbitrations with processors who offered a price lower than the one received under the arbitration.

If the removing the LBO arbitration requirement creates uncertainty in the outcomes, it could create incentives to test the system. If Arbitration IFQ holders were to continue to submit offers that were at the lower end of ex-vessel prices or were an average of the prices paid, there may still be reason to think that the arbitrator would select their offer or an amount closer to that offer. After an initial arbitration under a revised system, the parties may consider the risks of arbitration differently. Using that information may affect whether the harvester Arbitration Organization chooses to initiate arbitration in the future. It may also influence the negotiation leading up to arbitration.

Also, the decline in the number of active shorebased processors makes it more problematic to obtain current ex-vessel prices for comparison or as an average. In the past year, for example, if an arbitration had occurred, the arbitrator may have known the price paid by the other processor or used prices from outside of Alaska, but comparing multiple current prices paid by comparable processors would have been impossible. The lack of comparable price data may require the arbitrator to rely on other, more subjective, information submitted by the parties to make a price determination.

### **Change Costs of Arbitrations**

If the LBO model was removed from regulation, it would be anticipated that the costs to arbitrate would increase. While analysts cannot quantify this expected increase in cost, it may result if there is an increase in the frequency of arbitrations, the information needed to make a decision, or the duration of each arbitration. Discussions with the current participants in the arbitration pool, tended to support this assumption. However, it was noted that the under the current structure the arbitrations tended to be relatively short. Unless the regulations defining how arbitration would be paid for were changed, any increase in cost would be shared equally by the two parties. Regulations at 50 CFR 680.20(d)(1) state that in the arbitration formation process, an Arbitration Organization must establish the Arbitration System that includes the payment of arbitration costs.

Currently, the Arbitration Organizations establish contracts with three arbitrators and pay a retainer fee to each, establishing a contract under which each would serve as mediator and arbitrator of disputes between Arbitration IFQ holders and IPQ holders if arbitration is required. The contracts define the hourly rate that each arbitrator agreed to charge for that fishing year to act as an arbitrator. A contract may also include separate hearing rates. Since the arbitration contracts are based on hourly rates, any increase in time spent reviewing the arbitration materials and making the decision would increase the cost charged by the arbitrator. Any increase in the number of arbitrations would also increase the costs to the parties involved in the arbitration (Bering Sea Arbitration Organization and the Alaska Crab Processors Arbitration Organization) and the costs to the parties to the arbitration.

Under current fishery conditions, of low prices and low TACs, both harvesters and processors have noted that the economics of the CR Program fisheries are challenging. If the costs to establish contract terms increase, the party with fewer resources to fund arbitration could be impacted the most. Harvesters have noted that they only trigger arbitration when they expect to prevail based on information from the failed



negotiations. Cost of arbitration was noted as a factor in that decision. Processors have also noted the challenging economic conditions in the crab and groundfish fisheries. To remain viable, they have limited risk and reduced costs when possible (not processing crab when it appears to be unprofitable).

Processors initially pay the total arbitration cost. The harvesters' portion of the fee is then collected from harvesters using a reduction in the ex-vessel price paid to the harvester. The cost to fund the arbitration process has been \$0.01 per pound or less in recent years. The amount of the fee could change and would depend on the change in the cost to arbitrate, the overall revenue generated by CR Program fisheries, and carry-over funds from previous years. Processors would need to fund their share of the cost directly. While the per pound cost paid to fund the arbitration structure is low, all cost savings are important to both sectors.

### **Changes the Distribution of Wholesale Revenue**

Because the first wholesale price is determined by the worldwide demand for the available supply of crab, and the supply is generated from both U.S. and foreign producers, processors must take the price established by the market or hold the crab with the expectation that market conditions will change and prices will increase. Holding the product in cold storage increases the cost of supplying the crab.

Any changes to the percentage of first wholesale revenue paid to harvesters through the ex-vessel price will depend on how closely arbitrators stick to the division of first wholesale revenue and how much arbitrators are willing to move away from the price formula they are provided.

The selection of arbitrators and their willingness to interpret the regulations as providing flexibility to establish ex-vessel prices could become more important. Regulations at 50 CFR 680.20(g)(2) describe the information that must be included in the Formula Arbitrator's contract. That contract establishes the fraction of the weighted average first wholesale price that may be used to set the ex-vessel price for a fishery. The Non-Binding Price Formula is based on the historical distribution of first wholesale revenues between fishermen and processors in the aggregate based on arm's length first wholesale prices and ex-vessel prices, taking into consideration the size of the harvest in each year (50 CFR 680.20(g)(2)(ii)(A)), but may consider a variety of other factors (50 CFR 680.20(g)(2)(ii)(B))

- 1) Current ex-vessel prices, including ex-vessel prices received for crab harvested under Class A, Class B, and CVC IFQ permits;
- 2) Consumer and wholesale product prices for the processing sector and the participants in arbitrations (recognizing the impact of sales to affiliates on wholesale pricing);
- 3) Innovations and developments of the harvesting and processing sectors and the participants in arbitrations (including new product forms);
- 4) Efficiency and productivity of the harvesting and processing sectors (recognizing the limitations on efficiency and productivity arising out of the management program structure);
- 5) Quality (including quality standards of markets served by the fishery and recognizing the influence of harvest strategies on the quality of landings);
- 6) The interest of maintaining financially healthy and stable harvesting and processing sectors;
- 7) Safety and expenditures for ensuring adequate safety;
- 8) Timing and location of deliveries; and
- 9) The cost of harvesting and processing is less than the full IFQ or IPQ allocation (underages) to avoid penalties for overharvesting IFQ and a mechanism for reasonably accounting for deadloss.

The regulations also allow the arbitrator to consider other relevant factors such as product form, delivery timing, and delivery location. The arbitrator may also consider the “highest arbitrated price” for the fishery from the previous crab fishing season.

Allowing arbitrators to select a compromise position would increase the importance of who is selected to serve as arbitrators. Both the Arbitration Organizations must agree upon the persons selected to serve as arbitrators (50 CFR 680.20(e)(5)). The Arbitration Organizations then notify NMFS of the persons selected. Those selections must be provided to NMFS by June 1st for that crab fishing year. NMFS will not issue CVO IFQ and IPQ for a fishery until the Arbitration Organizations establish the contracts with Contract Arbitrators and notify NMFS (50 CFR 680.20(e)(7)). Because of these requirements, either of the two Arbitration Organizations could prevent the issuance of CVO IFQ and IPQ for a fishery.

Based on the information available, the contract arbitrators have chosen not to diverge from the historical division of first wholesale revenue in arbitrations that have taken place to establish ex-vessel prices. Potential reasons are that it could create a precedent, be more controversial, and increase the complexity of weighing all factors involved in adjusting the ex-vessel price in terms of all the other (perhaps countervailing) factors that could be considered. If the arbitrator was allowed to select an intermediate position, weighing and perhaps justifying an outcome would be more complex.

### **Impact on Harvesting Crew**

The primary impact on the harvesting crew would be associated with changes in ex-vessel prices directly resulting from modifications to the arbitration structure. If the modified arbitration structure results in lower ex-vessel prices, the crew share would be expected to change approximately in proportion to the change in ex-vessel value. It also depends on whether costs associated with arbitration are deducted from crew shares by individual vessel operators. Without knowing how arbitration may change ex-vessel prices, it is not possible to provide quantitative estimates of changes in crew payments and whether they would be higher or lower than the status quo.

#### **3.10.2.2 Option 2: Provide a Written Report of the Arbitration Outcome**

Option 2 would establish regulations requiring a written report and rationale from the arbitrator to the parties to the arbitration. The Council indicated that the report should be patterned after the report that must be provided to NMFS to the extent possible to reduce costs. However, the information provided to NMFS does not include the Contract Arbitrator’s rationale for making the decisions. The report and the rationale could potentially have unique anti-trust concerns, and the anti-trust concerns should be considered separately. While the current regulations do not require that the Contract Arbitrator submit a written report of the arbitration outcome, there are also no regulations that prohibit the parties to the arbitration from asking for a report that excludes information that would trigger anti-trust concerns. Thus, outside of regulations, the contract that the two parties sign with the arbitrators could define the written report and the information included.

Regulations at 50 CFR 680.20(h)(6) define the information that the Contract Arbitrator must provide to NMFS under the terms of their contract with the parties. The Contract Arbitrator must provide all required information, documents, or data by 30 days before the end of the crab fishing year for which the open negotiation or arbitration applies.

1. minutes from any meeting attended by that Contract Arbitrator between or among any PQS or IPQ holders;
2. the last-best offers made during the Binding Arbitration process with all contract details;
3. the names of other participants in the arbitration, and whether the Contract Arbitrator accepted the bid; and

4. any information, data, or documents the Contract Arbitrator gave to any person who was not a party to that arbitration, and the person provided the data or documents.

A primary obstacle to allowing a written report that contains confidential information and the rationale for the decision is antitrust concerns. A legal review of the arbitration program was commissioned by NOAA Fisheries in 2004 to review whether the proposed program could trigger antitrust issues (see Appendix 1). That legal opinion found that the originally proposed arbitration component of the BSAI CR Program did raise some antitrust concerns. The main concerns focus on provisions regarding the exchange of information that would not be permitted in an unregulated, competitive environment. The legal opinion advised that several provisions, including publicly announcing a pricing formula, circulating a Market Report, and providing arbitrators with access to information from prior arbitration sessions, could be implemented consistent with antitrust laws if they were conducted within limited parameters.

Other provisions raised antitrust concerns in the 2004 review.

*These include the provision giving both harvesters and processors access to all information provided to their arbitrators, permitting processors to engage in discussions regarding pricing, and the unlimited publication of the arbitration results. To address the possible anticompetitive effects of these provisions, that paper recommended that the harvesters' and processors' access to information during an arbitration be limited to materials submitted directly by the parties.*

The opinion also concluded that access to the results of other arbitration sessions should be limited to arbitrators and non-affiliated harvesters that have not committed shares to a processor. Limiting the information provided was an important consideration in the program's development to avoid antitrust issues.

The reason stated in the Arnold and Porter review that the results of the completed arbitration sessions should not be publicly announced was that,

*there is no reason for the processors to have access to this information. While harvesters who are members of a cooperative could freely exchange the information among members, allowing processors (including vertically integrated harvesters) and harvesters who are not co-op members to share the results of other arbitration sessions would run the risk of violating the antitrust laws as an exchange of current pricing information. Additionally, access to this information could influence a harvester's or processor's final offer to the arbitrator in later proceedings or facilitate pricing coordination for other seafood or in future crab seasons. Moreover, vertically integrated harvesters present similar concerns and should be denied access to this information out of a concern that they could share it with their affiliated processors.*

For these reasons, the Council may wish to carefully consider whether to recommend the creation of reports that could result in antitrust violations. Based on the Arnold and Porter memo, providing information on past arbitration results to processors that could influence future price offers is an antitrust concern.

Based on the Council's modification of this option in June and past guidance, the written report may be less of an anti-trust concern so long as the information provided by the contract arbitrator to a person that was not a part of the arbitration did not include the exchange of current pricing information or information could influence a harvester's or processor's final offer to the arbitrator in later proceedings or facilitate pricing coordination for other seafood or in future crab seasons.

In terms of the rationale for the decisions that was made by the arbitrator, it would need to be general enough so as not to disclose prices or terms that could allow pricing coordination by processors or impact future price offers. This portion of the written report has the potential to be the most problematic and may require the establishment of specific guidelines for addressing information on prices that influenced the outcome. For example, the rationale may not be allowed to indicate the price offered to harvesters was a percentage less than the lowest, mean, or median price offered by other processors. Indicating the price

offered, without giving any additional information of how it influenced a decision, may not provide the level of detail proponents of the rationale are seeking to better understand why their offer was not selected. However, the Council could recommend requiring a written report to include the arbitrator's rationale for the decision, to the extent that the information included in the report would not violate anti-trust laws.

Information that may be include as part of the rationale includes:

- **Factual background:** A clear, concise summary of the events and circumstances leading to the dispute.
- **Statement of claims and counterclaims:** A breakdown of what each party is seeking and why.
- **Application of law and contract:** An explanation of how relevant laws and the terms of the CR Program were applied to the facts.
- **Credibility determinations:** An assessment of witness credibility and expert testimony, which can be a crucial part of the decision-making process.
- **Reasoning and conclusion:** The logical steps the arbitrator took to arrive at the final decision, including why one party's arguments were accepted and the other's were rejected. Specific pricing information beyond that submitted by the two parties to that arbitration would be limited to the extent that it would not disclose information prohibited by antitrust law.

### 3.10.2.3 Option 3: Remove Requirement for Fishery Market Reports

Certain requirements are established for CVOs who hold Class A QS/IFQ and processors that hold PQS/IPQ, regardless of whether participants in the fishery initiate binding arbitration during a year. One regulation is the requirement to produce market reports for each CTR Program fishery that is anticipated to be open during that fishing year. Because the required market report submission dates are set before the determination of whether the stocks will support a fishery that crab fishing year, the arbitration system process must be conducted and the costs to collect and submit the required information must be incurred each year.

Four data collections are submitted annually:

- (1) Annual Arbitration Organization Report (compiled by each of the two arbitration organizations representing the processors and the harvesters<sup>14</sup> see template linked in footnote),
- (2) Market Report (analysis of the market for products of a specific crab fishery and reports on activities occurring within three months prior to its generation. The purpose of this report is to provide background information on each crab fishery, the products generated by each fishery, and position of those products in the marketplace; discuss the historical division of wholesale revenue; and provide the methods for predicting wholesale prices before the fishery occurs),
- (3) Non-Binding Price Formula Report (a pre-season report that is designed to serve as a starting point for negotiations between fishermen and processors, or as a starting point for a Contract Arbitrator in evaluating offers in an arbitration process. This report documents how each formula was developed), and

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<sup>14</sup> <https://s3.amazonaws.com/media.fisheries.noaa.gov/2020-11/Crab-Arbitration-Organization-Annual-Report-Template-AKRO.pdf?null=>

- (4) Cost Allocation Agreement (provides combined shared arbitration accounting costs since the Federal regulations require that the crab arbitration costs are shared equally between IPQ holders and Class A IFQ holders).

The shared arbitration system costs are outlined in an annual report submitted to NMFS and the Council by the Alaska Crab Processors Arbitration Organization (ACPAO) participants. Arbitration costs are divided equally between the harvesters and processors based on a landings fee structure.

As discussed under the No Action alternative, the estimated 2023/2024 cost to develop the Market Report and the price formula was \$49,000<sup>15</sup>. Eliminating the requirement to produce a Market Report for each fishery would eliminate the portion of that cost associated with the Market Report.

A “market analyst” and a “formula arbitrator” (who may be the same person), are jointly selected by the harvesting and processing sectors. develop a Market Report and Non-Binding Price Formula. The Market Report is intended to provide baseline information concerning the current market and provide information to help establish a reasonable price. The price formula is a pre-season report that specifies an ex-vessel price as a portion of the first wholesale price (after considering relevant information including the Market Report), to be used by participants to guide their negotiations. Neither the Market Report nor the formula price has any binding effect. Instead, they are intended to provide baseline information concerning the market and signal what may be considered a reasonable ex-vessel price. They are intended to serve as the starting point for price negotiations by members of the Arbitration Organizations. The Market Report and Non-Market Price Formula must be released at least 50 days before the season opening.

Both harvesters and processors supported removing this requirement at the December 2024 Council meeting and the Council selected it as part of its PPA during the June 2025 Council meeting. A representative of the harvest sector indicated that other published Market Reports (e.g., Uner Barry’s report) have been used to provide more timely market information for the negotiations. The industry organizations have access to those reports so costs would not increase.

### 3.10.2.4 Option 4: Remove Arbitration for Non-Performance

Option 4 would eliminate the option for IFQ and IPQ holders to independently initiate arbitration to enforce issues of non-performance. **The Council indicated that Option 4 only applies to non-performance and would not change regulations relative to quality disputes.** Both issues are addressed in the same regulatory section (50 CFR 680.20(h)(11)).

This option was proposed in the North Pacific Crab Association's December 2024 comment letter to the Council. As noted in that letter, entities eligible to hold IPQ may not know whether the economics of the crab fishing year will support crab processing operations when they must apply for IPQ. If IPQ holders cannot process the IFQ due to economic conditions, or they hold IPQ but do not operate a processing facility, and no crab processor operations are available to custom process the crab, they are still subject to contracts. This means they may be required to pay damages to a Class A IFQ holder for non-performance. This option is included to recognize the problem that Class A IFQ holders may be unable to deliver their IFQ crab to an IPQ holder because of economic conditions in the Crab Rationalization program that were unanticipated when the delivery contracts were established. As stated in the letter, the intention appears to be diminishing the penalty for an IPQ holder in situations where crab processing is not possible because a processor does not operate a crab processing facility or if the IPQ holder does operate a processing facility the economic losses of operating under a contract are too great.

Option 4 would result in the two parties with an intractable dispute over performance to either agree to arbitrate or use the civil court system to enforce contract terms, when necessary, when other methods of

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<sup>15</sup> <https://omb.report/icr/202402-0648-001/doc/139606500>

resolution fail. Discussions with knowledgeable members of the fishing industry indicated that arbitration has not been used to enforce contracts, but the option to use arbitration has been used as a backdrop in negotiations to come to a resolution by the parties. Removal of the requirement to use arbitration to settle performance disputes would not void contracts between IPQ holders to process crab, but it would broaden the options for settling performance disputes arising from the agreed-upon contract terms.

Under the current regulations, either IFQ or IPQ holders must (shall) use arbitration for dispute resolution to enforce contract terms as an alternative to going to court to resolve a dispute. The IFQ/IPQ holders with a dispute submit their argument to an approved contract arbitrator, who renders a binding decision. The contract arbitrator is selected from the list of persons submitted to NOAA Fisheries. The arbitrator chosen would hold hearings to consider the evidence from both sides. That evidence and the contract terms are used to make their decision. This decision is binding.

Removing the arbitration regulations would not prohibit the two parties from using arbitration to resolve the disputed contract terms, but both parties would need to agree to arbitrate. If not defined in regulation, arbitration costs could be fully levied on one party or divided by a set or arbitrator-determined method, depending on each particular agreement to arbitrate. These costs would no longer be allocated, paid, or collected under the regulations at 50 CFR 680.20.

Arbitration does not take place in a courtroom and generally offers a more informal setting, allowing the parties to present their case in a semi-formal atmosphere. Instead, it can take place virtually or in a selected meeting room. Often, arbitration cases are a less expensive and less intrusive way to settle a dispute over non-performance of contract terms. Lawyers are generally still involved in the arbitration process to ensure the parties are well represented.

Civil trials are often considered more expensive in terms of time and cost. However, the cost of a civil trial varies depending on the case's complexity. There are typically filing fees, attorney fees, document certification fees, record retrieval fees, expert witness fees, deposition fees, travel costs, and other miscellaneous fees and costs. The civil lawsuit filing fee is generally a small component of the total cost. Washington State filing fees typically range from \$83 to \$250, depending on the county and the case's specifics. It can also be higher if a jury demand is filed. Additionally, some counties may have additional fees for dispute resolution, administrative costs, etc. In Alaska, the civil lawsuit filing fee varies depending on the court level and the nature of the case. For formal civil cases, the District Court fee is \$150, and the Superior Court fee is \$250. The United States District Court, District of Alaska, also has a filing fee of \$405 for civil cases.

Civil trial could also require that persons less familiar with the crab fisheries and the relationships between harvesters and processors in the program (compared to arbitrators agreed to by the IFQ/IPQ holders) render judgments regarding non-performance. This could increase uncertainty regarding the court's decision.

The court in a contract dispute examines the contract, the parties' actions, and relevant evidence to determine if a breach occurred and, if so, what remedies are appropriate. The process typically begins with one of the parties to the contract determining that the other party has not met the contract terms. The plaintiff could then file a lawsuit in a civil court. The lawsuit would describe how the contract was breached and request specific damages or require the party to meet the contract's performance standard. The defendant in the lawsuit may file any counterclaims arising from the contract, and both parties may assert any defenses they may have. A lawsuit can be settled at anytime before resolution by the Court. Either party can ask the court for a decision on how the law applies to the facts of the case, if both parties agree on all relevant facts, by requesting summary judgment. The court would then accept the agreed evidence of the parties, hold a hearing at which the parties present their legal arguments on the case, and issue a decision resolving the case.

If the two parties do not agree on all relevant facts, they may gather evidence through depositions, witness testimony, and document requests. Relevant information is presented to the court as evidence for their position.

The judge then conducts a trial, where the parties present their evidence and arguments to a judge or jury. The court reviews the evidence, determines whether the plaintiff (and any counterclaimant) has proven their case (i.e., that the contract has not been fulfilled), and issues a judgment against the party found to be in breach of the contract. The court may award attorney's fees and other costs, requiring one party to pay some or all of the other's litigation costs.

The court may order various remedies to enforce the contract such as:

- ordering the party to perform the contract as agreed;
- compensating the plaintiff for the financial losses caused by the breach;
- canceling the contract and returning the parties to their pre-contract position;
- clarifying the parties' rights and obligations under the contract.

The outcome selected depends on the nature of the breach and the circumstances of the case, and the discretion of the judge and any jury. Reaching a judgment usually takes a number of months.

If there is no appeal after a judgment is issued, the judgment becomes final, and the parties must pay or comply with the judgment. If a losing party does not fulfill their duties under the judgement, the prevailing party can take steps to enforce the judgement, seeking further court orders to allow collection actions, financial inquiry and mandates to third parties, garnishing of wages or other income, seizure of property, or other enforcement remedies. Some actions, such as collecting assets from the breaching party or filing liens on property, may be permissible without additional court orders enforcing a final judgment.

If a party appeals the court's judgment, the judgment may be stayed until the appeal is resolved by an appellate court and, in some cases, a higher appellate court or supreme court. An appeal could result in the lower court's judgment being fully or partially upheld, reversed, and/or returned to the lower court for further proceedings. Additional attorney's fees and other costs may also be awarded on appeal. This appeal process can cause costs to multiply many times over, and can delay a final resolution of a case for years. A party can also use this additional cost as a means to seek concessions from the other in exchange for settling the appeal.

In the case of the CR Program fisheries, non-performance arbitration has never been utilized. The ability to arbitrate has been utilized as a negotiation tool on numerous occasions.<sup>16</sup> Under Option 4, if both parties did not agree to use arbitration, parties would have the option to file a civil suit. If only civil courts could be used to settle disputes, there is uncertainty regarding the judgment that will be rendered and a civil trial is more expensive (possibly by a significant amount). Since regulations do not define how the cost of the trial will be divided, such a change could benefit the party that has the greater ability to fund a lawsuit. If the defendant in the hearing cannot afford to fund the lawsuit and, as a result, fails to appear or respond to the lawsuit, the court may enter a default judgment against them. The court may then rule in favor of the plaintiff, and the defendant could be responsible for damages the plaintiff is seeking, as well as the plaintiff's attorney's fees and costs. To obtain those damages and expenses, collection actions could be taken, including freezing bank accounts and placing liens on property.

A discussion in the Advisory Panel also raised concerns about the timing of payments, given changes to the non-performance regulations. Concern was expressed that, if the case had to be resolved in court, payment to harvesters may be delayed longer than it would have been under the arbitration process. The delay would depend on the ability to assemble the necessary information for the hearing and securing a

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<sup>16</sup> Personnel communication with Jake Jacobsen (4/19/2025)

time slot on the court's docket. If the court has a heavy workload, it could delay the hearing and the resolution of the dispute, and payment to harvesters. Because harvesters have incurred costs to harvest the crab, payment delays could impact cash flow and the harvester's ability to remain current on their bills.

### **3.10.2.5 Option 5: Streamline the Information Submitted to NMFS**

The analysis of this option is presented in more detail under the Management and Enforcement section of this document (Section 3.12). Removal of regulations that are unnecessary for managing the CR Program complies with E.O. 14276. It will reduce the reporting and compliance burden on harvesters and processors required to submit the information annually. Cost reductions are dependent on other elements of this package, specifically, whether the Council recommends removing the requirement that a Market Report be prepared annually for each CR Program fishery that is projected to be opened to fishing. The cost of all the market reports was estimated to be less than \$49,000 based on the current number of open fisheries. This cost also includes generating the Price Formula. Costs are not separated to protect confidential data. The numbers reported are taken from the OMB Paperwork Reduction Act submission.

Removal of the regulations identified in the Management and Enforcement section is not expected to have any negative impact on harvesters or processors. Their reporting burden will be reduced. NMFS will not be negatively impacted because only reports and submissions that are determined to be unnecessary to manage the CR Program will be removed from the regulations.

### **3.10.3 Alternative 3**

Alternative 3 would clarify that IFQ and IPQ may be withdrawn after RAM accepts the applications for quota as complete. Current regulations explicitly state the requirements for submitting and accepting IFQ and IPQ applications. The regulations are silent on whether those applications may be withdrawn by request of the applicant, and any considerations that might apply to reviewing the request, such as the timeframe within which those withdrawals must be completed.

The ambiguity of the regulations requires NOAA Fisheries staff to determine on a case-by-case basis whether an application may be withdrawn. Not knowing the parameters of that decision process creates uncertainty for the IPQ holders that may wish to withdraw their applications after additional information regarding the fishery is available (e.g., the TAC), the other processors that would have the amount of IPQ they are allocated changed, the harvesters that had committed to deliver to the processor that withdraws an application, and RAM knowing when IPQ/IFQ holder's final allocations can be released.

The ambiguity of the regulations creates uncertainty and financial risk for the IPQ holders. If they cannot withdraw their application after the State establishes the TAC, they will have to decide whether to apply with imperfect information. They may risk operating at a loss if the TAC is too low or they may not apply for IPQ to avoid the risk. Not knowing if the application may be withdrawn could cause them to contact RAM, discuss the possibility of a withdrawal, and then wait to see if the request will be approved or denied. Similar requests could be made in other years, and it would not be guaranteed that the decision to allow the withdrawal would be consistently applied. If they are risk-averse and choose not to apply, but the TAC would have ultimately been enough to sustain their operations, both the IPQ holder as well as the IFQ holders may be adversely impacted by the loss of their engagement in that year.

Conversely, knowing the parameters of the application withdrawal process would allow the IPQ holders to make better and more informed decisions. Knowing whether IPQ applications may be withdrawn may allow other IPQ holders to better plan for how any IPQ application withdrawals will impact the IPQ they are allocated. While processors would not be allowed to coordinate this activity, the understanding that it is possible under certain conditions may allow strategic plans within a company to be formed.



Clarification of the IPQ/ IFQ application process could also impact Arbitration IFQ holders. This alternative would not necessarily encourage more withdrawn applications; although it would clarify that applications *may* be withdrawn. If this results in more IPQ holders choosing to withdraw applications subsequent to the announcement of the TAC, it will generally not benefit Arbitration IFQ holders. However, if the proposed alternative results in more PQS holders willing to apply for IPQ due to diminished risk, this may benefit Arbitration IFQ holders. Additionally, the proposed changes would also allow IFQ application to be withdrawn in the same time period. Thus, if harvesters are concerned about a limited pool of IPQ holders in a given year, they could also choose to withdraw their application. The availability of IPQ holders and processors in general also has implications for other A Class IFQ as well as B and C Class IFQ. Therefore, the extent to which this proposed action influences that could result in positive or negative impacts for other share types.

With the clarification of the applications process, Arbitration IFQ holders would have more information on how they would be impacted by IPQ holders withdrawing applications. The time between when the TACs are announced and when the IPQ withdrawal would be requested would be short. If an IPQ holder removes their application, harvesters may need to share match with a different processor than they traditionally had committed to. These share matches are facilitated through [sharematch.com](http://sharematch.com) and the regulations stating that

*“any time 120 hours (five days) after NMFS issues IFQ and IPQ for that crab QS fishery in that crab fishing year, holders of uncommitted Arbitration IFQ may choose to commit the delivery of harvests of crab to be made with that uncommitted Arbitration IFQ to an uncommitted IPQ holder. The issuance of IFQ and IPQ for a crab QS fishery occurs on the time and date that IFQ and IPQ amounts for that crab QS fishery are posted on the NMFS, Alaska Region website<sup>17</sup>.*

The difference between the time when the TAC is announced and when the season opens is the amount of time RAM would have to determine who has applied for IPQ and IFQ, issue the permits, and publish them on NMFS website. The options for withdrawing IFQ or IPQ are Option 1) 24 hours or Option 2) 48 hours after the TACs are issued and the Council has highlighted Option 2 as its PPA. IFQ holders can share-match any uncommitted A Class IFQ to an uncommitted IPQ holder for up to five days after the IPQ and IFQ amounts are issued and the process should be timed such that the end of the five days falls before or coincides with the start of the season.

Using the 2024 BSS fishery as an example, ADF&G announced the TAC on October 4<sup>th</sup>. The fishery was opened on October 15<sup>th</sup>. That year, RAM would have had about five days to determine the IPQ and IFQ allocations, issue the permits, and publish them on the NMFS website.

The option would also allow IFQ holders to withdraw their application during the same time frame. It is less likely that Arbitration IFQ holders or any IFQ would withdraw their applications. IFQ can be assigned to a cooperative and leased within cooperatives. Lease rates have been about 50 percent of the ex-vessel value for BSS and 65 percent for BBR (see Section 3.3). Given that leasing crab can generate an income stream with minimal expense, it is assumed that IFQ would be unlikely to withdraw their application.

If this option is not implemented and NMFS determines that an application may not be withdrawn, the PQS (QS) holder would be issued IPQ (IFQ) for that fishery based on their annual application. Focusing on the PQS holder, since it is anticipated that they would be most likely to use this option, they would then be subject to share matching and the requirement to perform under the share matching agreement. That would include purchasing crab equal to the amount of their IPQ holdings that were sharematched. The contract price could be negotiated and agreed to by the two parties, or it could be determined through arbitration if they were unable to reach an agreement. The IPQ holder would be required to purchase all of

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<sup>17</sup> <http://www.fakr.noaa.gov>

the crab delivered under the contract. However, the IFQ holder requirement to deliver all of the Class A shares they hold would only be necessary if the entire amount to be delivered is defined in the contract.

If an application was allowed to be withdrawn, as they have in the past, the other processors that chose not to withdraw their applications that would have the amount of IPQ they are allocated increased in proportion to the amount of IPQ withdrawn. The harvesters that had planned to deliver to the processor that withdraws an application would need to alter their business plan. RAM would also be required to make determinations on an ad hoc basis. Those decisions may not be consistent across years, depending on the person making the decision and the agency's opinion on allowing withdrawals under specific conditions. For example, NMFS staff may feel the withdrawal was made too late or there would be too few processors applying for IPQ. As noted earlier, if all processors withdraw their IPQ application during a year, Class A IFQ would not be issued. Such a scenario would impact the achievement of Optimal Yield in the fishery that year, unless the Council takes action to address those situations. Under Alternative 1, there would continue to be ambiguity in whether RAM may allow for a withdrawal of IFQ/IPQ applications and when those withdrawals could occur.

IPQ holders may be impacted differently depending on their particular situation. IPQ holders who hold ownership in a processing facility would take delivery of the crab, process the product, and market the product. IPQ holders that do not hold ownership in a processing facility would need to establish or utilize a pre-existing agreement with another entity to have the crab custom processed. Depending on whether the entity has loans to pay for the purchase of the PQS, custom processing contract costs, and the ex-vessel price negotiated, the IPQ holder may be required to operate at a loss to fulfill the contracts.

### **3.10.3.1 Community Impacts and Changes in Tax Revenue**

If this alternative does result in increased withdrawals of IPQ applications, it could impact the communities that are home to processors and the tax revenue derived by crab deliveries to those communities. The IPQ that would have been issued to that processor would be redistributed to the processors that did apply. If all the processors are in the same community or borough, the changes would be minimal. However, if the processor that withdrew its application was the only processor in a community, the impacts could be substantial. In that case, all the taxes derived from the purchase and processing of that crab species would be forgone, in the absence of agreements to compensate the community for lost taxes<sup>18</sup>. Communities are dependent on fish tax revenue to meet their annual budget and may need to reduce spending (cut services) or seek revenue from other funding sources.

As shown in Section 3.5, most of the processing in recent years has taken place in Dutch Harbor/Unalaska, Akutan or on floating processors. Last year, shorebased processing was only done in Dutch Harbor/Unalaska. Limited information is available on the location where floating processors operate throughout the year. Movement of IPQ between Dutch Harbor/Unalaska and Akutan will directly impact the tax revenues of those communities and communities that hold regionalized quota, unless other contracts between the communities address the movement of IPQ.

Taxes derived from fishing and processing are important to many Alaska communities. For example, BSS is reported to have generated revenue that supported about 60% of the St. Paul's budget<sup>19</sup> from 2018 through 2021. Various fish taxes in Adak accounted for about 40% of its budget in 2019<sup>20</sup>. These revenues have declined with the lost fishery closures, TAC reductions, and the loss of an active processor in recent years. Tax sharing agreements have mitigated some of the losses, but negotiating those contracts under

<sup>18</sup> <https://www.adak-ak.gov/media/2841> and

[https://www.ci.unalaska.ak.us/sites/default/files/fileattachments/Mayor%20and%20City%20Council/page/10360/01\\_moa\\_with\\_st\\_paul\\_on\\_north\\_region\\_bering\\_sea\\_snow\\_crab\\_2025.pdf](https://www.ci.unalaska.ak.us/sites/default/files/fileattachments/Mayor%20and%20City%20Council/page/10360/01_moa_with_st_paul_on_north_region_bering_sea_snow_crab_2025.pdf)

<sup>19</sup> <https://www.fisheries.noaa.gov/s3/2023-12/AK-Snow-Crab-Disaster-Request-Letter.pdf>

<sup>20</sup> <https://library.municode.com/ak/adak/munidocs/munidocs?nodeId=2f58d01450fe2>

tight timelines are difficult. Changing the regulations to withdraw IPQ applications are unlikely to change the amount of processing that takes place in communities like St Paul, Adak, and King Cove.

Municipalities and boroughs rely on revenue generated from CR Program fisheries including the BSS and BBR fisheries. A fishery disaster fund was established for the BSS and BBR fisheries to aid communities, processors, and harvesters affected by the disaster. The draft disaster relief report for the BSS crab fishery noted that landings and other economic activities related to the crab fisheries and the fishery disaster significantly reduced, and in some cases eliminated, crab fishery revenue sources. The state's Fishery Business tax rate is 3% for shore-based crab landings and is shared 50/50 with the state and municipalities/boroughs where the landings occur. If landings occur in the bounds of a municipality and borough, landing tax revenues are shared 50/50 between each entity. Some municipalities and boroughs levy an additional local raw fish tax at a rate of 2% to 3.5% depending on the location and species. ADF&G proposes a 6% allocation to affected municipalities and boroughs to help mitigate losses in fish tax and other economic losses due to the fishery disaster.

### 3.10.3.2 Impact on Processing Workers

In aggregate, the impact on processing workers is not expected to change dramatically if IPQ applications are allowed to be withdrawn, but distributional impacts may occur. The impact on individual workers would vary depending on whether the plant they work at processes more crab as a result of another PQS holder withdrawing their IPQ application. Plant workers traditionally value the opportunity for overtime and the additional compensation it offers. If the plant operator decides to withdraw its IPQ application and not process crab (not custom process other IPQ holder's crab) the production hours will be lost. The total lost wage opportunity will depend on the processors' portfolios across all fisheries.

### 3.10.3.3 Other Issues

The question has been asked at previous Council meetings, 'what happens if all IPQ holders withdraw their application for a fishery?' NOAA Fisheries staff have indicated that they are aware of this issue and the questions that industry has posed. This situation has not happened in the history of the CR Program and the CR Program regulations do not address this scenario. It was not contemplated when the CR Program was being developed. NMFS has raised concerns around the possibility of stranded Class A IFQ in the event of this market failure, due to the regulations requiring share-matching. **The Council may wish to consider developing recommendations now or in the future for how to support the full harvest of Class A IFQ if a scenario like this were to arise.**

Regulations at § [680.7\(a\)\(5\)](#) prohibit an Registered Crab Receiver (RCR) from receiving any crab harvested under a Class A IFQ permit unless the RCR holds unused IPQ for that crab QS fishery. This means that if there are no RCRs who hold uncommitted IPQ, then a legal landing of Class A IFQ cannot be made.

Additionally, Section [680.20\(h\)\(3\)\(iv\)](#) states that holders of uncommitted arbitration IFQ may choose to commit the delivery of crab with uncommitted Arbitration IFQ to an uncommitted IPQ holder. In contrast, any holder of uncommitted IPQ must accept all proposed Arbitration IFQ commitments, up to the amount of its uncommitted IPQ. If all holders of uncommitted IPQ withdraw their application and are not issued IPQ permits, then there would not be any holders with uncommitted IPQ. In this event, Arbitration IFQ that cannot be matched with IPQ would not be issued and 90 percent of the TAC associated with those shares would go unharvested.

From a technical and administrative standpoint, the permitting systems used to facilitate the CR Program are designed to calculate, monitor, and administer the program as created, which includes a share matching requirement for A shares. The system is not programmed to deviate from the standard business rules, which are designed not just for the issuance of quotas, share matching, and splits, but also for

monitoring use caps. It would take some time and resources to design and build a new system to monitor and account for crab quota if the system did not include share-matching. Adapting the current system on short notice is not feasible.

### **3.11 Summary of Costs**

The Office of Management and Budget (OMB) requires that NOAA Fisheries provide estimates of the costs to industry for submitting certain information to the Federal Government. OMB requires the estimates to be updated and submitted every three years under the Paperwork Reduction Act (PRA). The BSAI Crab fisheries PRA package was submitted on January 19, 2024<sup>21</sup>. Costs presented in the renewal package are in terms of both time and dollars.

Arbitration organizations also incur other costs to comply with regulations implemented to ensure the arbitration program is functional. For example, NMFS requires the Arbitration Organizations to enter a contract for the payment of the costs of arbitration but does not require notification or collect information regarding this contract (Cost Allocation Agreement).

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<sup>21</sup> OMB Control No. 0648-0516, Expiration Date: 10/31/2027

**Table 3-16 Current CR Program Data Submission Costs**

Information Collection	Total # of Annual Responses)	Total Hours	Total Annual Cost Burden
Data submission costs			
Arbitration Organization Report	2	12	\$4,200
Market Report	Depends on annual number of reports required	Time is not estimated but cost is based on factors defined in the contract. The reports are paid using funds provided by the Bering Sea Arbitration Organization and the Alaska Crab Processors Arbitration Organization	\$49,000 <sup>1</sup>
Non-binding Price Formula Report <sup>2</sup>			
Contract Arbitrator Report	0	n/a in years that no arbitration was conducted. Estimates are not available for years they were conducted. Requiring a written report is expected to increase cost.	n/a <sup>2</sup>
Other Arbitration Costs			
Contract Arbitrators	3	0	\$6,000 <sup>3</sup>
Cost Allocation Agreement	1	16	\$5,600 <sup>4</sup>
Arbitration Costs	Unknown	Depends on the number of arbitrations and their duration	May increase

<sup>1</sup>Cost is dependent on the number of market reports and non-binding price formula reports that must be produced. The number is determined by how many crab fisheries are opened to fishing during a crab fishing year. Costs presented in the table assume that reports would be generated for the EAG and WAG, BBR and Bering Sea Tanner crab (EBT and WBT), and the BSS fisheries.

<sup>2</sup>The contract arbitrator report cost is \$0, because in years when there are no arbitrations, there is no report submitted.

<sup>3</sup>This amount is paid in consideration of agreeing to serve as a potential arbitrator if needed. It does not include the costs associated with conducting arbitrations.

<sup>4</sup>Federal regulations for the CR Program require that the crab arbitration costs are shared equally between IPQ holders and Class A IFQ holders (processors pay half and fishermen pay half). The costs and contracts associated with this requirement are private, between the arbitration organizations.

There are other costs that are not expected to change based on the options considered in this amendment package. These include the cost of designing and maintaining the web-based share matching site, legal fees that are in addition to the actual cost of an arbitration or those previously listed, and insurance costs.

The costs of conducting an arbitration are not provided because they could vary depending on the individual circumstances and the type of arbitration. As noted earlier, the persons contracted to conduct arbitrations indicated that they anticipated the arbitration cost would increase, but could not provide an estimate. The person who has conducted past arbitrations notes that under the current structure, the proceedings have been relatively short, which has helped to reduce the cost.

### 3.12 Management and Enforcement Considerations

NMFS AKR staff presented a discussion paper<sup>22</sup> at the June 2025 Council meeting that addressed E.O. 14276 Restoring American Seafood Competitiveness. One section of that paper discussed the removal of unnecessary requirements for Alaska Crab Arbitration System reports.

*In response to the 2018 renewal of the authority to collect information for the Alaska Crab Arbitration System for the CR Program fisheries, a commenter noted that some information required for a complete annual arbitration organization report appears redundant. Section §§680.20(d)(2)(ii) and (iii) require submission of the amount of QS/IFQ or PQS/IPQ held by each member and QS, PQS, IFQ, and IPQ ownership information for the members. Neither arbitration organization currently submits this information with its annual report. The report is due May 1, but information on IFQ pounds is not available until October. NMFS has access to the information on IFQ pounds and detailed information on the organizations' members, so there is no need for some of this information to be submitted with the annual report. Additionally, NMFS recommends reviewing the need to annually submit the information listed in §680.20(d)(2) if this information has not changed. NMFS also recommends reviewing two other components of the arbitration system, the notifications and the market report, to determine if some requirements at §680.20 for these are no longer necessary, or could be revised. These issues could be added to the Crab Arbitration paper.*

Regulations at §680.20(d)(2) are presented in Table 3-17 with a discussion of whether submitting the information annually is necessary and whether it is available elsewhere. The current regulations require each Arbitration Organization to submit a complete annual Arbitration Organization report to NMFS.

The Seattle business license website shows some of the harvester's and processor's arbitration association's business license information and status. An example of the public information from the website is provided for the harvester's business license. The subset of public information from the business license application<sup>23</sup> does not provide all the information requested as part of the Arbitration Organization's annual report. For example, the public information does not include the names of all partners or corporate officers/directors and their titles.

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<sup>22</sup> Discussion Paper Review of Regulations under Executive Order 14276 Restoring American Seafood Competitiveness May 29, 2025.

<sup>23</sup> Application for a a business license in Seattle:  
<https://www.seattle.gov/documents/Departments/CityFinance/BusinessLicenseTax/BLTC%20Application%20Packet-2025%20rate%20-%20v4-2025.pdf>

**Table 3-17 Summary of Regulations at §§680.20(d)(2)**

Requirement	Necessary	Information available
(i) A copy of the business license of the Arbitration Organization;	Yes, to get detailed information that is not provided through the public website.	Using the harvesters organization as an example: Legal & Trade Name: ALASKA AFFILIATED CRAB HARVESTER ARBITRATION ASSOC Seattle Business License Tax Certificate Number: 581051 UBI Number: 6025242050010001 City Account Number: 0005810510587371 Address: 1191 2ND AVE # STE 1800 SEATTLE, WA 98101-2996 Phone: (206) 931-6305 Renewal Date: 12/31/2025
(ii) A statement identifying the members of the organization and the amount of Arbitration QS and Arbitration IFQ, Non-Arbitration QS and Non-Arbitration IFQ, or PQS and IPQ held by each member and represented by that Arbitration Organization;	Partial	NMFS has data on the amount of arbitration QS, arbitration IFQ, Non-Arbitration QS, and Non-Arbitration IFQ, or PQS and IPQ held by each member of an Arbitration Organization.  NMFS would still need an annual list of the Arbitration Organization's members.
(iii) QS, PQS, IFQ, and IPQ ownership information on the members of the organization;	No	NMFS has current ownership information. Transfers require that the buyer's and seller's NMFS ID is provided. The NMFS ID does not change when the ownership structure changes. Ownership information is submitted to NMFS separately when ownership structure changes.
(iv) Management organization information, including:		
(A) The bylaws of the Arbitration Organization;	Yes	This information would need to be collected annually or only when the bylaws change. NMFS would only know if the bylaws change if they are not collected annually.
(B) A list of key personnel of the management organization including, but not limited to, the board of directors, officers, representatives, and any managers;	Partial	This information would need to be collected separately if it differs from or is in addition to the information provided in the business license application.
(v) The name of the Arbitration Organization, permanent business mailing addresses, name of contact persons and additional contact information of the managing personnel for the Arbitration Organization, resumes of management personnel; and	Partial	Resumes are not included as part of the business license application.
(vi) A copy of all minutes of any meeting held by the Arbitration Organization or any members of the Arbitration Organization.	Yes	If this information is considered necessary, it would need to be collected annually.

Regulations at §680.20 reference the terms market analyst or market report over 50 times. Depending on the action the Council may take regarding the requirement that an annual market report be developed for each fishery, the language associated with those references will need to be eliminated or the language modified to indicate that the market report and hiring of a market analyst would not be required. For example, regulations at §680.20(e)(4) could be modified to state that:

*For each crab fishing year, QS holders who are members of Arbitration QS/IFQ Arbitration Organization(s) and PQS holders who are members of PQS/IPQ Arbitration Organization(s), by mutual agreement, will select ~~one Market Analyst~~, one Formula Arbitrator, and Contract Arbitrator(s) for each crab QS fishery. The number of Contract Arbitrators selected for each fishery will be subject to the mutual agreement of those Arbitration Organizations. The selection of the ~~Market Analyst and the Formula Arbitrator~~ must occur in time to ensure the ~~Market Report and non-binding price formula is~~ produced within the time line established in paragraphs (f)(4)(i) and (g)(2)(viii)(B) of this section.*

In addition to regulations that would need to be modified, other regulations could be removed based on the Council’s PPA (Table 3-18). A complete list of the regulations and how they would be modified will be provided in the proposed rule and will depend on the final actions taken by the Council in this proposed amendment package.

**Table 3-18 Regulations that could potentially be removed**

Regulation	Purpose
§680.20(c)(3)	Defined the date by which QS and PQS holders must have joined an Arbitration Organization in 2005
§680.20(e)(4)(iii)	States that the same person may be chosen for the positions of Market Analyst and Formula Arbitrator for a fishery. If only a formula arbitrator is selected annually, this section is unnecessary.
§680.20(f)	Addresses the roles and standards for the Market Analyst, as well as the process for producing the Market Report. The approximately 17 regulations outlined in that section could be removed if the Council recommends eliminating the requirement for an annual Market Report for each open fishery.
§680.20(e)(6)	Addressed a first-year implementation issue. It states that during 2005, the selection of and establishment of the contractual obligations of the Market Analyst, Formula Arbitrator, and Contract Arbitrator(s) as required under this section shall occur not later than September 1, 2005
§680.20(g)(2)(iii)(B)	§680.20(g)(2)(iii) states that the Non-Binding Price Formula may rely on any relevant information available to the Formula Arbitrator, including, but not limited to (B) information in the market report.
§680.20(h)(4)(ii)(B)	§680.20(h)(4)(ii) states that the Contract Arbitrator's decision may rely on any relevant information available to the Contract Arbitrator, including, but not limited to: (B) the Market Report for that fishery.

### 3.13 Affected Small Entities

The RFA recognizes and defines three kinds of small entities: 1) small businesses, 2) small non-profit organizations, and 3) small government jurisdictions. Small entities directly regulated by this action would be those subject to the arbitration system: those who hold Class A arbitration IFQ and IPQ holders. For purposes of RFA this can be approximated through gross revenues associated with harvesting vessels,



persons that use custom processing for their IPQ, or crab processing entities that meet the “small business” definition.

Under the RFA, businesses that are classified as primarily engaged in commercial fishing are considered small entities if they have combined annual gross receipts not in excess of \$11.0 million for all affiliated operations worldwide, regardless of the type of fishing operation (81 FR 4469; January 26, 2016). The types of entities evaluated under this small entity definition threshold are harvesting vessels and entities that utilized custom processing to process IPQ they hold.

If a vessel has a known affiliation with other vessels – through a business ownership or through a cooperative – these thresholds are measured against the small entity threshold based on the total gross revenues of all affiliated vessels. From 2020 to 2024, 70 vessels participated in the CR Program fishery, of those, 44 were active in 2024. Of the 44 active vessels in 2024, 13 would have been classified as small entities based on 2024 revenue being less than \$11 million if they had not been affiliated through ICE and membership in the harvesting Arbitration Organization. Because of those affiliations, they are not considered to meet the small entity definition.

When an entity that used custom processing to have crab they control processed has a known affiliation with other seafood businesses through business ownership, they are measured against the small entity threshold based on the total gross revenues (\$11 million) of all affiliated businesses. This measure was used for businesses that utilized custom processing because not all of these entities own a processing facility. From 2020 to 2024, 16 entities utilized custom processing arrangements. In 2024, 10 of the 16 entities utilized custom processing agreements to have their crab processed. Seven of those firms are defined as small entities.

The SBA’s final rule (81 FR 4469, February 26, 2016) modified the size standard for “seafood product preparation and packaging” (NAICS code 311710) that applies to seafood processors. SBA’s final rule modified the definition of a small entity operating as a seafood processor to include all entities that are independently owned and operated, not dominant in their field of operation, and have a combined annual employment of fewer than 750 employees. From 2020 to 2024, 12 processors actively processed CR Program crab. Three of the twelve were active in 2024. Only one of the three is considered a small entity based on combined annual employment.

**Table 3-19 CR Program Small Entity Summary**

<b>Entity class</b>	<b>2020-2024</b>	<b>2024 Total</b>	<b>2024 Small Entities</b>
<i>Vessels</i>	<i>70</i>	<i>44</i>	<i>0</i>
<i>Businesses Using Custom Processing</i>	<i>16</i>	<i>10</i>	<i>7</i>
<i>Crab Processors</i>	<i>12</i>	<i>3</i>	<i>1</i>
<b>Total</b>	<b>98</b>	<b>57</b>	<b>8</b>

*Source: ADFG/CFEC Fish Tickets, data compiled by AKFIN in Comprehensive\_FT*

### **3.14 Summation of the Alternatives with Respect to Net Benefit to the Nation**

RIRs are required under E.O. 12866 to include an analysis of the net benefits of the proposed action to the Nation. Net benefits to the Nation are the sum of consumer and producer surplus in the U.S. economy. Cost benefit analyses (CBA) are typically used to estimate the benefits.

This section compares the expected benefits and costs of an action. When all benefits and costs can be quantified and expressed in monetary units, the analysis provides decision makers with information to identify the alternative that generates the largest net benefit to the U.S. When it is not possible to express benefits and costs in monetary terms, Circular A-4 (2003) directs the analysis to rely on a qualitative assessment of the costs and benefits.

The RIR provides information on the expected changes in costs and benefits for the proposed alternatives and options, and when appropriate, discusses the uncertainty around those potential changes. For example, the option to define the withdrawal of IFQ/IPQ could increase the uncertainty of who will be issued IFQ/IPQ based on initial applications, but could reduce the potential for net losses for some firms. Depending on who withdraws their application and the pool of IFQ/IPQ holders that remain, the net benefits to the Nation could either increase or decrease.

Changes in employment and most tax revenues are not economic benefits within a BCA, but are important to various individuals and communities they impact. The former is an example of an economic impact, and the latter is a transfer payment within the economy.

For consistency in accounting, impacts categorized as potential costs are related to the investment or inputs required to achieve the goals of the action. This means impacts could represent either cost savings or additional costs as a result of the action.

Overall, the expected impact of the alternatives and options being considered relative to the No Action alternative is expected to be small. The one situation where there is the potential for larger changes in net benefits to the Nation would be under Alternative 3, but only if all IPQ holders withdrew their applications and Class A quota that is subject to share matching was not issued that year. The same situation could occur if no IPQ holders applied during the initial application period. However, this outcome is less likely due to the risk that IPQ would forgo a profitable fishing season if TACs are higher or economic conditions are better than initially anticipated.

**Table 3-20 Changes in Net Benefits to the Nation**

Proposed Action	Expected Change in Net Benefits to the Nation
<p>Alternative 2, Option 1: Remove the requirement to use LBO arbitration</p>	<p>If LBO arbitration is no longer required, increases in costs per arbitration for harvesters and processors are expected, but the overall change in net benefits to the Nation is expected to be unchanged or small. Costs could increase somewhat for both harvesters and processors to participate in the modified arbitration process. These costs would depend on the additional time that would be required of the arbitrator to make a determination and consider all the facts, since the arbitrators are paid an hourly rate for their services. These costs would be benefits to U.S. firms that are paid to conduct the arbitrations.</p> <p>To the extent the arbitrator would select an outcome different from what would have been chosen under the status quo, the producer surplus realized by the harvesters and processors would change in opposite directions. However, because world crab markets generally dictates the first wholesale value, this is not expected to change due to this action. Thus, the net national benefit change is expected to be about zero.</p>
<p>Alternative 2, Option 2 Require a written report from the arbitrator</p>	<p>Producing a written report is expected to increase the costs of arbitration due to the time required to compile and write the report. Writing the report will require the arbitrator to document and justify the rationale behind the decision, which may increase scrutiny of their decisions. The time needed to produce the report may vary depending on the complexity of the case, the range of positions submitted, and the materials provided that informed the decision.</p> <p>The increased cost to the harvesters and processors would be revenue to the arbitrators. Therefore, the change in net benefits to the Nation is expected to be small or unchanged.</p>
<p>Alternative 2, Option 3 Remove the Market Report requirement</p>	<p>Removing the requirement that a market report be produced for each CR Program fishery that is opened during a fishing year is expected to reduce costs and increase the producer surplus for harvesters and processors. The reduction in cost is shared equally by the Class A IFQ harvesters and the processors that hold IPQ. The overall reduction in cost, given the fisheries that are currently open to fishing each year, would be \$20,000 or less for the harvesters and processors. The firm that produces the market report would lose that annual revenue. The total change in net benefits to the Nation is expected to be small or unchanged.</p>
<p>Alternative 2, Option 4 Remove the arbitration requirement for non-performance disputes</p>	<p>This action would not invalidate existing contracts, but could change how they are enforced, which may increase the costs of settling those disputes. The option would increase the potential for non-performance disputes to be settled in court at a higher cost, rather than through arbitration. Changes in court costs cannot be accurately estimated, but they have the potential to be considerably higher and could negatively impact a party with fewer financial resources.</p> <p>The selection of this option may reduce producer surplus for both the harvesters and processors to pay attorney fees and court costs. Increased attorney fees will benefit their firms. Overall, this option has the potential to reduce net benefits to the Nation.</p>
<p>Alternative 2, Option 5 Remove unnecessary data submissions to NMFS</p>	<p>Removing the requirements to submit unnecessary data that NMFS already has access to will increase net benefits to the Nation by increasing producer surplus for harvesters and processors. The increase in net benefits to the Nation will be equal to the cost of collecting, organizing, and submitting the data. Costs associated with submitting the data are described in Section 3.11.</p>

Proposed Action	Expected Change in Net Benefits to the Nation
<p>Alternative 3            Allow IFQ/IPQ applications to be withdrawn up to 48 hours after the TAC is announced</p>	<p>The impact of Alternative 3 on net benefits to the Nation cannot be determined with certainty. This option is anticipated to be primarily used by IPQ holders who would lose money if they are required to purchase crab under low TACs or other unexpected market or cost conditions when the application was initially submitted, as there is little to no benefit to IFQ holders in withdrawing their applications. The impact of IPQ holders utilizing this alternative includes:</p> <ol style="list-style-type: none"> <li>1) Protecting IPQ holders who withdraw their applications from being required to perform in a fishery when they anticipate that the economic conditions will result in a reduction of their producer surplus.</li> <li>2) Shifting the burden to perform to IPQ holders that do not withdraw their application, increasing the potential for those entities to reduce producer surplus.</li> </ol> <p>Under current regulations, if all IPQ holders withdraw their application, the Class A IFQ and IPQ subject to share matching would not be issued. This result would reduce the producer surplus of harvesters and the consumer surplus for the U.S. consumers. These decreases in net benefits to the Nation are unlikely to be offset by changes in processors' producer surplus.</p>

## 4 Magnuson-Stevens Act and FMP Considerations

### 4.1 Magnuson-Stevens Act National Standards

In recommending a preferred alternative at final action, the Council must consider how to balance the national standards. *The information in this section is based on the Council's PPA and may be modified after the Council takes final action.*

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

The CR Program is designed with safeguards that impose substantial penalties for persons harvesting more than their allocated amount. As a result, the CR Program has been successful in preventing overfishing of the established TACs. However, there continues to be concerns regarding the health of some crab stocks some of which have been closed in recent years.

Alternative 3 would establish regulations for the withdrawal of IPQ and IFQ applications after they have been submitted and accepted by the NMFS Alaska Region. If all processors were to withdraw their application for IPQ, based on their individual analysis of the economic conditions of the fishery after the TAC is announced, optimum yield may not be achieved in that year. This is most likely to be the case if the size of the TAC or economics of the fishery lead to unviable operations for processors in that year. . This result could also occur if PQS holder choose not to apply for IPQ during the annual application process.

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

Management of the BSAI crab fisheries is described in Section 1.3. The shared management by the State and Federal agencies is based on the best available scientific information.

***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 CR Program manages individual crab stocks throughout their range in the BSAI. The proposed actions would not change how the crab stocks are managed.

***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.*

When the CR Program was developed, it established allocations of harvesting and processing shares as directed by the U.S. Congress. Those allocations were enacted to be fair and equitable. Harvesting allocations included Captain shares to recognize persons who participated in the fishery as a crab vessel captain, but were not necessarily the vessel owner.

Allocations are based on a quota share system where the TAC, which is calculated to promote conservation, is divided between qualifying members of the harvesting sector. Because quota holders know at the start of the fishing year how much of each crab species they are allowed to harvest, it reduces the need to set more pots than necessary. This may reduce discard mortality, especially in frigid weather. It may also reduce the number of lost pots, helping reduce ghost fishing.

The CR Program also includes excessive harvesting and processing limits. These regulations are calculated based on what was determined to be an excessive share by the Secretary of Commerce in consultation with the NPFMC. The excessive share limit calculation currently excludes custom

processing. This determination was made, in part, because the custom processors are providing a service for the quota holders and do not own or control the quota themselves.

**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 CR Program was developed because the BSAI crab fisheries were determined to be overcapitalized. There were too many vessels harvesting the available GHL, and the season was compressed. Proposed changes to the CR Program consider the efficiency of utilization of the CR Program fisheries in terms of reducing regulations that are no longer necessary. These changes comply with Federal initiatives to reduce the regulatory burden.

**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 CR Program took into account variation in the BSAI crab fisheries by only including fisheries that were determined to benefit from the catch share program. The proposed amendment package allows for contingencies in the fisheries by clarifying the regulations to allow persons who submitted a complete and accepted IFQ or IPQ application to NMFS to withdraw the application within 48 hours after the TAC is announced.

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

Proposed amendments directly address management measures that could be removed to minimize costs. Removal of the regulations regarding the annual development of a Market Report would not negatively impact the industry's ability to access timely and accurate information needed under the Binding Arbitration system. The review of regulations under Alternative 2, Option 5 will allow for the removal of regulations that are not necessary or require the submission of information to NMFS that they already have.

**National Standard 8** — *Conservation and management measures shall, consistent with the conservation requirements of this Act (including the prevention of overfishing and rebuilding of overfished stocks), take into account the importance of fishery resources to fishing communities by utilizing economic and social data that meet the requirements of National Standard 2, in order to (A) provide for the sustained participation of such communities, and (B) to the extent practicable, minimize adverse economic impacts on such communities.*

The CR Program was developed with specific components to protect fishing communities. For example, the regional landings requirements help protect vulnerable communities that have historic participation in the BSAI crab fisheries. In recent years, when economic conditions have resulted in the regionalized crab from being delivered to communities protected by the regional delivery requirements, the regulations have fostered negotiations that allowed those communities to receive some compensation for lost tax revenues that would have been realized if the landings had been made in the community. Those negotiations must be completed in a short time window. Those negotiations may become more complicated as the number of communities involved increases. Nothing in this proposed amendment package would alter the regional landings requirements.

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

There is nothing in this proposed amendment package that would alter the current conservation and management measures that are in place to minimize crab bycatch and, when it cannot be avoided, minimize its mortality.

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

Safety at sea has improved under the CR Program. None of the amendments under consideration would alter the changes in the fisheries that have led to that improvement.

## **4.2 Section 303(a)(9) Fisheries Impact Statement**

Section 303(a)(9) of the Magnuson-Stevens Act requires that a fishery impact statement be prepared for each FMP or FMP amendment. A fishery impact statement is required to assess, specify, and analyze the likely effects, if any, including the cumulative conservation, economic, and social impacts, of the conservation and management measures on, and possible mitigation measures for (a) participants in the fisheries and fishing communities affected by the plan amendment; (b) participants in the fisheries conducted in adjacent areas under the authority of another Council; and (c) the safety of human life at sea, including whether and to what extent such measures may affect the safety of participants in the fishery.

The proposed action affects the regulations governing the arbitration program in the CR Fishery and the withdrawal of an IFQ/IPQ application after NOAA Fisheries has accepted it. Impacts on participants in fisheries conducted in adjacent areas under the jurisdiction of other Councils are not anticipated as a result of this action. The RIR prepared for this plan amendment constitutes the fishery impact statement. The likely effects of the proposed action are analyzed and described throughout the RIR. Based on the information reported in this section, there is no need to update the Fishery Impact Statement included in the FMP.

## **4.3 Council's Ecosystem Vision Statement**

In February 2014, the Council adopted, as Council policy, the following:

### **Ecosystem Approach for the North Pacific Fishery Management Council**

#### *Value Statement*

The Gulf of Alaska, Bering Sea, and Aleutian Islands are some of the most biologically productive and unique marine ecosystems in the world, supporting globally significant populations of marine mammals, seabirds, fish, and shellfish. This region produces over half the nation's seafood and supports robust fishing communities, recreational fisheries, and a subsistence way of life. The Arctic ecosystem is a dynamic environment that is experiencing an unprecedented rate of loss of sea ice and other effects of climate change, resulting in elevated levels of risk and uncertainty. The North Pacific Fishery Management Council has an important stewardship responsibility for these resources, their productivity, and their sustainability for future generations.

#### *Vision Statement*

The Council envisions sustainable fisheries that provide benefits for harvesters, processors, recreational and subsistence users, and fishing communities, which (1) are maintained by healthy, productive, biodiverse, resilient marine ecosystems that support a range of services; (2) support robust populations of marine species at all trophic levels, including marine mammals and seabirds; and (3) are managed using a precautionary, transparent, and inclusive process that allows for analyses of tradeoffs, accounts for changing conditions, and mitigates threats.

#### *Implementation Strategy*

The Council intends that fishery management explicitly take into account environmental variability and uncertainty, changes and trends in climate and oceanographic conditions, fluctuations in productivity for managed species and associated ecosystem components, such as habitats and non-managed species, and relationships between marine species. Implementation will

be responsive to changes in the ecosystem and our understanding of those dynamics, incorporate the best available science (including local and traditional knowledge), and engage scientists, managers, and the public.

The vision statement shall be given effect through all of the Council's work, including long-term planning initiatives, fishery management actions, and science planning to support ecosystem-based fishery management.

In considering this action, the Council is being consistent with its ecosystem approach policy. The proposed action will not change the assessment or management process for BSAI crab and it will not affect the way CR Program fisheries are prosecuted. This action is focused on protocols within the Arbitration System, including what types of reports are necessary, whether binding arbitration would be required under non-performance and the withdrawal of an IFQ/IPQ application after NOAA Fisheries has accepted it.



## **5 Preparers and Persons Consulted**

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## **7 Appendix 1: Arnold and Porter Memo (separate attachment)**