Tanner Crab Custom Processing Exemption Discussion Paper

April 2017[1]

1 Introduction

At its December 2015 meeting, the North Pacific Fishery Management Council (Council) determined that the unforeseen and recent exit of one *Chionoecetes bairdi* Tanner crab processor from processing caused the remaining processors currently operating in the Bering Sea (BS) region to be constrained by individual processing quota (IPQ) use cap in the *C. bairdi* fisheries. With the loss of this unique, unaffiliated processor, less than the required minimum of four unique and unaffiliated processors remained active in the *C. bairdi* Tanner crab fisheries; therefore, only 90 percent of the Class A individual fishing quota (IFQ) could have been delivered to, and only 90 percent of the IPQ could have been used at, facilities owned and operated by the remaining processors—Maruha-Nichiro Corporation (Alyeska, Peter Pan, and Westword Seafoods), Trident Seafoods, and Nissui Global (UniSea Seafoods)—without exceeding the IPQ use cap. The remaining 10 percent of the Eastern Bering Sea tanner (EBT) Class A IFQ/IPQ and Western Bering Sea tanner (WBT) Class A IFQ/IPQ would have had to be delivered to processing facilities unaffiliated with these three processors, or left unharvested. Based on these conditions and the low probability that a new, unaffiliated processor would enter the fisheries at that time, the Council requested that NMFS promulgate an emergency rule to temporarily allow a custom processing exemption to the IPQ use cap for the 2015/2016 crab fishing season in the EBT and WBT crab fisheries. Without emergency action, 10 percent of the Tanner crab Class A IFQ likely would have been stranded (826,322 pounds of EBT and 615,489 pounds of WBT) for the 2015/2016 crab fishing season.

The Council and NMFS considered a range of factors before the Council recommended and NMFS implemented the emergency rule. First, the Council and NMFS considered whether developing or using an alternative shorebased processing facility in the BS that was not affiliated with the Maruha-Nichiro Corporation, Trident Seafoods, or UniSea Seafoods would be a feasible processing option for the remainder of the 2015/2016 crab fishing season. At the time, there was no unaffiliated company that expressed interest in entering the fisheries. Additionally, the Council and NMFS determined that the

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regulatory closure date for the EBT and WBT crab fisheries provided very limited time for IPQ holders to find an alternative processing facility.

Second, the Council and NMFS also considered whether alternative shoreside processing facilities not affiliated with the Maruha-Nichiro Corporation, Trident Seafoods, or UniSea Seafoods, such as facilities in Kodiak, AK, could be used. The Council and NMFS concluded that transporting EBT or WBT crab to those locations would result in longer trips with increased fuel and operating costs for harvesters, result in lost fishing days while the crab are being transported, and increase the potential for deadloss (death) of crab.

Third, the Council and NMFS considered whether the use of a stationary floating crab processor would be a feasible processing option for the remainder of the 2015/2016 crab fishing season. At the time, there was no unaffiliated company that expressed interest in entering the fisheries. The Council and NMFS concluded that establishing a contract with a stationary floating crab processor, outfitting the vessel, and establishing a market for delivered Class A IFQ EBT and WBT crab in the short amount of time available before the end of the fisheries during the 2015/2016 crab fishing season would present many of the same logistical challenges that are present for alternative shoreside processing facilities. These factors made it highly unlikely that a new, unaffiliated processor would enter the fisheries using a floating processor.

Finally, the Council and NMFS determined that any IPQ holder hoping to secure an alternative shoreside processing facility or a stationary floating crab processor during the 2015/2016 crab fishing season would have had very little negotiating leverage with any unaffiliated processing facility given the amount of time remaining for the EBT and WBT crab fishing season. That lack of negotiating leverage in establishing delivery terms and conditions could impose additional costs on IPQ holders and harvesters that may make such deliveries uneconomical. The Council and NMFS concluded that there did not appear to be any viable delivery options available for 10 percent of the EBT and WBT Class A IFQ during the remainder of the 2015/2016 crab fishing season.

On January 26, 2016, NMFS published an emergency rule that temporarily exempted EBT and WBT IPQ crab that was custom processed at a facility through contractual arrangements with the facility owners from being applied against the IPQ use cap of the facility owners. The temporary rule expired on June 30, 2016. Additional details on the factors considered by the Council and NMFS are described in the preamble to the emergency rule (81 FR 4206, January 26, 2016,).

In recommending the emergency rule, the Council recognized that the processor consolidation that had occurred in the *C. bairdi* crab fisheries would likely continue to constrain processors operating in the *C. bairdi* crab fisheries after the emergency rule expires. To address this situation, the Council initiated an amendment to the Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs (FMP) and Federal regulations to add BS *C. bairdi* crab to the list of species for which custom processing arrangements do not count against the IPQ use cap.

The Council scheduled initial review for its June 2016 meeting. During the April 2016 Council meeting, NMFS advised the Council that its current schedule of final action in October or December 2016 would not provide sufficient time for NMFS to complete proposed and final rulemaking to permanently exempt the *C. bairdi* crab fisheries from the IPQ use cap for the 2016/2017 *C. bairdi* crab fishing season before it ended on March 31, 2017. As a result, at the April 2016 meeting, the Council voted to schedule both initial review and final action on permanently exempting the *C. bairdi* Tanner crab fisheries from IPQ use cap for the June 2016 meeting.

The Council developed the following purpose and need statement:

> C. bairdi *Tanner crab processing facilities have consolidated to the extent that the IPQ use caps are constraining the ability of the remaining processing sector to process the entire allocation of Tanner crab under the caps. This prevents the portion of the* C. bairdi

Tanner crab allocation in excess of the caps (i.e., 10 percent) from being harvested, because insufficient processing capacity, relative to the use caps, is available. In the 2015/2016 Tanner crab season, the gross ex-vessel value for 10 percent of the Class A individual fishing quota (IFQ) for eastern C. bairdi *Tanner (EBT) and Western C. bairdi Tanner (WBT) crab was estimated at $3.4 million. Without relief from the restriction, harvesters, processors, and communities could lose the potential benefits from the foregone portion of this crab catch. Management objectives would include providing relief from the processing use caps, so that the full* C. bairdi *crab allocation can be harvested, processed, and delivered to consumer markets, worldwide.*

At its June 2016 meeting, the Council took final action to exempt custom processing arrangements for BS *C. bairdi* Tanner crab from IPQ use cap. The Council's preferred alternative was directly responsive to the situation in the *C. bairdi* crab fisheries that occurred during the 2015/2016 crab fishing season and that the Council determined is likely to persist for the foreseeable future. The Council's preferred alternative complemented and followed the management approach the Council recommended and NMFS implemented under the emergency rule (81 FR 4206, January 26, 2016) that was effective for the 2015/2016 crab fishing season. The Council noted that the analysis detailed the limited processing capacity now available in the *C. bairdi* Tanner crab fisheries, and crab fisheries in general. Amendment 47 to the FMP was approved on December 6, 2016. NMFS published the final rule with implementing regulations for Amendment 47 on December 20, 2016 (81 FR 92697).

In addition to taking final action on Amendment 47 to the FMP in June 2016, the Council tasked staff to evaluate additional solutions to the *C. bairdi* crab IPQ use cap issue. Specifically, it requested analysis of three options: 1) raise the *C. bairdi* crab IPQ use cap to 40 percent; 2) convert Class A IFQ shares to Class B IFQ shares; and 3) apply exemption only in years when capacity to process is not sufficient (i.e., when there are less than four processors). This discussion paper evaluates these options under a scenario where Amendment 47 was repealed and one of these options would replace it.

2 Background

Nine Bering Sea and Aleutian Islands (BSAI) crab fisheries are managed under the Crab Rationalization (CR) Program, which was implemented on March 2, 2005 (70 FR 10174). Under the CR Program, holders of License Limitation Program (LLP) licenses endorsed for a crab fishery were issued quota shares (QS), which are long term shares, based on their qualifying harvest histories in that crab fishery. As part of the CR Program, NMFS issued four types of QS: 1) catcher vessel owner (CVO) QS, assigned to holders of LLP licenses who delivered their catch onshore or to stationary floating crab processors; 2) catcher/processor vessel owner (CPO) QS, assigned to LLP holders that harvested and processed their catch at sea; 3) catcher/processor crew (CPC) QS, issued to captains and crew on board catcher/processor vessels ; and 4) catcher vessel crew (CVC) QS, issued to captains and crew on board catcher vessels. Each year, the QS holder may receive an exclusive harvest privilege for a portion of the annual total allowable catch (TAC), called individual fishing quota (IFQ). The size of each annual IFQ allocation is based on the amount of QS held in relation to the QS pool in the fishery. For example, a person holding 1 percent of the QS pool would receive IFQ to harvest 1 percent of the annual TAC in the fishery.

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

Class A IFQ with the total pounds of IPQ issued in each crab fishery. CVC and CPC IFQ are also not required to be delivered to a specific processor with IPQ.

C. bairdi crab are managed as two separate fisheries, east and west of 166° W longitude, and the State of Alaska sets a separate TAC for each area. The *C. bairdi* crab fisheries were closed between 1996/1997 and 2004/2005, as a result of conservation concerns regarding depressed stock status (NPFMC 2015). Since these were the qualifying years for PQS issuance, the issuance of PQS for *C. bairdi* was based on the processing history in the BS *C. opilio* snow crab fishery. Prior to the qualifying years, both BS *C. opilio* snow crab and BS *C. bairdi* Tanner crab were harvested together.

The *C. bairdi* fisheries reopened for the 2005/2006 crab fishing season. The fisheries harvested on average 70 percent of the EBT IFQ from the 2005/2006 through 2009/2010 crab fishing seasons, and 32 percent of the WBT IFQ from the 2005/2006 and 2008/2009 crab fishing seasons (**Table 2-1**). The number of participating vessels averaged 24 for EBT and 30 for WBT during these periods. For the 2010/2011 through 2012/2013 crab fishing seasons, the State of Alaska closed directed commercial fishing for *C. bairdi* crab due to estimated female stock abundance being below thresholds adopted in the state harvest strategy (NMFS 2015). However, these thresholds were met in the fall of 2013 and the directed fisheries were opened in 2013/2014 (NMFS 2015). Between the 2013/2014 crab fishing season and the end of the 2015/2016 crab fishing season, the fisheries harvested on average 100 percent of the EBT IFQ and 84 percent of the WBT IFQ. During that same period, the number of vessels that participated averaged 40 in the EBT and 57 in the WBT. For the 2016/2017 crab fishing season, the State of Alaska again closed directed commercial fishing for *C. bairdi* crab, due to estimated female stock abundance being below thresholds adopted in the state harvest strategy.

Table 2-1 Eastern BS and Western BS *C. bairdi* IFQ, CDQ, TAC, catch, vessel numbers, and crab fishing season from 2005/2006 through 2016/2017.

Fishery	Season	IFQ (lbs)	CDQ (lbs)	TAC (lbs)	Total IFQ harvest (lbs)	%of IFQ harvested	Vessels	Season
Eastern BS Tanner crab	2005 - 2006	closed	closed	closed	closed	closed	closed	closed
	2006 - 2007	1,687,500	187,500	1,875,000	1,267,106	75	37	Oct 15, 2006 - Mar 31, 2007
	2007 - 2008	3,100,500	344,500	3,445,000	1,439,435	46	20	Oct 15, 2007 - Mar 31, 2008
	2008 - 2009	2,486,700	276,300	2,763,000	1,553,584	62	21	Oct 15, 2008 - Mar 31, 2009
	2009 - 2010	1,215,000	135,000	1,350,000	1,189,573	98	17	Oct 15, 2009 - Mar 31, 2010
	2010 - 2011	closed	closed	closed	closed	closed	closed	closed
	2011 - 2012	closed	closed	closed	closed	closed	closed	closed
	2012 - 2013	closed	closed	closed	closed	closed	closed	closed
	2013 - 2014	1,316,700	146,300	1,463,000	1,310,068	99	30	Oct 15, 2013 - Mar 31, 2014
	2014 - 2015	7,632,000	848,000	8,480,000	7,602,659	100	41	Oct 15, 2014 - Mar 31, 2015
	2015 - 2016	10,144,800	1,127,200	11,272,000	10,138,304	100	49	Oct 15, 2015 - Mar 31, 2016
	2016 - 2017	closed	closed	closed	closed	closed	closed	closed
Western BS Tanner crab	2005 - 2006	1,458,000	162,000	1,620,000	952,887	65	43	Oct 15, 2005 - Mar 31, 2006
	2006 - 2007	984,600	109,400	1,094,000	633,910	64	36	Oct 15, 2006 - Mar 31, 2007
	2007 - 2008	1,958,400	217,600	2,176,000	467,136	24	27	Oct 15, 2007 - Mar 31, 2008
	2008 - 2009	1,383,300	153,700	1,537,000	108,368	8	27	Oct 15, 2008 - Mar 31, 2009
	2009 - 2010	closed	closed	closed	closed	closed	closed	closed
	2010 - 2011	closed	closed	closed	closed	closed	closed	closed
	2011 - 2012	closed	closed	closed	closed	closed	closed	closed
	2012 - 2013	closed	closed	closed	closed	closed	closed	closed
	2013 - 2014	1,480,500	164,500	1,645,000	1,202,887	81	58	Oct 15, 2013 - Mar 31, 2014
	2014 - 2015	5,962,500	662,500	6,625,000	4,638,718	78	56	Oct 15, 2014 - Mar 31, 2015
	2015 - 2016	7,556,400	839,600	8,396,000	7,539,381	100	56	Oct 15, 2015 - Mar 31, 2016
	2016 - 2017	closed	closed	closed	closed	closed	closed	closed

Source: NMFS and EBT_WBT_VES(03-23)

Unlike the QS and PQS issued for most other crab fisheries, the QS and PQS issued for the EBT and WBT fisheries are not subject to regional delivery requirements, commonly known as regionalization. Therefore, the Class A IFQ that results from EBT and WBT QS, and the IPQ that results from EBT and

WBT PQS are not restricted for delivery and can be delivered to any registered crab receiver (RCR). RCRs include shoreside processors, stationary floating processors, catcher/processors, entities holding PQS with custom processing agreements with other shoreside processors, and community development quota groups or their subsidiaries holding PQS. In addition, the PQS and resulting IPQ issued for the EBT and WBT crab fisheries are not subject to a right of first refusal (ROFR) provision.

Because the EBT and WBT crab fisheries are not subject to regionalization or ROFR provisions, crab harvested under a Class A IFQ permit in these fisheries can be delivered to a range of processors in a broad geographic area more easily than in crab fisheries subject to regionalization and ROFR provisions. As noted in the regulatory impact review (RIR) for the CR Program, the EBT and WBT crab fisheries were exempted from regionalization and ROFR provisions because these fisheries had been and would likely continue to be conducted primarily as a concurrent fishery with the regionalized Bristol Bay red king crab and BS snow crab (*C. opilio*) fisheries, making the regional designation of *C. bairdi* crab landings unnecessary (NMFS 2004).

When the Council recommended the CR Program, it expressed concern about the potential for excessive consolidation of PQS, and the resulting annual IPQ. The RIR for the CR Program noted that, contrary to the intent of the PQS provisions, custom processing could create an opportunity for persons to buy crab processing rights without having a plant to actually process crab (i.e., non-participatory ownership of PQS) (NMFS 2004). These processing share owners could then "lease" the rights to process crab to processors with the physical capacity through a custom processing arrangement. To address this concern, the CR Program limits the amount of PQS that a person can hold, the amount of IPQ that a person can use, and the amount of IPQ that can be processed at a given facility.

In most of the nine BSAI crab fisheries under the CR Program, including EBT and WBT, a person is limited to holding no more than 30 percent of the PQS initially issued in the fishery and using no more than the amount of IPQ resulting from 30 percent of the initially issued PQS in a given fishery, with a limited exemption for persons receiving more than 30 percent of the initially issued PQS. However, no person in the EBT or WBT crab fisheries initially received more than 30 percent of the issued PQS in these fisheries. Therefore, the limited exemption to exceed 30 percent of the IPQ use cap does not apply to the EBT and WBT crab fisheries. **Table 2-2** includes information on the amount of *C. bairdi* PQS that each PQS holder holds for the *C. bairdi* fisheries.

Table 2-2 PQS Holders for *C. bairdi* Tanner crab (EBT and WBT) and their PQS units held for 2016/2017 organized by those associated with processing facilities and those not associated.

	PQS Holder	**PQS units**	**Percentage**
Non-associated	57 Degrees North, LLC	29,689,974	14.84%
	APICDA Joint Ventures	7,276,863	3.64%
	RAS II, LLC	18,596,734	9.30%
	Other PQS holders*	7,560,202	3.78%
Associated	Alyeska Seafoods	11,129,843	5.56%
	Peter Pan Seafoods	29,575,672	14.79%
	Trident Seafoods	51,982,936	25.99%
	UniSea Seafoods	24,112,517	12.06%
	Westward Seafoods	19,294,485	9.65%
	Total	**200,000,000**	

*****10 PQS holders that individually held less than 3 percent of the total PQS pool for EBT and WBT were combined.

Since rationalization, there has been consolidation in the BSAI crab processing sector. Based on known affiliations between PQS holders, NMFS has determined that during the 2006/2007 crab fishing season,

there were five unique unaffiliated entities (processors) that received EBT crab and four that received WBT crab (**Table 2-3**). During the 2014/2015 crab fishing season, there were only three unique unaffiliated processors who received EBT crab and four unique unaffiliated processors who received WBT IPQ crab at their facilities. During the 2015/2016 crab fishing season, there were only three unique unaffiliated processors who received EBT and WBT IPQ crab at their facilities. These three processors are the Maruha-Nichiro Corporation, which operates processing facilities under the names of Alyeska Seafoods, Peter Pan Seafoods, and Westward Seafoods; Trident Seafoods; and UniSea Seafoods.

The net effect of this processor consolidation is that there are not at least four unique and unaffiliated processors active in the EBT and WBT crab fisheries in the BS region. Therefore, only 90 percent of the Class A IFQ can be delivered to, and only 90 percent of the IPQ may be used at, facilities owned and operated by Maruha-Nichiro Corporation, Trident Seafoods, and UniSea Seafoods without causing the IPQ use cap to be exceeded. At least 10 percent of the EBT Class A IFQ/IPQ and 10 percent of the WBT Class A IFQ/IPQ must be delivered to processing facilities that are not affiliated with Maruha-Nichiro Corporation, Trident Seafoods, or UniSea Seafoods.

Processor consolidation is not unique to the EBT and WBT crab fisheries. The difficulties with processing crab and the barriers to entry are described in the RIR for Amendment 27 to the FMP (NMFS 2008). Facilities owned by Maruha-Nichiro Corporation, Trident Seafoods, and UniSea Seafoods processed 99 percent of the BSAI crab in 2015. Analyst information indicates that the processing facilities that processed the remaining one percent may have focused on supplying live golden king crab to specialized markets.

Table 2-3 *C. bairdi* Tanner crab processing companies, processing facilities, and communities in 2006/2007 and 2015/2016. *Source: NMFS Restricted Access Management Division*

Crab Fishery	Year	Company Name	Facility	Community
Eastern *C. Bairdi* Crab (EBT)	2006/2007	Maruha	Alyeska Seafoods	Dutch/Unalaska
			Westward Seafoods	Dutch/Unalaska
		Nichiro	Peter Pan Seafoods	King Cove
		Nissui Global	UniSea Seafoods.	Dutch/Unalaska
		Trident Seafoods	Trident Seafoods	Akutan
		Icicle Seafoods	Arctic Star	Processing Vessel
	2015/2016	Maruha Nichiro Group	Alyeska Seafoods	Dutch/Unalaska
			Peter Pan Seafoods	King Cove
			Westward Seafoods	Dutch/Unalaska
		Nissui Global	UniSea Seafoods	Dutch/Unalaska
		Trident Seafoods	Trident Seafoods	Akutan
				St. Paul
Western *C. Bairdi* Crab (WBT)	2006/2007	Maruha	Alyeska Seafoods	Dutch/Unalaska
			Westward Seafoods	Dutch/Unalaska
		Nichiro	Peter Pan Seafoods	King Cove
		Nissui Global	UniSea Seafoods.	Dutch/Unalaska
		Trident Seafoods	Trident Seafoods	Akutan
	2015/2016	Maruha Nichiro Group	Alyeska Seafoods	Dutch/Unalaska
			Peter Pan Seafoods	King Cove
			Westward Seafoods	Dutch/Unalaska
		Nissui Global	UniSea Seafoods	Dutch/Unalaska
		Trident Seafoods	Trident Seafoods	Akutan
				St. Paul

How IPQ use is calculated

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

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

3 Amendment 47 (Status Quo)

Amendment 47 modified § 680.42(b)(7)(ii)(A) by adding EBT and WBT IPQ crab to the list of BSAI crab fisheries already receiving a custom processing arrangement exemption. Amendment 47 allowed EBT and WBT IPQ crab received for custom processing by the three processors currently operating in these fisheries processors (Maruha- Nichiro Corporation, Trident Seafoods, or UniSea Seafoods) to qualify for a custom processing arrangement exemption and not apply against the IPQ use cap for these processors. The custom processing arrangement exemption allows these processors to custom process crab for unaffiliated IPQ holders who have custom processing arrangements with the processors, thereby allowing harvesters to fully harvest and deliver their EBT and WBT Class A IFQ crab to IPQ holders with a custom processing arrangement at facilities operating in these fisheries. Because the *C. bairdi* Tanner crab fisheries were closed for the 2016/2017 crab fishing season, Amendment 47 has not been used and there is no information to evaluate its effects at this time.

4 Options to Address *C. bairdi* IPQ Use Cap Issue

The following sections explore the options raised by the Council at the June 2016 meeting. Each option is analyzed as if it would replace Amendment 47.

Raise the IPQ Use Cap to 40 Percent

The first option that the Council requested analysis of would raise the IPQ use cap for the EBT and WBT fisheries to 40 percent. At the time of review of the RIR/initial regulatory flexibility analysis (IRFA) for Amendment 47, some members of the public advocated that NMFS set the IPQ use cap in the *C. bairdi* crab fisheries high enough that all of the crab could be processed in existing facilities. The Council's motion that initiated this discussion paper clearly stated that the only action under consideration for this option would be raising the IPQ use cap; this option would not change the existing 30 percent PQS holding cap. As described below, the IPQ use cap are explicitly tied to the PQS holding cap; adjusting the

use cap would require changes to the relationship between these cap or, at the very least, examination of how changing the IPQ use cap affects the PQS holding cap.

Under current regulation, a person is limited to using no more than the IPQ that results from the PQS use cap (50 CFR 680.42(b)(1)(ii)). Additionally, under § 680.7(a)(7), an IPQ holder is prohibited from using more than the maximum amount of IPQ that may be held by that person unless the IPQ qualifies for an exemption under § 680.42(b)(7) or (b)(8). The PQS and IPQ caps were coupled to allow for potential grandfathering of entities above the cap. However, no person in the EBT or WBT crab fisheries was grandfathered in above the PQS cap in these fisheries.

Raising the IPQ use cap would allow the current participating entities to process up to 40 percent of the IPQ in the EBT and WBT fisheries. If this option was chosen as a replacement for Amendment 47, then all custom processed crab would accrue to a company's IPQ use. Under this option, there would need to be at least three unique and unaffiliated processors operating in the fisheries so that all Class A IFQ could be delivered and processed. Under this option, an entity would still be prohibited from owning more than 30 percent of the PQS in the fisheries, but would be able to use up to 40 percent of the PQS. That 10 percent difference would need to be custom processed crab.

This option could have the effect of requiring more processing capacity to exist in the EBT and WBT fisheries than under Amendment 47 because under Amendment 47, there are no regulatory barriers to all EBT and WBT Class A IFQ being processed at a single processor. As discussed in the RIR for Amendment 47, it was determined that this outcome was unlikely; however, it remains a possibility (NPFMC/NMFS 2016).

There is a disparity in the relative amounts of EBT and WBT IPQ that each of the entities currently active processed during the 2015/2016 crab fishing season. While no entities processed in excess of 40 percent of the IPQ, one entity processed greater than 35 percent of the IPQ in the EBT and WBT fisheries. This has the connotation that one entity has a considerably larger market share of the processing of *C. bairdi* than the other two entities; however, this effect could occur under either Amendment 47 or this option to raise the IPQ use cap. Both Amendment 47 and raising the cap to 40 percent would allow an entity to process more than 30 percent of the IPQ pool through custom processing relationships; the major difference is whether custom processed crab accrues to an entity's use or not.

An additional consideration for this option is the effect on the compliance with IPQ use cap. Having two fisheries with 40 percent cap while all others have 30 percent cap could create additional complexity, and confusion for PQS holders as they attempt to comply with IPQ use cap across all CR Program fisheries.

Convert Class A IFQ to Class B IFQ

The second option that the Council requested analysis of would convert Class A IFQ for the EBT and WBT fisheries to Class B IFQ. At the time of emergency action, the Council considered alternative ways to provide temporary relief from the IPQ use cap, including having NMFS convert stranded Class A IFQ into Class B IFQ. Class B IFQ does not accrue to the IPQ use cap when processed and can be delivered to any crab processor without the need for matching IPQ. If the Council wished to permanently convert a portion of the Class A IFQ to Class B IFQ and repeal Amendment 47, Class A IFQ could still be "stranded" because the IPQ use cap would still be binding. The IPQ use cap is structured as a percentage limit. IPQ is issued in an amount matching Class A IFQ. If the Class A share pool decreased, the IPQ pool would be similarly decreased but existing processors would still only be able to process 30 percent of this decreased IPQ pool. With only three existing processors, this would leave 10 percent of the Class A IFQ/IPQ pool that could not be processed.

For example, if we assume that Amendment 47 were replaced with a share conversion, NMFS would instead issue (for this example) 80 percent of the IFQ as Class A IFQ and 20 Class B IFQ. Processors

would still be limited to processing no more than 30 percent of Class A IFQ (i.e., 30 percent of the 80 percent of the IFQ issued as Class A IFQ). Under this scenario, converting Class A IFQ to Class B IFQ reduces the total percentage of the TAC that would be stranded if less than four unique and unaffiliated processors were operating, but it would not address the purpose and need for Amendment 47—to provide for the complete harvest and processing of the Tanner crab resource given existing processor operations. If the Council wished to maintain the provisions of Amendment 47 and increase the proportion of Class B IFQ relative to Class A IFQ, then the Council would need to address a separate purpose and need statement—converting shares is different than the scope of Amendment 47.

If the Council did wish to maintain Amendment 47 and modify the proportion of Class B IFQ, some of the discussions that occurred during the development of Amendment 47 may be helpful to consider. During development of Amendment 47, harvesters expressed concerns over the impacts this conversion would have on the price harvesters would be paid for delivering the Class B IFQ. In their letter to the Council petitioning for emergency action, the Inter-Cooperative Exchange (ICE) noted that it had originally requested emergency relief through a regulatory amendment converting stranded *C. bairdi* Class A share IFQ into Class B share IFQ. However, ICE later determined that a conversion would exclude that IFQ from binding arbitration. Class B IFQ is not subject to binding arbitration Because Class B IFQ is not subject to the CR Program's specific price negotiation provisions under the arbitration system, harvesters could potentially not receive the same price for the crab harvested with Class B IFQ as they would have received for the Class A IFQ crab. If the Council wished to develop a separate regulatory action to modify the proportions of Class A and Class B IFQ, it would need to assess the potential for unintended consequences given the complex nature of the price negotiations and relationships developed under the current regulations.

Under the CR Program, Class B share IFQ tends to have a slightly higher price per pound than Class A share IFQ, though the difference has been marginal in some years. The 10-year review of the CR Program looked at price differentials between Class A IFQ and Class B IFQ for Bristol Bay red king crab and BS *C. opilio* and found that, on average, Bristol Bay red king crab Class B IFQ get 17 cents more in ex-vessel price per pound than Class A IFQ, and *C. opilio* Class B IFQ get 9 cents more per pound (NPFMC 2016). The *C. bairdi* fisheries have been closed for 5 of the 12 years since the start of rationalization so the price trend data is more reliable for Bristol Bay red king crab and *C. opilio*. However, participants in the EBT and WBT fisheries also generally participate in the Bristol Bay red king crab and the BS *C. opilio* fisheries, so we would expect a similar trend. NPMFC (2016) also notes that price differences are thought to fluctuate with market conditions with less of a premium for Class B IFQ when crab markets are weak.

Apply Exemption in Years When Capacity to Process is Not Sufficient

The third option that the Council requested analysis of would apply the custom processing arrangement exemption for EBT and WBT crab only in years when processing capacity is not sufficient. The Council requested that staff provide information about creating a processing capacity "trigger." A capacity trigger would allow a custom processing arrangement exemption from the IPQ use cap only in years when there were no more than three active unique processing companies in the EBT and WBT fisheries. Conversely, in years when there were four or more unique active processing companies in the EBT and WBT fisheries, there would not be a custom processing arrangement exemption.

Under Amendment 47, there is no regulatory impediment to a new entrant processing in the fisheries. If a processing company wanted to enter the fisheries, it could either purchase PQS to be able to process Class A IFQ, or it could process Class B or Class C IFQ (CVC and CPC shares) without having to purchase PQS/IPQ. In addition, as shown in **Table 2-2,** approximately 32 percent of the EBT and WBT PQS is currently held by persons who are not affiliated with one of the three affiliated processing companies that are currently processing EBT and WBT crab. Amendment 47 does not preclude the unaffiliated PQS holders from establishing their own shoreside or stationary floating processors, or from establishing

custom processing arrangements with a processor not affiliated with the three currently active processing companies.

Although neither Amendment 47 nor the CR Program limit additional processing effort entering the fisheries, the structural changes to crab management introduced by the CR Program has impacted the potential for new entrants or re-entrants into the processing sector of the EBT and WBT fisheries. Prior to implementation of the CR Program, processing capacity was overcapitalized based on the need to process the entire TAC of the fishery within a short window of time under the derby fishery system (NMFS 2004). Processing plants worked to process crab as quickly as possible as vessels waited to offload. Proximity to the fishing grounds was especially important in years of high TACs as this prevented vessels from losing valuable fishing time in the derby years while transiting to a distant shoreside processor (NMFS 2004). During the derby years, several processing companies that owned shoreside processors also operated stationary floating processors close to the fishing grounds, for example, in the Pribilof Islands (NPFMC/NMFS 2016). Prior to rationalization, and in the early years of rationalization, stationary floating processors were located in False Pass, Port Moller, St. George, and St. Paul (NMFS 2004).

The lengthening of the crab fishing season that came as a result of rationalization reduced the amount of processing capacity needed (NMFS 2004). This largely negated the need for stationary floating processors as extra processing capacity for short derby fisheries. The number of stationary floating processors that have registered to participate in the CR Program has declined since implementation. Additionally, rationalization has allowed multiple companies to coordinate their processing operations, often at a single shoreside plant to undertake the physical processing of the crab. The capacity in the processing sector under the CR Program is also influenced by the seasonality of market demands and crab quality levels that might prevent a full realization of efficient capacity in the sector (NMFS 2004).

The RIR for Amendment 47 examined the potential entry of new shoreside processors (NPFMC/NMFS 2016). The RIR notes that entry of new processors is possible, but barriers to entry exist. Both prior to and since implementation of the CR Program, the cost and complexity of entry to the processing sector is very challenging. A new processing facility would need to become equipped with crab lines for crab processing (cleaning, cooking, glazing, and freezing), cold storage, and be able to economically accommodate the relatively small amount of crab that would be processed. Crab processing tends to be labor intensive. The cost of transporting, housing, and provisioning crew is asserted by IPQ holders to substantially drive up the cost of processing (NMFS 2008). The long-term viability of a new entrant into the *C. bairdi* processing sector would likely depend on its ability to enter other BSAI crab fisheries. All current *C. bairdi* processors operate in other CR Program fisheries as well. The volatility of the *C. bairdi* fisheries (i.e., substantial variations in TAC and frequent "closed" years) could make it an unpredictable investment for a processor interested in building a crab portfolio.

There are two potential shorebased processing facilities not affiliated with the Maruha-Nichiro Corporation, Trident Seafoods, and UniSea Seafoods that process other species of BSAI crab, but do not currently process *C. bairdi* crab. These facilities are assumed to be the facilities that could most easily transition into these fisheries. However, both processors are located some distance from the EBT and WBT grounds, in Kodiak and Adak. The distance of these facilities from the fishing grounds could present barriers (e.g., increased deadloss). Additionally, the facility in Adak has not taken crab for traditional processing in the recent past. Instead, this facility has focused on supplying a relatively small live crab market, which requires a different operational set-up than traditional cooking and freezing of crab sections. The facility in Kodiak takes a small amount of Bristol Bay red king crab every year (NPFMC/NMFS 2016).

Stationary floating processors could be used to enter the crab processing sector. **Table 4-1** shows the number of active stationary floating processors in the crab fisheries from 1996 through 1999, which includes the qualifying years for most of the CR Program fisheries. The *C. bairdi* fisheries were closed

from 1997 through 2001, but it is useful to look at fisheries such as the Bristol Bay red king crab and BS *C. opilio*, which were often prosecuted by the same participants. In the years leading up to rationalization, there were several floating processors that had operated in the BSAI crab fisheries, and that subsequently left the fisheries due to reduced TACs and the associated economic uncertainty (J. Iani, North Pacific Crab Association, personal communication; February 9, 2017). In 2005, the first crab fishing season post-rationalization, there were seven vessels with Federal crab vessel permits with stationary floating processor endorsements (**Table 4-2**).

Table 4-1 Number of stationary floating processors active in each fishery from 1996 to 1999.

Fishery	1996	1997	1998	1999
Bristol Bay red king crab	-	4	8	5
Bering Sea *C. opilio*	-	11	13	14
Eastern Aleutian Islands golden king crab	-	-	1	1
Pribilof Islands red and blue king crab	2	3	3	-
St. Matthew Island blue king crab	3	4	5	-
Western Aleutian Islands golden king crab	-	1	-	-
Total*	**3**	**13**	**14**	**16**

*The total presented is the total unique processors; some processors participated in multiple fisheries.
Source: NMFS Catch Accounting database, data used to issue PQS

Table 4-2 2005 Federal crab vessel permit holders with stationary floating processor endorsement

Vessel name	Primary owner
Alaska Packer	Trident Seafoods
Arctic Star	Icicle Seafoods, Inc.
Bering Star	Alaska Star, Inc.
Independence	Trident Seafoods
Northern Victor	Evening Star, Inc.
Sea Alaska	Trident Seafoods
Westward Wind	Highland Light Seafoods LLC.

Source: NMFS Federal Crab Vessel Permit List

The most recent stationary floating processor active in the CR Program fisheries was the *R.M. Thorstenson*, which operated in the WBT and BS *C. opilio* fishery during the 2014/2015 crab fishing season. In the 2015/2016 crab fishing year, there were two vessels with Federal crab vessel permits with stationary floating processor endorsements: the Aleutian Falcon and the Independence. Both of these vessels listed Trident Seafoods as their primary owner. However, for the 2015/2016 crab fishing year, no stationary floating processors participated in any of the CR Program fisheries.

It is difficult to track what happened with the stationary floating processors that formerly participated in the BS crab fisheries; some have been retired and others have moved into other fisheries. Similarly, it is difficult to assess if any of these former participants may return to the CR Program fisheries in the future. At the June 2016 Council meeting, Ocean Fresh Seafoods expressed interest in entering their stationary floating processor, the *Ocean Fresh* (formerly the *Blue Wave*), into the *C. bairdi* fisheries. This vessel operated as a stationary floating processor prior to rationalization.

The economic viability of a new *C. bairdi* crab processor is uncertain. Existing processors who operate processing plants hold the majority of *C. bairdi* crab PQS (approximately 68 percent according to **Table 2-2**) that can be processed. The remaining approximately 32 percent of the EBT and WBT PQS is held by entities that do not have ownership or affiliation with a processing facility. Therefore, at least 32 percent of the PQS in the EBT and WBT fisheries must be processed under a custom processing arrangement, unless these PQS holders operated their own processing facility.

The three major crab processors (i.e., Trident, Nissui, Maruha-Nichiro) also own a majority of the PQS in other CR Program fisheries. Whether IPQ holders without processing facilities establish their own processing facility or move to a new processing facility depends not only on economic factors, such as price, but also their ability to attract an IFQ holder to match with based on the delivery conditions agreed upon with the processing facility under the custom processing arrangement. A harvester may also consider other species they would deliver to that processor (such as Pacific cod), loyalty to an existing processor relationship, and any risk of severing existing ties with a processor to move to a new processor.

One potential avenue for developing new crab processor capacity is for the entrant to also process groundfish. Processors that also process groundfish are able to keep plants operating for a greater period, spreading capital costs across larger scale production. Consequently, entry to the processing sector is affected by a processor's potential to participate in groundfish fisheries and secure a portion of that production. However, with groundfish processing fully capitalized, joint entry opportunities in the processing sector are limited. In addition, to the extent that other management programs (such as the American Fisheries Act, BSAI Pacific cod sector allocations, and the Amendment 80 program) directly or indirectly limit the ability of processors to enter those fisheries, this means of entry into the crab fisheries is more constrained. Overall, it appears unlikely that existing processors would have access to significant amounts of crab that would provide for a viable crab processing operation (NPFMC/NMFS 2016).

If the Council wished to revise the custom processing exemption and tie it to a specific capacity trigger, the Council would need to establish whether adequate capacity exists, when it would determine that adequate capacity exists, and what would happen in those cases where anticipated capacity does not materialize.

As noted earlier, there are currently no regulatory restrictions on new processors entering the fisheries, and no regulatory prohibitions on existing processors in Adak and Kodiak active in other BSAI crab fisheries providing additional processing capacity in the *C. bairdi* crab fisheries. Given this, it is not clear that the Council or NMFS could easily establish objective criteria for determining that adequate processing capacity does or does not exist relative to the IPQ use cap for Tanner crab.

When the Council and NMFS do not have an objective method for establishing that a specific condition exists, the Council and NMFS have used an annual application process to indicate intent to undertake some activity. If the Council wished to use that process here, the Council would need to define who would be eligible to indicate their intent to undertake Tanner crab processing activity (e.g., any Tanner crab PQS holder, only Tanner crab PQS holders not affiliated with the owner of a processing facility, or only those Tanner crab PQS holders not affiliated with the owner of a processing facility with more than some minimum amount of PQS holdings).

The actual operation of a capacity trigger would depend on reporting by processing participants prior to the start of the crab fishing season as to their intent to operate or not. NMFS would need to create a reporting requirement specific to processors in the EBT and WBT fisheries with sufficient time prior to the season to allow IPQ holders to make custom processing arrangements and for IFQ and IPQ holders to share match. If the Council wished to provide a capacity trigger, it may also need to analyze the potential impacts on the arbitration system if an IPQ holder fails to provide adequate processing mid-season.

The CR Program currently contains elements that allow for exemptions from particular requirements when the fishery is under a certain set of conditions. One example is the North/South regional delivery exemption under Amendment 41 to the FMP. Amendment 41, approved on March 13, 2013 (78 FR 28523, May 15, 2013), uses a system of civil contracts among harvesters, processors, and community representatives to determine when an exemption from the North/South regional delivery requirements can be requested and received. This exemption process allows fishery participants to respond to an emergency situation during the crab fishing season in accordance with ground rules that they established before the season. Amendment 37, approved on April 25, 2011, also created an exemption process, which is specific to West-designated Class A IFQ for the Western Aleutian Islands crab fishery (76 FR 35781, June 20, 2011).

Another example of an annual application process is found in Amendment 113 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area that establishes an annual requirement to indicate an intent to process Pacific cod in the Aleutian Islands before a portion of the Aleutian Islands Pacific cod TAC is set aside for harvest by a specific group of harvesters (81 FR 84434, November 23, 2016).

Additionally, the State of Alaska has a processing capacity trigger system for foreign fish processing permits (5 AAC 39.198). This system was designed for the Bristol Bay salmon fishery. Under this system, the State may conduct an annual survey of fish buyers and processors on their intent to purchase and process Bristol Bay salmon for an upcoming fishing season (5 AAC 39.132). If the State determines that sufficient domestic capacity does not exist to process the fish, then it may issue a foreign processing permit a foreign-owned vessel to process in internal waters of Alaska.

Although an annual application process would indicate intent, the Council would likely need to consider an in-season provision, in case a participant was unable to operate, that would allow existing processors to exercise a custom processing arrangement exemption. As an example of this type of process, the Council incorporated "back stop" measures in Amendment 113 that relieve specific limitations on harvesters if specific harvest limits are not met (81 FR 84434, November 23, 2016).

This option could also introduce additional year to year uncertainty as to whether there will be a custom processing exemption in a given year or not, which could complicate long-term planning between harvesters and processors and between IPQ holders and processors. For the existing processors in the *C. bairdi* fisheries, a new entrant may create more competition in contract terms such as price, delivery location, and delivery windows. More competition for Class A IFQ may also have a trickle-down effect on competition and negotiation for Class B IFQ. However, the additional uncertainty introduced by a capacity trigger could discourage processors from undertaking investments in their facilities or marketing if there is additional uncertainty in their revenue due to changes in processing patterns that would not be known until shortly before the start of a crab fishing season.

Overall, establishing a processing capacity trigger would increase administrative requirements and costs for the agency to develop regulations to modify the CR Program relative to the other options considered. NMFS would need to conduct and review an annual application process and reestablish a custom processing arrangement exemption if a minimum processing trigger is not met. These additional annual costs would be subject to cost recovery under the provisions of the Magnuson-Stevens Fishery Conservation and Management Act.

Recommendations

Based on this discussion paper, additional action by the Council does not appear warranted at this time for two reasons. First, when the Council adopted Amendment 47 to the BSAI Crab FMP, it relieved a regulatory restriction to allow the three existing unique processors to completely process Tanner crab

Class A IFQ. NMFS notes that the conditions of processor availability in the Tanner crab fisheries have not changed since the Council recommended, and NMFS implemented Amendment 47. Therefore, the provisions for custom processing in the Tanner crab fishery continue to be necessary to allow for the complete harvesting and processing of the Tanner crab resource.

Second, the three options described in this discussion paper do not appear to provide for opportunities to process Tanner crab that are more effective than current management. Increasing the Tanner crab use cap would still allow for only three unique processors to be active in the Tanner crab fishery, as is currently the case. Replacing the custom processing provisions with an increased proportion of Class B IFQ relative to Class A IFQ would reduce but not eliminate the potential amount of "stranded" Class A IFQ, and would not necessarily increase the number of active processors. Establishing a trigger that relieves custom processing exemptions if a capacity threshold is met does not, in itself, guarantee that additional processors will enter the Tanner crab fishery, but it does impose additional administrative complexity, and costs for fishery participants to establish and maintain this trigger mechanism. As noted in this discussion paper, neither the status quo management, nor the three options considered relieve a regulatory provision that restricts the number of processors. Under the status quo PQS holders unaffiliated with the three existing processors can establish a relationship with another processor.

Because the three options considered here do not relieve a regulatory restriction on the new entry of processors into the *C. bairdi* fisheries, it is not clear that additional regulatory action is warranted. Although there may be logistical and financial challenges that limit the entry of new processors into the Tanner crab fishery, those conditions appear to be outside of the regulatory scope of the Council to address. It may be appropriate to continue to monitor the performance of the Tanner crab fisheries and reassess harvesting and processing activity after the Tanner crab fishery has been opened and operating for several years rather than investing additional staff resources at this time.

5 References

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