

Bering Sea and Aleutian Islands crab fisheries – C-4(a)-(c)
Council motion – February 2013
North Pacific Fishery Management Council

C-4(a) – Modification of community provisions

Actions 1 through 5

The Council took final action, selecting a preferred alternative for five actions. The Council adopted the following purpose and need statement for these actions:

The Bering Sea/Aleutian Islands crab rationalization program recognizes the unique relationship between specific crab-dependent communities and their shore-based processors, and has addressed that codependence by establishing community “right of first refusal” agreements as a significant feature of the program. These right of first refusal agreements apply to the Processor Quota Shares initially issued within each community, and are entered into and held by Eligible Crab Community Organizations on behalf of each respective community.

To date, there have been several significant Processor Quota Share transactions, resulting in Eligible Crab Community Organizations now owning holding substantial portions of the PQS in each rationalized fishery. However, the ability of the right of first refusal to lapse may diminish the intent to protect community interests. Also, limiting the time period to exercise the right may conflict with the ability to exercise and perform under the right of first refusal. In addition, some communities, when exercising the right of first refusal may have no interest in purchasing assets located in another community and feel the right of first refusal contract should exclude any such requirement. Lastly, under the current structure, right holders and NOAA Fisheries have limited information concerning the transfer and use of PQS and IPQ subject to the right. Additional notices from PQS holders to right holders and NOAA Fisheries concerning the use of IPQ and transfer of PQS and IPQ would allow community entities to more effectively protect their interests through the rights of first refusal.

The Council selects as its preferred alternative the following:

Action 1: Increase a right holding entity’s time to exercise the right and perform as required.

Alternative 2: Increase an entity’s time to exercise the right and perform.

- 1) Require parties to rights of first refusal contracts to extend the period for exercising the right of first refusal from 60 days from receipt of the contract to 90 days from receipt of the contract.
- 2) Require parties to rights of first refusal contracts to extend the period for performing under the contract after exercising the right from 120 days from receipt of the contract to 150 days from receipt of the contract.

Action 2: Increase community protections by removing or modifying the (two) ROFR lapse provisions.

Provision 1

Alternative 2 – Remove provision under which ROFR lapses if IPQ are used outside the community.

Require parties to rights of first refusal contracts to remove the provision that rights lapse, if the IPQ are used outside the community for a period of three consecutive years

Provision 2

Alternative 3 – Allow PQS holder to identify the right holder, if a community entity fails to exercise the right on a transfer of PQS

If the right is triggered by a sale subject to the right, a new ROFR contract would be signed at the time of transfer, in which the PQS buyer names the community that gets the ROFR (either the original right holder or receiving right holder). The right holder must be an existing entity that was eligible to hold a ROFR at the time of the implementation of the program in the region in which the IPQ must be landed.

Action 3: Apply the right to only PQS or PQS and assets in the subject community.

Alternative 1 – status quo

The right of first refusal applies to all assets included in a sale of PQS subject to the right, with the price determined by the sale contract.

Action 4: Require community approval for IPQ subject to the right to be processed outside the subject community.

Alternative 1 – Status quo

Intra-company transfers of PQS and IPQ outside the subject community are permitted without requiring the PQS holder to notify the community entity that holds the right.

Action 5: Require additional notices to right holders and NMFS

Require the following notices from PQS holders:

- 1) To the right holder, a prior notice of all transfers of IPQ or PQS that are subject to the right (regardless of whether the PQS holder believes the right applies to the transfer) (*as a required contract provision*);
- 2) To NMFS as a part of any application to transfer PQS subject to the right to any party other than the right holder, either:
 - a. A certification of the transferor of the PQS that the right holder was provided with 90 days notice of the right and did not exercise the right during that period (in which case the PQS may transfer and the right will no longer apply); or
 - b. A certification of the new PQS holder and the right holder that a contract has been entered establishing the right with respect to the new PQS holder or that the right holder has elected to waive the right with respect to the new holder.
- 3) To the right holder annually, the location of use of IPQ that are subject to a right and whether the IPQ were used by the PQS holder (*as a required contract provision*).
- 4) To NMFS, as part of the annual application for IPQ, certification of a current ROFR agreement in place with the community entity.

Action 6

The Council took no action on the sixth action at this meeting. The Council has adopted the following purpose and need statement for this action:

At least one PQS transfer is believed to have occurred without the right holder (Aleutia Corporation) being informed of the transaction, denying that right holder of the ability to

exercise its right of first refusal to acquire PQS as intended by the program. This lack of notice allowed the transfer of PQS to a party other than the right holder and the movement of the processing to another community. Providing that right holder with a direct allocation of PQS could mitigate the negative impacts arising from that transaction. In addition, providing for notice of the location of use of IPQ and transfers of PQS to right holders could prevent similar circumstances from arising in the future and make the right more effective in protecting communities' historical interests in processing and ensure that community entities are better able to assert their interests as provided for by the right.

Action 6: Issuance of newly created PQS to Aleutia Corporation

Alternative 1 – Status quo

No further of issuance of PQS

Alternative 2 – Issuance of PQS to Aleutia

Bristol Bay red king crab PQS shall be allocated to Aleutia Corporation in an amount that would result in that corporation receiving up to 0.55 percent of the PQS in that fishery. This allocation would be made exclusively from newly issued PQS.

C-4(b) – Active participation requirements

The Council intends to take no further action on this amendment package.

C-4(c) – Discussion paper on cooperative provisions for crew

The Council requests that each of the BSAI crab rationalization cooperatives voluntarily provide an annual report detailing measures the cooperative is taking to facilitate the transfer of quota share to active participants ,including crew members and vessel owners, and available measures which affect high lease rates and crew compensation. The annual reports should convey to the Council the effectiveness of the measures implemented through the cooperatives and the estimated level of member participation in any voluntary measures and include supporting information and data. These reports are requested to be delivered for the October meeting each year.