

Amendment 55 to the Fishery Management Plan (FMP) for the Bering Sea/ Aleutian Islands King and Tanner Crabs

Revise the FMP as follows. Additions are in **bold and underlined**. Words indicated with a ~~strike through~~ should be deleted from the FMP.

1. In the Executive Summary, add to the list of Amendments to the BSAI king and Tanner crab FMP:

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55. Remove facility use caps and exempt custom processing of crab IPQ from PQS/ IPQ use caps

2. In Chapter 11.0 Voluntary Three-Pie Cooperative Program, under Section 2. Processor Sector Elements

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2.7 Ownership and use caps –

2.7.1 Ownership caps

~~Option 4.~~ No **PQS/ IPQ** ownership **or use** to exceed 30% of the total **initial** PQS pool on a fishery by fishery basis with initial issues grandfathered, **unless exempted as described in component 2 of the section titled “Clarifications and Expressions of Council Intent and corresponding Federal regulations.** PQS ownership caps for non-CDQ group persons should be applied using the individual and collective rule using 10% minimum ownership standards for inclusion in calculating the cap. PQS ownership caps are at the company level. PQS ownership caps for CDQ groups should be applied only using the individual and collective rule.

2.7.2 Use Caps.

In the Northern Region annual use caps will be at 60 percent for the opilio crab fishery unless subject to a custom processing cap exemption as described in component 2 of the section titled “Clarifications and Expressions of Council Intent **and corresponding Federal regulations.**”

3. In Chapter 11.0 Voluntary Three-Pie Cooperative Program, under the heading “Clarifications and Expressions of Council Intent”, the second clarification:

2. Ownership/use cap distinction - The current council motion contains several provisions that limit ownership and use of the harvest and processing shares. These provisions include the following:

1.6.3 contains provisions limiting the ownership of QS

1.6.4 contains provisions limiting processor ownership of QS

1.7.4 contains provisions limiting a vessels use of IFQs

2.7.1 contains provisions limiting ownership of the PQS pool

2.7.2 contains a use cap of 60 percent for the Northern region opilio crab fishery

The Council confirmed that the ownership caps limit ownership of the QS and PQS, which carry a long-term privilege, and IFQs and IPQs, which are annual allocations. Application of the caps to both types of shares is consistent with interpretation of caps in the halibut and sablefish IFQ program, in which use caps are interpreted as limiting IFQ use and the ownership of both QS and IFQs. This broad interpretation has two primary effects. First, this interpretation prevents individuals from accumulating shares in excess of the cap through leasing arrangements. Long term leasing, unlimited under a narrow interpretation of the caps, could allow a person to effectively control shares well in excess of cap. Second, under the broad interpretation the caps operate as a individual use cap since IFQ and IPQ holdings determine use. The IPQ use cap in the North region *C. opilio* fishery also operates as both a cap on ownership of PQS and IPQs in that region and as a use cap on IPQs in that region. The vessel use caps would limit the use of shares on a vessel but would not impose any limit on share ownership.

~~Although custom processing is permitted by the Council motion, the Council established that limits on ownership and use would count any crab custom processed by a plant toward the cap of the plant owner, unless those crab meet the custom processing exemption described below. The application of the cap to custom processing is intended to prevent consolidation, which could occur if that custom processing is not considered.~~

Custom Processing Cap Exemption

Fisheries and Regions:

Custom processing will be exempt from use caps in **all regions and CR Program fisheries.** ~~the following regions and fisheries:~~

~~North region of the Bering Sea *C. opilio* fishery;
Western Aleutian Islands golden king crab fishery West designated or Undesignated shares processed in the West region;
Western Aleutian Islands red king crab fishery;
Eastern Aleutian Islands golden king crab fishery;
St. Matthew Island blue king crab fishery;
Pribilof Islands red and blue king crab fishery;
Eastern Bering Sea Tanner crab fishery; and
Western Bering Sea Tanner crab fishery.~~

Definition of custom processing exemption:

This is defined as the pPhysical processing of IPQ crab held by a person who ~~is not affiliated with the owner~~ **does not have an ownership interest in the processing facility or affiliation with its owners** of the facility at which those IPQ crab are processed. IPQ custom processed at a facility ~~owned by an entity~~ does not count toward the cap of the entity **that owns the facility** (i.e., only processor share holdings count toward an entity's cap).

Locations qualified for the exemption: Custom processed **IPQ crab will does not count against** ~~qualify for the exemption from~~ IPQ use caps, provided that processing is undertaken in the applicable fishery and region at a shore plant, or a floating processor that is moored at a dock or docking facilities (e.g., dolphins, permanent mooring buoy) in a harbor in a community that is a first or second class city or a home rule city, except for the community of Atka, where a floating processor may anchor at any location, provided that it is within the municipal boundary.

Facility cap

~~Outside of the West region, no facility may process more than 60 percent of EAI golden king crab and WAI red king crab.~~

Provisions to protect interests of the community of origin

~~In the event that processing shares currently or formerly subject to a right of first refusal are transferred from the initial recipient, custom processing of those shares in the community of origin will not be counted toward cap of the processing plant (the shares would only count toward the cap of the share holder).~~