

ROFR Contract Terms Implemented by Amendment 44 to the Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs

Final Rule to implement Amendment 44:

<https://alaskafisheries.noaa.gov/sites/default/files/81fr1557.pdf>

Section 3.4.4.1.2 of the Crab FMP contains the required ROFR contract terms, which are listed below.

Right of First Refusal Contract Terms

- A. The right of first refusal (ROFR) will apply to sales of the following processing shares:
 - 1. PQS and
 - 2. IPQs, if more than 20 percent of a PQS holder's community based IPQs (on a fishery by fishery basis) have been processed outside the community currently associated with the right by another company in 3 of the preceding 5 years.
- B. All terms of any ROFR and contract entered into related to the ROFR will be enforced through civil contract law.
- C. Any ROFR contract must be on the same terms and conditions of the underlying agreement and will include all processing shares and other goods included in that agreement, or to any subset of those assets, as otherwise agreed to by the PQS holder and the community entity.
- D. Intra-company transfers within a region are exempt from ROFR. To be exempt from the ROFR, IPQs must be used by the same company.
- E. Any sale of PQS for continued use in the community with which the PQS is associated will be exempt from the ROFR. A sale will be considered to be for use in the community associated with the PQS if the purchaser contracts with the community to:
 - 1. use at least 80 percent of the annual IPQ allocation in the community for 2 of the following 5 years (on a fishery by fishery basis), and
 - 2. grant the community a ROFR on the PQS subject to the same terms and conditions required of the processor selling the PQS.
- F. A community group or CDQ group can waive any ROFR.
- G. The ROFR will be exercised by the CDQ group or community group by providing the seller within 90 days of receipt of a copy of the contract for sale of the processing shares:
 - 1. notice of the intent to exercise and

2. earnest money in the amount of 10 percent of the contract amount or \$500,000, whichever is less.

The CDQ group or community group must perform under the terms of the ROFR contract within the longer of:

1. 150 days of receipt of the sales contract or
2. in the time specified in the sales contract.

- H. If a ROFR is triggered by a sale subject to the right and the CDQ group or community group associated with the ROFR does not exercise its right, a new ROFR contract between the buyer and the CDQ group or community group named by the buyer must be signed at the time of transfer. The buyer can name as the new right holder either the CDQ group or community group previously associated with the right or a new CDQ group or community group. The CDQ group or community group named by the buyer to receive the new ROFR must be an existing CDQ group or community group that was eligible to hold a ROFR at the time of the implementation of the CR Program in the region in which the IPQ must be landed.
- I. Any due diligence review conducted related to the exercise of a ROFR will be undertaken by a third party bound by a confidentiality agreement that protects any proprietary information from being released or made public.
- J. The PQS or IPQ holder must notify the CDQ group or community group that holds the ROFR of the transfer of IPQ or PQS that are subject to the right. A PQS/IPQ holder must provide this notice to the right-holding CDQ group or community group for all transfers of PQS or IPQ subject to a ROFR regardless of whether the PQS/IPQ holder believes the right applies to the transfer.
- K. Annually, the PQS holder must provide the CDQ group or community group that holds the ROFR with the location of the use of IPQ that are subject to the ROFR, and whether the IPQ subject to the ROFR were used by the PQS holder.