

Proposed text for Amendment 44 to the Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs

Update Table of Contents as necessary.

In the Executive Summary on Page 1, add the current amendment in numerical order to the box which lists the current Amendments to the BSAI King and Tanner Crab FMP.

Modify the following in Chapter 11 Voluntary Three-Pie Cooperative Program, section 3.4 Alternative Regionalization/Community Protection Option:

1. Number the heading “IPQ Caps (from the February 2003 meeting)” by adding the text in bold:

3.4.1 IPQ Caps (from the February 2003 meeting)

2. Number the heading “Cool Down Period (from the December 2002 motion and February 2003 motion)” by adding the text in bold:

3.4.2 Cool Down Period (from the December 2002 motion and February 2003 motion)

3. Number the heading “Regionalization of the Bairdi Fishery (from the February 2003 motion)” by adding the text in bold:

3.4.3 Regionalization of the Bairdi Fishery (from the February 2003 motion)

4. Number and remove the bold and italic font from the heading “Community Purchase and Right of First Refusal Options (from April 2003 motion)” and revise the paragraphs under that heading by deleting the text marked in ~~strikeout~~ and adding the text in bold:

3.4.4 Community Purchase and Right of First Refusal (**ROFR**) Options (from April 2003 motion)

3.4.4.1 General ~~Right of First Refusal~~ **ROFR**

For communities with at least three percent of the initial PQS allocation in any BSAI crab fishery based on history in the community except for those communities that receive a direct allocation of any crab species (currently only Adak), allow CDQ groups or community groups representing qualified communities a ~~first right of refusal~~ **ROFR** to purchase processing shares that are based on history from the community which are being proposed to be sold for processing outside the boundaries of the community of original processing history in accordance with the provisions below.

3.4.4.1.1 Entity Granted the ~~Right of First Refusal~~ **ROFR**

The right of first refusal **ROFR** shall be established by a contract entered into prior to the initial allocation of PQS which will contain all of the terms specified

~~in paragraphs A through I below~~ by **Amendments 18 and 19 to the FMP**. The contract will be between the recipient of the initial allocation of the PQS and:

- 1) the CDQ group in CDQ communities
- 2) the entity identified by the community in non-CDQ communities.

In non-CDQ communities, the community must designate the entity that will represent the community at least 90 days prior to the deadline for submission of applications for initial allocations of PQS.

Beginning on [INSERT DATE OF APPROVAL OF AMENDMENT 44], all ROFR contracts must contain all of the terms specified in section 3.4.4.1.2 below.

3.4.4.1.2 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) ~~has~~ **have** been processed outside the community of origin **currently associated with the right** by another company in 3 of the preceding 5 years.
- B. All terms of any ~~right of first refusal~~ **ROFR** and contract entered into related to the ROFR will be enforced through civil contract law.
- ~~B.C.~~ Any ~~right of first refusal~~ **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.**
- ~~C.D.~~ Intra-company transfers within a region are exempt from ~~this provision~~ **ROFR**. To be exempt from the ~~first right of refusal~~ **ROFR**, IPQs must be used by the same company. ~~In the event that a company uses IPQs outside of the community of origin for a period of 3 consecutive years the right of first refusal on those processing shares (the IPQs and the underlying PQS) shall relapse. With respect to those processing shares, the right of first refusal will not exist in any community thereafter.~~
- ~~D.E.~~ Any sale of PQS for continued use in the community of origin **with which the PQS is associated** will be exempt from the ~~right of first refusal~~ **ROFR**. A sale will be considered to be for use in the community of origin **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 ~~right of first refusal~~ **ROFR** on the PQS subject to the same terms and conditions required of the processor ~~receiving the initial allocation of~~ **selling** the PQS.

- E. ~~All terms of any right of first refusal and contract entered into related to the right of first refusal will be enforced through civil contract law.~~
- F. A community group or CDQ group can waive any ~~right of first refusal~~ **ROFR**.
- G. The ~~right of first refusal~~ **ROFR** will be exercised by the CDQ group or community group by providing the seller within ~~60~~ **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 ~~all of the terms of the contract of sale~~ **under the terms of the ROFR contract** within the longer of:

1. ~~120~~ **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.**

~~The right of first refusal applies only to the community within which the processing history was earned. If the community of origin chooses not to exercise the right of first refusal on the sale of PQS that is not exempt under paragraph D, that PQS will no longer be subject to a right of first refusal.~~

- I. Any due diligence review conducted related to the exercise of a ~~right of first refusal~~ **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.

5. Number the heading “GOA Right of First Refusal” by adding the text in bold:

3.4.4.2 GOA First Right of Refusal

6. Number the heading “Community Purchase Option” by adding the text in bold:

3.4.4.3 Community Purchase Option

7. Number the heading “Identification of Community Groups and Oversight” by adding the text in bold:

3.4.4.4 Identification of Community Groups and Oversight

8. Number the heading “Right of First Refusal is Non-Assignable” by adding the text in bold:

3.4.4.5 Right of First Refusal is Non-Assignable

9. Number the heading “Fisheries Exempt from the Community Right of First Refusal” by adding the text in bold:

3.4.4.6 Fisheries Exempt from the Community Right of First Refusal