

# Public Testimony Sign-Up Sheet

## Agenda Item C-3 (b-1,2,3,4) BSAI CRAB DISCUSSION PAPERS

(C-3 yr plan)

	NAME (PLEASE PRINT)	AFFILIATION
1	Frank Kelly	City of Unalaska
2	Larry Cotter	APICDA
3	Karen Mantozza	Aleutia
4	Ernest Weiss	Aleutians East Borough
5	Margaret Hall, Roger Thomas, George Hall	Crab Group of Independent Harvesters
6	Arnie Thompson	ACC
7	Simon Swartz, F. J. <sup>MATEO</sup> Pazzoldo	City of ST. PAUL
8	Dave Fraser	Alaska Fisheries / ACDC
9	Hakim McCarty	CBSEA
10	Aloysius Unold	YDFDA
11	John Tani	AK Crab Processors Arb. Org
12	Jack Tremaine	Sjo Alaska
13	Steve Minor	NPCA
14	Colem Tillman	Ale-t Coop.
15	Linda Kozak	Kozak & Assoc.
16	Iu DOCHTELMAN	HARVESTED
17	SHAWN C. DOCHTELMAN	CREWMAN'S ASSOCIATION BSAIs CREWMAN ASSOC.
18	MIKE STANLEY	GOLDEN KING CRAB HARVESTERS ASSOC.
19	Wesley Herzog	AK King Crab Coop
20	Stephen Taufen	Groundswell Fisheries Movement
21	Pat Harding	Trade Seafarers
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NOTE to persons providing oral or written testimony to the Council: Section 307(1)(I) of the Magnuson-Stevens Fishery Conservation and Management Act prohibits any person "to knowingly and willfully submit to a Council, the Secretary, or the Governor of a State false information (including, but not limited to, false information regarding the capacity and extent to which a United State fish processor, on an annual basis, will process a portion of the optimum yield of a fishery that will be harvested by fishing vessels of the United States) regarding any matter that the Council, Secretary, or Governor is considering in the course of carrying out this Act.

**North Pacific Fishery Management Council**  
**December 2008 Motion**  
**C-4 Agenda Items**

**C-4(a),(b), and (c) BSAI Crab Rationalization Program Revisions**

**Analysis of alternatives to revise the program**

**Purpose and need statement:**

The Bering Sea/Aleutian Islands (BSAI) Crab Rationalization Program is a comprehensive approach to rationalize an overcapitalized fishery in which serious safety and conservation concerns needed to be addressed. Conservation, safety, and efficiency goals have largely been met under the program.

Experience under the BSAI Crab Rationalization Program has made apparent the need to analyze alternatives to status quo to achieve: entry-level investment opportunities for active participants

This focused analysis on entry level investment opportunities for active participants will by definition include an analysis of the A/B split through potential share conversions.

Additional flexibility under the program is needed to address some inefficiencies created through the share matching system. For example, if a PQS holder opts not to apply for IPQ, the program should allow competitive markets to determine whether resources are harvested rather than redistribute the IPQ for share matching.

Processors and communities have received protections through processor quota shares under this program since the year of implementation. Higher TACs afford an opportunity to expand competition while maintaining protection for processor investments and recognizing community dependency under an IPQ threshold.

**Alternative 1:**

No action, status quo.

**Alternative 2:**

Increase investment opportunities for active participants by increasing the proportion of C share quota in all rationalized fisheries through a market-based reallocation.

Change the 3 percent C share allocation to:

- a) 6 percent
- b) 8 percent
- c) 10 percent

**Suboption:** Applicable only to b) and c) above (increase to 8 or 10 percent), redesignated C shares will be subject to:

- 1) the A share/B share split (including regionalization)
- 2) regionalization

**Suboptions:** Use the following mechanism to achieve the increase (i and iii can be combined):

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- i) A pro-rata reduction in owner shares (distributed over a period not to exceed 5, 7, or 10 years) to create C shares available for active participants to purchase. Owner share holders who meet active participation requirements would be able to retain their converted C shares.
- ii) A percentage re-designation of owner shares to C shares at the time of each transfer. The purchasing owner is required to comply with the active participation definition or divest of the C shares.
- iii) A pro-rata reduction of PQS (distributed over a period not to exceed 5, 7, or 10 years) and conversion into C shares available for active participants to purchase through market transactions.

### **PQS/QS Conversion Rate**

Each crab fishery may have a different conversion ratio. These ratios are based on rough estimates of the relative value of each PQS to CVO QS. This range could be expanded or modified based on further analysis.

- a) 1 PQS unit =- 0.5 CVO QS unit
- b) 1 PQS unit =- 0.4 CVO QS unit
- c) 1 PQS unit =- 0.3 CVO QS unit
- d) 1 PQS unit =- 0.2 CVO QS unit
- e) 1 PQS unit =- 0.1 CVO QS unit
- f) 1 PQS unit =- 0.075 CVO QS unit

### **Alternative 3:**

Increase investment opportunities for active participants by establishing a preferential purchase and finance program for all share types (but no share conversion).

- 1) The Crab Advisory Committee is directed to consider the potential for a private contractual proposal to increase investment opportunities for active participants. A response and recommendations will be made to the Council.
- 2) The proposed program should address the following:
  - a. Establishing goals for an aggregate amount of QS owner shares to be held by active participants at 5, 7, and 10 years.
  - b. Identify and address any potential impacts on industry efficiency or investment and on communities.
  - c. Identify any regulatory issues that may need to be addressed, such as use and ownership caps, and provide recommendations to address these issues.

### **Alternative 4:**

#### C share Regional Fishery Association

The committee is tasked to review proposals to form a regional fishery association (RFA) to hold and distribute C shares on behalf of RFA members.

If RFAs are established, the aggregate total of all C shares shall be:

- a) 6 percent
- b) 8 percent
- c) 10 percent.

### **Component 1 (IPQ accounting when PQS holder opts not to apply)**

If a PQS holder opts not to apply for IPQ in a year, distribute harvesting quota that would have been the matching CVO IFQ A shares as open delivery B shares.

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**Component 2 (Establish IPQ thresholds)**

The amount of IPQ (individual processing quota) issued in any year shall not exceed,

**Option a)** in the *C. opilio* fishery,

- i) 26 million pounds.
- ii) 45 million pounds.
- iii) 64 million pounds.
- iv) 80 million pounds.

**Option b)** in the Bristol Bay red king crab fishery,

- i) 12 million pounds.
- ii) 15 million pounds.
- iii) 18 million pounds (status quo).

**Suboption:** Any IFQ above the threshold will be auctioned by NMFS to the highest bidder.

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**Right of first refusal modifications  
North Pacific Fishery Management Council  
June 2009**

In August of 2005, fishing in the Bering Sea and Aleutian Island crab fisheries began under a new share-based management program (the "rationalization program"). The program is unique in several ways, including the allocation of processing shares corresponding to a portion of the harvest share pool. These processor shares were allocated to processors based on their respective processing histories. To protect community interests, holders of most processor shares were required to enter agreements granting community designated entities a right of first refusal on certain transfers of those shares. Since implementation, community representatives and fishery participants have suggested that some aspects of the rights of first refusal may inhibit their effectiveness in protecting community interests.

In response to concerns of participants, the Council tasked its crab advisory committee review the right of first refusal provisions to assess potential issues that limit the effectiveness of the right. The committee discussed the following four possible issues:

- 1) the lapse of the right after three consecutive years of use of the individual processing quota (IPQ) outside the community;
- 2) the requirement that the right apply to all assets involved in a transaction, which could include assets outside the community;
- 3) the short period of time allowed for exercising and performing under the right; and
- 4) the potential for communities to have inadequate funding exercising the right.

In response to the Council's request, the committee reached a consensus in support of two amendments to the rights of first refusal. Under the first amendment, the time that a community has to exercise the right would be extended from 60 days to 90 days and the time that a community has to perform under the contract would be extended from 120 days to 150 days. These extended periods are intended to provide communities with additional time to assess whether to exercise its right and arrange financing for the transaction. The second suggested amendment would extend the right indefinitely, without lapse. This modification is intended to ensure that historical community interests in the fisheries are maintained in perpetuity.

The committee also discussed potential ways to address the other two issues directed to it by the Council. Specifically, the committee discussed potential methods of applying the right to only community-based assets (as opposed to all assets in a transaction). The committee was unable to reach a consensus on this issue. The committee also discussed potential measures to improve a community's ability to use the right of first refusal. The committee supported the development of a loan program that could support acquisition of shares under the right by communities. At its February 2009 meeting, in light of the committee's report, the Council directed staff to prepare a discussion paper examining these four issues. This paper is staff's response to that request.

**Background**

Under the rationalization program, the Council adopted a provision for community rights of first refusal on PQS. The representative entity of any community that supported in excess of 3 percent of the qualified processing in any fishery received the right on the PQS arising from processing in that community.<sup>1</sup> In

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<sup>1</sup> The community of Adak was excluded from the rights of first refusal, as that community received a direct allocation of 10 percent of the Western Aleutian Islands golden king crab fishery.

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addition, entities representing qualified communities in Gulf of Alaska north of 56°20' N latitude received a right of first refusal on any PQS issued based on processing in a community not qualifying for a right of first refusal in that same area of the Gulf.

In the case of CDQ communities, the representative entity holding the right is the local CDQ group. In all other communities, the right is held by an entity designated by the community. The right is established by a contract that between the community entity and the PQS holder. Under the contract, the right applies to any sale of PQS and sales of IPQ, if more than 20 percent of the PQS holder's community-based IPQ in the fishery were processed outside the community by another company in 3 of the preceding 5 years.<sup>2</sup> To exercise the right, the community entity must accept all terms and conditions of the underlying agreement.

Any intra-company transfers are exempt from the right of first refusal. To qualify for this exemption, the IPQ must be used by the same company.<sup>3</sup> In addition, transfers of PQS for use in a community are exempt from the right. To meet this exemption requirement, the purchaser must agree to use at least 80 percent of the annual IPQ in the community in 2 of the following 5 years and grant a right of first refusal on the received PQS. Under two circumstances, the right will lapse. First, if a company uses its IPQ outside of a community for three consecutive years, the right on the underlying PQS lapses. Second, if a community entity chooses not to exercise the right on the transfer of PQS, the right also lapses.

To exercise the right, a community entity must provide the seller of PQS with notice of its intent to exercise the right and earnest money in the amount of 10 percent of the contract amount or \$500,000, whichever is less, within 60 days of notice of a sale. In addition, the entity must perform under the terms of the agreement within the longer of 120 days or the time specified by the contract.

Based on the qualifying criteria, 7 community entities received rights of first refusal in the different fisheries governed by the program (see Table 1). The distribution of rights differs across fisheries, with Akutan, Unalaska, King Cove, St. Paul, and St. George all starting the program with rights on approximately 10 percent or more of the PQS in at least one fishery.

The limitations of the 'cooling off' provision prevented much of the IPQ subject to the right of first refusal from being used outside the community of origin in the first two years of the program. Only in the third year of the program (once the cooling off limitation lapsed) was any sizeable portion of the IPQ permitted to be moved. As a result, rights of first refusal on PQS are believed to have lapsed (as a result of use outside the community) in only a few instances. Most notably, the right is believed to have lapsed with respect to PQS arising from historic processing in St. George. The St. George harbor and its entrance were damaged by a storm in 2004. In the first two years of the program, that damage was found to have prevented processing in St. George. As a consequence, the right of first refusal lapsed on shares for which the Aleutian Pribilof Island Community Development Association (APICDA) holds rights of first refusal on behalf of St. George under the terms required by regulation. Despite these provisions, APICDA is reported to have reached agreements with both PQS holders. Under the agreement with one of the PQS holders, APICDA received the PQS formerly subject to the right. The terms of the other agreement are not known.

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<sup>2</sup> Although custom processing of IPQ outside of the community could be argued to trigger this right on a subsequent transfer, a PQS holder could engage in custom processing for an indefinite period without triggering the right, if no transfer of IPQ is made.

<sup>3</sup> It is believed that this provision does not apply to custom processing arrangements, as no share transfer occurs under those arrangements.

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**Table 1 Distribution of rights of first refusal by community on implementation.**

Fishery	Region	Right of first refusal boundary	Number of PQS holders	Percentage of PQS pool
Bristol Bay red king crab	North	None	1	0.0
		St. Paul	2	2.7
	South	Akutan	1	20.8
		False Pass	1	3.9
		King Cove	1	9.8
		Kodiak	3	4.0
		None	4	3.6
		Port Moller	3	3.7
Unalaska	11	51.5		
Bering Sea <i>C. opilio</i>	North	None	3	1.0
		St. George	2	9.7
		St. Paul	6	36.3
	South	Akutan	1	9.7
		King Cove	1	6.3
		Kodiak	4	0.1
		None	4	1.8
		Unalaska	13	35.0
Eastern Aleutian Islands golden king crab	South	None	1	1.7
		Unalaska	7	98.3
Pribilof red and blue king crab	North	None	1	0.3
		St. Paul	5	67.3
	South	Akutan	1	1.2
		King Cove	1	3.8
		Kodiak	4	2.9
Unalaska	5	24.6		
St Matthew Island blue king crab	North	None	5	64.6
		St. Paul	4	13.8
	South	Akutan	1	2.7
		King Cove	1	1.3
		Kodiak	1	0.0
Unalaska	6	17.6		

Source: RAM PQS data 2007-2008.

In addition, PQS allocated based on processing in the Aleutians East Borough communities (i.e., Akutan, False Pass, King Cove, and Port Moller) was permitted to be moved within the borough during the cooling off period. As a consequence, rights of first refusal for the benefit of those communities may also have lapsed from movement of processing.

Also, certain IPQ have had the right removed as a consequence of other transfers that have occurred in the first few years of the program. In some cases, the PQS has been transferred to the right holder (see Table 2), while in others the right has lapsed because the right holder chose not to exercise the right at the time of a transfer (see Table 3). In one instance, a PQS holder elected to divest of a portion of its PQS holdings to remain within permitted share use caps.

In five cases, community entities holding the right have acquired PQS subject to the right. In one fishery, a portion of the PQS subject to the right was transferred to the community entity holding the right, while the right with respect to another portion of the PQS was allowed to lapse. In another fishery the PQS represented a relatively small portion of the total PQS on which the entity held rights of first refusal and

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the PQS buyer was a different community entity. Rather than intervene in the transfer, the right holder elected to allow the transaction to proceed, lapsing the right of first refusal. In another instance, a PQS holder transferred its PQS to the right holding community entity to avoid a potential affiliation that would have prevented participation in the arbitration program. In most cases, right holding community entities have been actively involved in PQS transactions involving shares subject to their rights. In some cases, those entities have acquired shares; in others, they have allowed transactions to proceed. This community involvement in transactions suggests that the right has affected community interests.

Assessing the extent to which rights have lapsed, beyond those voluntarily reported to NOAA Fisheries, is difficult because of the nature of available landings data. While some PQS holders have reported lapsing of rights voluntarily, regulations do not require PQS holders to report lapsing of a right. Although geographic landing requirements are applied in the program, records concerning location of landings are limited by record keeping protocols. Currently, most deliveries to floating processors are recorded as 'at sea,' without designation of a port. These 'at sea' deliveries may take place within community boundaries, and therefore may not be considered as being outside of the community that benefits from the right of first refusal. On the other hand, landing records will not fully reflect the geographic distribution of landings, which may result in several rights lapsing (because of use of IPQ outside of the community for three consecutive years). In addition, no system is in place for reporting and documenting the lapse of rights of first refusal. Given this shortcoming, it is possible that other rights of first refusal may have lapsed.

**Table 2. Percentage of PQS transferred to right of first refusal holder by fishery (as of 2009).**

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Fishery	Percent of PQS
Bristol Bay red king crab	8.8
Bering Sea <i>C. opilio</i>	6.1
St. Matthew Island blue king crab	0.1

Source: NMFS RAM Division database.

**Table 3. Percentage of PQS on which right of first refusal lapse has been reported to NMFS by fishery (as of 2009).**

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Fishery	Percent of PQS
Bristol Bay red king crab	4.0
Eastern Aleutian Island golden king crab	6.9

Source: NMFS RAM Division database.

In developing an amendment package to address issues that have arisen with the rights of first refusal, the Council should consider its purposes for taking these actions and whether those purposes will be achieved, when considering whether to advance this action. To date, the rights have provided community entities with some degree of leverage with PQS holders that are attempting to move processing from a community. To date, this leverage has been largely asserted indirectly, as community entities have negotiated the purchase of PQS, in circumstances when the holder has had an interest in divesting of those shares or when the movement of processing has attracted political attention. Maintained in its current form (even with the suggested amendments), the right is likely to continue to have its greatest effect through these indirect means. PQS holders desiring to move processing from a community may avoid triggering the right in many instances, as the right is only triggered by a transfer. A PQS holder may use



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the yielded IPQ at another of its plants or may have the IPQ custom processed at another company's plant without triggering the right. If the buyer of the PQS is willing to use a portion of the yielded IPQ in the community in 2 of the first 5 years after the transfer, the right is not triggered. After that period, the IPQ may be moved, provided not transfer is made. This limited applicability of the right may prevent modifications from fully achieving the Council's objectives. Yet, solving these shortcomings (or developing alternative community protections) could require large scale changes to the rights, which would not be simple to devise and could be disruptive to the current distribution of interests.

### **Extension of the periods to exercise and perform under the right of first refusal**

Under the current right of first refusal contract requirements, a community entity has 60 days from receipt of a contract defining a transfer from a PQS holder to exercise the right of first refusal. Within that time period, the community entity must inform the PQS holder that it is exercising its right and provide earnest money of 10 percent of the transaction amount or \$500,000, which ever is less. The 60 day period in which to exercise the right is intended to provide community entities with the opportunity to assess the merits of intervening in the transaction. For some entities, such as CDQ groups, decisions of whether to enter simple, low value, transactions may be made expeditiously; however, larger more complex transactions, could involve a more extended decision making process for a community entity.

In considering whether to exercise a right of first refusal, a community must examine the merits of the transaction. Under the current rules, the entity must assess the value of the various items included in the transaction, which may include items other than PQS and could include items that are not present in the community and items that cannot be relocated to the community. Each item in the transaction must be assessed along with its value as part of the transaction, as a whole. In some cases, the entity may need to assess the values of different groups of assets in the transaction. For example, an entity may wish to retain only those assets based in or movable to the community.<sup>4</sup> To make these determinations, an entity may need to consult experts or conduct its own appraisals. In addition to the other steps involved in the decision making process, the entity may need to arrange financing. Depending on the purchase, financing arrangements may require substantial due diligence on the part of any financing party. Independent assessments of the transaction, including valuations of possible collateral may be necessary. In some instances the entity may undertake a public meeting process or take formal board action to make a purchase. Notice requirements may be applied to any such meetings. Each of these various steps in the decision making process will require time.

Community entities may also need to undertake considerations beyond those confronted by entities acting as simple business entities. For example, an entity may only wish to exercise the right, if it is confident that the assets will bring some level of benefit to the community. Achieving these benefits may depend on relationships with other community-based operations and commitments of residents. These relationships and arrangements may be complex and commitments may take time to attain. Each of these factors suggests that an extended period for making a decision of whether to exercise a right could be beneficial to entities confronted by that decision. In some circumstances, a 30 day extension to a 90-day period, as suggested by the crab advisory committee, could be adequate for an entity to better evaluate a transaction, access earnest money, make preliminary financing arrangements, and make an appropriate decision concerning the exercise of its right.

In addition to having a limited period of time to exercise a right, community entities also have a limited period of time in which to perform under the right of first refusal. Under the current rule, an entity has

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<sup>4</sup> The willingness of an entity to retain items will likely vary across entities. CDQ groups with substantial fishing interests in many locations may be more interested in retaining items outside the community for use as a part of their fishery ventures.

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exercised its right has 120 days from receipt of the contract to fully perform under the contract. This added time for performance is intended to provide the entity with adequate time to finalize financing arrangements. This extended period could also allow for the entity to make additional arrangements, such as partnerships or transactions for portions of the assets that it may not wish to maintain. The additional 90 days from the time from the exercise of the right is intended to ensure that the transaction may be finalized, with all necessary due diligence by lenders. If time to exercise is extended 30 days, concurrently extending the time to perform will maintain the existing 90 day window between the deadline for exercising the right and performing under the contract. This time was adopted to ensure that the community entity and any lenders would have adequate time to complete the transaction. Adding 30 days to the periods for exercising the right and performing under the applicable contract may make the right of first refusal more accessible to community entities wishing to enter a contract to protect a community's interests.

The current rule, which allows a community entity 60 days to determine whether to exercise a right, may challenge some community entities (particularly entities that use a more structured decision making process, face a more complex transaction, or have less experience in the industry); however, lengthening the time for decision making could complicate transactions for parties affected by the right. PQS holders and those wishing to acquire PQS may invest substantial efforts arranging transactions. Time may be of the essence in these transactions because of the seasonality of fisheries. Allowing an extended period for a community entity to exercise a right of first refusal may impinge on operations, if the time period extends into the fishing season. The extent of this disruption will depend on the transaction and its timing. If the transaction includes assets other than PQS (such as processing equipment or groundfish fishery assets) the disruption could be of even greater significance. These factors all suggest that an extended time period for the decision of whether to exercise a right could be problematic for the parties to the transaction.

In considering whether to extend the time periods for exercising the right and performing under the contract, the Council should also consider that the PQS holder and the buyer can prevent a community entity from intervening in the transaction, if the buyer agrees to grant a right of first refusal to the entity and to use the IPQ yielded by the transferred PQS in the community in two of the following five years. Although these concessions may affect the value of the assets transferred (including the PQS), the parties to the transaction can effectively limit the ability of the community entity to disrupt the transaction by exercising the right. This ability may limit both the difficulty posed by the extensions and their effectiveness in protecting community interests.

### Possible amendments:

- 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.

### Extending the right permanently

Under the current contract requirement, the right of first refusal lapses, if the IPQ yielded by the PQS subject to the right is used outside of the community for three consecutive years.<sup>5</sup> The rationale for this lapse is that the community's connection to the PQS may be diminished, if the yielded IPQ are used

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<sup>5</sup> The contract also provides the community entity with a right of first refusal on the IPQ, if more than 20 percent of IPQ from a holder's community-based PQS is processed outside of the community by another company in 3 of the preceding 5 years. Yet, the holder may avoid triggering the right, if the no transfer of IPQ is made. This may occur by simply having the crab custom processed without transfer.

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outside of the community for an extended period. In addition, the right of first refusal lapses, if the right holder elects not to exercise the right on a transfer to which it applies.<sup>6</sup> The rationale for rights lapsing after these transfers is that the community entity chose to allow the transfer to occur, despite the recipient's intention to use the IPQ outside the community. Some proponents of strengthening the right of first refusal (including a consensus of the crab advisory committee) have recommended removing the provisions under which the right of first refusal lapses, effectively making that right permanent.

Making the right permanent would establish a perpetual link between PQS and the community where processing occurred that led to the allocation of that PQS. This community/PQS association would be maintained regardless of whether the PQS holder used the yielded IPQ outside of the community for several years. In addition, once triggered by a transfer, the right would supersede the interests of other parties, including communities where the yielded IPQ have been processed in the intervening years.

Establishing a permanent right of first refusal could also remove the provision that allows the right to lapse, if a community entity elects not to exercise the right on a transfer of PQS with the intention of moving processing from the community. Under the current provision, if a community entity elects not to exercise its right when transfer is intended to move the PQS from the community the right lapses. Although the entity arguably demonstrates its intent to allow the shares to leave the community by not exercising its right, perpetuating the right could help overcome some other perceived shortcomings with rights of first refusal. If an entity chooses not to exercise its right because it cannot arrange financing or the transaction involves assets other than the PQS that the community has no interest in, extending the right would provide the entity with a possible future opportunity to reassert its interest in the PQS. Extending the right in this manner may aid entities (and communities) lacking the wherewithal to exercise a right of first refusal.

To the extent that the right is intended to protect community interests, the right may be lacking, in part, because of its lack of permanence. Yet, several other aspects of the right limit the effectiveness of the provision in protecting community interests. By its nature, the right only applies to transfers. Absent a transfer, shares may move freely among communities under other processing arrangements (including those internal to a company, as well as custom processing arrangements). This limitation on the right leaves a community entity unable to prevent the movement of processing from its community, as long as the PQS holder chooses not to transfer the shares. Yet, establishing a permanent right would prevent a PQS holder from moving shares outside of the community until the right lapses prior to putting the PQS on the market. Lapsing of the right in this manner could simplify any transaction to sell the PQS (and other assets) by removing the encumbrance of the right.

In considering whether to advance for analysis a provision extending rights indefinitely, the Council should consider the current structure and distribution of processing in the fishery, the possible redistribution of processing activity in the future, and community interests at stake. Over time, processing activity may be expected to be redistributed among communities. The redistribution will vary across fisheries depending on efficiencies and evolving circumstances. Under current rule, IPQ are free to be used in any location (within the designated region, if applicable). The only community-based limitation on processing shares arises when a transfer of those shares is made. As a result, it is possible that a community entity's right of first refusal could be triggered by a transfer several years after the PQS has effectively left the community.

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<sup>6</sup> It should be noted that the right applies, only if the recipient of the PQS acknowledges that the transfer is for use of the yielded IPQ outside of the community.

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The indeterminate movement of IPQ use among communities could result in unintended (and, at times, paradoxical) effects. For example, IPQ use could shift dramatically from one community to another without sales triggering the right. Even with a large shift of shares in to one community, a small portion of the benefiting community's PQS could be transferred with the intent of using the yielded IPQ in the community that has lost processing. At the time of this transfer, the entity representing the community that has benefited from attracting additional processing would have a right of first refusal on the transfer. Under these circumstances, the right enhances the leverage of the entity of the community that has attracted substantially more processing and provides no power to the community that has lost processing. Although this possibility is somewhat speculative, it could arise in instances where a single company has multiple operations in a region or where substantial amounts of processing are consolidated through custom processing.

### Possible amendments:

- 1) Require parties to rights of first refusal contracts to remove the provision that rights lapses, if the IPQ are used outside the community for a period of three consecutive years
- 2) Require parties to right of first refusal contracts to remove any provision for the right to lapse if an entity chooses not to exercise its right
- 3) Require that any person holding PQS that meet landing thresholds qualifying a community entity for a right of first refusal to maintain a contract providing that right at all times

### **Apply the right to the PQS only (rather than all assets included in the transaction)**

Some supporters of modification of the rights of first refusal have suggested that applying the right to PQS only (as opposed to all assets that may be involved in a transaction) may more effectively protect interests of communities. Under the current structure, a community entity has a right of first refusal on a transaction involving the subject PQS (including all assets included in that transaction). The provision requires that an entity exercising the right accept all terms and conditions of the proposed transaction. Transactions may include a variety of assets, including processing equipment and real estate. Some of these assets may have no connection to the crab fisheries or the represented community. In these instances, a community entity may be unable to effectively use its right for several reasons. Financing may be more difficult to obtain as the cost of these additional assets drive up the transaction price. The entity may have no justifiable interest in assets unrelated to its host community. Acquiring these unrelated assets under the right may effectively require the entity to act as a broker for the assets to avoid maintaining those assets beyond its local interests.

To avoid the potential complications that arise from applying the right to assets beyond the PQS, it has been suggested that the right could be limited to the PQS. Under this approach, a community entity would have a right of first refusal on any PQS included in transfers, but no other assets would be subject to the right. Establishing such a right creates several issues. First, PQS values must be established, independently of other assets. With few trades and little public information concerning those trades developing a valuation method will be challenging. Under the current regulations, the right of first refusal is administered directly by the parties to the contract establishing the right. NOAA Fisheries only direct role in administration of the rights was ensure that contracts were established as required for PQS issuance. Enforcement of contracts, once established, is through civil proceedings by the parties. If this approach is continued, the regulations could define contract requirements that must be followed by the parties to ensure that fair PQS valuations apply when the right is triggered. NOAA Fisheries role, under this approach, would be to ensure that adequate contracts were entered by PQS holders prior to IPQ issuance. A system by which the parties jointly select one or more persons to value PQS could be the simplest approach to establishing a value for the PQS. Development of other competing methods for

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establishing a value could also be considered (and should be explored), if the Council wishes to proceed with this action.

A second effect that arises from applying the right of first refusal to only the PQS in a transaction is a potential disruption to the transaction and business operations of the participants. Transactions that include assets other than PQS are likely to be valued based on all assets in the transaction (including the PQS), as a whole. At the extreme, the value of assets (particularly crab processing equipment in a community) could be quite minimal in the absence of the accompanying PQS. Given this possibility, some participants may question the equity of the right to intervene in a transaction in a manner that removes only a portion of the assets. It is unlikely that the buyer would obligate itself to complete the transaction, in the event the right on the PQS is exercised. Consequently, the exercise of the right could result in the community entity acquiring the PQS and the former holder of the PQS retaining all other assets. Whether this outcome (the PQS would be separated from the assets as a result of the right being exercised) would ever occur is doubtful, though. PQS buyers and sellers are likely to take steps to avoid the outcome.

A few avenues may be pursued to avoid the separation of PQS from related assets. First, the PQS holder may attempt to negotiate an agreement with the community entity to allow the sale to proceed without the entity exercising the right. To secure an agreement the PQS holder may need to provide something of value to the entity, which could be financial remuneration or a portion of the PQS. A community entity may have little leverage in this negotiation, if the PQS holder knows that the entity is without the wherewithal to exercise the right, but could receive some compensation for the security it provides by indicating its intent to allow the sale.

Alternatively, the person receiving the PQS could avoid the right being triggered by agreeing to use the requisite amount of IPQ in the community for the requisite period and extending the right to the entity in a second contract. This approach maintains that community entity's interest in the PQS under the terms of the right with the new holder. This approach would apply, only if the person acquiring the PQS is willing to use the yielded IPQ in the community for a period of years. After that period expires, the IPQ may be used outside the community.

A third way to avoid community entity intervention in a transaction is for the PQS holder, prior to the transfer, to use the IPQ outside of the community for three consecutive years causing the right to lapse.<sup>7</sup> To use this approach, the PQS holder would need move the IPQ from the community ahead of the transaction to ensure the right lapsed; however, this approach provides the PQS holder with the greatest flexibility at the time of the PQS sale.

Lastly, a PQS holder that is undertaking a transaction might also subdivide the transaction. One transaction would be for the PQS; the other transaction would be for any other assets. By subdividing the transaction in this manner, the PQS holder and the buyer can ensure that the price of PQS and the price of other assets in the transaction are set at an acceptable level, if the right holder intervenes in the transaction. At the extreme, assets other than the PQS could be offered at a nominal price, with the PQS carrying the entire value of the transaction. Alternatively, the sale of other assets may be contingent on the sale of PQS (without exercise of the right). Clearly, a variety of contractual arrangements can be made to ensure that the PQS holder receives reasonable value for assets (including the PQS), particularly in cases where the value of the assets is highly dependent on the accompanying PQS. The extent to which

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<sup>7</sup> This choice may be unavailable, if the Council elects to extend the right in perpetuity.

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these different arrangements might circumvent the Council purpose for applying the right to the PQS exclusively depends on the goal it intends to achieve with this change.

An alternative approach to applying the right of first refusal exclusively to PQS is to apply the right to PQS and any assets based in the community protected by the right of first refusal. This approach necessitates a system for valuing the PQS and other community-based assets. Valuing these other assets (beyond the PQS) will further complicate administration of the right. As with an approach that applies the right exclusively to the PQS, PQS holders and persons acquiring PQS could use a variety of means to ensure that their positions are not diminished by the right. Whether these different arrangements subvert the Council's intent depend on its object in considering this amendment.

### Possible amendments:

- 1) Require parties to rights of first refusal contracts to provide that the right shall apply only to the PQS. In the event other assets are included in the proposed sale, the price of the PQS to which the price applies shall be determined by:
  - a) an appraiser jointly selected by the PQS holder and the entity holding the right of first refusal, or,
  - b) *further options to be developed by the Council.*
- 2) Require parties to rights of first refusal contracts to provide that the right shall apply only to the PQS and other assets physically present in the community benefiting from the right of first refusal. In the event other assets are included in the proposed sale, the price of the PQS to which the price applies shall be determined by:
  - a) an appraiser jointly selected by the PQS holder and the entity holding the right of first refusal, or,
  - b) *further options to be developed by the Council.*

### **A loan program to support community entity purchases**

Periodically throughout discussions of community entity rights of first refusal, community representatives and other stakeholders have suggested that the effectiveness of the right of first refusal may be limited in cases where the right holder is without the wherewithal to exercise the right. Some supporters of the right (and the crab advisory committee) have suggested that the development of a federal loan program to support purchases of QS and PQS could benefit right holding entities and the communities that they represent. Since the Council has no authority for the development of a loan program to support holders of a right of first refusal on PQS, it may only suggest that such a program is appropriate.

The need for loan support likely varies substantially across these entities. CDQ communities are represented by their local CDQ groups. These groups already hold substantial fishery assets and have access to financing comparable to (or, in some cases, better than) many other participants in the fisheries. Yet, it is possible that funding for particularly large transactions could be inaccessible to CDQ groups. Other communities are represented by entities with substantially poorer access to financing. These entities may find financing challenging on even small transactions. In considering whether to suggest that a loan program be developed for right holders, the Council should consider these differences among right holders and the scope of the program that it believes should be developed. If the Council believes that the program should be used to support only certain transactions or right holders, it should develop criteria for those limitations and a rationale for the limitations. These limitations could be developed (or suggested) at this time or could be developed, if a loan program is authorized in the future.

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### **Conclusion**

As the Council begins the process of developing an amendment package to modify rights of first refusal, it should focus its efforts on developing a thorough understand of its purpose and the extent to which the amendment package will achieve that end. In its current form, the right of first refusal provides a community entity with some leverage in the event a PQS holder wishes to transfer PQS. Yet, a PQS holder may take several measures to limit the effectiveness of the right. The moderate measures proposed to date may strengthen the position of the community entity slightly; however, these measures are unlikely to substantially change the negotiating position of a right holder, particularly if the PQS holder is determined to undermine that negotiating position. More realistically, the right (either in its current form or as modified by the proposed measures) will provide community entities (and the communities that they represent) with both negotiating leverage and political leverage, in the event that a PQS holder wishes (or attempts) to move IPQ use from a community to the detrimental of the community.

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**Western Aleutian Islands golden king crab fishery modifications  
North Pacific Fishery Management Council  
June 2009**

In August of 2005, fishing in the Bering Sea and Aleutian Island crab fisheries began under a new share-based management program (the "rationalization program"). The program is unique in several ways, including the allocation of processing shares corresponding to a portion of the harvest share pool. These processor shares are allocated as long term shares, known as processor quota shares (PQS), which annually yield individual processing quota (IPQ) authorizing the holder to accept deliveries of the corresponding harvest shares. The portion of the harvest share pool that must be delivered to a processor holding unused IPQ is known as Class A individual fishing quota (Class A IFQ). In certain fisheries, these allocations of Class A IFQ and IPQ are required to be used in designated regions (i.e., the landing of crab and its processing must take place within the designated region).

The program governs fishing in several crab fisheries, including the Western Aleutian Islands golden king crab fishery. In the second year of the program, a noticeable portion of the quota in this fishery was left unharvested. Some harvesters in the fishery assert that compliance with certain aspects of the management program (including processor share and regional landing requirements) caused this failure to harvest the quota. They also assert that those program requirements have hampered their ability to achieve efficiency benefits intended by the program. In addition, representatives of Adak and the Adak-based shore plant have expressed frustration with the program's processor and community protections. Their specific concern is that the program requires that 50 percent of the catcher vessel Class A IFQ (or approximately 24 percent of the non-CDQ TAC) be landed in the area west of 174° West longitude (the West region), an area that includes Adak. Yet, the qualifying years for the initial allocation of processor shares excludes years after 1999, when processing developed in Adak and the West region. Adak community and processor representatives have asserted that the mismatch of the regional landing requirement compared with the Adak processing activity and the qualifying years has prevented the program from achieving intended benefits to communities in the West region, particularly Adak. In effect, the holders of processor shares in the West region do not correspond with the active regional processing capacity in the West region of the fishery. So each year, these different interests have been required to negotiate agreements for the use of IPQ in the fishery.

Although some participants believe that the program structure has created problems in the fishery, others believe that few problems arose from the original program structure and any such problems have been addressed by amendments. Most importantly, a yet to be implemented amendment that exempts custom processing from use caps in the West region is argued to have addressed an impediment to using all West designated IPQ in a single facility in that region. In addition, some participants believe it is the reluctance of others in the fishery to use the systems created by the program (specifically the arbitration system) to resolve issues that have caused problems in the fishery.<sup>1</sup>

Over time, stakeholders have suggested a variety of measures that could be used to address the perceived problems in the fishery. Use-it-or-lose-it requirements for PQS that would reallocate PQS that was not used in 3 of 5 years, reallocation of PQS and CP QS to address community issues, and reversion to a

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<sup>1</sup> The Council has also requested an analysis of an amendment that would withhold IPQ, if a PQS holder fails to apply for the allocation. In one year in the Eastern Aleutian Islands golden king crab fishery, a PQS holder chose not to apply leading to substantial consolidation of IPQ holdings in that year. If IPQ are withheld when a PQS holder fails to apply for an allocation, QS holders will receive additional Class B IFQ (which are not subject to IPQ landing requirements).



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limited access fishery have all be suggested as measures to address the fishery's problems. After input from its crab advisory committee, members of the public, and the Advisory Panel and deliberations over the course of several meetings, the Council has requested staff to examine the following two potential measures to address perceived problems in the fishery:

Emergency exemption from regionalization for Western Aleutian golden: A paper examining a mechanism to provide an emergency exemption from regional landing requirements in the Western Aleutian Island golden king crab fishery for lack of available processing capacity as defined by private contract between the holders of Class A IFQ and matched IPQ.

PQS removal for Western Aleutian golden (WAG): A paper examining a component to extinguish PQS in the Western Aleutian Islands golden king crab fishery (including options to extinguish west designated PQS only and to compensate PQS holders). The purpose of the proposed action is that additional flexibility under the program may be needed to address some inefficiencies created through the share matching system. For example, the program may need to be adjusted to avoid stranding resources when market conditions do not support PQS restrictions.

The paper begins with a background section that is intended to shed light on the perceived problems in the fishery. The paper then goes on to discuss the two proposed measures and their potential to address those problems and a brief assessment of potential issues that could arise under the measures.

**Background**

Prior to implementation of the rationalization program, the crab fisheries were managed under the License Limitation Program (LLP). Under that program, 28 licenses carried endorsements authorizing participation in the Aleutian Islands golden king crab fisheries (including the Western fishery). Despite a relatively constant TAC leading up to implementation of the rationalization program, the license limits were not constraining and the fishery did not attract the level of competition of other crab fisheries (see Table 1). The fishery's small TAC and distant and relatively limited grounds are believed to have been an effective deterrent to entry to those qualified under the LLP.

**Table 1. TACs, catches, and participation by operation type in the Western Aleutian Islands golden king crab fishery (2000/1 through 2007/8 seasons).**

wag

Season	TAC	Catch	Percent of TAC harvested	Number of vessels		
				catcher vessels	catcher processors	all unique vessels
2000 - 2001	2,700,000	2,902,518	107.5	11	1	12
2001 - 2002	2,700,000	2,693,221	99.7	8	1	9
2002 - 2003	2,700,000	2,605,237	96.5	5	1	6
2003 - 2004	2,700,000	2,637,161	97.7	5	1	6
2004 - 2005	2,700,000	2,639,862	97.8	5	1	6
2005 - 2006	2,400,000	2,382,468	99.3	2	1	3
2006 - 2007	2,400,000	2,002,186	83.4	2	1	3
2007 - 2008	2,400,000	2,246,040	93.6	2	1	3

Sources: ADFG fishtickets and NMFS RAM catch data (for 2005-2006, 2006-2007, and 2007-2008)

Despite relatively low participation levels in the years leading up to implementation of the rationalization program, the fishery did exhibit signs of increased effort. Seasons progressively shortened in the few years leading up to implementation of the program (see Table 2).

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**Table 2. Season opening and closings in the Western Aleutian Islands golden king crab fishery (2001/2 through 2004/5 seasons).**

wag

Season	Season opening	Season closing
2001 - 2002	August 15	March 30
2002 - 2003		March 8
2003 - 2004		February 2
2004 - 2005		January 3

Sources: ADFG Annual Management Report.

Under the rationalization program, quota shares were allocated based on historic activity in the fishery. With few participants, initial allocations of QS were very concentrated. Very few QS transfers have been made since the implementation of the program, so QS holdings have remained very concentrated (see Table 3).

**Table 3. Quota share holdings by share type, region, and operation type in the Western Aleutian Islands golden king crab fishery (2007-2008).**

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Share type	Share holdings by region and operation type						Across regions and operation types			
	Region/Catcher processor	QS holders	Percent of pool	Mean holding	Median holding	Maximum holding	QS holders	Mean holding	Median holding	Maximum holding
Owner Quota Shares	Undesignated	13	28.9	2.1	1.0	11.0	16	6.25	1.74	45.73
	West	9	28.9	3.0	1.3	13.5				
	Catcher processor	3	48.2	15.4	0.5	45.7				
Crew Quota Shares	Catcher vessel	8	57.5	7.2	5.6	21.7	9	11.11	6.17	41.74
	Catcher processor	2	42.5	21.3	21.3	41.7				

Source: NMFS Restricted Access Management IFQ database, crab fishing year 2007-2008.

Note: These share holdings data are publicly available and non-confidential.

The few QS holders in the fishery have used measures provided by the rationalization program to concentrate activity in the fishery beyond that of QS holdings. Exclusive allocations have been organized in harvest cooperatives reducing the fleet to two catcher vessels and a single catcher processor, all of which have fished only cooperative allocations. In the first three years of the program, in excess of 99 percent of the annual IFQ has been allocated to the three cooperatives that have formed in the fishery. Gains arising from IFQ are also suggested by the changes in pot usage, pot lifts, and catch per unit effort in the fishery (see Table 4). In the first three years of the program, the number of registered pots per vessel has increased substantially, but the number of pot lifts in the fishery has fallen. Catch per unit effort has also risen substantially, suggesting that participants' use greater numbers of pots and allowing those pots to soak for longer periods has increased catch rates.

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**Table 4. Pot usage and catches in the Western Aleutian Islands golden king crab fishery (2000/1 through 2007/8).**

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Season	Number of pots registered*	Number of pot lifts *	Lifts per registered pot*	Average catch per unit effort (crabs per pot lift)*	Pots per vessel	Pounds per pot
2000 - 2001	8,910	101,239	11.4	7	743	28.7
2001 - 2002	8,491	105,512	12.4	7	943	25.5
2002 - 2003	6,225	78,979	12.7	8	1,038	33.0
2003 - 2004	7,140	66,236	9.3	10	1,190	39.8
2004 - 2005	7,240	56,846	7.9	12	1,207	46.4
2005 - 2006	4,800	27,503	5.7	21	1,600	86.6
2006 - 2007	6,000	22,694	3.8	20	2,000	88.2
2007 - 2008	4,800	25,287	5.3	21	1,600	88.8

Sources: \*ADFG Annual Management Report and \*\*fishtickets and \*\*NMFS RAM catch data (for 2005-2006, 2006-2007, and 2007-2008)

As might be expected, since implementation of the program, catcher vessel fishing has been extended over a longer period of time (see Table 5). Substantial time periods between landings (or breaks in fishing) appear to have developed with the temporal dispersion of the fishery. QS holders in the fishery assert that the large spreads between the first delivery and the last deliveries in the second and third years arise largely from the lack of available processing capacity in the West region. These QS holders assert that landings during the second and third years were delayed because participants relied on the shore plant at Adak to handle processing in the West region of the fishery, rather than establishing alternative platforms to support West region landings. Prolonged negotiations concerning processing arrangements between IPQ holders and the Adak processor are said to have delayed processor availability during those two years.

**Table 5. Seasons and deliveries in the Western Aleutian Islands golden king crab fishery (2005/6 through 2007/8).**

wag

Season	Season opening	Date of first delivery	Date of last delivery	Season closing
2005-2006		September 6	March 25	
2006-2007	August 15	September 10	May 6	May 15
2007-2008		September 14	May 21	

Source: RAM IFQ landings data

Throughout this time, the 30 percent processing share use cap has prevented any single plant from processing all of the West region IPQ deliveries. When implemented, a use cap exemption adopted by the Council applicable to custom processing will remove this regulatory impediment to a single processor receiving all West region IPQ deliveries, thereby facilitating processing efficiencies in the West region of the fishery. Whether the exemption will resolve uncertainties concerning availability of processing capacity in the West region is not known. Some of the delays in landings have arisen because holders of most of the IPQ in the fishery do not own shore-based processing facilities in the region. In recent years, negotiations between the single shore-based plant owner and IPQ holders have lasted well into the season, which is said to have prevented harvesters from planning fishing.

Although harvesters did not fully harvest the IFQ in the fishery in the second and third years of the program, it is not clear that IFQ holders used tools provided by the program that could assist them. No binding arbitration actions have taken place in the fishery in the first three years of the program. Some

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harvesters have suggested that they have avoided use of the arbitration system because they believe it will be ineffective and could hurt their positions in the fishery. These participants believe that use of this adversarial system could damage relationships between the sectors in the fishery. Although it is clear that the adversarial nature of the arbitration system can stress relationships, it is unclear whether use of the system would damage relationships as contended. The system has been used effectively in other fisheries. While it has stressed relationships among participants at times, it is not believed to have had long term detrimental effects on those relationships. In actuality, the use of the arbitration system in those other fisheries might be argued to have had a positive effect on relationships, since it has clarified expectations.

In addition, it is asserted that the arbitration system may be ineffective because IPQ holders have used custom processing relationships to process landings in the region. It is clear that an arbitrator is likely to have no authority to compel a plant processing under a custom processing relationship to accept any delivery. The arbitrator is also unlikely to have authority to compel an IPQ holder to accept a delivery. Regardless of who is engaged in the physical processing of the delivery, the arbitrator's only authority is to establish a contract that binds both the IFQ holder and IPQ holder. Any failure to comply with that contract would be enforceable only through a civil action. So, an IPQ holder's failure to perform could be grounds for damages against that IPQ holder. Although the IFQ holder would have no action against the plant processing under the custom processing arrangement, it is unclear how the IFQ holder is disadvantaged, since the suit could be pursued against the IPQ holder. In addition, given the prevalence of custom processing in all fisheries under the program, it is unclear how this differs from the circumstances in any other fishery. In those other fisheries, the arbitration system has effectively protected IFQ holder interests.

### **Development of an emergency exemption from regional landing requirements**

The first request from the Council is to examine the development of a mechanism to provide an exemption from regional landing requirements, in the event that processing capacity is unavailable. Since the only regional landing requirement in the fishery pertains to IFQ and IPQ required to be used in the West region, this exemption would apply only to those Class A IFQ bearing the west region designation.

The Council is currently considering a general emergency exemption from regional landing requirements applicable to all fisheries that would be available to holders of Class A IFQ, in the event that unforeseen circumstances prevent compliance with regional landing requirements. The specific terms of the exemption are currently being developed. The exemption would be applicable only when an event beyond the control of the IFQ and IPQ holders prevent compliance with regional landing requirements. Although the measure proposed here uses similar terms (i.e., it is proposed as an "emergency exemption"), the availability of processing capacity is clearly within the control of the IPQ holder. Although most IPQ holders do not have shore plants in the region, floating processors (including catcher processors) could be contracted to take delivery of landings of Class A IFQ in the West region. Given the circumstances and the ability of PQS holders unable to participate in the fishery to choose not to apply for IPQ, the lack of processing capacity to receive landings that has occurred to date would not seem to qualify for an "emergency exemption".

Since the emergency exemption provision being developed generally does not seem to apply, the question arises as to whether an alternative provision could be developed that would fairly address the interests of IFQ holders and IPQ holders and the region. In considering a potential exemption, the availability of processing capacity could be argued to be beyond the control of the IFQ holder.<sup>2</sup> If this view is accepted,

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<sup>2</sup> Whether processing capacity availability is beyond the control of the IFQ holder could be debated, if the IFQ holder did not attempt to use the arbitration system to compel an IPQ holder to receive a delivery. Since the

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it could be argued that an IFQ holder should be permitted to exercise the exemption once it is determined that processing capacity will not be available in the region. The season for Aleutian Island golden king crab opens August 15<sup>th</sup> and continues until May 15<sup>th</sup> the following year. Requiring processing capacity to be available at all times during this period is clearly unnecessary, as the fishery supported fewer than 20 landings in each of the first three years. On the other hand, allowing a processor to make capacity available at some undefined time during the season is also inappropriate, since it prevents any reasonable planning on the part of a harvester. To allow the program to achieve its intended benefits, it is necessary that participants in both sectors be able to plan their activities in the fishery. This planning would allow participants to coordinate crab fishing with activity in other fisheries and minimize operating costs within the crab fishery. Any system that is intended to apply an exemption when processing capacity is unavailable should balance these competing needs by ensuring that processing capacity is available for a reasonable, but not protracted, period of time.

A possible system could be to include notices among IFQ and IPQ holders for defining periods during which processing capacity would be available. If capacity is unavailable during that time, the exemption would be granted. For example, a requirement could be added that at the time of share matching, an IPQ holder must notify the matching IFQ holder of the period when capacity will be available for the deliveries. The time requirement would need to be developed based on discussions with participants in both sectors and could depend on the quantity of crab subject to the share matching commitment. Once the delivery period is noticed, a processor would be obligated to provide processing capacity for deliveries or would forfeit any privilege to the delivery through the exemption. So, an IFQ holder who wished to make a delivery to the processor during the period would notify the processor of the delivery date (or a window). If capacity is not available to receive the delivery during the appointed window, the harvester would be permitted to file a statement of qualification for the exemption and make the delivery outside of the designated region without any obligation to match to IPQ. To ensure that the IPQ holder does not choose to make capacity unavailable in the region as a measure of convenience, a prohibition could be included that prevents the IPQ holder (either as a plant or a buyer) from receiving the delivery subject to the exemption. Effectively, the IPQ holder by not making capacity available would forfeit any potential interest in the delivery and could not compete for the delivery once it chose not to use its IPQ.

The development of this exemption may not be without shortcomings. First, in the form suggested here, the exemption would not protect the region (or communities in the region) in the event that IPQ holders choose not to process in the region. Yet, if communities in the region are not willing or able to support processing to a level needed to draw in the holders of regionally designated IPQ, one might question the merits of retaining those regional designations. While this may seem a callous argument, it should be noted that the West designation provides no direct protection to any single community or to any community at all. The requirement is that processing be conducted in a location west of 174° West longitude simply ensuring that processing will take place in that area. Any such processing could be on a floating platform outside of any community. Processing might be drawn to a community by the use of an exemption for custom processing, which applies only to processing onshore or at a docking facility within community boundaries. A second shortcoming in the exemption arises from its administrative complexity. Making a determination of whether processing capacity is available (and whether the exemption applies) may not be a simple. It is possible that a processor may request that a harvester wait for a period of time to offload. Assessing when the wait is excessive to an extent that qualifies for the exemption is a matter of judgment that will require some careful discretion. Administering an exemption in a manner that provides clear and predictable outcomes for participants is critical to its effectiveness.

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arbitration system has not been used in the fishery to date, it could be argued that IFQ holders have not taken all reasonable steps to ensure processing capacity is available.

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Additionally, it is unclear whether an exemption of this type provides additional protections to IFQ holder interests beyond that currently available under the arbitration system. Under that system, an IFQ holder could bring an arbitration action to compel a processor to accept deliveries within a certain time period, as the system provides the arbitrator with authority to determine all terms of delivery. Once established, the processor would be required to make capacity available within the terms of the agreement or compensate the IFQ holder for any damages. An exemption would allow the IFQ holder to make delivery outside of the region, which could prevent a portion of the TAC from going unharvested, if a processor compelled by an arbitration finding elected to reject deliveries, instead risking a future action from the IFQ holder for compensation. Whether an IPQ holder would risk such an action is uncertain.

Although it is possible to fashion an exemption to regionalization that might address concerns of some participants in the fishery, it is not clear that the exemption can effectively balance the interests of IFQ holders, IPQ holders, and stakeholders in the region. Development of a effective exemption will likely require substantial efforts on the part of all interested parties.

### **Removal of processing shares from the West Aleutian Islands golden king crab fishery**

An alternative to developing a provision for an emergency exemption from regional landing requirements is a proposal to remove processing shares from the fishery. The proposal includes consideration of options to remove processing shares from the West region only and to compensate PQS holders who lose shares as a result of the measure. The change would be intended to allow additional flexibility to increase efficiencies that arise from the share matching system, which could help prevent stranding of resources that could arise, if market conditions are inadequate to support market restrictions arising from processing shares.

Several effects of this proposed change would arise generally under any action to remove processing shares from any of the crab fisheries. Since the Council has requested a separate discussion paper concerning the removal of processing shares from all fisheries, to avoid redundancy, the discussion here focuses only on issues that are unique to the Western Aleutian Islands golden king crab fishery. When issues surface in this discussion that are common to all fisheries, reference is made to that more general paper.

Removal of all processing shares from the Western Aleutian Islands golden king crab fishery would be intended to ensure that IFQ holders could deliver to a processor with available capacity. Clearly, allowing full discretion to IFQ holders to freely negotiate all terms of delivery (including the buyer and delivery time and location) will ensure that IFQ holders have the greatest latitude to make certain that landings are not prevented by lack of available processing capacity. In addition, the removal of IPQ landing requirements will increase flexibility, which should improve harvester efficiencies; however, whether overall production efficiency will be increased is uncertain. It is possible that, at times, harvesters considering their own efficiencies could impose terms on processors that reduce processor efficiency in the fishery. These inefficiencies are unlikely to persist, as processors will respond through pricing adjustments to account for the inefficiencies arising from delivery scheduling.

As suggested by the introduction of pricing to the discussion, processors will also be compelled to compete for landings in the fishery, if IPQ are removed. This competition for landings will affect the distribution of benefits between the harvesting and processing sectors and will affect the interests of current PQS holders (most importantly, those who have acquired PQS since program implementation). To address these distributional concerns, PQS holders could be compensated for the loss of their shares. To avoid redundancy, the distributional effects (including potential PQS holder compensation) are discussed

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in the paper concerning the removal of processor shares from all fisheries that is being presented at the same time as this paper.<sup>3</sup>

Removing all processing shares from the fisheries would also have other effects, as landings would be free to be redistributed geographically, without regard to the current regional boundary. The effects of the removal could draw landings to either side of the regional boundary depending on the responses of the participants in the fisheries. Harvesters are likely to save on operating costs by delivering to plants in the West region that are closer to the fishing grounds, but may prefer to make landings outside the West region, as crab prices may be higher and supplies and services may be more available and cheaper. Processor decisions of whether to operate in the West region are also likely to be affected by a variety of factors, including conditions and limitations in other fisheries (such as the Aleutian Island cod fishery). For example, the existing shore plant in Adak relies on both Pacific cod and crab processing to support its facility. The viability of the plant likely depends on the availability of both species. Similarly, the proposed shore plant in Atka, and possibly the introduction of a floating processor in area defined by the West region, might require the processing of both species to be economically feasible. Since processing in the West region may require a broader base of available inputs, the potential for processing to be undertaken in the West in the absence of the regional designation may depend on the status of non-crab fisheries that produce those other inputs.

To maintain processing in the West region, the Council could continue to apply the regional designation to West region IFQ. Under this approach, the 50 percent of the IFQ currently allocated as West region Class A catcher vessel IFQ would continue to be required to be landed west of 174° west longitude, but could be marketed to any processor operating in that region. Maintaining the regional landing requirement would be intended to ensure that communities in the West region continue to benefit from processing activity in the fishery. Whether that benefit actually flows to communities will depend on the potential for communities to attract landings, either through a shore based processor or through floating processors within community boundaries. If floating processors elect to process outside of any community, it is possible that little benefit to communities would arise from applying regional landing requirements. In addition, if a processor undertakes processing in the West region to meet a regional landing requirement, it is possible that it could attract landings that are not subject to the regional landing requirement by offering a price competitive with prices offered in locations more distant from the fishing grounds. Through this competition, it is possible that the removal of IPQ landing requirements from all IFQ in the fishery could result in additional landings in the West region.

Although applying regional landing requirements could ensure that processing is undertaken in the West region, some harvesters have expressed concern over applying regional landing requirements as a part of an action to remove IPQ. These harvesters believe that the absence of active processors in the West region in recent years may persist leading to limited (or no) competition for West region landings. The potential for competition for these landings may depend on activity in other fisheries in the West region (particularly groundfish fisheries). If little groundfish are landed in the region, it is possible that competition will be very limited for crab landings required to be landed in the region. A lack of competition in the region could be very challenging for harvesters, who might be compelled to accept a minimal price for landings and accommodate a processor's schedule when making deliveries.

Since the lack of processor capacity is asserted to have occurred only in the West region, it has been suggested that the Council consider an option to remove only those processor shares that are currently

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<sup>3</sup> In considering the effects of the extinguishing processor shares discussed in the companion paper, it should note that rights of first refusal do not apply to processor shares in the Western Aleutian Island golden king crab fishery. Consequently, issues related to rights of first refusal are not relevant here.

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designated for landing in the West region. Processor shares subject to no regional designation would continue to be issued, along with the accompanying undesignated Class A IFQ. This proposal could be intended to allow free marketing of West designated landings to ensure that processor capacity is available to support landings. By removing the IPQ landing requirements from these IFQ, holders could market landings to any processor in the West region.

Competition in the West region would likely be less under this proposal than under the proposal to remove all processor shares from the fishery. The dampening of West region competition arises from the restrictions on landings arising from the undesignated IPQ. Although those landings could be drawn to the West region, by a processor willing to operate in the West and able to either acquire those IPQ or arrange custom processing. This constraint arising from undesignated IPQ could limit the extent of competition, as economies of scale could be limited by lack of access to those landings to processors operating in the West region. These effects on competition could reduce harvesters' ability to negotiate delivery times and prices for these landings in the region.

The effect of the removal of processor share landing requirements from all West designated IFQ on communities in the West region is uncertain. Since the West designated IFQ formerly limited by IPQ landing requirements would be free to be landed with any processor, it is possible that the existing shore plant in Adak, which holds little IPQ, would gain an advantage in landings. That plant received most of landings in the West region in the first year and all of the landings in the second and third year of the program. Yet, its need to reach agreement concerning the usage of IPQ with holders of PQS has complicated arrangement of those landings for the plant.<sup>4</sup> Although the plant in Adak could attract additional landings with the removal West designated IPQ, it could lose deliveries if processor shares are removed from the fishery and other platforms choose to compete for those landings.

The Council should also consider the necessary scope of its action and the effects of the action in determining whether to advance this proposal. Some advocates for the action suggest that any action short of removal of all IPQ and all regional designations from the fishery would be inadequate for addressing the problem. These participants assert that removal of IPQ and retaining West designated IFQ would result in little or no processing competition for West designated landings. These participants contend that processors based in the West region will have a competitive advantage over processors in other locations that are more distant from the fishing grounds. This advantage is argued to provide West region based processors with an opportunity to attract all processing in the fishery. Although this locational advantage may exist, it is possible that other considerations could limit the amount of processing drawn to the region, in the absence of regional designations. Processors outside of the region have long term relationships with harvesters in the fishery (including relationships that extend into other fisheries). Those relationships could outweigh any locational advantage of West region facilities. Despite these relationships, it is possible that the locational advantage could be used to attract midseason deliveries from harvesters wishing to avoid travel costs of making deliveries to more distant locations outside of the West region.

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<sup>4</sup> The 30 percent cap on processing share use has also constrained the ability of the Adak plant to receive deliveries to date. The exemption of custom processing from the cap could facilitate additional deliveries at the plant, once that exemption is put in place; however, custom processing arrangements will need to be entered to facilitate the use of the IPQ at the plant.



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### **Conclusion**

Several aspects of the Western Aleutian Island golden king crab fishery management should be considered as the Council approaches an action to remove IPQ (or a portion of the IPQ) from the fishery or establish an exemption from regional landing requirements. Most importantly, the potential for elements of the program (or in the process of being introduced into the program) to address the stated problem should be assessed prior to advancing changes. Specifically, the Council should assess the potential of the arbitration system to address delivery complications that are said to have been an obstacle to harvest of the TAC. Harvesters have elected not to use that system, asserting that the system will not address their concerns (or will have too many detrimental effects to be a useful tool for addressing the problem). These IFQ holders remain concerned that the use of the arbitration system would damage harvester/processor relationships and possibly provoke retribution from IPQ holders. Also, the Council undertook a previous action to exempt custom processing from processor use caps in the fishery. This exemption could address some of the complications in harvesting the TAC that is the Council's stated purpose for this action. Allowing that new provision to be implemented and sufficient time to assess its potential to address the stated problem could obviate the need for this action. In determining whether to advance this action, the Council should consider whether it is appropriate to allow time for these elements to operate pursuing program changes. In addition, the incentive for those supporting program changes to resolve fishery problems with existing program elements may be reduced to the extent that they perceive a potential willingness on the part of the Council to consider those program changes. These incentives may exacerbate problems in the fishery, if the Council protracts its consideration of whether (or not) to advance management changes.

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**Extinguishing processor shares  
North Pacific Fishery Management Council  
June 2009**

In August of 2005, fishing in the Bering Sea and Aleutian Island crab fisheries began under a new share-based management program (the "rationalization program"). The program includes a novel allocation of processing shares corresponding to a portion of the harvest share pool. These processor shares are allocated as long term shares, known as processor quota shares (PQS), which annually yield individual processing quota (IPQ) authorizing the holder to accept deliveries of the corresponding harvest shares. This portion of the harvest share pool, which must be delivered to a processor holding unused IPQ, is known as Class A individual fishing quota (Class A IFQ). In certain fisheries, these allocations of Class A IFQ and IPQ are required to be used in designated regions (i.e., the landing of crab and its processing must take place within the designated region).

The processor share allocations are among the most controversial aspects of the program. Those allocations required specific legislative authorization, as they are beyond the scope of the Council's general authority under the Magnuson Stevens Act.<sup>1</sup> The controversial nature of processor shares was evident in the authorizing legislation, which prohibited any Council from considering the allocation of processor shares in any fishery other than the Bering Sea and Aleutian Island crab fisheries.

From the onset, several participants in the crab fisheries have questioned the appropriateness of limiting harvester deliveries through processor shares. Beyond simply constraining the marketing of crab by harvesters, processor shares are also argued to limit production efficiency gains and bias long run production in favor of established processors and methods. Others believe that the program, as a whole, appropriately balances the interests of all stakeholders in the fisheries without jeopardizing efficiency or productivity goals. Given these competing claims, the Council has undertaken a process of reviews of the program, starting with a review of certain elements after 18 months of fishing under the program and continuing with a preliminary comprehensive review of the program after 3 years of fishing under the program. After considering those reviews and public testimony, the Council has initiated a process to consider whether certain changes to the program are merited. Among those considerations is whether to modify the program by removal of all processor shares from the fisheries. To that end, the Council has requested this paper examining the issues that would arise, were the Council to pursue an action removing processor shares from the fisheries.

The paper begins with a background section describing elements of the program relevant to the allocations of processor shares that is intended to frame the issues arising with the extinguishment of processor shares. The paper then goes on to discuss those issues directly, in an attempt to identify various considerations for the Council, if it advances an action to extinguish processor shares.

**Background**

Prior to implementation of the rationalization program, the crab fisheries were managed under the License Limitation Program (LLP). Under that program, each holder of a license endorsed for a fishery was permitted to enter a vessel into that fishery. Fisheries were prosecuted under derby style management, under which the season opened at a designated time with each vessel competing for a share of the total allowable catch (TAC) in the fishery. Vessel harvests were monitored through the season, with managers announcing a fishery closure when they estimated that the TAC was fully harvested. To address

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<sup>1</sup> The program was specifically authorized by an amendment to the MSA incorporated into the Consolidated Appropriations Act of 2004.

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efficiency, safety, and stock management concerns that arose under LLP management, the Council adopted the rationalization program.

Under the program, eligible license holders were allocated quota share (QS), which are a revocable privilege that allow the holder to harvest a specific percentage of the annual TAC in a fishery, based on qualified harvest history. The annual allocations, which are expressed in pounds, are referred to as individual fishing quota (IFQ). QS are designated as either catcher vessel QS or catcher processor QS, depending on whether the vessel that created the privilege to the shares processed the qualifying harvests on board. Approximately 97 percent of the QS (referred to as "owner QS") in each program fishery were initially allocated to license holders based on their catch histories in the fishery. The remaining 3 percent of the QS (referred to as "C shares" or "crew QS") were initially allocated to captains based on their catch histories in the fishery. These C shares are intended to be held only by persons who meet fishing participation requirements.

Catcher vessel owner IFQ are issued in two classes, Class A IFQ and Class B IFQ. Class A IFQ are issued for 90 percent of the catcher vessel owner IFQ in a program fishery. Crab harvested using these IFQ must be delivered to a processor holding unused individual processing quota (IPQ). In addition, most Class A IFQ are subject to regional share designations, whereby harvests are required to be delivered within an identified region. The delivery restrictions of Class A IFQ are intended to add stability to the processing sector by protecting processor investment in program fisheries and to preserve the historic distribution of landings and processing between regions. Class B IFQ are issued for the remaining 10 percent of the catcher vessel owner QS in a program fishery. Crab harvested using these Class B IFQ can be delivered to any processor (except a catcher processor) regardless of whether the processor holds unused IPQ. In addition, Class B IFQ are not regionally designated. The absence of delivery restrictions on a portion of the catch is intended to provide harvesters with additional market leverage for negotiating prices for landings of crab, as well as to increase opportunity for processor entry.

QS and IFQ are transferrable under the program, subject to limits on the amount of shares a person may own or use. In addition, QS holders may form cooperatives to organize the harvest of their IFQ collectively. Cooperatives and transferability of shares among eligible purchasers of QS and IFQ are believed to promote production efficiency and coordination of landings and provides means for compensated removal of excess harvesting capacity in the program fisheries.

The program also created processing quota shares (PQS), which are allocated to processors and are analogous to the QS allocated to harvesters. PQS are a revocable privilege to receive deliveries of a fixed percentage of the annual TAC from a program fishery. These annual allocations are referred to as individual processing quota (IPQ). IPQ is issued for 90 percent of the owner IFQ pool, corresponding to the 90 percent allocation of catcher vessel owner IFQ as Class A IFQ. As with catcher vessel owner QS and Class A IFQ, PQS and IPQ are designated for processing in a region. These processing shares are intended to protect processor investment in program fisheries and preserve community and regional interests in the fisheries. Processing shares are transferable, including leasing of PQS (or equivalently, the sale of IPQ) subject to use caps. As with harvesting shares, transferability of processing shares is intended to promote efficiency and coordination of deliveries and facilitate compensated reduction of excess capacity. Processors also have relied on custom processing arrangements to coordinate processing activities and achieve efficiencies. Under these arrangements a holder of IPQ may contract with a plant for the processing of landings supported by those IPQ. The IPQ holder remains responsible for any payments to the delivering IFQ holder and any related taxes.

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To provide a period of general stability for processors and communities to adjust to the program, a 2-year "cooling off period" was established during which most processing shares could not be relocated from the community where the historical processing occurred that led to the allocation (the community of origin). In addition, a right of first refusal was granted to community groups and CDQ groups from communities with significant crab processing history on the sale of any processing shares for use outside of the community of origin. Exceptions to the right allow a company to consolidate operations among several commonly owned plants to achieve intra-company efficiencies and the temporary lease of shares outside of the community of origin.

The allocation to regions is accomplished by regionally designating Class A harvest shares and all corresponding processing shares. In most program fisheries, regionalized shares are either North or South, with North shares designated for delivery in areas on the Bering Sea north of 56° 20' north latitude and South shares designated for any other areas, including Kodiak and other areas on the Gulf of Alaska. In the Western Aleutian Islands (Adak) golden king crab fishery, the designation is based on an east/west line to accommodate a different distribution of activity in that fishery. Regional designations (with the exception of the east/west designation) are based on the historic location of the landings and processing that gave rise to the shares and require the crab harvested with the corresponding shares to be landed within the designated region.

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Table 1 shows the distribution of processor shares by region and community protected by the right of first refusal. In most fisheries subject to right of refusal requirements, in excess of 95 percent of the PQS are subject to those rights. The exception is the St. Matthew Island blue king crab fishery, in which most qualified historical processing occurred on floating processors outside of community boundaries. As a result, over 65 percent of the PQS are not subject to community rights of first refusal.

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Table 1 Distribution of rights of first refusal by community (2008-2009).

Fishery	Region	Right of first refusal boundary	Number of PQS holders	Percentage of PQS pool
Bristol Bay red king crab	North	None	1	0.0
		St. Paul	2	2.5
	South	Akutan	1	19.7
		False Pass	1	3.7
		King Cove	1	7.4
		Kodiak	2	0.2
		None	6	12.2
		Port Moller	3	3.5
Unalaska	8	50.7		
Bering Sea <i>C. opilio</i>	North	None	5	10.7
		St. Paul	7	36.3
	South	Akutan	1	9.7
		King Cove	1	6.3
		Kodiak	3	0.0
		None	5	2.0
		Unalaska	10	35.0
		Eastern Aleutian Islands golden king crab	South	Akutan
None	2			7.8
Unalaska	8			91.2
Eastern Bering Sea <i>C. bairdi</i>	None	None	21	100.0
Pribilof red and blue king crab	North	None	1	0.3
		St. Paul	5	67.3
	South	Akutan	1	1.2
		King Cove	1	3.8
		Kodiak	4	2.9
Unalaska	4	24.6		
St Matthew Island blue king crab	North	None	5	64.6
		St. Paul	4	13.8
	South	Akutan	1	2.7
		King Cove	1	1.3
		None	1	0.0
		Unalaska	4	17.6
Western Aleutian Islands golden king crab	Undesignated	None	8	50.0
	West	None	7	50.0
Western Aleutian Islands red king crab	South	None	8	100.0
Western Bering Sea <i>C. bairdi</i>	None	None	21	100.0

Source: RAM PQS data 2008-2009.

Rights of first refusal lapse, if IPQ are used outside of a community by the holder for three consecutive years. The limitations of the 'cooling off' provision prevented the movement of most IPQ subject to the right of first refusal from the community of origin in the first two years of the program. Consequently, only in the third and fourth years of the program was any notable portion of the IPQ permitted to be moved. As a result, rights of first refusal on PQS are believed to have lapsed in only a few instances. Most notably, the right has lapsed with respect to shares arising from historic processing in St. George. The St. George harbor and its entrance were damaged by a storm in 2004. In the first two years of the program, that damage was found to have prevented processing in St. George, as otherwise would have been required by the 'cooling off' period limitations. As a consequence, the right of first refusal lapsed on shares for which the Aleutian Pribilof Island Community Development Association (APICDA) holds rights of first refusal on behalf of St. George. To protect the interests of St. George, APICDA has acquired a portion of the PQS on which it held a right of first refusal and has entered into other agreements (which are confidential) with respect to the remainder that PQS. Other than the rights

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formerly protecting St. George, rights with respect to less than 1 percent of the PQS in any fishery are known to have lapsed.<sup>2</sup> In four additional cases, the holder of the right has acquired PQS formerly subject to a right of first refusal to ensure the associated processing remains in the community. These acquisitions suggest that the rights have contributed to protecting community interests.

Given the market limitations created by the Class A IFQ/IPQ issuances, the program includes an arbitration system for negotiating terms of delivery, including prices. Under the system, holders of Class A IFQ without PQS holder affiliations may arbitrate the terms of any landing under a last, best offer arbitration proceeding. The arbitrator is directed to establish a price that preserves the historic division of first wholesale revenues between the harvester and processor. In addition, the system mandates the production of a non-binding price formula by an independent analyst (based on the same standard). This formula is intended to guide negotiations among participants in the fisheries to limit the number of arbitration proceedings. Some participants believe the use of this non-binding formula has effectively prevented price disputes, as fewer than ten binding proceedings have taken place to date.

The arbitration system also defines a system of matching commitments of Class A IFQ and IPQ. That share matching process establishes delivery and acceptance commitments between share holders, and is the starting point for establishing the terms of delivery. This early season commitment of delivery quantities is believed by some participants to be important to planning and scheduling operations in the fisheries. The matching of Class A IFQ and IPQ is also a critical step in the arbitration system, as it is used to define eligibility for, and the parties to, any binding arbitration proceedings.

### Removal of processor shares

Several considerations arise if the Council undertakes a process to remove processor shares from the program. As suggested in public testimony, prior deliberations, and committee discussions, the removal of processor shares will allow harvesters greater flexibility in marketing their catches. This flexibility could increase production efficiency in the fishery by allowing harvesters to choose markets they believe are most beneficial. In making this calculus, a harvester will consider not only crab prices, but also any harvest cost differential that may arise from factors such as delivery location and time. These choices should lead to greater production efficiency, as choices will allow harvesters to pursue the greatest net return from their catches. While it is possible that some loss of processing efficiency could arise, particularly if independent actions of harvesters cause some loss of coordination in landings that impose costs on processors. Cooperatives (and other collective bargaining) can be beneficial in reducing these production efficiency losses by coordinating harvests and deliveries. Harvesters will have an incentive to engage in this coordination, as improved processor production efficiency should allow for a higher ex vessel price.

In addition to program changes, the Council will also need to consider the process for amending the program. The Council should consider whether extinguishing processor shares effectively creates a new limited access privilege program that must be adopted under the procedure defined for those programs in

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<sup>2</sup> Monitoring of the lapse of community rights of first refusal is challenging. Electronic landings data do not include the location of processing, for deliveries that are made to floating processors. Instead these landings are reported as "at sea". As a result, it is possible that rights could lapse without knowledge of the community. Once the lapse of the right is established, a community would have no standing to intervene in any subsequent sales of the PQS. NOAA Fisheries maintains a record of known instances of the lapse of rights of first refusal, but reporting the lapse is not required. Efforts are currently under way to rectify this reporting need.

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the reauthorized Magnuson Stevens Act.<sup>3</sup> In other words, the program change brought on by the elimination of processor shares could be argued to so fundamental to the program that it effectively creates a new management program. In favor of this view, extinguishing processor shares would directly modify several aspects of the program identified as fundamental to the program by the Council.<sup>4</sup> Processor shares (together with the arbitration system) define the distribution of benefits between harvesters and processors. The relationships driven by processor shares also affect the prosecution of the fishery, including timing of landings and location of deliveries. It can be argued that the extinguishment of processor shares will change the fishing practices through these indirect effects. Compounding this argument, other elements of the program are dependent on the processor share allocations. Most specifically, the community rights of first refusal apply to processor shares. Without these allocations communities with historic crab processing would have no direct protection of their interests in that processing activity. Based on these arguments, it could be asserted that removal of processor shares from the fishery effectively creates a new limited access privilege program. To adopt a new program the Council will be required to follow the procedure defined by the Magnuson Stevens Act as reauthorized. This includes respecification of the goals of the program, reconsideration of allocations (including allocations to small owner-operated vessels, fishing communities, and set asides for entry, captains, and crew), and the consideration of the auction of shares and the collection of royalties in the fisheries.

An alternative view suggests that extinguishment of processor shares does not create a new program. Persons supporting this view are likely to note that the removal of processor shares will not remove the existing allocations of QS and IFQ. Those harvest share allocations give the program its identity as a limited access privilege program and therefore its identity as an existing program. Absent any reissuance of QS and IFQ, it could be argued that the program is not a new program. Even if the program is not identified as a new limited access privilege program, it is not altogether clear whether changes to the program would need to be adopted under the procedure identified in the Magnuson Stevens Act as reauthorized. The transition rules adopted in the reauthorization state that the rules in effect prior to the reauthorization apply to limited access privilege programs adopted within 6 months after the reauthorization, but that Council's can incorporate criteria from the reauthorized act into any such program. Clearly, any elements of such a program as originally adopted would be subject to the Act in effect prior to the reauthorization and that a Council, at its discretion, could include provisions from the reauthorized Act in the original program or amendment. Amendments to the program, however, might need to be adopted in accordance with applicable procedures defined in the reauthorized Act. Alternatively, the Council would arguably be limited only by Section 303(d) as in effect prior to reauthorization. That section provides a limited framework for the adoption of individual fishing quota programs (see Appendix A).<sup>5</sup>

Although this uncertainty concerning authorizing legislation creates some uncertainty concerning procedural matters, the basis for proceeding with an action should be the Council's opinion of other aspects of the action to remove processor shares from the program.

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<sup>3</sup> A limited access privilege program is defined as a program under which persons are allocated fishing privileges that authorize the harvest of a portion of the total allowable catch of a stock. An IFQ is defined as a limited access privilege.

<sup>4</sup> See Summaries of the Bering Sea and Aleutian Islands crab rationalization program, submitted to the U.S. Congress, August 2002 and May 2003.

<sup>5</sup> Although that section provides a limited framework for the Council action, the Council would arguably be bound by National Standards, which provide more general considerations that apply to any Council action.



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### Processor share holder considerations

Removal of processor shares will most directly affect the marketing of landings by IFQ holders. This change in marketing is likely to affect both the distribution of landings among processors and ex vessel pricing. Implicit in any changes in distribution of landings among processors and ex vessel prices arising from the extinguishing of processor shares are detrimental effects on the holders of processor shares. If extinguished, holders of processor shares will lose the certainty of landings and any price and delivery term negotiating leverage that arises through those shares.<sup>6</sup> This change, in the absence of any compensating measure, would shift the distribution of benefits established by the current program. PQS holders would lose the benefit derived from their shares, while QS holders would gain an added benefit from the marketing flexibility. In addition to the effects on the distribution of benefits under the initial allocations in the program, recipients of QS and PQS by transfer would also be affected. Persons who acquired QS would receive an added benefit beyond that expected at the time of their acquisition, while persons who acquired PQS would lose the benefits associated with their purchase.<sup>7</sup> In considering a change in the program, the Council should assess whether holders of processor shares should be compensated for any loss of interest arising from extinguishing those processor shares. Of particular concern are those persons who acquired PQS since implementation of the program<sup>8</sup>, who have invested in processing in the fisheries in reliance of the programs attributes.

To be clear, the Council should note that under the authorizing legislation, it is under no obligation to compensate for the removal of processor shares. That legislation provides:

*An individual processing quota issued under the Program shall be considered a permit...and may be revoked or limited at any time in accordance with this Act. Issuance of an individual processing quota under the program shall not confer any right of compensation to the holder of such individual processing quota if it is revoked or limited and shall not create, or be construed to create, any right, title, or interest in or to any fish before the fish is purchased from an individual fishing quota holder.<sup>9</sup>*

Yet, the absence of an obligation to compensate should not be construed as justifying a possible inequitable outcome, should the Council find that removal of processor shares is unfair to their holders.

It is helpful to examine the exchange of processor shares since program implementation, when considering whether some form of compensation is appropriate on their extinguishment. A substantial portion of the PQS pools in the various fisheries have changed hands in the first four years of the program. Transfers have brought new entrants to the processing sector, as well as increased the holdings of some existing processors (see Table 2). While these changes in holdings suggest an active market for PQS, the degree of market activity is both overrepresented and underrepresented in these records. In some instances, changes in holdings are simply changes in named holder, which reflect minor structural

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<sup>6</sup> The arbitration system has limited the leverage that may be asserted by processing share holders. Yet, the shares provide some leverage by limiting the ability of harvesters to freely market landings of crab harvested with Class A IFQ. Also, processors can gain certainty in landings, but that certainty will come at the cost of a higher ex vessel price paid to induce a harvester to provide that certainty.

<sup>7</sup> To the extent that a change in the program was anticipated at the time of a transfer, it is possible that prices of QS and PQS might have been adjusted to reflect the potential for change. Clearly, Council agendas suggest that change is possible, so such a price adjustment is also possible. The degree of any such price adjustment is not known.

<sup>8</sup> The Council might also consider PQS investments made prior to program implementation. It is likely that some transactions preceding implementation of the program were founded on the upcoming allocations of PQS. Future PQS allocations likely formed the basis of and determined the price of these transactions.

<sup>9</sup> See MSA Section 313(j)(7).

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changes in the underlying holder's ownership. In other cases, substantial changes in underlying ownership of the holder have occurred with no corresponding change in the named holder. Despite these uncertainties, it is clear that transfer activity has occurred in all fisheries. Any extinguishment of processor shares would not only be disruptive to business arrangements structured around the current processor share regulatory structure, but would also deprive all holders of PQS (including those shares acquired since the program's implementation) of the value of those shares. These changes in share holdings should be considered when determining whether it is equitable to compensate PQS holders, if those shares are extinguished.

If the Council elects to proceed with an action to remove processor shares from the program and to compensate PQS holders for the loss of their shares, it would need to identify a mechanism for making that compensation. In prior deliberations, the Council has considered attempting to develop a means for financial compensation. The Council abandoned those discussions, as financial compensation would likely require Congressional authorization and appropriations. An alternative to financial payments could be compensation by transferring a portion of the QS pool to PQS holders. This mechanism is currently under consideration in a separate action that could reduce annual IPQ allocations by converting owner QS, which yield Class A IFQ and Class B IFQ, to crew QS, which are not subject to that IFQ share division. The compensation by conversion of extinguished PQS to harvester QS is clearly within the authority of the Council. To date, these are the only suggested means of compensating PQS holders for extinguishing all or portion of the processor share pool, should the Council determine to extinguish processor shares and that compensation is appropriate.<sup>10</sup>

**Table 2. Number of new PQS holders and PQS holders that have increase their holdings since implementation of the program.**

pqs

Fishery	Number of holders	New PQS holder in the fishery		New PQS holder in all fisheries		PQS holders that increased holdings	
		Number of entrants	Percent of QS pool acquired	Number of entrants	Percent of QS pool acquired	Number of holders	Percent of QS pool acquired
Bristol Bay red king crab	16	6	22.7	5	22.0	6	22.7
Bering Sea <i>C. opilio</i>	20	5	19.7	4	19.6	6	19.7
Eastern Aleutian Islands golden king crab	10	5	21.7	4	20.7	5	21.7
Eastern Bering Sea <i>C. bairdi</i>	21	5	11.5	4	11.5	7	11.9
Pribilof red and blue king crab	13	2	16.3	1	2.5	2	16.3
St. Matthew Island blue king crab	10	4	13.9	3	5.9	4	13.9
Western Aleutian Islands golden king crab	10	4	53.0	3	52.6	4	53.0
Western Aleutian Islands red king crab	8	3	62.5	2	35.4	3	62.5
Western Bering Sea <i>C. bairdi</i>	21	5	11.5	4	11.5	7	11.9

Source: RAM PQS database.

<sup>10</sup> If the Council elects to compensate holders of processor shares that are extinguished with QS, it will need to determine the magnitude of that compensation. Neither values of QS nor PQS are well established. Estimates of the relationship between these values can be derived for use by the Council in determining appropriate compensation. But these estimates will rely on price information that is considered relatively unreliable. In addition, any estimated QS value will be the value of the QS under the existing program. Extinguishment of processor shares will change QS values. This change in QS value will need to be considered in determining the appropriate level compensation, if the Council decides to compensate PQS holders with QS. Shortcomings of these type are often present in the Council's policy making process. The shortcomings should be considered, but should not prevent the Council from advance with an action otherwise deemed appropriate.

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**Regional landing requirements**

The current distribution of landings in the fisheries is greatly influenced by the regional landing requirements associated with Class A IFQ and IPQ. In the three of the six fisheries open last year, approximately 80 percent of the annual allocation of IFQ (including catcher processor IFQ and crew IFQ) was subject to a regional landing requirement (see Table 3).<sup>11</sup> In a fourth, the Western Aleutian Island golden king crab fishery, half of the annual catcher vessel owner IFQ allocation (or almost 25 percent of the total annual IFQ) are subject to regional landing requirements. In addition, regional landing requirements will apply to the Pribilof red and blue king crab, St. Matthew Island blue king crab, and Western Aleutian Island red king crab fisheries, all of which have been closed in recent years. In those three fisheries, substantial majorities of the total IFQ allocations will be subject to regional landing requirements.

The importance of regional landing requirements differs greatly across fisheries and regions. The Pribilof Island communities depend greatly on landings from the Bering Sea *C. opilio* fishery for revenues and economic activity. Community representatives maintain that North region landing requirements are vital to the both of the Pribilof Island communities. Likewise, West region landing requirements in the Western Aleutian Island golden king crab fishery are supported by Adak representatives, who maintain that landings from that fishery that are supported by the regional landing requirement are vital to maintaining a shore-based plant in the community. Regional landing requirements for South communities (specifically, Akutan, King Cove, and Unalaska/Dutch Harbor) are arguably less important, as most of those communities have a greater diversity of landings activities.

The importance of regional landing requirements likely varies year-to-year with total allowable catches (TACs) and conditions in the fisheries. For example, in years with high TACs and little ice, North region processors might draw more landings from the Bering Sea *C. opilio* fishery, if regional landing requirements did not require landings to be made in the South region. Regional landing requirements, however, add stability by ensuring the region will receive a portion of landings in every year. Although most beneficial to remote regions that could lose landings to locations that provide better access to goods and services, the application of regional landing requirements to less remote areas provide stability to those locations and prevent a large shifts in the distribution of landings across time.

**Table 3. IFQ subject to regional landing requirements by fishery (2008-2009 season).**

Fishery	Region	Pounds	Percent of total pounds*
Bristol Bay red king crab	North	387,853	2.1
	South	14,886,834	81.2
Bering Sea <i>C. opilio</i>	North	19,382,290	36.8
	South	22,250,814	42.2
Eastern Aleutian Islands golden king crab	South	2,355,261	83.1
Western Aleutian Islands golden king crab	West	599,474	23.5

Source: RAM IFQ database.

\* Including catcher processor allocations

<sup>11</sup> Approximately 10 percent of the annual catcher owner IFQ allocation is Class B IFQ not subject to regional landing requirements; approximately 3 percent of the annual catcher vessel allocation of IFQ is allocated as crew IFQ not subject to regional landing requirements; all catcher processor IFQ is exempt from regional landing requirements; and all or a portion of the Class A IFQ allocations in the Eastern Bering Sea *C. bairdi*, Western Bering Sea *C. bairdi*, and Western Aleutian Islands golden king crab fisheries are exempt from regionalization.

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If the Council elects to advance an action extinguishing processor shares from the fisheries, it could choose to retain regional landing requirements to protect regional interests in the fisheries. Retaining regional landing requirements will have an offsetting effect on the overall freeing of markets for IFQ holders, by limiting potential markets to those within specific geographic areas. If the current distribution of processing facilities is maintained, it is possible that in remote regions a holder of regionally designated IFQ could have only one or two markets to choose from. This constraint on markets has led some harvest sector participants to suggest that the arbitration system should be retained, if the Council elects to maintain regional landing requirements. To retain an arbitration system in the program without IPQ will require substantial restructuring of that system. The arbitration system relies on the matching of Class A IFQ and IPQ to define the parties to an arbitration proceeding. In the absence of this share matching, a system will need to be developed by which a processor commits to accept a delivery from IFQ holder. Each commitment would then define the parties to a potential arbitration proceeding. These modifications of the arbitration system would likely require substantial industry discussion, similar to the committee discussions used in the initial development of the arbitration system. If the Council elects to proceed with a modified arbitration system, it should also develop a process for the development of those modifications.

In deciding whether to include an arbitration system in any action to remove processor shares from the fisheries, the Council will need to assess whether the use of an arbitration system is consistent with its purpose for considering the action to extinguish processor shares. Specifically, to the extent that the Council is considering removal of processor shares as a means to simplify the program and remove market constraints for landings, the adaptation of the arbitration system to the program would reintroduce complexity and could lead to additional constraints on landing markets (depending on the structure of IFQ and processor delivery commitments that support the arbitration system). The Council will need to reconcile these tensions between the its purpose for extinguishing processing shares and the added complexity that would arise, if the arbitration system is retained.

In any case, the Council will need to determine whether regional landing requirements should be retained in the absence of processor shares, if they elect to proceed with this action. If regional landing requirements are retained, the Council will then need to determine whether to complement IFQ constrained by those requirements with an arbitration system to ensure that IFQ holders have an adequate negotiating position.

### **Rights of first refusal considerations**

Under the current management, community interests are protected, in part, through rights of first refusal on processor shares. Since these rights apply to processor shares, the extinguishment of processor shares would erase those rights by removing their subject. Consequently, in considering whether to advance an action to extinguish processor shares, the Council will need to consider the importance of those rights to protection of community interests in the fisheries. If the Council chooses to move forward, it could either extinguish those rights with the processor shares or develop alternative forms of protection for community interests.

The portion of the processor share pool subject to rights of first refusal varies by fishery. Over 85 percent of the processor shares in the Bristol Bay red king crab and the Bering Sea *C. opilio* fisheries are subject to these rights; over 90 percent of the processor shares in the Eastern Aleutian Islands golden king crab and the Pribilof red and blue king crab fisheries are subject to these rights; and slightly more than 35 percent of the processor shares in the St. Matthew Island blue king crab fishery are subject to these rights. The two Western Aleutian Island king crab fisheries and the two Bering Sea *C. bairdi* fisheries are exempt from rights of first refusal.

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Rights of first refusal have been a controversial element of the program for several reasons. Applying rights of first refusal to any assets is known to reduce its value in transfer. To the extent that processor shares are intended to compensate historic processors who choose to exit the fishery, the right can reduce the amount of that compensation. On the other hand, several structural aspects of the rights of first refusal protect share holder interests in processing activity undertaken using processor shares. A processor share holder has the latitude to move processing between communities without triggering the right. If the holder uses the shares outside the community for three consecutive years, the right lapses. The right applies to any transaction that includes a transfer of the shares, on the terms of the transaction. So, to exercise its right a community must accept all terms of the transaction including assets other than the shares and a purchase price that may be inflated by those other items. These structural aspects of the right provide flexibility for processors to use their shares and receive the expected compensation for a sale that includes the shares, but they also limit the accessibility of the right to community representatives. The Council is considering an action to strengthen community rights, but it remains unclear whether that action will (or can) address all of these issues.

Although the structure of the right of first refusal provides ample opportunity for processor share holders to circumvent community interests, to date, processor share holders have shown a reluctance to exploit those opportunities. In three instances, share holders negotiated agreements for the transfer of processor shares to community representatives without the exercise of rights. These share holders likely could have avoided triggering the rights or could have prevented the exercise of rights by structuring their transactions in a manner that discourages that exercise. These negotiated transfers are arguably a better outcome than the exercise of a right by a community representative, as they provide an agreed (and planned) transition of interests from processor share holders to communities, which is likely less disruptive to business operations and reduces risk to community representatives that may take on far greater risk, if confronted with the all-or-nothing proposition of intervening in a transaction through the exercise of the right.

The negotiating leverage the right provides communities and these negotiated arrangements also provide protection to communities. On its face, the right of first refusal provides community representatives with a mechanism for acquiring processor shares that are being transferred for use outside the community. Yet, no cases of the right being triggered or exercised under its structure are known to have occurred. Instead, the effect of the right has been to provide community representatives with a platform for negotiations with PQS holders that are considering share transfers. The development of these negotiations has likely improved the position of community representatives, especially those that lack the wherewithal to exercise a right of first refusal on large transaction that includes assets other than processor shares. In addition, negotiated transactions (as leveraged by the right) have led processors to consider community interests when considering a transfer of share holdings that is likely to affect the community. Overall, the rights of first refusal have had the effect of providing community representatives with negotiating leverage with respect to processing shares originating from their community.

In considering whether to initiate an action to extinguish processor shares, the Council should recognize that rights of first refusal applying to those processor shares would also be eliminated. The Council will need to consider whether a substitute protection is merited. The form of that protection could take several forms and would depend on the Council's objectives in protecting community interests in the fisheries. Under the Magnuson Stevens Act as recently reauthorized, Councils may consider applying regional and port specific landing requirements to IFQ.<sup>12</sup> These requirements would be similar to current regional

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<sup>12</sup> See MSA 303A(c)(5)(B)(i)

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designations on IFQ, but could be more specific. For example, a QS holder could be required to always (or for some subset of years) land yielded IFQ in a particular community. These port specific landing requirements could resurrect other issues and complications. First, QS holders who assert that regional landing requirements limit markets to an extent that arbitration is required are certain to assert the arbitration system will be necessary, if port landing requirements are adopted. As under a program with regional landing requirements and no processor shares, the arbitration system will need to be adapted as processor shares are currently used for identifying commitments and parties to arbitration proceedings. Modification of the arbitration program would likely require substantial discussion by harvesting and processing sector representatives and the Council, as the procedural structure of that system can greatly affect the relative bargaining positions of participants. Second, IFQ usage and its tracking by both cooperatives and NOAA Fisheries administrators will be substantially more complicated, as each pound of IFQ held by a cooperative will need to be tracked by its applicable port designation. Current systems of recording landings do not adequately track landings for this purpose. As a result, fish ticket and catch accounting modifications would likely need to be developed. In considering whether port specific landing requirements are an appropriate measure to protect community interests, the Council should consider whether these added complexities are consistent with its overall objectives for considering an action to extinguish processor shares from the fisheries.

Other measures to address community interests could be considered. For example, the Magnuson Stevens Act as reauthorized allows for the allocation of harvest shares to communities. Several considerations could affect the Council's decision of whether to proceed with a harvest share allocation to communities. Harvest share allocations would provide a different interest to the community than the processing interest represented by rights of first refusal. In addition, CDQ groups already receive substantial allocations in these fisheries. Additional community allocations are likely to be controversial and provoke objections from historic private participants who may view the allocations as eroding their fishery investments. These arguments may be more difficult to overcome, if the Council elects to compensate PQS holders for the extinguishment of processing shares with an allocation of QS, as that would further erode current QS holdings. Although other approaches to protecting community interests under the program might be possible, the Magnuson Stevens Act suggests only these two measures for the protection of communities in the development of limited access privilege programs.

### Conclusion

Processor shares (and the associated arbitration system) define the harvester/processor relationships under the rationalization program. Any action to eliminate processor shares from the program would cause fundamental changes in that relationship. Negotiation of pricing and all delivery terms will be affected. If the Council elects to proceed with an action to eliminate processor shares, it will need to assess these changes and determine whether offsetting program elements are necessary. Beyond balancing negotiating leverage between the sectors, elements could be considered to provide for stability within the sectors and in harvester/processor relationships.

Extinguishment of processor shares will require the Council to revisit not only the distribution of interests between the sectors, but also consider revisions to other aspects of the rationalization program. The processor share component of the program is a lynchpin that supports other program defining elements – most importantly community and regional protections. If processor shares are removed from the fisheries, the effects on these aspects of the program should be considered. Regional requirements on IFQ could be continued, but may require consideration of a revised arbitration system. Rights of first refusal on processor shares cannot be maintained, but other community protections could be substituted. The MSA as revised suggests two possible measures to protect community interests - port landing requirements and community allocations. Either of these measures will have effects on other aspects of the program.

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Community allocations would further erode the owner harvest share pool allocations. Port landing requirements would further complicate administration of the program and would further constrain harvester markets increasing the need to develop revisions to the arbitration system.

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**Appendix A**

**Section 303(d) as in effect October 11, 1996**

**303(d) INDIVIDUAL FISHING QUOTAS.--**

(1) (A) A Council may not submit and the Secretary may not approve or implement before October 1, 2000, any fishery management plan, plan amendment, or regulation under this Act which creates a new individual fishing quota program.

(B) Any fishery management plan, plan amendment, or regulation approved by the Secretary on or after January 4, 1995, which creates any new individual fishing quota program shall be repealed and immediately returned by the Secretary to the appropriate Council and shall not be resubmitted, reapproved, or implemented during the moratorium set forth in subparagraph (A).

(2) (A) No provision of law shall be construed to limit the authority of a Council to submit and the Secretary to approve the termination or limitation, without compensation to holders of any limited access system permits, of a fishery management plan, plan amendment, or regulation that provides for a limited access system, including an individual fishing quota program.

(B) This subsection shall not be construed to prohibit a Council from submitting, or the Secretary from approving and implementing, amendments to the North Pacific halibut and sablefish, South Atlantic wreckfish, or Mid-Atlantic surf clam and ocean (including mahogany) quahog individual fishing quota programs.

(3) An individual fishing quota or other limited access system authorization--

(A) shall be considered a permit for the purposes of sections 307, 308, and 309;

(B) may be revoked or limited at any time in accordance with this Act;

(C) shall not confer any right of compensation to the holder of such individual fishing quota or other such limited access system authorization if it is revoked or limited; and

(D) shall not create, or be construed to create, any right, title, or interest in or to any fish before the fish is harvested.

(4) (A) A Council may submit, and the Secretary may approve and implement, a program which reserves up to 25 percent of any fees collected from a fishery under section 304(d)(2) to be used, pursuant to section 1104A(a)(7) of the Merchant Marine Act, 1936 (46 U.S.C. App. 1274(a)(7)), to issue obligations that aid in financing the--

(i) purchase of individual fishing quotas in that fishery by fishermen who fish from small vessels; and

(ii) first-time purchase of individual fishing quotas in that fishery by entry level fishermen.

(B) A Council making a submission under subparagraph (A) shall recommend criteria, consistent with the provisions of this Act, that a fisherman must meet to qualify for guarantees under clauses (i) and (ii) of subparagraph (A) and the portion of funds to be allocated for guarantees under each clause.



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(5) In submitting and approving any new individual fishing quota program on or after October 1, 2000, the Councils and the Secretary shall consider the report of the National Academy of Sciences required under section 108(f) of the Sustainable Fisheries Act, and any recommendations contained in such report, and shall ensure that any such program--

(A) establishes procedures and requirements for the review and revision of the terms of any such program (including any revisions that may be necessary once a national policy with respect to individual fishing quota programs is implemented), and, if appropriate, for the renewal, reallocation, or reissuance of individual fishing quotas;

(B) provides for the effective enforcement and management of any such program, including adequate observer coverage, and for fees under section 304(d)(2) to recover actual costs directly related to such enforcement and management; and

(C) provides for a fair and equitable initial allocation of individual fishing quotas, prevents any person from acquiring an excessive share of the individual fishing quotas issued, and considers the allocation of a portion of the annual harvest in the fishery for entry-level fishermen, small vessel owners, and crew members who do not hold or qualify for individual fishing quotas.

**Leasing practices in North Pacific fisheries  
Bering Sea and Aleutian Island crab fisheries  
North Pacific Fishery Management Council  
June 2009**

In August of 2005, fishing began under the rationalization program developed by the North Pacific Fishery Management Council for the Bering Sea and Aleutian Islands crab fisheries. In the years leading up to implementation of the program, in excess of 200 vessels typically participated in the Bristol Bay red king crab fishery, while over 150 vessels typically participated in the Bering Sea *C. opilio* fishery. Under the new program, fewer than 100 vessels participated in either of these fisheries in any year. This consolidation has affected crews in the fisheries in several ways. While some changes may be viewed as benefiting crew, many crew have lost positions in the fisheries; others have seen their incomes affected by deduction of lease payments from the vessel revenues prior to computation of crew shares. These concerns have drawn the continuing attention of the Council, since implementation of the program. To begin the process of addressing these concerns the Council has taken several steps. The Council has defined alternatives to amend the program that include options to increase the portion of the harvest share pool that must be held by persons active on vessels in the fisheries. In addition, the Council adopted the following motion, requesting a discussion paper examining the effects of leasing on crew in fisheries, including the crab fisheries:

Leasing restrictions: A paper addressing factors affecting lease rates in the Bristol Bay red king crab and Bering Sea *C. opilio* fisheries. Include a discussion of how the extraction of rents by quota holders through lease payments has changed payments to crew under the crab rationalization program. Provide examples from other programs of provisions that limit leasing activity and suggestions of how to achieve some reductions in either the extent of leasing activity or the lease rate in these two rationalized crab fisheries.

This paper is the staff response to the Council's request. The paper begins with a discussion of the defining of "leasing" citing pitfalls that might arise in trying to curtail undesirable practices, if a narrow definition of leasing is used. The discussion of a leasing definition is followed by a section examining the leasing and transfer practices in the Bristol Bay red king crab and Bering Sea *C. opilio* fisheries (the major crab fisheries) and the effects of those practices on crew. The paper then examines transfers and consolidation in the halibut and sablefish IFQ fisheries and the American Fisheries Act Bering Sea pollock cooperative program, the other fisheries in the North Pacific governed by share-based management programs from which lessons may be drawn.<sup>1</sup> The paper concludes with a discussion of possible measures (including both management measures and private measures that could be adopted by crews) to mitigate against the negative effects of leasing practices in the crab fisheries. In all cases, the discussion focuses on catcher vessels. Limited information is available and can be released concerning the catcher processors in the crab fisheries and other fisheries considered in this paper. In addition, compensation of catcher processor crews tends to be more complex and varied as some crew work as vessel crew and in processing.

**What's a lease?**

Prior to implementation of the rationalization program, the major crab fisheries were managed under the License Limitation Program (LLP). With the transition to the rationalization program, license holders in the crab fisheries were allocated quota shares (QS) that annually yield individual fishing quota (IFQ) that

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<sup>1</sup> Although the Central Gulf of Alaska rockfish fishery and the Bering Sea non-pollock catcher processor fleets are governed by share-based management, those programs are relatively new and provide limited insight into the effects of transfers on crew.

allow the holder to harvest a portion of the total allowable catch. These transferable shares allowed former license holders to realize a return from the fishery without participation. QS holders could either divest of their interest in the fisheries by transferring those shares to others or transfer their IFQ on an annual basis to others who entered a vessel in the fishery. Annual transfers of interests can be through direct leases of IFQ<sup>2</sup> or through transfers among members of a cooperative. In addition, QS holders could form partnerships (or jointly owned corporations) with other QS holders to enter a single vessel in the fisheries to fish their combined share holdings. NOAA Fisheries documents only transfers of QS and simple leases of IFQ among their holders. Many transfers escape documentation because of the share holding structure of the program and the business practices of share holders. For example, exchanges of IFQ among members of the same cooperative are not recorded, as IFQ are allocated to the cooperative and fished collectively by the members. In addition, transactions that appear to be transfers may not be transfers at all, but are merely restructuring of interests. For example, two QS holders may agree to form a partnership to hold their QS, while maintaining their proportional interests in the QS under a partnership agreement. These shares may be fished off a single vessel without leasing. This variety of transfers is problematic for any examination of the effects of 'leasing.' The examination requires a definition of a 'lease' and records for distinguishing leases from other forms of transfer activity. By developing a definition, transactions of interest (which may have the same effect as transactions that are defined as a lease) may be excluded from consideration.

The Council's purpose for examining 'leasing' is to determine how leasing under the rationalization program has affected crew and to develop measures to prevent adverse effects of that leasing. Given this purpose and the potential for omitting transactions that are important contributors to crew effects, this paper looks more broadly at share use and consolidation in the fisheries and their effects on crew and possible mitigation of any adverse effects. This broader approach will ensure that share use (including use that might otherwise not be defined as a lease) that carries with it adverse consequences will be considered. This broader approach is also justified by data available for examining crew effects. These data include catch, ex vessel revenues, and crew payments. The diversity of crew contracts and their terms of compensation across the fleet prevent any back calculation of crew shares using lease rates. As a result, a broader consideration of crew effects that includes consideration of the array of transactions that contribute to consolidation seems merited. Also, rules in other fisheries that may shed light on the potential for management measures to protect crew prevent transactions that might be characterized as 'leases' under a traditional definition. In some cases, participants in these other fisheries have achieved consolidation despite these leasing prohibitions. To understand whether a management measure will protect crew from detrimental effects arising from transfers, it is therefore important to broadly consider the effects of share use and consolidation.

#### **Leasing practices in the Bristol Bay red king crab and Bering Sea *C. opilio* fisheries**

Prior to implementation of the rationalization program, a holder of a license endorsed for one or both of the major fisheries needed to enter a vessel into the fisheries to realize any return. As a consequence, license holders (particularly those who had invested in a vessel to use in the fisheries and carried mortgage obligations) are reported to have been compelled to participate in the fisheries, regardless of whether returns were expected to be substantial (or even cover the full costs of participation). With relatively high participation rates, crew positions were readily available particularly for good, experienced crew. Although financial pressures might have otherwise limited the ability of vessel owners to compensate crew, the large number of vessels simultaneously participating in the fisheries provided persons willing to work on vessels with substantial leverage in any negotiation for a position.

This leverage was likely manifest in two ways. First, crew shares likely reflected some of this additional

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<sup>2</sup> These direct leases will be prohibited for IFQ holders other than cooperatives after the 5<sup>th</sup> year of the program.

leverage. Most crew were paid on a share system, under which payment is a percentage of vessel revenues after deduction of specified costs (most frequently food, fuel and bait). In individual cases, some crew may have been able to negotiate a more senior position and higher share for themselves, if a vessel needed to fill that more senior position. In addition, crewmembers on average might have received a higher share percentage for their work, than would have been paid in a more competitive labor market. This market power may be evident as share percentages in the crab fisheries are similar to share percentages paid in other fisheries (such as pot fishing for Pacific cod) despite substantially higher daily revenues from the crab fisheries. Admittedly crab fishing introduces greater risks than cod fishing, which should provide for a premium for crab fishing.<sup>3</sup> Yet, it is unlikely that any vessel owner who attempted to reduce crew shares in the fishery to a level that would compensate crew at a daily rate similar to that in other pot fisheries would have been able to retain a good crew. The magnitude of the difference in daily revenues suggests that crew may have received extraordinary shares (and pay) in the crab fisheries under the LLP.

The leverage of crew in these negotiations also shows in the payment of late (or last minute) hires in the fisheries. It was not uncommon for some vessel owners to make hires to fill out their crews in the last few days before the season opened. Crew hired for these positions were typically hired at the same share they would have received had they been hired earlier, a few weeks or a month prior to the opening. These late hires would have done little gear and boat work prior to the opening, but received a share comparable to other crew, as they were needed by both the vessel owner and the other crew for the vessel to participate in the fishery. These late hires clearly exploited their leverage with both vessel owners and other crew.

In the first season under the rationalization program, former license holders used their new ability as share holders to consolidate fishing on fewer vessels. Examining data from the first three years of the program shows a substantial reduction in the fleets in the two major fisheries (Table 1). The figures reveal initial precipitous declines that, as expected, slowed over time. Prior to the implementation of the rationalization program, between 167 and 251 vessels participated annually in each of the two largest fisheries, the Bristol Bay red king crab and Bering Sea *C. opilio* fisheries. In the Bristol Bay red king crab fishery, the fleet contracted to less than one-third its pre-rationalization size. In the Bering Sea *C. opilio* fishery the fleet contracted to levels similar to those in the Bristol Bay red king crab fishery, but the contraction was of smaller magnitude because this fleet had contracted to some degree prior to implementation of the program, as GHLs in the fishery were at historic lows in the years preceding the program. Consolidation in the fisheries took place to the degree but more quickly than most predicted.

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<sup>3</sup> These risks include not only safety risks arising from the nature of the crab fishery, but also financial risk, as crew payments depend on the performance of the vessel. Crewmembers on a vessel that had a poor season, due to unsuccessful fishing or breakdown, would receive little pay.

**Table 1. Catch, number of vessels, and season length in the Bristol Bay red king crab and Bering Sea *C. opilio* fisheries (2001 to 2007-2008).**

Fishery	Season	Catch	Number of vessels participating			Season length (in days)
			catcher vessels	catcher processors	all unique vessels	
Bering Sea <i>C. opilio</i>	2002	29,609,702	182	9	190	24
	2003	25,410,122	185	5	190	10
	2004	21,939,493	183	6	189	8
	2005	22,655,777	161	6	167	5
	2005 - 2006	33,248,009	76	4	78	212/228*
	2006 - 2007	32,699,911	66	4	70	
	2007 - 2008	56,722,400	74	4	78	
Bristol Bay red king crab	2001	7,681,106	224	8	230	3
	2002	8,770,348	234	9	241	3
	2003	14,237,375	242	8	250	5
	2004	13,889,047	243	8	251	3
	2005 - 2006	16,472,400	88	4	89	92
	2006 - 2007	13,887,531	79	3	81	
	2007 - 2008	18,324,046	72	3	74	

Sources: ADFG fishtickets and NMFS RAM catch data (for 2005-2006, 2008-2007, and 2007-2008)

For 2005-2006, 2006-2007, and 2007-2008 catcher processor vessel count include all vessels harvesting catcher processor shares.

\* The Eastern area closes 16 days prior to the Western area in this fishery.

A few factors likely contributed to the substantial consolidation that occurred in the first years of the program. The short seasons and low catches (relative to historic highs) created an environment ripe for consolidation. In addition, industry participants maintain that many of the vessels that departed in the first year of the program would have been retired from the fishery earlier, but for the prospect of the rationalization program. This lingering capacity led to a far more precipitous drop in the first year of the program. Consolidation was also stimulated by the cooperative structure under the program. Cooperatives created the framework and led to the development of harvesting associations, improving relationships and easing consolidation. Exempting cooperative participants from vessel use caps (set at 1 percent of the owner IFQ for vessels harvesting individually held IFQ) both increased the incentive for cooperative membership and effectively annulling any vessel use cap.

Comparing vessel activities before and after implementation of the program brings to light further changes in the fleet dynamics in the fisheries (see Table 2 and Table 3). Considerable consolidation occurred in the first year of the program. In the Bristol Bay red king crab fishery, the fleet contracted to slightly more than one-third its pre-rationalization size. While quota was consolidated on the active vessels, other vessels sat idle and owners collected lease royalties). Most active vessels substantially increased their catch after rationalization. Under the rationalization program, both the median and largest harvests have been more than double their prerationalization levels in pounds and as a percent of the total catch. The mean and median vessel harvest in the fishery has grown consistently in the first three years of the program, but the largest harvests have fluctuated, both in pounds and as a percent of the total harvests. In the first year of the program in Bering Sea *C. opilio* fishery, the fleet contracted to levels similar to those in the Bristol Bay red king crab fishery, but the contraction was of smaller magnitude because this fleet had contracted to some degree prior to implementation of the program. The relatively fewer vessels in the Bering Sea *C. opilio* fishery prior to the 2005-2006 season likely occurred because GHs in that fishery were at historic lows leading up to implementation of the program. From 1997 through 1999, the average vessel harvest was approximately 617,000, substantially higher than the average vessel harvest in the 2005-2006 season. In the first year of the program, the harvests of the largest vessels in the fleet

greatly exceeded the largest pre-rationalization harvests.<sup>4</sup>

**Table 2. Simple statistics of the fleet participating in the Bristol Bay red king crab fishery.**

Season	Number of vessels in the fishery	Total Catch	Average vessel harvest		Median vessel harvest		Average of highest four vessel harvests	
			as percent of total allocation	in pounds	as percent of total allocation	in pounds	as percent of total allocation	in pounds
2001	230	7,681,106	0.43	33,396	0.37	28,747	1.28	98,202
2002	241	8,770,348	0.41	36,391	0.40	35,316	0.82	71,911
2003	250	14,237,375	0.40	56,950	0.33	47,540	1.40	198,892
2004	251	13,889,047	0.40	55,335	0.38	52,780	0.86	119,599
2005-2006	89	16,472,400	1.12	185,120	0.85	140,698	3.90	643,007
2006-2007	81	13,887,531	1.23	170,268	1.05	146,374	3.27	453,476
2007-2008	74	18,324,046	1.35	247,343	1.22	222,838	3.57	654,402

**Table 3. Simple statistics of the fleet participating in the Bering Sea *C. opilio* fishery.**

Season	Number of vessels in the fishery	Total Catch	Average vessel harvest		Median vessel harvest		Average of highest four	
			as percent of total allocation	in pounds	as percent of total allocation	in pounds	as percent of total allocation	in pounds
2001	207	22,940,704	0.48	110,825	0.38	86,479	2.59	593,306
2002	190	29,609,702	0.53	155,841	0.50	147,730	1.44	425,538
2003	190	25,410,122	0.53	133,737	0.49	125,655	1.07	271,901
2004	189	21,939,493	0.53	116,082	0.49	106,791	1.30	284,844
2005	167	22,655,777	0.60	135,683	0.57	128,122	1.21	273,237
2005-2006	78	33,248,009	1.27	423,485	1.05	349,851	3.59	1,192,020
2006-2007	70	32,699,911	1.42	463,589	1.19	389,008	4.14	1,352,638
2007-2008	78	56,722,400	1.28	727,105	1.08	611,366	3.27	1,853,105

This consolidation brought led the greatest effect on crew arising from the rationalization program, the loss of crew positions in the fisheries. Crew sizes are generally unchanged since implementation of the program, so vessel participation provides a direct estimate of the number of crew that have left the fisheries. Data from Crab Economic Data Reports (see Table 4 below), as well as anecdotal reports, indicate that crew sizes have changed minimally (at most one person per vessel) since implementation of the program. In some instances, vessels are reported to have added crew to reduce the burden of deck labor in the fisheries. Absent improved data, the removal of vessels from the fisheries provides a direct estimate of the number of crew jobs lost. Assuming approximately six crew members per vessel, approximately 975 fewer crew (including captains) were employed in the Bristol Bay red king crab fishery on average in the first three years of the rationalization program, in comparison to the 2000 to 2004 season average; approximately 675 fewer crew were employed in the Bering Sea *C. opilio* fishery on average in the first three years of the program, when compared to the 2001 to 2005 season average.<sup>5</sup>

<sup>4</sup> The four largest vessels in the fishery in 2001 harvested a substantially greater share than the four largest harvests in any other year. This likely occurred because some catcher processors did not acknowledge a catcher vessel strike in the fishery that year.

<sup>5</sup> Note that these estimates are based on an assumption of 6 persons per crew (including captain). Crab Economic Data Reports suggest that average crews are approximately 5 persons; however, these surveys may have some biases. For years prior to implementation of the program, the surveys requested average crew size. Subsequent to the implementation the survey requests the number of paid crew per fishery. Both suggest that average crews are less than 6 persons. Further estimates of crew sizes could be derived using E-landings data, if time allowed.

Although these job losses are substantial, one must also consider the terms of employment in the prerationalization fisheries in assessing the magnitude of the loss. Few crab deck jobs, particularly in the two large fisheries, fully supported a crewmember. Because of the small size of the fisheries in years leading up to the rationalization program, most crew worked only a month or so in the crab fisheries. Crew typically worked other jobs (including crew jobs in other fisheries) throughout the remainder of the year. In addition, since pay was based on performance in the derby, pay was subject to risk. Although high end of that spectrum The relatively short tenure of crab crew jobs was attractive to many crew, since they were able to negotiate (or take) short periods away from other employment to fish crab. Notwithstanding the relatively short term of these jobs, for many deck crew, their crab fishing jobs were reported to have provided important contributions to annual income. Particularly in the case of crew from remote communities with few job opportunities, replacing income from lost crab crew jobs is reported to be problematic.

Crab Economic Data Reports provide some indication of crew pay effects arising from the rationalization program. These data, however, should be interpreted as only providing a general reflection of conditions, as many respondents are believed to have misinterpreted questions concerning crew compensation (see Table 4). Specifically, captain and crew payment questions requested the actual amount paid to crew, not their payment before "shared expenses" (such as food, fuel, or bait) were "deducted". The following question distinguishes "deductions," which are shared expenses removed from vessel revenues prior to calculation of the crew share, from "charges," which are crew borne expenses removed after the calculation of crew shares. Most respondents are believed to have included the amount paid to crew in settlement checks without distinguishing whether "charges" might be removed before making that payment. As a result, we are uncertain of whether charges were removed by respondents, although the instructions direct a respondent to remove only deductions (not charges). The discrepancy could be significant, particularly in pre-rationalization years, when crew payments were substantially lower dollar amounts. For example, a \$1,000 plane ticket to Dutch Harbor may be the difference between a \$5,000 season and a \$6,000 season in the Bering Sea *C. opilio* 2001 season. In addition, although data are collected for most of the items deducted or charged, much of those data are of poor quality. In combination, these issues limit the ability to fully and accurately understand crew or captain pay. Despite these shortcomings, it is believed that these data provide a general understanding of the direction and gross scale of changes in crew compensation under the program. Interpreting these data also requires one to consider the circumstances in the fisheries. For example, in 1998, the Bering Sea *C. opilio* harvests exceeded 240 million pounds, more than four times the 2007 catch and more than seven times the catch for any other year covered by the data collection. Such circumstances are important to interpreting changes in crew compensation that have occurred.

Crew shares and payments reflect the course of changes that arose in the crab fisheries under the rationalization program, including these changes in deductions and charges. Fleet consolidation (together with some contribution from generally higher TACs) increased the average vessel harvest substantially from the years immediately preceding the program. In the Bering Sea *C. opilio* fishery, the 1998 TAC greatly exceeded the TAC in any subsequent year. As a result, average vessel catch in that year exceeds average vessel catch in any year since program implementation. In years with comparable TACs, average vessel catches in the rationalized fishery were approximately triple the pre-rationalization levels. This consolidation, and the means by which it occurred, greatly increased the catches that are the basis for crew shares.

Since crew compensation arrangements vary across the fleet, changes in crew share payments can be best assessed by examining the change in the percentage of gross vessel revenues paid to crew before and after the implementation of the program. Available data suggest that mean and median crew payments as a percentage of vessel revenues declined by approximately one-third under the rationalization program (see

Table 4). Although this decline is substantial, on average, the increase in revenues from consolidation (i.e., increase in average vessel harvest) more than compensated for additional deductions, charges, and decrease share percentages. In general, this additional compensation came at the cost of greater crew efforts harvesting those additional pounds.

In reviewing crew compensation on a fishery basis, two seasons in the Bering Sea *C. opilio* fishery stand out. In 1998, the extremely large total catch supported a very high average vessel harvest – more than twice the average vessel harvest any other year for which Economic Data Reporting data are available. This high vessel harvest level, supported a very high crew compensation. Despite the high vessel catches in that 1998, in 2007 (the second year of the rationalization program), crew compensation in the fishery approached the 1998 level. This relatively high compensation arose because of a relatively high price for crab in 2007 (\$1.71 per pound based on Economic Data Reporting data) compared to 1998 (\$0.57 per pound based on Economic Data Reporting data) and despite the lower percent of gross vessel revenues paid to crew. The 2006 year in the fishery shows an opposite price effect. In that year, crew compensation increase only slightly from levels seen in the years immediately preceding implementation of the program. In that year, crab prices dropped by more than one-third (to \$1.11 in 2006 from \$2.03 in 2004 and \$1.80 in 2005 based on Economic Data Reporting data). As a result of this price drop (and the changes in deductions, charges, and crew shares), crew compensation increased only slightly, despite a substantial increase in average vessel harvests.

**Table 4. Crew size, harvest, captain pay, crew pay, and percentage of gross vessel revenues paid to crew in the Bristol Bay red king crab and Bering Sea *C. opilio* fisheries by fishery (1998, 2001, 2004-2007).**

Fishery	Year	Number of vessels	Mean crew size	Mean vessel harvest (pounds)	Captain pay (\$)		Mean crew pay (excluding captain) (\$)	Crewmember pay (\$)		Percent of gross vessel revenues paid to crew (including captain)	
					Mean	Median		Mean	Median	Mean	Median
Bristol Bay red king crab	1998	185	5.2	56,089	17,543	16,499	35,862	6,921	6,179	35.4	35.3
	2001	180	4.8	36,279	21,359	18,668	40,172	8,395	6,996	35.5	35.3
	2004	218	5.3	58,822	31,483	29,865	66,482	12,417	11,596	35.7	35.7
	2005	83	4.9	194,812	63,387	53,910	120,058	24,112	21,375	25.0	22.7
	2006	77	4.9	202,058	50,384	46,818	99,381	19,899	19,423	23.7	23.1
	2007	70	5.0	269,194	75,771	68,155	150,526	29,640	27,007	22.8	21.5
Bering Sea <i>C. opilio</i>	1998	159	6.0	1,093,034	74,434	70,129	150,025	25,349	23,392	36.3	35.5
	2001	156	5.4	110,497	18,620	15,624	37,714	6,758	5,597	31.8	31.9
	2004	165	4.9	124,336	29,692	28,807	58,954	11,897	10,766	35.2	35.2
	2005	146	4.7	158,660	31,715	31,421	60,482	12,879	12,311	34.5	35.4
	2006	73	5.1	453,546	36,256	32,219	72,145	13,933	12,594	23.7	22.0
	2007	62	5.2	498,398	60,129	55,125	127,238	23,945	22,724	24.4	22.8

Source: Crab Economic Data Reporting.

Notes: Mean crew size is a count of all crew paid shares excluding the captain. Excludes any vessels on which crew were paid in excess of 75 percent of the vessel's gross revenues.

Examining compensation on vessels that participate in both the Bristol Bay red king crab and Bering Sea *C. opilio* fisheries provides a more complete view of compensation on vessels that used in both fisheries. In 2006, when Bering Sea *C. opilio* prices were particularly low, the average crew earned substantially greater compensation than in the years preceding rationalization, with the exception of 1998, when harvests from the Bering Sea *C. opilio* fishery were substantially greater than for any other year for which data are available. Despite these reinforcing factors, the average crew on a vessel that participated in both fisheries received comparable compensation in 1998 and 2006.



**Table 5. Harvest, captain pay, crew pay, and percentage of gross vessel revenues paid to crew by vessels participating in both the Bristol Bay red king crab and Bering Sea *C. opilio* fisheries (1998, 2001, 2004, 2006-2007).**

Year	Number of vessels	Vessel revenues		Captain pay		Crew pay (excluding captain)		Percent of gross to crew (including captain)	
		Mean	Median	Mean	Median	Mean	Median	Mean	Median
1998	146	783,000	742,052	93,457	88,913	189,765	176,540	36.0	35.3
2001	141	356,687	302,509	41,413	35,854	80,032	71,865	34.2	34.5
2004	160	548,336	517,390	63,883	61,549	130,808	120,434	35.7	35.6
2006	57	1,290,876	1,184,463	93,453	89,864	183,899	169,903	24.2	24.5
2007	55	2,136,090	1,892,917	139,596	141,269	288,535	267,431	23.0	21.9

Source: Crab Economic Data Reporting.

Notes: 2005 omitted, as Bering Sea *C. opilio* fishery prosecuted as limited entry derby and Bristol Bay red king crab prosecuted as share-based fishery. Excludes any vessels on which crew were paid in excess of 75 percent of the vessel's gross revenues.

Although catch consolidation has benefited remaining, a competing effect arose from deductions or charges against crew shares or direct reductions in crew share percentages, through which the quota costs of consolidation are effectively shared with crew. One potential means of changing crew compensation under the rationalization program is a change in deductions and charges. Although the amounts any of deductions and charges may be inaccurate in the Economic Data Reports, whether an item is deducted and charged to crew is believed to be accurately captured. These data suggest that with respect to vessel operating expenses, the percentage of the fleet imposing deductions and charges has remained relatively constant through the transition to the rationalization program.

**Table 6. Number of vessels deducting or charging vessel operating expenses from crew compensation (1998, 2001, 2004-2007).**

Year	Fuel				Food				Bait			
	Deducted	Charged	Neither	Unreported	Deducted	Charged	Neither	Unreported	Deducted	Charged	Neither	Unreported
1998	171	12	37	13	67	138	15	13	176	10	37	10
2001	176	11	32	9	63	140	15	10	180	9	34	5
2004	193	8	38	10	72	152	18	7	200	6	37	6
2006	80	4	18	0	21	69	12	0	80	4	18	0
2007	69	4	13	1	20	60	7	0	69	4	13	1

Year	Observers				Gear				Fish taxes			
	Deducted	Charged	Neither	Unreported	Deducted	Charged	Neither	Unreported	Deducted	Charged	Neither	Unreported
1998	48	0	97	88	38	8	160	27	199	6	15	13
2001	57	0	91	80	31	8	164	25	203	6	9	10
2004	65	0	92	92	40	10	169	30	216	9	13	11
2006	28	0	41	29	10	3	74	13	96	1	5	0
2007	22	0	17	48	0	0	5	0	82	2	2	1

Source: Crab EDR data

Notes: Travel costs are omitted as those data were not collected prior to implementation of the program. Freight costs are omitted, as few vessels have deducted or charged those costs in any year.

Unreported includes responses of unapplicable, uncertain, and multiple responses suggesting different treatment in different fisheries.

While the treatment of most vessel operating expenses has remained relatively constant, a notable change in deductions and charges since program implementation is the additional deduction of quota expenses. Prior to program implementation, a small portion of the fleet deducted CDQ quota expenses prior to the payment of crew compensation. Since implementation of the program, most of the fleet deducts IFQ quota expenses. As noted earlier, the magnitude of deductions on any vessel are not consistently reported. In addition, the number of vessels and percentage of the fleet deducting CDQ quota expenses has increased substantially. It is not known at this time whether this change has arisen from the redistribution

of CDQ quota among more vessels, or if the change is caused by shifting of additional expenses to crew. These additional charges are believed to be largely responsible for the decrease in the percentage of gross vessel revenues paid to crew.

**Table 7. Number of vessels deducting or charging expenses for acquired quota from crew compensation (1998, 2001, 2004-2007).**

Year	CDQ				IFQ			
	Deducted	Charged	Neither	Unreported	Deducted	Charged	Neither	Unreported
1998	18	0	88	127				
2001	19	0	83	126				
2004	24	0	89	136				
2006	34	0	18	46	78	1	15	8
2007	28	0	7	52	67	1	12	7

Source: Crab EDR data

Unreported includes responses of unapplicable, uncertain, and multiple responses suggesting different treatment in different fisheries. One vessel is reported to have deducted IPQ costs in both years, but the nature of that cost is unknown.

Anecdotal reports reinforce this conclusion, as most participants assert that these changes are applied simply to reflect the change in vessel owner revenues arising from the costly acquisition of shares to harvest. Many crew are said to have received full crew share on IFQ owned by the vessel owner. In most cases, shares paid on leased IFQ fished by a vessel were computed after deduction of any lease payments to the IFQ owner. Consequently, the base revenues used to compute a crew payment for catch of leased IFQ were reduced by as much as 65 to 70 percent in the Bristol Bay red king crab fishery and as much as 45 to 50 percent in the Bering Sea *C. opilio* fishery. As a result, sellers of quota (either through leases or sales of QS) receive a large portion of the revenues from their shares. In the transfer of quota received in the initial allocation, these revenues may be used to pay outstanding vessel mortgages or other vessel related costs (if the vessel is maintained for use in other fisheries). Any remaining amounts are profits to the share holder. Revenues from transfers after the initial allocation would be used, in part, to cover the holder's cost of acquiring that quota.

Although most changes in deductions, charges, and crew share percentages are to cover quota costs, anecdotal reports suggest that in some cases these changes have arisen from opportunistic vessel owners exerting negotiating leverage on crew. In these later cases, vessel owners have been able to exploit fleet contraction (and the surplus of available crew) to reduce crew compensation. The extent of these practices, however, is not known.

Examining changes in crew compensation with changes in pounds of harvests suggests that quota costs are the primary determinant of percentage of gross vessel revenues paid to crew (see Table 8). It may be expected that vessels that harvest greater amounts of crab will incur greater quota costs. The deduction of these costs prior to payment of crew will effectively reduce the percentage of gross vessel revenues paid to crew. Prior to implementation of the rationalization program, crews received a relatively similar share of gross vessel revenues regardless of a vessel's catch. Vessel harvests varied greatly, with crew on vessels harvesting in the highest quartile harvesting and earning between two and three times the amount harvested and earned by crew on vessels in the lowest quartile. Since implementation of the program, two changes in these relationships are notable. First, vessel harvests vary more greatly across the fleet. In the Bristol Bay red king crab fishery, average harvests of vessels in the highest quartile are now between four and five times the average harvest of vessels in the lowest quartile, while in the Bering Sea *C. opilio* fishery, average harvests of vessels in the highest quartile are between five and six times the average harvests of vessels in the lowest quartile. While catch is more consolidated in all quartiles, vessels in the highest quartile are able to amass a substantially greater portion of the total catch through quota transfers

than could be amassed under the competition of the pre-rationalization derby fisheries.

The second effect is a change in the percentage of gross vessel revenues paid to crew. In the quartile with the lowest harvests, crews in the Bering Sea *C. opilio* fishery received a comparable percentage of gross vessel revenues before and after implementation of the rationalization program. In the Bristol Bay red king crab fishery, crews in the lowest harvesting quartile have received slightly less of the gross vessel revenues than received prior to the rationalization program, but continue to receive in excess of 30 percent of the gross vessel revenues. The absence of a noticeable change in the percent of gross vessel revenues paid to crew since implementation of the program suggests that most of the quota harvested on these vessels are fished without deduction or charge of quota fees or an adjustment in crew share payments. In the second quartile of harvests in both fisheries, vessel harvests are approximately double those in the first quartile. Crew on these vessels are paid a lower percentage of gross vessel revenues (in the mid-20s on average). The combination of additional harvests and a lower percentage of gross vessel revenues results in an increase in compensation of approximately one-third over the lowest quartile. In general, this relationship continues. Vessel harvests generally increase by between 50 percent and 100 percent with each successive quartile. In addition, average crewmember compensation increases by approximately one-third on average. As a result, average crewmember pay on vessels in the highest harvesting quartile are more than double that of crew in the lowest quartile, while harvests in the highest quartile are between three and five times the harvests in the lowest quartile. Crew pay as a percentage of gross vessel revenues also declines in each successive quartile, suggesting that quota fees take an increasing share of vessel revenues as a vessel acquires additional quota to harvest. These declines result in pay to crew being over 30 percent of gross vessel revenues on vessels in the quartile harvesting the least crab and 20 percent or less of gross vessel revenues on the vessels in the quartile harvesting the most crab. Overall, these data suggest that as a vessel consolidates catch, a greater share of its harvests is subject to quota fees. The increase in catch supplements crew incomes, but at a lower rate than the vessel's initial allocation quota, which are fished with no (or lower) quota fees.

**Table 8. Crewmember pay and percent of gross vessel revenues paid to crew by quartile of pounds harvested in the Bristol Bay red king crab and Bering Sea *C. opilio* fisheries (1998, 2001, 2004-2007).**

Fishery	Year	Number of vessels per quartile	First quartile of pounds harvested			Second quartile of pounds harvested		
			Mean pounds harvested	Mean to single crewmember	Percent of gross to crew (including captain)	Mean pounds harvested	Mean to single crewmember	Percent of gross to crew (including captain)
Bristol Bay red king crab	1998	46	24,336	3,330	34.1	42,386	5,450	36.2
	2001	45	14,294	3,564	33.3	25,315	6,271	36.5
	2004	54/55	27,624	6,145	35.5	47,322	10,526	34.4
	2005	20/21	61,177	13,352	32.8	111,565	20,884	28.6
	2006	19/20	67,866	12,101	30.5	126,775	17,640	26.6
	2007	17/18	98,619	20,079	32.9	192,984	26,205	22.8
Bering Sea <i>C. opilio</i>	1998	39/40	533,558	14,754	37.7	925,200	21,632	35.6
	2001	39	45,411	2,510	27.4	77,238	4,722	30.5
	2004	41/42	65,903	6,477	34.2	96,395	9,663	34.7
	2005	36	84,930	7,502	32.4	122,265	11,330	36.1
	2006	18/19	152,887	7,726	30.8	308,944	10,731	22.4
	2007	15/16	185,828	15,082	32.8	351,032	20,301	24.4

Table 8, Cont.

Fishery	Year	Third quartile of pounds harvested			Fourth quartile of pounds harvested		
		Mean pounds harvested	Mean to single crewmember	Percent of gross to crew (including captain)	Mean pounds harvested	Mean to single crewmember	Percent of gross to crew (including captain)
Bristol Bay red king crab	1998	60,576	7,347	35.0	96,188	11,459	36.1
	2001	35,584	8,482	36.5	69,924	15,263	35.6
	2004	62,559	13,330	36.7	97,283	19,568	36.3
	2005	209,205	26,434	21.5	390,937	35,266	17.3
	2006	209,534	21,693	20.7	393,957	27,748	17.2
	2007	294,186	32,097	18.9	482,900	39,784	16.1
Bering Sea C. opilio	1998	1,214,389	27,480	35.1	1,685,001	37,263	36.9
	2001	114,553	7,099	34.0	204,786	12,703	34.5
	2004	128,889	13,027	36.3	204,208	18,266	35.4
	2005	155,342	14,165	35.7	270,019	18,408	33.8
	2006	480,274	15,223	21.8	850,049	21,625	20.1
	2007	506,536	24,619	21.3	931,170	35,267	19.5

Source: Crab Economic Data Reporting.

Notes: Pay to single crewmember is based on count of all crew paid shares excluding the captain. Excludes any vessels on which crew were paid in excess of 75 percent of the vessel's gross revenues.

While generally, the effects of the change to the rationalization program on crew have been driven by consolidation and related quota charges, it is important to recognize the effects differ across the fleet. In the most common case, crew are reported to have received historic share payments for quota received in the initial allocation by the vessel owner, supplemented with shares from the discounted base revenues on acquired quota; however, other circumstances are said to exist, which are not revealed by aggregated data. In some instances, vessel owners received little quota in the initial allocation. In these instances, crew received virtually all share payments from the discounted revenue base (i.e., after deduction of quota fees). In addition, in some instances vessel owners are reported to have charged quota fees on quota received in the initial allocation, lowering the base on which shares are calculated for all quota fished on the vessel. Depending on the level of quota fees, crew could receive substantially reduced payments from the historic shares, despite a vessel fishing mostly quota received in the initial allocation. Although some instances of crew compensation moving away from a traditional crew share format to a wage labor or salary format were reported in the first year of the program, it is believed that the most (if not all) crew in the fisheries are currently paid on a traditional crew share basis.

Overall, data and anecdotal reports suggest that remaining crew positions in the fisheries are more stable and better paying under the rationalization program. Crew typically know the amount of quota that will be harvested and terms of payment prior to beginning fishing, allowing them to project income for a season. Prior to implementation of the rationalization program, compensation hinged entirely on success in the limited access derby fishery. The consolidation of catch under the rationalization program has reportedly allowed some crew to rely exclusively on crab fishing for their incomes. Other crew are reported to work on the crab vessel in other fisheries or tendering, relying on employment from their crab fishing vessels for all of their income. Vessel owners hiring crew generally give priority to crew willing to work in all crab fisheries that the vessel participates in (and non-crab fisheries or tendering, if the vessel engages in those activities). These preferences have led to changes in crew composition, as some former participants are unwilling to give up other employment to work exclusively for a crab vessel. Maintaining a steady crew, however, can greatly simplify vessel management, reduce hiring costs arising from high turnover, and improve efficiency and safety, as crew become more familiar with the vessel's operation and fellow

crew. Although these benefits arise for crew remaining in the fishery, many crew have lost the relatively high paying, short term work in the crab fisheries since implementation of the program.

### **Leasing (and transfers) in the halibut and sablefish IFQ program**

The halibut and sablefish IFQ program contains a general prohibition on leasing (or the transfer of unused IFQ). To allow for a transition, leasing was permitted during the first three years of the program. In addition, leasing continues to be permitted for freezer vessel IFQ (or effectively, catcher processor IFQ), and, for a limited period, by survivors on the death of a QS holder. With the exception of the freezer vessel fleet, the leasing prohibition could be argued to have prevented leasing from affecting crew, but consolidation through other means permitted by the program can affect crew in the fisheries in a manner similar to leasing. For example, QS holders outside of Southeast who received an initial allocation can use a 'hired skippers' to fish, provided the QS holder owns at least a 20 percent interest in the harvesting vessel. In some cases, QS holders are said to have joined interests to jointly own a vessel to consolidate catch on a single vessel, effectively removing a vessel from the fishery and reducing crew employment. In cases in which one owner has a minimal involvement in the management of the vessel, these arrangements are functionally leasing arrangements. In other cases, purchasers of QS have deducted mortgage payments from gross revenues prior to compensating crew, effectively reducing their crew payments, in a manner similar to a quota fee charged against leased quota.

The halibut and sablefish IFQ program includes two types of share caps to limit the extent of consolidation. These individual use caps are intended, in part, to ensure that investment in fishery resources is spread among a minimum number of persons in each management area. The second type of cap is a vessel use cap, which prevents a vessel from fishing in excess of specified amounts of IFQ. The vessel use cap is intended, in part, to ensure that a minimum number of vessels participate in the fishery in each year. In the IFQ program, the two types of caps are generally set at the same levels. In the sablefish fishery, no individual may hold or use (and no vessel may harvest) more than 1 percent of the combine QS in all areas. In addition, no individual may hold or use (and no vessel may harvest) more than one percent of the combine QS in Southeast Alaska (i.e., for harvest east of 140°W longitude) the most sought after QS in the fishery. In the halibut fishery, individual use caps prohibit an individual from holding or using (and a vessel from harvesting) in excess of one-half of one percent of the combined quota in two separate groupings of management areas (2C, 3A, and 3B is one grouping and 4A, 4B, 4C, 4D, and 4E is the other). In addition, no individual may hold or use (and no vessel may harvest) more than one percent of the QS in the eastern most management area (area 2C), where QS is most sought.

In addition to share caps, the 'block program' is also intended to ensure that the market for shares remains fluid and open to newcomers. Under the block program, small initial allocations of quota (which would yield less than 20,000 pounds of fish at the 1994 TAC level) are not divisible and no person is permitted to hold in excess of two blocks or one block and any other amount of unblocked quota. An exception allowed persons to "sweep up" or consolidate extremely small allocations into a single block, as long as the resulting block would yield less than 1,000 pounds of halibut or 3,000 pounds of sablefish based on the 1994 TACs.

A unique influence on crew and their treatment in the halibut and sablefish fisheries is the Deep Sea Fishermen's Union. The union, which was founded in early 1900s, has maintained a negotiated crew agreement with the Fishing Vessel Owners Association, an organization of halibut and sablefish vessel owners. Although a large portion of the fleet and crews operate independently of the union and the vessel owners association, the union contract has served as the starting point for many crew agreements throughout the fisheries. The agreement has influenced both the structure of crew contracts and the amount of compensation. Yet, in recent years, fewer vessels are said to abide fully by the union contract. As a result, most crew are believed to be compensated at a rate lower than reflected by the union contract.

The contribution of the transition to IFQ management to the decline in effectiveness of the union in representing crew interests is not known; however, extending the seasons may have decreased the ability of crew to act collectively, as is necessary for effective collective action by the union. In addition, some crew compensation arrangements differ greatly from the union contract in structure. These variations make it difficult to generalize. Where known, these different structures are described.

To understand the effects of the IFQ program on crew, it is helpful to consider crew circumstance prior to the program. Historically, the vessel owners charged a 'boat share' (or a percentage of vessel revenues, usually about 30 percent) prior to payment of crew in the fishery. In most cases, this boat share was taken from gross revenues after deduction of certain fees, such as observer costs, fish taxes and moorage fees. The remaining amount was typically paid to crew (which may include an owner operator) after payment of operating costs, such as food, bait, and fuel. This payment system typically left crew a crew of 6 with approximately 45 to 55 percent of the gross revenues after taxes and fees. On other vessels, crew were compensated with each receiving a share of the vessel's gross revenues after deduction of expenses (including taxes, fees, fuel, and food). This individual crew shares were approximately 6 to 10 percent of the gross revenues after deduction of expenses, resulting in a slightly lower portion of the vessel's gross revenues. In the pre-IFQ derby fishery, payments to crew depended greatly on the vessel's success in the race for fish. With relatively large numbers of participants in the years immediately preceding implementation of the program, crew on the best highline vessels that participated in several management areas and in both halibut and sablefish might receive payment of approximately \$30,000 with the best payments at most \$50,000 annually. In earlier years, with fewer vessels participating, some crew would have received as much as \$80,000 annually. In all cases compensation depended on several factors, including a crewmember's experience, vessel performance, and the vessel's contract.

A few changes occurred with transition to the IFQ program (and since that transition). To consider the treatment of crew, it is helpful to first discuss crew compensation for the harvest of quota received in an initial allocation. Some vessel owners have maintained the same compensation structure under the IFQ program as used prior to the program. These vessel owners continue to charge a 'boat share' and operational cost deductions (without additional deductions for quota received in the initial allocation). In many cases, the boat share is increased to approximately 40 percent of the gross revenues after deduction of taxes and fees. In some cases, vessel owners are reported to have increased boat shares substantially beyond the 40 percent charge that is more typical. This greater adjustment effectively charges crew for the use of the quota received in the initial allocation. In other cases, some vessel owners have modified the payment structure to deduct a quota fee for the use of initial allocation quota from vessel revenues prior to paying either a boat share or crew. Although these changes in compensation did not arise from leasing, they effectively reduce revenues available to compensate crew, by charging for the use of initial allocation quota by the vessel in a manner similar to a lease fee that might be charged on quota acquired subsequent to the initial allocation. The number of vessel owners charging quota fees on initial allocations is said to have increased in recent years.

Overall, very few (if any) vessel owners are believed to compensate crew without a deduction (or adjustment) for harvesting quota that were not received in the initial allocation.<sup>6</sup> In the freezer vessel fleet, where leases are allowed, lease payments are typically deducted from gross revenues in a manner similar to either fees and taxes or operational cost deductions, and in both cases, a prior to the payment of crew. In addition, throughout the halibut fleet, quota are stacked on vessels through a variety of non-lease transactions. In some cases, vessel owners purchase QS, deducting a percentage of revenues from the

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<sup>6</sup> In some cases, owners have sold QS in one area and used the revenues to acquire shares in another area to concentrate fishing activity. In many of these instances, the owner has considered the newly acquired QS to be effectively part of the initial allocation and has not charged a fee on the new QS.

vessel revenues in the manner of fees or taxes or operational costs prior to paying crew shares. Most vessel owners charge a fee of between 40 and 50 percent for these acquired shares. In other cases, crew who acquire quota fish that quota on a vessel for a fee, which is also deducted prior to paying crew at approximately a 50 percent rate. Fees in some cases are reported to be substantially higher than these rates – as high as 60 percent to 70 percent. These high fees are most often observed on vessels that received little or no initial allocation of QS, and therefore, have QS base to support the vessel's operation. Under some loan structures, these deductions in the first few years of the loan period are reported to be less than the full mortgage payment, as the high price of quota may result in mortgage payments that exceed the revenues until a portion of the principle is paid down.

A few observations concerning transfers of quota should be considered. Persons who received an initial allocation are better positioned in the quota market, since revenue received from initial allocation quota can subsidize additional purchases. Entrants, with no initial allocation to use as a basis to support additional purchases, are disadvantaged, and may face artificially high prices cause by this subsidization. This quota price effect also has consequences for crew, as new entrants are forced to pass on higher quota costs to crew through higher boat shares (or lower crew shares). An additional feedback has likely arisen in some parts of the fleet. As more newcomers charge quota fees (or pay reduced crew shares), crew compensation rates decline. This decline may affect the crew market, increasing the willingness and ability of recipients of initial allocations to charge quota fees on initial allocations (or increased boat shares). The result is a decline in crew compensation across a larger part of the fleet, than simply on those vessels bearing additional quota costs.

A more recent practice has been for vessels to consolidate catch through contracting "walk-on" QS holders (or QS holders who come on board a vessel while their IFQ is fished, thereby satisfying owner-on-board requirements). In some cases, these walk-ons crew on the vessel; in others, they simply ride along on board the vessel during the trip. Lease fees are typically charged on the shares of walk-ons in the manner and amounts of other QS that was not received in the initial allocation. Whether a walk-on works on the vessel can depend on both whether the walk-on is interested in crewing and whether crew would be displaced by the walk-on. Working walk-ons are typically compensated in the manner of other crew.

Beyond the norm, some vessels have changed crew compensation terms entirely from the crew share arrangement that dominated prior to the IFQ program. In some instances, crew are compensated a flat amount per thousand pounds of catch. Payments are believed to range from \$150 per thousand pounds to \$250 per thousand pounds. Depending on the rate and ex vessel prices, this compensation can be more or less generous than the more standard crew share structure. Compensation at the low end of the scale is likely comparable to shares paid to crew with substantial lease (or mortgage) fees, while compensation at the high end of the scale is comparable to payment of crew on vessels with a reasonable initial allocation and more generous crew share.<sup>7</sup> As with other participants, crew that bring quota to a vessel receive separate compensation for those shares, improving their return from the fishery.

Crew circumstances differ greatly across the fleet, with the variety of arrangements. Most vessels that concentrate on halibut and sablefish fisheries that received a reasonable initial allocation tend to have good crew who are satisfied with their compensation. Some crews, however, are discouraged with additional quota fees that have been introduced on initial allocation quota in recent years. Vessels that fish a variety of fisheries other than halibut and sablefish (such as seine vessels) may charge higher lease fees on QS on average, but most tend to have good crew that are satisfied with their compensation. Crew

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<sup>7</sup> In rare cases, some vessels fishing IFQ are reported to pay crew a daily wage, rather than a crew share as is typically paid. These payment arrangements are believed to be among the poorest crew compensation in the fisheries.

compensation (and satisfaction) tends to be lowest on vessels that received little in the initial allocation and have little reliance on other fisheries. In general, the high costs of QS cut into crew payments on these vessels. Despite these costs, some vessels have entered the fishery and have managed to put together a reasonable portfolio of shares and have maintained good crew.

Under the all of various crew payment structures, crew shares, as a percentage of gross revenues, are reported to have declined since implementation of the IFQ program. On an average vessel crew shares have fallen by approximately 10 percent of gross revenues. Despite this decline, the annual income of a typical crewmember is said to have increased substantially, with the consolidation of quota on fewer vessels and the increases in halibut prices. It is said that a typical crewmember now makes between two and three times the income of a typical crewmember in the years immediately prior to implementation of the IFQ program. Although this describes the norm in the fisheries, some crew are reported to have seen a large drop in their shares of revenues under the program. These drops are typically seen fishing for a vessel owner who received little in the initial allocation, who therefore must support mortgage payments from vessel revenues. Some opportunistic vessel owners have also used the IFQ structure to increase their return from the fisheries through reducing crew shares. These vessel owners typically have less reliable crew, but are able to continue in the fisheries.

**Table 9. Halibut fishery vessel participation, catch, price, and revenue per vessel (1992-2008).**

Halibut									
Year	1992	1993	1994	1995	1996	1997	1998	1999	
Number of vessels	3,452	3,393	3,450	2,057	1,962	1,925	1,601	1,613	
Catch (lbs)	51,829,522	48,136,903	44,449,185	32,502,416	35,567,687	49,312,973	51,405,493	56,436,529	
Catch per vessel	15,014	14,187	12,884	15,801	18,128	25,617	32,108	34,989	
Price (\$/lbs)	0.96	1.23	1.93	1.97	2.19	2.13	1.29	2.00	
Revenue per vessel (\$)	14,417	17,391	24,841	31,185	39,754	54,472	41,310	69,803	

Year	2000	2001	2002	2003	2004	2005	2006	2007	2008
Number of vessels	1,588	1,460	1,393	1,338	1,304	1,276	1,255	1,211	1,156
Catch (lbs)	51,769,153	55,758,769	58,122,339	57,411,780	57,264,375	56,976,000	52,906,045*	50,155,033*	47,321,739
Catch per vessel	32,641	38,191	41,725	42,909	43,914	44,652	42,158	41,416	40,936
Price (\$/lbs)	2.52	1.99	2.19	2.84	2.97	3.00	3.75	4.33	
Revenue per vessel (\$)	82,137	75,905	91,357	121,845	130,371	134,114	158,009	179,249	

Source: NMFS/RAM catch data.

**Table 10. Sablefish fishery vessel participation, catch, price, and revenue per vessel (1992-2008).**

Sablefish									
Year	1992	1993	1994	1995	1996	1997	1998	1999	
Number of vessels	1,168	969	1,191	616	565	530	477	463	
Catch (lbs)	48,400,987	49,313,981	44,827,268	40,935,864	33,196,479	28,651,250	27,636,101	25,410,370	
Catch per vessel	41,510	50,892	37,638	66,454	58,755	54,059	57,937	54,882	
Price (\$/lbs)	1.89	1.67	2.36	3.23	3.30	3.53	2.34	2.83	
Revenue per vessel (\$)	78,454	84,989	88,826	214,647	194,067	190,828	135,573	155,316	

Year	2000	2001	2002	2003	2004	2005	2006	2007	2008
Number of vessels	450	436	416	409	396	378	372	373	362
Catch (lbs)	27,824,505	26,355,159	27,091,941	30,838,900	33,695,316	35,765,226	30,849,437	30,080,328	26,872,648
Catch per vessel	61,388	60,448	65,125	75,401	85,089	94,617	82,929	80,644	74,234
Price (\$/lbs)	3.04	3.04	3.06	3.46	2.95	3.14	3.33	3.10	
Revenue per vessel (\$)	186,680	183,821	199,282	260,887	251,013	297,381	276,152	249,997	

Source: NMFS/RAM catch data.

While individual and vessel use caps in the fishery have prevented consolidation by their terms, quota prices are considered very high in the halibut and sablefish fisheries. High prices have a clear effect on crew, who in most payment arrangements are paid after a deduction for quota not received in the initial allocation. Strong operations (particularly those that received a sizeable initial allocation) are reported to have well-paid and well-qualified crew. Yet, at the fringe, vessel operators with little initial allocation to rely on and little support from other fisheries may have more difficulty maintaining a good experienced



crew, because of the operating expense of acquiring quota. Owner on board requirements and limits on hired skippers have also changed the nature of the fishery for some participants. In some cases, participants have worked around these rules by partnering in vessel ownership or other unorthodox arrangements, such as walk-on agreements. In addition, exempting recipients of an initial allocation from the owner on board requirement has limited the effect of that provision to some extent.

The block program has also ensured that small amounts of quota are available for entrants (particularly crew who wish to become quota holders). While facilitating small scale entry, these small blocks (and the limits on block and unblocked share holdings) can complicate efforts of participants to increase their interests in the fisheries.

The burdens of quota fees on crew have also changed the nature of the fishery for crew. In the past, a substantial number of crew could participate in the fishery strictly as crew, and without investment in the fishery. Those wishing to evolve into an owner could invest in the fisheries through acquisition of a portion of a vessel (and possible licenses used to support activities in limited entry fisheries). Under the IFQ program, crew without quota have their share reduced by charges for quota held by both the vessel owner and other crew. These new charges have increased the incentive for crew to purchase into the fishery by acquiring quota. Crew who hold no quota are less attractive (as a crewmember) to the vessel owner than a potential crewmember who holds quota. In addition, a crewmember without quota will receive less income from the fishery than crew who hold shares, as they may see their crew compensation reduced to support quota holdings of others.

#### **Leasing (and transfers) in the Bering Sea pollock fishery**

The American Fisheries Act (AFA) introduced a share-based management program to the Bering Sea pollock fishery. Catcher processor fishing under the program began in 1999, while catcher vessel fishing under the program began in 2000. Under the program, each eligible vessel is annually eligible to join a cooperative, which receives an exclusive allocation of pollock to be harvested collectively by its members. A cooperative's allocation is determined base on the harvest histories of its members. Eligible vessels that choose not to join a cooperative are permitted to fish in a limited access fishery, which is prosecuted as a derby fishery. The management and allocations are structured on a vessel basis. To participate, a person must own an eligible vessel. While annual allocations to a cooperative are divisible and may be exchanged within and among cooperatives in a sector, long term interests are not divisible and are associated with the eligible vessel. So, to enter the fishery a person must acquire one of the eligible vessels (or an interest in an eligible vessel).

The effects of the AFA management on crew have been notably influenced by a few structural aspects of the program. By maintaining a vessel-based system of eligibility and allocations, the program has limited the transfer of both long-term and annual allocations. Since long term interests are not divisible, entry generally requires a large scale purchase. Maintaining large scale units has limited the number of transfers. By keeping the interests large and indivisible, only crew that have a goal of developing into a full scale owner have an incentive to invest in the fishery. This structure (together with the industrial nature of the fishery) has created a clearer division between owners and crew in the fishery, than exists in programs that included smaller allocations and allow for greater divisibility of long term shares. The vessel-based structure has also likely dampened the extent of transfers of annual allocations. Since a vessel must be owned (and maintained in existence) to receive an allocation in the fishery, few vessels (particularly catcher vessels) have been removed from the fishery. TAC increases and the redistribution of the TAC among sectors that followed the implementation of the AFA also limited the incentive to consolidate in the catcher vessel sector. Under the AFA, catcher vessels (including those delivering their catch to motherships) are allocated 60 percent of the pollock TAC. In the years immediately preceding the AFA, catcher vessels harvested less than 45 percent of the TAC. The TAC in the fishery also increased to

historic highs immediately following the implementation of the AFA. These two factors also reduced the incentive for participants to consolidate catch on fewer vessels. Despite the nature of the pollock fishery and share structure of the AFA, transfers have occurred and continue to occur in the fishery. Since vessel transfers require large investments, most acquisitions have been by well-funded investors, including Community Development Quota (CDQ) groups. These acquisitions have resulted in consolidation of ownership in the fisheries. With ownership consolidation, some consolidation of fishing has occurred, but not to the extent observed in most other share-based fisheries (see Table 11).

**Table 11. Number of catcher vessels, catch, and revenue in the Bering Sea pollock fishery (1997-2007).**

pollock						
Year	1997	1998	1999	2000	2001	2002
Number of catcher vessels	104	99	113	99	106	97
Catch (1,000 mt)	498	495	544	615	746	799
Catch per vessel (mt)	4,788	5,000	4,814	6,212	7,038	8,237
Ex vessel price (\$/lbs)	0.102	0.070	0.096	0.118	0.109	0.116
Revenue per vessel (\$)	1,076,778	771,610	1,018,876	1,616,039	1,691,178	2,106,507

Year	2003	2004	2005	2006	2007
Number of catcher vessels	91	93	90	90	91
Catch (1,000 mt)	808	792	797	798	722
Catch per vessel (mt)	8,879	8,516	8,856	8,867	7,934
Ex vessel price (\$/lbs)	0.107	0.106	0.125	0.128	0.129
Revenue per vessel (\$)	2,094,515	1,990,114	2,440,370	2,502,074	2,256,396

Source: NMFS Economic SAFE (2001-2008).

Note: Catch and prices includes non-target catch, which is less than 1 percent in any year, and CDQ catch.

Leasing under the AFA management has occurred in a few different ways, often differing with the owner's circumstance. In some circumstances, an owner of multiple vessels (or a group of vessel owners) has elected to remove a vessel from the fishery, transferring its quota to other vessels in its cooperative. In some cases, the available quota may be used to top off loads or to prevent overages. In some cases, the vessels are retired altogether (but tied up to maintain their interest in the AFA fishery); in other cases, the vessels are used in other fisheries. In cases of the owner of a single vessel, the annual allocation from the removed vessel is often transferred through a market lease. Market leases rates vary with seasons and may vary across participants. Reliable information concerning specific lease rates is unavailable. In cases of vessels owned, in whole or in part by a processor, the annual allocation may be transferred to other vessels in the processor's cooperative at below market rates. Processors may use these leases to coordinate fleet activity and maintain timely landings at their plants. Overall, lease arrangements are generally unique to the owner and vary across participants.

Prior to implementation of the AFA crews were compensated through a typical crew share basis under which a crew share percentage is applied to vessel revenues after deduction of expenses. On most vessels, this compensation system has been maintained since implementation of the AFA. In rare instances, some owners are reported to have changed crew compensation from a crew share system (such as a wage type system) since implementation of the AFA. Crew share percentages are typically applied after deduction of expenses, which differ across the fleet. For example, in a few instances, fuel costs are not deducted to limit the incentive to save on fuel costs at the expense of fish quality. Lease costs are typically charged as deductions prior to payment of crew shares.<sup>8</sup> In addition, in the case of some vessel transfers, it is reported that an ownership fee may be deducted prior to payment of crew shares. Also, for companies that

<sup>8</sup> In at least one instance, it is reported that a vessel owner compensated crew with a portion of lease revenues after transferring an annual allocation to another vessel for harvest; however, this compensation is extraordinary.

employ vessel managers, a vessel management fee may be deducted. These types of fees are reported to have increased with the increase in ownership consolidation in recent years. It is also reported that in many cases, crew share percentages have declined since implementation of the AFA. Although these changes typically accompany changes in ownership, the reduction in crew share percentage is reported to be fairly common throughout the fleet.

Despite changes in crew share percentages and increases in deductions for leases, vessel ownership, and management fees that pervade the fleet, annual crew compensation has not declined under the AFA. Good, experienced crew receive upwards of \$100,000 in annual income. In the first few years after implementation of the program, annual crew compensation is reported to have risen with increases in ex vessel prices and TACs and the greater share of the TAC allocated to catcher vessels. With the recent decline in TACs, annual crew compensation is reported to have dropped to levels comparable to pre-AFA years. Despite any changes in crew shares and compensation, AFA crew jobs remain coveted. Under the AFA, allocations improve employment certainty and improve crew jobs by allowing participants to slow their rate of fishing. Crew positions are generally long term jobs with a high degree of professionalism and little turnover.

### **Conclusion**

A change to a share-based management program will have consequences for crews in a fishery. Most often, fleet contraction that is induced by the transition reduces the number of crew positions (although some remaining vessels may choose to employ more crew to reduce the burden arising from increasing vessel harvests). Fleet contraction may be limited directly by capping the amount of quota that may be fished by a vessel, or indirectly by making allocations to vessels, thereby requiring that a vessel be maintained to participate in the program. Each of these mechanisms comes with consequences for both crew and other stakeholders in the fishery. For example, vessel caps will prevent not only the possible negative effects of fleet consolidation on crew who lose their positions, but may also limit the extent to which vessel owners and remaining crews benefit from the production efficiencies that can arise from that consolidation. Similarly, making allocations to vessels (instead of share holders or license holders) may require vessel owners to incur added expenses associated with maintaining a vessel to receive the allocation, even if the vessel is not used in the fishery. So, while these provisions may bring benefits, those benefits need to be weighed against the costs that would arise in their absence.

In considering the source of effects of share-based management programs on crew and whether certain measures may mitigate negative effects, it is helpful to consider the markets that drive those effects and how those effects may evolve. From the outset, much of the change is driven by share holder decisions. Fleet contraction, undertaken to reduce costs, typically creates a surplus of crew. The fleet contraction arises through competition among vessels to acquire and harvest quota in the fishery. This vessel competition defines the remaining fleet. Historic participants that receive a large initial allocation are clearly advantaged in the competition, as their purchases may be subsidized by revenues from shares received in that allocation. Crewmembers with experience on one of these remaining vessels often retain their positions, because of their experience and relationship with the vessel. This pattern may provide a benefit to remaining crew, as established relationships (including crew share contracts) typically are the starting point for defining vessel owner/crew relationships going forward. Many crews receive their historic share percentages on quota received by the vessel owner in an initial allocation. For any shares acquired by the vessel (whether leased or purchased), quota fees are typically deducted from revenues prior to applying crew share percentages, reducing crew payments for harvest of these acquired shares. On many vessels, crew accept these deductions without question, as acquired quota come to the vessel at a lease or mortgage cost. Crew on vessels with a reasonably sizeable initial allocation may view their compensation for harvesting these acquired shares as a windfall, above and beyond their expected annual income.

On vessels that fish little initial allocation quota, the circumstances often differ. On these vessels, deducting quota charges prior to applying crew share percentages may substantially reduce the crews' share of the vessel's gross revenues on all harvests. In some cases, owners facing these quota costs may reduce the crew share percentage or change the structure of crew payments altogether (to daily or annual payments or payments per pound of catch), rather than deduct quota fees. Crew on vessels that fish little initial allocation quota may be dissatisfied with the change in compensation. If the fleet has seen substantial contraction, the crew may have little or no leverage to negotiate higher payments. These crew are likely to receive a substantially lower percentage of gross vessel revenues than prior to implementation of the share based program. Despite quota fees or changes in compensation structure, some of these crews may receive greater annual compensation under share-based management, if the positive effects of ex vessel prices increases or increased catch on a vessel exceed the negative effects of any quota fees or compensation structure changes.

In time, the harvest of most quota will be subject to fees that effect payment of crew. Transfer of interests in quota will occur (either gradually or rapidly depending on the rules governing those transfers). Even if all quota is not transferred, a shift in the crew market may occur. The additional fees charged by some share holders based on their quota costs could induce a change in payment to all crew, as vessel owners become aware of the reduced payments to crew across the fleet. So, even vessel owners that do not have quota costs may consider changing their payments to crew based on the perceived willingness of other crews in the fishery to accept reduced compensation.<sup>9</sup> In short, transfer costs may be expected to change the overall market for crew jobs. The spread of these additional charges may affect the crew market generally by emboldening share holders who do not have quota costs to charge quota fees (or reduce crew shares). Although this trend may be suggested by experiences in transition of share-based management programs, the extent to which crew pay changes will depend on the characteristics of that labor market.

The crew labor market may sustain added deductions or charges in the form of quota fees, if crew pay has declined across a substantial part of the fleet. On the other hand, it is possible that resistance to these charges by qualified crews could limit the ability of vessel owners to impose these costs, if those crews are difficult to replace. In these circumstances, if vessel owners are unable to hire crew that they find acceptable, it may necessitate an increase in crew pay. For example, some vessel owners are reported to have shifted from crew share payments to other arrangements with lower pay shortly after implementation of a share-based management program. In some cases, it is reported that vessel owners moved back to a share-based pay (or increased pay to crews), after crews walked off and owners were unable to find acceptable crews. As information concerning failed attempts to reduce pay becomes known across the fleet, it is possible that others can be deterred from attempting to make similar reductions in crew payments. The potential for this type of walk off to be effective will depend on the availability of qualified crews, which can be influenced by several factors. At the time of a large fleet contraction, it is likely that many crew will be available to work in a fishery. As time passes, displaced crew will move on to other work providing greater potential for remaining crew to assert bargaining leverage against vessel owners. In addition, collective action by crews may influence pay if those actions limit the availability of replacement crews. The effectiveness of these acts will clearly depend on the circumstances.<sup>10</sup> The overall effect on the market will depend on several factors, some of which may mitigate perceived negative effects on crew. The degree of fleet contraction and changes in timing of fishing (including extension of

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<sup>9</sup> Some may view charging crew for quota received in an initial allocation as unfair. Yet, it is unclear why persons who sell quota received in the initial allocation should reap the entire windfall from their shares, while persons who maintain a vessel and fish their own share holdings should receive less return from their shares (or have an obligation to share that return with crew).

<sup>10</sup> For example, more temporal distribution of fishing (which may be induced by share-based management) and widespread geographic distribution of crews and vessels may limit the ability of crews to organize.

the fishing season) can affect not only the number of crew demanded in a fishery, but also the characteristics of desirable crew. For example, in extended crab fishing seasons the ability to work extremely long hours without rest (once highly valued in the derby fishery) might be of less value relative to reliability and willingness to work on a vessel through all of its fishing operations. These changes in demands on crew (and any associated change in risks) may also drive some changes in crew compensation.

In considering regulatory measures to curtail the effects of transfers (including leases) on crew, it is helpful to consider the effects of those measures on the market for crew and the transition of that market. Certain factors can affect the level and rate of change in the crew market in the transition to share-based management. For example, the rapid and extreme change in the crew market in the crab fisheries arose primarily from the rapid consolidation. Rapid fleet contraction created a surplus of qualified crew and a dearth of crab vessels on which to work. In this environment, a vessel owner whose crew turns down an offer of reduced pay may have alternative crew to offer positions. In addition, transfer of quota may induce owners of remaining vessels to offer a lower percentage of gross vessel revenues to crew, as the removal of value from the fisheries by payments to inactive quota holders in the fishery leaves less revenue for the owners of active vessels. Limits on consolidation would have slowed the rate of crew job losses, but also might have reduced the rate of change of crew pay (as a percent of vessel revenues) by decreasing the surplus of available crew and decreasing the downward pressure on crew pay that arose from the quota costs of vessels that consolidated shares to harvest. Whether a consolidation limit (or vessel cap) can prevent this effect in the long run is uncertain. In the long run, all quota are likely to have been transferred (as opposed to leases of annual allocations). These transfers may induce additional quota charges against crew pay by persons acquiring that quota. Whether these charges against crew pay can be resisted depends on the availability of qualified crew willing to work at the lower pay rate.

Attaching share privileges to vessels, as done by the AFA pollock cooperative program, may have a similar effect to vessel caps. Requiring a person to maintain a vessel to receive an allocation may have led more vessel owners to continue to participate, thereby slowing consolidation in the fishery. Slower consolidation may have reduced the pressure on (and ability of) participating vessel owners to reduce crew pay (as a percent of vessel revenues) by keeping crews active. Whether this effect will persist is uncertain, since vessel owners might be inclined to tie up vessels or deploy them in other fisheries, if that provides a greater return from their interest. Once a vessel is removed, it is likely that quota fees will be charged for the use of the vessel's allocation, which will have a similar effect to leasing. Yet, these vessel based allocations might soften the transitional effects by reducing the rate of consolidation (and the effect of related quota fees on crew pay).

While short run effects of these measures may be desirable, it is also important to consider long run effects. Although consolidation under share based management has reduced pay to crews as a percentage of revenues, it is important to keep in mind that in some instances (including in the crab fisheries) individual crew pay may increase with consolidation. This occurs if the effect of additional vessel revenues on crew pay outweighs the decline in crew pay arising from quota fees (or the transfer of value to share holders prior to paying crew). These two competing effects should be considered when developing a program (including measures intended to prevent consolidation and other effects that could change crew labor markets). For example, limits on consolidation may limit the effect of the share-based management program on crew employment, but it may also limit potential production efficiency benefits from retirement of vessels. If quota fees are likely to be charged against crew in the long run, the efficiency benefit of allowing consolidation could lead fewer but better paying crew jobs.<sup>11</sup>

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<sup>11</sup> Programs that include the auctions of shares should also be carefully evaluated, as auctioned shares will remove the resource value of the fishery for the public. If implemented comprehensively from the start of a program, an

Many stakeholders support owner on board (or active participation<sup>12</sup>) provisions as a means to protecting crew interests. This position is based on a belief that a participating crewmember will have a better perspective of fairness and better appreciation of work on a vessel and therefore will reward crew with better pay. Whether this belief is well-founded is not known. It is possible that this motivation may exist, but it is also possible that share holders confronted with quota costs will view it as necessary to pass on a portion of those costs to crews. Owner on board requirements may also lead to a faster transition, as share holders unwilling to comply with on board requirements will divest of their holdings. These transfers could shorten the transition period, during which a portion of the quota pool is fished without quota fees. Owner on board (and active participation) provisions, however, also serve another social or cultural purpose by requiring share holders to maintain a particularly connection to a fishery. These social effects arise independent of any possible effect on crew.<sup>13</sup> In considering owner on board requirements, it is important to consider the effect of that requirement on the character of the fishery. As shares transition among holders, it is possible that two types of crew may develop in a fishery, those holding shares and those without shares. Share holding crew may have a very different standing in the fishery, than crew who hold no shares. In this environment, it is possible that the management program is inducing persons to invest in the fishery by buying shares who might otherwise avoid risks and costs associated with those purchases. On the other hand, creating an environment in which crew have the ability to protect their positions through an investment in the fishery may be desirable. Making certain that share holdings are of appropriate size is important to having such measure achieve this purpose. In considering owner on board requirements, any action should strive to appropriately weight the different interests at play.

Similarly, some stakeholders support vessel ownership requirements that require a share holder to own a threshold interest in the vessel that harvests any held shares. These direct ownership requirements may be characterized by some as a prohibition on leasing. Alternative measures could require a person to hold a threshold interest in a vessel active in a fishery in order to maintain share holdings. This type of requirement may could be used to achieve a similar objective to owner on board (or active participation requirements), but it is unclear whether the requirement would benefit crews.<sup>14</sup> The measure may be desirable, particularly if used in tandem with an active participation requirement, for ensuring that share holders maintain an interest in the fishery beyond their quota holdings (through either vessel ownership or active participation on a vessel in the fishery). Yet, vessel ownership requirements might be ineffective, as share holders may choose to simply maintain a paper interest in a vessel. That interest may expose the

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auction that recovers a large share of the resource value will remove that value from a vessel's revenues. A share of this cost is likely to be passed on to crew immediately through quota fees. The change in crew pay may be more rapid than the effect in the crab fishery, under which many recipients of initial allocations appear to deduct no quota fee on shares received in the initial allocation. In the long run, the differences in crew effects of auctions and allocations based on history are likely to be minimal, as all vessels are likely to adjust crew pay based on quota costs. Implementing an auction in a limited way or after an initial adjustment period, however, would allow time for the fleet to adjust and crew labor markets to stabilize.

<sup>12</sup> Active participation requirements may require a share holder to participate in the fishery in a prescribed manner (typically on board a vessel) but do not require a person to be on board a vessel for harvest of all shares held by that person. Active participation provisions may be favored in fisheries in which an owner on board requirement is impractical. For example, in industrial fisheries (like the crab fisheries), all vessels may not participate in all fisheries in all years, as TACs fluctuate. A person may be active in several of the fisheries, but not be active in all fisheries, thereby meeting the spirit (but not the letter) of an owner on board provision. In such fisheries, it may be more appropriate to apply active participation requirements, than owner on board requirements.

<sup>13</sup> Even these effects might be subverted, by persons comply the rule by being on board the vessel when shares are harvested, but have no active role in the harvest of the fish. This practice is burdensome and is likely adopted by only a small minority of share holders.

<sup>14</sup> It is possible that the requirement could be costly to crews in some instances, if quota holders are required to expend additional amounts on vessel ownership that are passed on to crew through increased quota fees.

share holder to liability in certain situations, but the involvement in the fishery would not approach the vessel management interest that is likely the rationale for behind the policy.

Transfers of shares (including transfers that might be characterized as leases) typically occur under avenues permitted in all share-based management programs. Evidence from fisheries in the North Pacific suggests that constraints on transfers are effective, but only to the extent of their terms. More stringent limitations have a greater effect, but cannot close all transfer avenues, including some avenues that may be intended to be closed. Whether the limits are serving their purpose depends on the objective of the decision maker and the creativity of fishery participants in working within the rules. For example, owner-on-board requirements have fostered a system of "walk-on" share holders, who at the extreme may simply ride along on a vessel while their quota is harvested by hired crew. Although each share holder requirement or limitation will affect the actions of share holders, the result may not be the one intended by the policy maker. To the extent that rules affecting transfers are intended to affect crew pay, those rules are particularly uncertain, since these rules effect crew markets only indirectly. In addition, effects are difficult to predict because of the vagaries of crew labor markets, which often overlap not only with other fishery crew markets, but other labor markets.

In considering measures to constrain transfers (or share holdings) and fleet consolidation in a share based management program, it is helpful to consider the markets in which the effects of those constraints are manifest. Primary effects will arise in the market for shares; secondary effects will be in the crew labor market. The interaction of these markets, as constrained by governing rules, will determine the effects of the program on crew. The quota markets between share holders and vessel operators will affect the extent of quota fees deducted or charged against crew compensation in the fisheries. Constraining these markets for a period of time may ease transitional effects, such as a rapid decline in crew jobs or the charging of quota fees on a large portion of the harvest at the onset of a program. These measures may, in turn, provide for a more orderly transition of crew markets, as crew unable to secure a position or unwilling to accept changes in terms of employment depart the fishery over time. In addition to slowing the rate of change in the transition crew compensation may be affected in the long run by limiting the amount of surplus crew competing for jobs during the transition. In other words, remaining crew may have improved negotiating leverage, if fewer displaced, experienced crew are available for remaining jobs at any given time. Even with measures to limit the shock of a transition, crew pay in the long run will depend primarily on the ability of crew to command pay based on skills needed to prosecute the fisheries and the competition for crew positions. In considering the development of a share based management program and the adoption of measures intended to improve crew circumstances, the presence of crew market (and the limits on ability of regulatory measures to control that market should be considered). The competing effects of these measures, including their effects on factors other than crew, should be carefully considered in evaluating the benefits and costs of the measures and their appropriateness for a fishery.

May 26, 2009

Mr. Eric Olson  
Mr. Chris Oliver  
North Pacific Fishery Management Council  
605 West 4<sup>th</sup>, Suite 306  
Anchorage, AK 99501

Re: Agenda Item C-3 (b)(1) -- ROFR Modifications

Dear Mr. Chairman:

As representatives of Saint Paul Island's main entities, we are submitting our comments in response to the Right of First Refusal (ROFR) Discussion Paper that was requested of North Pacific Fishery Management Council (NPFMC or Council) staff during the February 2009 meeting. It must be noted that community ROFR's to Processor Quotas Shares (PQS) and Individual Processing Quota (IPQ) are inextricably linked to the survival of PQS in the Crab Rationalization Program. In this regard, please review our comments in response to the Discussion Paper on "Extinguishing PQS" (agenda item C-3 (b)(3)) in order to understand the importance of PQS as a basis for safeguarding various community interests in the BSAI crab fishery.

The Saint Paul entity representatives have previously enumerated during public testimony at the NPMFC the main community protections in the Crab Rationalization Program, which together constitute the "third leg of the stool" in the "three pie program." These are: (i) the A/B share 90/10 split; (ii) regionalization of A shares; (iii) ROFR's; and (iv) the two year "cooling off period" which has already lapsed.

At the insistence of the State of Alaska, and its representatives in the U.S. Congress, these protections were negotiated during years of Council and industry discussions in order to ensure that the stake that communities, and by the extension the state and federal governments, had acquired in the BSAI crab fishery through hundreds of millions of dollars of public and private investment were protected in a newly rationalized crab fishery. All three of the remaining community protections could be weakened or potentially eliminated by initiatives being considered before the NPFMC, thereby jeopardizing local, state, and federal investments. The proposal to extinguish PQS, for example, fundamentally alters if not destroys the three remaining protections.

In the context of the above, Saint Paul welcomes the recommendations and observations made by the Council-appointed Crab Advisory Committee (CAC) concerning ROFR's which are reflected in Staff's discussion paper. Saint Paul has been an active participant at the CAC and has played a key role in crafting many of proposed modifications discussed below.



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1. Extension of Time to Accept and Perform Under a ROFR Agreement

Saint Paul concurs with the proposal recommended by the CAC to extend the period that a community has to accept the purchase terms under a ROFR from 60 to 90 days from receipt of the contract, and the period of time that a community has to exercise the ROFR from 120 days to 150 days from receipt of the contract.

The ROFR holder or ECCO for Saint Paul is the Central Bering Sea Fishermen's Association (CBSFA), which is the local CDQ group. The extension of time in both instances would provide CBSFA with additional time to evaluate a contract; discuss its implications with the broader community; study potential partnerships; and secure potential sources of funding in order to be able to exercise the ROFR's.

Saint Paul agrees with the observations made by Staff in the draft Discussion Paper on this topic and the possible amendments proposed for Council consideration.

2. Extending ROFR's Permanently

The various crab fishing industry sectors at the CAC discussed modifications regarding the duration of ROFR's as a way of making them more effective in extending protections to communities. Currently, ROFR's lapse under certain circumstances. Saint Paul supports modifications that would in effect make ROFR's permanent by removing the provisions under which the ROFR's lapse. In particular, Saint Paul believes that ROFR's should not be allowed to lapse if the IPQ in question is used outside of the community for a period of three consecutive years. Saint Paul agrees with the possible amendments proposed by Staff.

3. Applicability of ROFR to All Assets Involved in a Transaction

Saint Paul understands that this is a complex issue that has business and legal implications for processing companies wishing to divest of their IPQ and related processing assets. Communities are protected to the extent that processing activity and the IPQ associated with it remain in the community. By modifying ROFR's to make them permanent as proposed in Item II above, part of this problem is addressed.

To the extent that a ROFR is triggered by the sale of a processing company's entire operations in a particular community and/or region, the community's interest lies in protecting the community-related IPQ and assets, and not in the IPQ and/or assets that may also be up for sale in the same transaction that may be linked to other communities.

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However, by severing a company's assets to allow communities to exercise their ROFR's and protect their interests, there is a likely risk of interfering with the value of the transaction being undertaken that has business and legal implications for the seller and purchaser.

This is a problem that may not have a solution -- from Saint Paul's perspective, by strengthening other elements of ROFR's (i.e., extension of time to respond and execute, making ROFR's permanent) a community's capacity to respond and protect itself is greatly enhanced. Similarly, by retaining other core community protections in the Crab Rationalization Program such as the A/B share split and regionalization, Saint Paul's ability to remain a viable crab processing community is maintained, despite certain inherent weaknesses with ROFR's.

#### 4. Financial Inability of Communities to Exercise ROFR

One of the main weaknesses of the ROFR's is a community's inability to raise the funds necessary to exercise a ROFR. This is true particularly for small, remote, and impoverished Western Alaska communities. In many instances, the transactions involving transfer of IPQ and processing assets are worth millions of dollars, which communities can ill afford to fund and/or acquire.


As the Council Discussion Paper correctly indicates, this is a weakness in the ROFR's mechanism which the Council cannot easily address, as it would require the establishment of a loan program by the U.S. Congress, which the Council has no authority to develop. Presumably, many of the weaknesses with ROFR's and the changes being recommended above would be resolved with a well-funded loan program that would allow ROFR holders to respond quickly in the event a ROFR is triggered. As part of a package of amendments to strengthen ROFR's the Council should recommend to the U.S. Congress that such a program be established, akin to loan programs established previously (vessel buy-back program) or under consideration (crewmember loan program) for other industry sectors.

#### 5. Conclusion

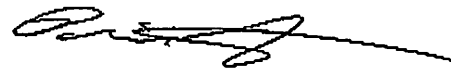
Some of the inherent weaknesses in the ROFR mechanism point to the need for maintaining the current A/B share split and regionalization, particularly with regards to northern region communities. Both of these components are critical to the well-being of these communities, which also happen to be those most dependent on crab processing. Unlike their southern region counterparts, the northern region communities have for historical reasons not yet been able to diversify into multispecies processing. In conclusion, we look forward to continuing our work with the Council to improve ROFR's and other community protection mechanisms.

Mr. Eric Olson  
Mr. Chris Oliver  
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Sincerely,

  
Simeon Swetozof, Mayor  
City of Saint Paul Island

  
Ron Philemonoff, CEO  
Tanadgusix Corporation

  
Phillip Lestenkof, President  
Central Bering Sea Fishermen's  
Association

**MICHAEL A. D. STANLEY**

ATTORNEY AT LAW

P.O. BOX 020449, JUNEAU, ALASKA 99802

TELEPHONE: (907) 588-8077

FACSIMILE: (907) 463-2511

May 27, 2009

Sent via Facsimile Only

Eric Olson, Chairman  
North Pacific Fishery Management Council  
605 W. 4<sup>th</sup> Avenue, Suite 306  
Anchorage, Alaska 99501-2252

RECEIVED  
MAY 27 2009  
N.P.F.M.C.

Re: Western Aleutian Islands Golden King Crab Fishery

Dear Chairman Olson and Council Members:

I am writing on behalf of the Golden King Crab Harvesters Association (GKCHA), a group of crab harvesters who hold quota share for the Eastern Aleutian Islands golden king crab fishery (EAG) and the Western Aleutian Islands golden king crab fishery (WAG). These comments pertain to the discussion paper regarding the WAG fishery, which you are scheduled to consider at your meeting next week (agenda item C-3(b)(2)).

The Council and its Crab Advisory Committee have identified and discussed problems in the WAG fishery under the crab rationalization program for approximately a year and a half, in particular the failure to harvest all of the total allowable catch (TAC). The WAG discussion paper (in Table 1) notes the underharvest of TAC, but does not otherwise provide any analysis of this problem. We have prepared a more detailed table showing the extent of the underharvest, based on IFQ landings reported by the Restricted Access Management Division. This table (attached) shows that in the four years the rationalization program has been in effect, not once has the TAC been fully harvested in the WAG fishery. Nearly one million pounds of WAG crab have been left on the table during this time. Although the price has varied from season-to-season, using an average ex-vessel price of \$ 3.00 per pound means that quota share holders have lost approximately \$ 3,000,000 in foregone catch.

Several factors have contributed to this underharvest of the TAC in the WAG fishery. One is that the qualifying period for issuance of processor quota share (PQS) in the WAG fishery – the four-year period beginning on September 1, 1996 through August 14, 2000 – largely predates the time when the processor on Adak was most active prior to rationalization. Consequently, the shore plant on Adak holds relatively little PQS. Another is that no more than 30 percent of the PQS/IPQ may be held by one person or processed at any one facility. This 30 percent cap came into play this past season,

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preventing the plant on Adak from custom processing some IPQ derived from PQS held by the CDQ group and Alaska Native tribe on Atka. While the Council has created an exception to this requirement for custom processing, under Amendment 27 to the BSAI Crab FMP, final rules to implement that amendment were not in effect this past season and it thus remains to be seen if this will help remedy the underharvest problem. The processor on Adak has previously expressed little interest in custom processing IPQ for others, and its willingness to do so this year does not necessarily indicate that it will custom process crab for other IPQ holders in future seasons.

More generally, the problem of an underharvest in the WAG fishery is related to the fact that half of the catcher vessel QS is west-designated and must be delivered west of 174 ° W. longitude. Half of the WAG PQS is likewise west-designated. These regionalization requirements were "designed to benefit the communities of the western Aleutian Chain, with the primary beneficiary at least in the near term being Adak, but the area also encompasses the community of Atka." *See Bering Sea and Aleutian Islands Crab Fisheries Final Environmental Impact Statement, Appendix 1, Regulatory Impact Review/Initial Regulatory Flexibility Analysis (August 2004) at p. 614.* However, the "split is less based on historic patterns than on a desire to foster emerging economic growth based on commercial fisheries in the Western Chain and *will require additional processing activity in the west over what was seen during the qualifying period.*" *Id.* (emphasis added). This additional processing has not materialized, and there is thus a lack of available processing capacity to take delivery of all the west-designated IFQ.

In order for processors to take delivery of the west-designated IFQ matched up with their west-designated PQS, they either have to (1) contract with a floating processor to operate in the western Aleutians; (2) transfer their annual IPQ to the processor on Adak; or (3) arrange for the processor on Adak to custom process the crab they purchase. Each of these options has been tried, with mixed results.

**2005-06 Season:** During the 2005-06 season, a Dutch Harbor processor which then held a substantial amount of WAG PQS sent a floating processor out west to take delivery of west-designated IFQ. The processor claims to have lost money in the venture, and did not make a similar attempt the following season.

**2006-07 Season:** With no processing platform to take delivery this year, over 400,000 pounds of TAC was unable to be harvested.

**2007-08 Season:** This same Dutch Harbor processor attempted initially to arrange an agreement with the processor on Adak which would have involved a transfer of annual IPQ and a royalty split between them. The processor on Adak refused. With only six weeks remaining in the season, the PQS holder, in the interest of not leaving TAC unharvested, transferred its IPQ to the processor on Adak for no royalty. Despite this, the TAC was still not fully harvested.

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**2008-09 Season:** The CDQ group and Alaska Native tribe on Atka, having received by transfer most of the west-designated WAG PQS, announced (to the Council, among others) plans to operate a floating processor at Atka. These plans did not materialize, and in January 2009, halfway through the season, these PQS holders reached agreement with the processor on Adak to custom process their annual IPQ. But the plant on Adak was unable to custom process all of this IPQ due to the 30 percent use cap.

The WAG discussion paper (at 4-5) echoes the suggestion by some Council members and others that WAG IFQ holders have not used the arbitration system to address these problems in the fishery. While the IFQ holders may yet be forced to trigger an arbitration in a future season, their hesitance to date has been based on two basic concerns. First, some of the approaches discussed above require the PQS holder to reach agreement with a third party who is not subject to the arbitration system, either the operator of a floating processor or a shore plant willing to undertake custom processing. The arbitration system is set up to resolve disputes between two parties, the QS/IFQ holder and the PQS/IPQ holder. But where the IPQ holder has to hire a floating processor or engage a custom processor, a third party has been introduced into the equation. What happens, for instance, if the IPQ holder cannot find a floating processor to charter for the purpose of taking delivery of crab west of 174 ° W. longitude? The number of floaters available for or interested in operating in the WAG fishery appears to have decreased since rationalization. Those that remain cannot be forced to operate, so if a floater is not available, then the IPQ holder and IFQ holder are stuck. Similarly, just because an IPQ holder has the ability to employ a custom processor to process west-designated crab does not mean that a deal for custom processing will necessarily be struck or that the custom processor will be willing to operate at times when the harvesters are fishing. Here again, a third party, the custom processor, has been introduced into the mix but is not subject to arbitration. The arbitrator cannot force the custom processor to offer a competitive price to the IPQ holder nor order the custom processor to commit to processing crab at any particular time or for the entire season. In either of these situations, if the IPQ holder fails to reach agreement with the third party, then no processing capability will be available, no matter what an arbitrator orders.

Second, given the small number of participants in both the harvesting and processing sectors in the WAG fishery, the arbitration system is not conducive to business relationships. IFQ holders rely on processors for many things – bait sales, provision of supplies and equipment for repairs, cash advances for crew – which may become unavailable if the relationship is in state of adversity as a result of repeated arbitrations. Unlike arbitrations in the larger crab fisheries, which have generally been conducted between a group of cooperatives and particular processors, such that individual harvesters are not on the frontlines of the dispute, an arbitration between a WAG IFQ holder and a processor would be a direct vessel-to-buyer proceeding, with all the potential for souring relations that that may entail. Moreover, if the processor is unable or unwilling to comply with an arbitrator's order through no fault of its own – it cannot, for instance, reach agreement with a custom processor – then the end result of an

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arbitration is a claim for damages which the IFQ holder can pursue in court. Again, this is hardly the recipe for a good business relationship, and is inconsistent with the intent of the rationalization program to foster cooperation between harvesters and processors.

Analysis of how the rationalization program is working in the WAG fishery, especially the regional delivery requirement, must also address the question of the viability of processors in the region. For instance, when one of GKCHA's members made its last call on Adak this season, prior to its last trip to the fishing grounds, it found that the plant had closed and ceased operations. We hope that a representative of the processor on Adak will be at the Council meeting and can clarify the situation and confirm whether or not they expect to be processing golden king crab next season. There is also a question of what might happen to the processor on Adak if additional restrictions are placed on the Aleutian Islands cod fishery as a result of actions taken under the Endangered Species Act to avoid jeopardy to Steller sea lions. The BSAI Groundfish Fishery is currently undergoing a reinitiated consultation under Section 7 of the ESA, and the Biological Opinion is scheduled for review by the Council in October 2009. The possibility of further restrictions on the Aleutian Islands cod fishery cannot be discounted, and if imposed, may pose a significant economic challenge for the plant on Adak.

In short, the goal of promoting additional crab processing in the western Aleutian Islands, particularly at Adak, could be thwarted by events unrelated to the mismatch between the regionalization requirement and the lack of PQS allocated to the processor on Adak. If no viable shore plant is operating in the western Aleutians, then share matching and regionalization make no sense.

In previous comments and testimony, members of GKCHA have advocated elimination of processor quota as the best way to solve the problems in the WAG fishery. Converting the fishery to all B shares, without a regional delivery requirement, is not inconsistent with the Council's intent of promoting development of crab processing in the western Aleutians, particularly on Adak Island. An all B share fishery would allow the processor on Adak – or at Atka for that matter – to purchase substantial amounts of open-delivery golden king crab, provided they offered a competitive price on commercially acceptable terms. WAG harvesters much prefer delivering their crab out west, rather than having to run back to Dutch Harbor, particularly at prevailing fuel prices. If PQS (and the regional delivery requirement) were eliminated in the WAG fishery, then a substantial portion of this IFQ would likely be delivered to Adak due to its proximity to the fishing grounds. In the years immediately prior to rationalization, a large percentage of the TAC in the WAG fishery was delivered to Adak, without PQS, share matching, or regional delivery requirements. This delivery pattern would likely re-establish itself if PQS were eliminated. While this would, of course, depend on the existence of a viable processor operating on commercially reasonable terms, if those conditions obtained, then the original goal of promoting an expansion of processing in the western Aleutians would be better served by this approach rather than the current system.

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Our final comment concerns the relationship between the WAG fishery and the EAG fishery. There is considerable overlap among the participants in the harvesting and processing sectors in the two fisheries, and they generally serve the same markets. If the Council chooses to develop an amendment to eliminate PQS in the WAG fishery, it should also analyze the impact of such an amendment in the EAG fishery, to determine if similar action is warranted. The EAG fishery has also experienced inefficiencies with the share matching; in the 2006-07 season, for instance, one PQS holder did not apply for its IPQ. There is also the question whether the current mandatory matching system promotes market innovations and increases net value to the nation, given that both fisheries have so few players. It should also be noted that WAG and EAG QS holders are in the process of working with the Marine Stewardship Council for a pre-assessment of the Aleutian Islands golden king crab fishery. If a full assessment is planned, the fact that processor shares might exist in one area and not the other could create conflicts for marketing and labeling.

Thank you for reviewing these comments. We look forward to testifying at the upcoming meeting, and will be happy to answer any questions you may have regarding the positions expressed in this letter.

Sincerely,



Michael A. D. Stanley



**IFO LANDINGS**

**Western Aleutian Golden**

<u>YEAR</u>	<u>LANDINGS</u>	<u>TAC</u>	<u>CP IFO</u>	<u>CV IFO</u>	<u>CV LANDED</u>	<u>CV LEFT</u>	<u>% CV LEFT</u>
05/06	42	2,430,000	1,077,968	1,352,032	1,304,995	47,037	3.48%
06/07	31	2,430,000	1,077,968	1,352,032	924,218	427,814	31.64%
07/08	34	2,430,000	1,077,968	1,352,032	1,168,072	183,960	13.6%
08/09	37	2,551,500	1,175,986	1,375,514	1,076,125	299,389	21.77%

NOTE: 50% of the CV shares are required to be delivered in the West, so the percentages left on the table for the west-designated IFQ (W-WAG) are approximately double the amounts shown.

<b>W-WAG IFQ LEFT ON TABLE</b>	05/06	7%	Average % left on the table for W-WAG – 35% Total pounds left on the table for WAG – 958,200 Average pounds left on the table for WAG – 239,550
	06/07	63%	
	07/08	27%	
	08/09	43%	

**Eastern Aleutian Golden**

<u>YEAR</u>	<u>LANDINGS</u>	<u>TAC</u>	<u>LANDED</u>	<u>LEFT</u>	<u>% LEFT</u>
05/06	33	2,700,000	2,569,209	130,791	5%
06/07	32	2,700,000	2,692,009	7,991	-0-
07/08	36	2,700,000	2,690,377	9,623	-0-
08/09	29	2,835,000	2,823,773	11,227	-0-

May 26, 2009

Mr. Eric Olson  
Mr. Chris Oliver  
North Pacific Fishery Management Council  
605 West 4<sup>th</sup>, Suite 306  
Anchorage, AK 99501

**Re: Agenda Item C-3 (b)(3) -- Extinguishing Crab PQS**

Dear Mr. Chairman:

As representatives of Saint Paul Island's main entities, we are submitting our comments in response to the Discussion Paper that was assigned to Council staff regarding extinguishing processor quota shares (PQS) from the BSAI Crab Rationalization Program. Since 2000, Saint Paul has been at the forefront of the development of the community protection elements of the program, and as a result, can address this topic from a community perspective based on first-hand experience.

We believe that extinguishing PQS would threaten the economic viability of northern region communities such as Saint Paul. The Crab Rationalization Program is based on a carefully constructed balance between processors, harvesters, and communities, that protects the interests of all major participants in this fishery. For various reasons, specified in greater detail below, Saint Paul's economy is almost entirely dependent on crab processing.<sup>1</sup> As a result, negative impacts to the processing sector

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<sup>1</sup> For over a century, Saint Paul was not allowed to develop a commercial fishing industry due to the exclusive federal management of the commercial fur seal harvest. Then, in 1983, the U.S. Congress directed that the federal government's fur sealing operations be phased out. With fisheries being the only viable alternative to fur sealing on the Pribilofs, the community scrambled to develop the necessary fisheries-related infrastructure in the late 80's and early 90's with the support of the U.S. Congress and the State of Alaska. The 1981 collapse of the Bering Sea king crab fishery and the need by harvesters and processors to diversify from king crab into opilio crab provided Saint Paul with the opportunity to enter a major fishery. The Bering Sea crab fishing industry took advantage of Saint Paul's harbor and the community's considerable investments in fisheries-related infrastructure to initiate shore-side landings, processing, and vessel support services for the fleet. Saint Paul's proximity to the opilio crab grounds with the associated benefits of reduced fuel costs, time, deadloss, and safety risks, plus its fresh water reserves, its airport, and other support services, were extremely valuable to a non-rationalized, derby-style, fishery.

The first crab processing plant was set up in 1989 and Saint Paul has been a primary processing center for crab since then. A significant number of floating processors have also frequented Saint Paul over the history of the opilio fishery. Icicle, Norquest, Trident, and Stellar Seafoods owned floaters that have processed crab in the area. Other processors also have used floaters to process crab in and around Saint Paul over the years. The processing and harvesting sectors clearly benefited from their relationship with Saint Paul and the considerable public and private investment on the Island. The community and the State also benefited. As a result, in the late 90's, Saint Paul was, after Unalaska, the largest generator of fisheries business tax in the State of Alaska.

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impact the community's economic base and other dependent businesses. Although crab stocks continue to be low, the rationalization program has ensured that some level of economic activity derived from this fishery has remained on Saint Paul and in the northern BSAI crab region.

The Crab Rationalization Program came into existence after substantial deliberation at the NPFMC, and was then enacted by Congress and subsequently implemented by the National Marine Fisheries Service (NMFS), through a thorough rulemaking process involving extensive notice and comment periods. While there is widespread agreement that certain issues identified by the Council and the industry need to be addressed -- such as Emergency Relief from Regionalization and greater opportunities for crewmembers -- the program according to Council analysis is working well, has benefited the participants in this fishery, has had a salutary effect on the crab stocks and fishing grounds, and more importantly, has resulted in greater safety to fishing vessels and crews. It is unclear to us what the ultimate objective of this Discussion Paper is, but we believe that there is no factual justification for doing away with a key element of the program such as PQS.

I. The Impacts of the Collapse of the Opilio Crab Fishery on Saint Paul:

When in 1999 the Alaska Department of Fish & Game (ADF&G) announced a significant reduction in the Guideline Harvest Level (GHL) for opilio crab from approximately 192 million lbs. in 1999 to 28 million lbs. in 2000, our community was forced to undertake several urgent actions.

One of the first steps was to request, as an affected fishing community, that the Secretary of Commerce, under the authority extended to him by Section 312 (a) of the Magnuson-Stevens Fishery Conservation and Management Act, declare that a commercial fishery failure had occurred due to a fishery resource disaster. The first such determination was made by the Secretary on May 11, 2000, and due to the continued collapse of the opilio crab fishery, has been extended by successive notifications from NMFS through the 2006 season.<sup>2</sup> This declaration allowed Saint Paul to tap into federal assistance and provided the impetus for proceeding with the development of a rationalization program in the crab fisheries.

On the rationalization front, the community (with the support of the State), played a key role in constructing the proper balance among processors, harvesters, and communities, known as "Three Pie." Critical from the community's perspective was that the U.S. Congress, the State of Alaska, and the NPFMC (the Council) recognized that the considerable federal, state, and municipal investments made on Saint Paul which proved

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<sup>2</sup> The City of Saint Paul's request for an extension of the Section 312 determination -- that a commercial fishery failure in the BSAI opilio crab fishery persists -- to cover the 2007 and 2008 seasons, is pending.

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invaluable to developing a commercially successful crab fishery in the Bering Sea, merited protection within the context of rationalization, in a manner similar to that extended to the harvesting and processing sectors. Since 1999, the City has been heavily involved supporting the Corps of Engineers' Saint Paul Harbor Improvements Project. The project is entering its final construction phase. The total cost of the Harbor Project upon completion is expected to be \$70 million. Just recently, the Corps of Engineers awarded the contract for the construction of the Small Boat Harbor at a total cost of more than \$19 million. Extinguishing PQS, therefore, would potentially undermine decades of public and private investments oriented toward capitalizing on Saint Paul's unique location amid the Bering Sea fisheries.

## II. "Three Pie" and the Benefits of Rationalization for Saint Paul:

Congressional approval of the crab rationalization program in January of 2004 set the stage for ending the derby style crab fishery and for the consolidation of harvesting and processing activity in the Bering Sea. As the main port in the designated northern region of the Bering Sea, Saint Paul has benefited from this program, even though crab stocks remain low and the community's revenues are still at 80% of what they were in 1999. While at present only two of the six crab fisheries are open, required deliveries to northern region processors have helped generate revenues of slightly more than \$720,000 per year during the last seven years. This revenue has helped the City to survive until the stocks return and new fisheries can be developed.

The City receives a portion of the State levied fisheries business tax on all crab delivered and processed at the Trident shoreplant, the Icicle Seafoods floating processor, which is moored within the harbor seasonally, and the floating processors stationed within three nautical miles of Saint Paul Island.<sup>3</sup> The City also receives a 3% sales tax on crab delivered to processors inside the Saint Paul Harbor as well as a sales tax on fuel and other supplies sold in the harbor. As a result of the fishery collapse, the total decrease in revenues to the City of Saint Paul on a yearly basis from 2004 to 2009 as compared to 1999, was approximately 80% (see chart below).<sup>4</sup> This is almost directly proportional to the 85% decrease in the GHL from 1999 to 2000 and subsequent years. Several major areas of City revenues such as onshore and offshore processing, fuel distribution, harbor services, and local businesses continue to be depressed.

<sup>3</sup> The fish tax is 3% for shorebased facilities and 5% for floaters [see A.S. 43.75.015(a)]. The state refunds 50% of the tax collected to cities located in unorganized boroughs and 25% to cities located within organized boroughs (A.S. 43.75.130(a)). Some floaters have negotiated to pay only 3% if they remain stationary for a season or part of a season.

<sup>4</sup> The percentage figures cited in this paragraph and the accompanying chart are rounded to the nearest percentage point, and value data is rounded to the nearest \$1,000. The decrease abated somewhat in 2008 but trended up again in 2009.

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These losses were reflected in continued depressed revenues in several major areas of City revenues – onshore processor revenues, offshore processing, fuel distributors, harbor services, and local businesses – which have not risen to any significant degree from the first year of the fishery collapse in 2000. Those losses are summarized in the following chart (rounded to the nearest thousandth dollar and percentage point):<sup>5</sup>

**City of Saint Paul Sales and Fish Tax Revenues**

(Rounded to nearest thousandth dollar and percentage point)

Revenue Source	1999	2000	2004	2005	2006	2007	2008	2009	%Decline						
									99-00	99-04	99-05	99-06	99-07	99-08	99-09
Onshore Processors	782	113	178	191	194	123	413	425	86%	77%	76%	75%	84%	47%	46%
Offshore Processors	1,935	298	272	230	135	332	577	389	85%	86%	88%	93%	83%	70%	80%
Fuel Distributors	85	11	20	28	42	31	69	10	87%	76%	67%	51%	64%	19%	88%
Harbor Services	759	78	69	94	91	24	213	63	90%	91%	88%	88%	97%	72%	92%
Local Businesses	110	60	60	47	45	29	66	29	45%	45%	57%	59%	74%	40%	74%
<b>TOTAL</b>	<b>3,671</b>	<b>560</b>	<b>599</b>	<b>590</b>	<b>307</b>	<b>539</b>	<b>1338</b>	<b>916</b>	<b>85%</b>	<b>85%</b>	<b>84%</b>	<b>86%</b>	<b>85%</b>	<b>64%</b>	<b>75%</b>

The decline in revenues experienced by the City is indicative of the declines similarly experienced by privately-held businesses in the community. These revenue declines have been felt directly by Saint Paul's 450 residents through loss of jobs, loss of consumers, loss of the community day care facilities, and curtailment in air passenger, cargo and bypass services to the mainland. As of the date of this letter, the City of Saint Paul officially has 36 employees, down from 50 in early 2000. The 2009 Census listed the population at 450; many residents have moved off the Island due to lack of work and

<sup>5</sup> These figures do not include other revenue sources which are not dependent on the condition of the Opilio crab harvests.

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opportunities. The departure particularly hurts the long-term viability of the Island as many of those leaving are educated, skilled, and young.

The community is now heading into the tenth year of the opilio crab fishery collapse. However, the scenario would have been much worse if Saint Paul had not been protected by the Three Pie concept built into the crab rationalization program. The two main community protections are regionalization and the 90/10 A/B share split. Regionalization requires that the 90% A shares are matched and delivered to processors owning processor quota in designated regions proportional to historic delivery rates. The 10% harvester B shares are not subject to matching and can be delivered anywhere. Council analyses show that there are no significant landings of B shares in the northern region. The current 90/10 A/B share split and its required matching of harvester and processor A shares, therefore, ensures adequate levels of deliveries and processing activity in the northern region.

Similarly, the community Rights of First Refusal (ROFRs) are dependent on PQS.<sup>6</sup> As stated in the Council's draft Discussion Paper, "[m]ost specifically, the community rights of first refusal apply to processor shares. Without these allocations communities with historic crab processing would have no direct protection of their interests in that processing activity." While other community protections could presumably be developed in a non-PQS crab fishery, ultimately Saint Paul's economic well-being depends on the well-being of the processors that operate on Saint Paul Island. Should the elimination of PQS threaten the processing sector's ability to operate on Saint Paul, then any alternative protections would be empty gestures and there would be little that the Council could do to ensure crab processing activity on the Island. Extinguishing PQS, therefore, would eliminate the carefully balanced structure existing in the Crab Rationalization Program, and remove several of the program's primary community protections.

Due to low quota levels, processing activity is at a fraction of what it was in the 90's. Nonetheless, the limited crab processing taking place on Saint Paul thanks to rationalization provides the economic basis for the local CDQ and IFQ halibut fishery as the local fishermen have no alternative location to process their halibut. CBSFA contracts with Trident at Saint Paul to custom process the halibut delivered by the local fleet. This fishery is a major source of employment and income for the community and it generated income of over \$3,000,000 in 2007 and 2008 (\$3,261,131 and \$3,407,201, respectively). This is significant for a small community. Furthermore, through its CDQ allocations, CBSFA has promoted economic activity on Saint Paul Island by working with the Trident plant to deliver its allocations of Bristol Bay Red King Crab (BBRKC)

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<sup>6</sup> Saint Paul has addressed issues concerning proposed modifications to ROFRs in another letter to the Council.

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to the Trident processing facility, which represents over 40% of the BBRKC landed in the community.

More recently, CBSFA made a considerable investment to acquire over 2.2 million lbs. (at the 2008/2009 TAC level) worth of northern region PQS and 698,000 lbs. of southern region PQS from Yardarm Knot LLC. In addition to CBSFA's 20% opilio CDQ allocation (out of the 10% that is allocated to the CDQ program), CBSFA now owns approximately 14% of northern region opilio processing. Given the importance of crab processing to Saint Paul, all of these key acquisitions by the local CDQ group would be jeopardized should the Council decide to extinguish PQS.

Furthermore, some 300-400 non-residents work at the shore-based Trident processing facility during the crab season. In addition, transient fishermen who deliver crab are also important to the local economy. These individuals are an important group of consumers and source of business for the Community Store, the Tavern, the Package Store, and the Hardware Store. The local village corporation, TDX, obtains substantial revenue from other related services such as leasing land for freezer vans (crab), sales of fuel, and hotel services, as well as jobs. Businesses such as PenAir, Northland Services, and Delta Fuel are dependent on these flows of people and trade. It is clear that without crab processing, the Island would have to shutter up.

Finally, without crab processing the community would be unable to attract investment in the infrastructure, permitting, and other upgrades necessary to diversify into commercially valuable species such as pollock and cod, and survive in the long-term. This would be an unfortunate development given that Saint Paul's greater proximity to the commercial fisheries which are gradually moving into the northern Bering Sea, in addition to high fuel costs, makes the Island an ideal location to support the North Pacific industry.

### III. Conclusion:


Given the importance of the crab processing sector's activities on Saint Paul Island, the community views with great concern the concept of extinguishing PQS. This is clearly not only a harvester/processor issue, but also a community issue. Regionalized PQS recognizes and protects processor investments and operations in remote communities. In many instances, the viability of a processing facility, made possible by the existing Crab Rationalization Program and its PQS component, is the only protection a community has against extinction.


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Extinguishing PQS therefore could lead to the extinguishment of several Alaska communities, which unlike harvesters or processors, cannot relocate elsewhere. It would be ironic indeed if Alaska's own leaders failed to recognize the economic value of maintaining viable communities in strategic locations like the Pribilofs. In the case of a primarily Aleut community like Saint Paul, more than just a community would be lost. The unique culture and history of the Pribilof Aleuts, which is integrally related to Alaska's own history, its colonization by the Russians, and its subsequent acquisition and eventual incorporation into the United States, would be lost as well.

Sincerely,

  
Simeon Swetozof, Mayor  
City of Saint Paul Island

  
Ron Philemonoff, CEO  
Tanadgusix Corporation

  
Phillip Lestenkof, President  
Central Bering Sea Fishermen's Association



**Alaska Crab Coalition**  
3901 Leary Way N.W. Suite #6  
Seattle, Washington 98107  
206.547.7560  
Fax 206.547.0130  
[accrabak@earthlink.net](mailto:accrabak@earthlink.net)

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May 25, 2009

Eric A. Olson, Chairman  
NPFMC  
605 West 4<sup>th</sup> Avenue, Suite 306  
Anchorage, Alaska 99501-2252

**Agenda Item C-3(b) Discussion papers, 4) Leasing restrictions**

ACC submits two comparative analyses that Edward Poulsen has been revising for the past year since its first submission to the NPFMC at its June meeting in 2008. Since then Edward who is the manager of the Sea Boats Cooperative, has continued to interview vessel owners and QS holders to cross reference the data. There are two narratives with two accompanying Excel spreadsheets that show average cost and revenue for the pre-rationalized and the post rationalized BSAI crab fleet. In the first scenario average gross vessel revenues and average net crew shares are based on an assumption of royalties being paid on 70% of the TAC, and the second scenario assumes royalties being paid on 100% of the TAC, the worst case scenario.

The comparisons below are averages of vessel and crew revenue shares: Pre-rationalized years, 1996-1997 through 2004-2005; and Post-rationalized years, 2005-06 through 2008-2009, Bering Sea Snow crab and Bristol Bay Red King crab.

**Scenario One: The assumption is that royalties are paid at 50% for snow crab and 70% for king crab---on 70% of the TAC. Based on conversations with QS holders, this assumption estimates that no royalties are being charged on 30 percent of the initial issuance of Quota Shares in BSAI crab fisheries.**

**Major conclusions:**

**Average net crew share per day per man, includes allowance for 15 days of travel time and 20 days of gear/boat work: \$508 vs. \$841, and increase of \$333, or 65%.**

A major increase---this is contrary to unverified claims, this is positive and makes decreased earnings per pot hauled in the king crab fishery (see below) irrelevant.

**Average net crew share per man, per year:**

**\$33,408 vs. \$64,028; a net increase in average crew share per man of \$30,620, a 91% increase per year.**

Snow crab: \$21,517 vs. \$34,968 per year, an increase of 62%.

King crab: \$11,891 vs. \$29,059 per year, an increase of 144%.

Remarkably, the average net crew share (after subtracting fuel and bait expenses) has increased by the same percentage as the gross vessel revenue (without deduction for vessel maintenance, shipyard and QS leasing costs).

**Average gross vessel revenue per year: No allowance for increased vessel maintenance and shipyard expenses and QS leasing costs.**

**\$556,795 vs. \$1,067,126; an increase in vessel gross revenue of \$510,331, a 91% increase.**  
This is as predicted in the BSAI Crab EIS because the program was designed to encourage consolidation of QS and leasing. Although there is a substantial increase in gross revenue, the number of days each boat works has increased which increases vessel maintenance and shipyard costs.

**Additional relevant comparative information:**

Total number of days worked, including allowance for travel time (15) and gear work (20):  
68 vs. 75; a 10% increase in the total number of days worked.

Average actual fishing days comparison:

Snow crab: 29 vs. 27

King crab: 4 vs. 13

Average crew share per day: No allowance for travel time and gear work.

Snow crab: \$1,117 vs. \$1,304

King crab: \$3,043 vs. \$2,159

Average crew earnings per pot hauled. No allowance for travel time and gear work:

Snow crab: \$17.00 vs. \$24.00; net increase for snow crab 41%

King crab: \$30.00 vs. \$24.00; net decrease for king crab 20%

Average number of pots hauled per day: No allowance for travel time and gear work

Snow crab: 68 vs. 55

King crab: 100 vs. 90

Less pots per day, easier work day, daily life threatening risks removed, increased net income.

Average number of pots hauled per season: A result of elongated seasons, leasing of QS and and less boats fishing.

Snow crab: 1,967 vs. 1,475, a decrease of 497 pots per boat, a 25% decrease in pots hauled.

King crab: 409 vs. 1,213, an increase of 395 pots per boat, a 96% increase in pots hauled.

**Scenario Two: The assumption is that royalties are paid at 50% for snow crab and 70% for king crab on 100% of the TAC, the "worst case" scenario:**

**Major conclusions:**

**Average net crew share per day per man, includes allowance for 15 days of travel time and 20 days of gear/boat work: \$508 vs. \$571**

Stable and slight increase---this is contrary to unverified claims, this is positive and makes decreased earnings per pot hauled in the king crab fishery (see below) irrelevant.

Snow crab: \$21,517 vs. \$26,705

King crab: \$11,891 vs. \$16,698

**Average net crew share per man, per year:**

**\$33,408 vs. \$43,403; a net increase in average crew share per man of \$9,995, a 30% increase per year.**

Remarkably, the average net crew share (after subtracting fuel and bait expenses) has increased by the same percentage as the gross vessel revenue (without deduction for vessel maintenance, shipyard and QS leasing costs).

**Average gross vessel revenue per year: No allowance for increased vessel maintenance and shipyard expenses and QS leasing costs.**

**\$556,795 vs. \$723,385; an increase in vessel gross revenue of \$166,590, a 30% increase.**

This is as predicted in the BSAI Crab EIS because the program was designed to encourage consolidation of QS and leasing. Although there is a substantial increase in gross revenue, the number of days each boat works has increased which increases vessel maintenance and shipyard costs.

**Additional relevant comparative information:**

Total number of days worked, including travel time (15) and gear work (20):  
68 vs. 75; a 10% increase in the total number of days worked.

**Average actual fishing days comparison:**

Snow crab: 29 vs. 27

King crab: 4 vs. 13

**Average crew share per day: No allowance for travel time and gear work.**

Snow crab: \$1,117 vs. \$999

King crab: \$3,043 vs. \$1,236

**Average crew earnings per pot hauled. No allowance for travel time and gear work:**

Snow crab: \$17.00 vs. \$18.00

King crab: \$30.00 vs. \$14.00

Net decrease in earnings per pot hauled in the king crab fishery.

**Average number of pots hauled per day: No allowance for travel time and gear work**

Snow crab: 68 vs. 55


King crab: 100 vs. 90

Less pots per day, easier work day, daily life threatening risks removed, stable income.

**Average number of pots hauled per season: A result of elongated seasons, leasing of QS and and less boats fishing.**

Snow crab: 1,967 vs. 1,475, a decrease of 497 pots per boat, a 25% decrease in pots hauled.

King crab: 409 vs. 1,213, an increase of 395 pots per boat, a 96% increase in pots hauled.

  
Arni Thomson, Executive Director  
Alaska Crab Coalition

Pre and Post Crab Rationalization Revenue Analysis

Prepared by Edward Poulsen

14-Apr-09

Source: NPFMC Crab SAFE Document 2007

<b>Assumptions:</b>	
% of TAC Owned (No Royalties)	0.40%
Days traveling from/To Dutch	15
Days working on gear/boat	20
Total Net Crew Share %	36%
Number of Crew	6

	Pre-Rationalization										Post-Rationalization			
	1996-1997	1997-1998	1998-1999	1999-2000	2000-2001	2001-2002	2002-2003	2003-2004	2004-2005	2005-2006	2006-2007	2007-2008	2008-2009	
<b>Bering Sea Opilio Crab</b>														
Vessels Fishing	226	229	241	229	207	191	192	189	169	78	69	78	77	
CPUE	133	209	160	137	97	76	154	157	239	204	332	349	295	
Price	\$0.79	\$0.56	\$0.88	\$1.81	\$1.53	\$1.49	\$1.83	\$2.05	\$1.80	\$1.13	\$1.65	\$1.78	\$1.45	
Royalty	0%	0%	0%	0%	0%	0%	0%	0%	0%	50%	50%	50%	50%	
Lbs/Crab	1.2	1.3	1.3	1.3	1.4	1.3	1.2	1.3	1.4	1.5	1.3	1.3	1.3	
Pots/Day	85	61	56	92	60	63	74	63	57	55	55	55	55	
Average Catch	883,139	1,063,286	766,535	115,284	122,222	149,215	123,438	102,116	114,793	429,487	478,261	726,923	684,351	
Amt Caught Non-Royalty	883,139	1,063,286	766,535	115,284	122,222	149,215	123,438	102,116	114,793	134,000	132,000	226,800	226,800	
Amt Caught Royalty	-	-	-	-	-	-	-	-	-	295,487	346,261	500,123	457,551	
Days Actually Fishing	65	64	66	7	15	24	9	8	6	26	20	29	32	
Gross Revenue for Opilio	\$697,680	\$595,440	\$674,551	\$208,664	\$187,000	\$222,330	\$225,891	\$209,339	\$206,627	\$318,370	\$503,465	\$848,814	\$660,584	
Revenue/Fishing Days Opilio	\$10,734	\$9,304	\$10,220	\$29,809	\$12,467	\$9,264	\$25,099	\$26,167	\$34,438	\$12,476	\$24,989	\$29,138	\$20,360	
Opilio Total Crew Share	\$251,165	\$214,359	\$242,838	\$75,119	\$67,320	\$80,039	\$81,321	\$75,362	\$74,386	\$114,613	\$181,247	\$305,573	\$237,810	
Opilio Average Crew Share	\$91,861	\$35,726	\$40,473	\$12,520	\$11,220	\$13,340	\$13,553	\$12,560	\$12,398	\$19,102	\$30,208	\$50,929	\$39,635	
Opilio Crew Share/Days Working	\$3,864	\$3,349	\$3,679	\$10,731	\$4,488	\$3,335	\$9,036	\$9,420	\$12,398	\$4,491	\$8,996	\$10,490	\$7,330	
Opilio Average Crew Share/Days Working	\$644	\$558	\$613	\$1,789	\$748	\$556	\$1,506	\$1,570	\$2,066	\$749	\$1,499	\$1,748	\$1,222	
Pots Pulled Per Boat Opilio	5,533	3,913	3,685	647	900	1,510	668	500	343	1,404	1,108	1,602	1,784	
Crewman \$ Earned Per Pot Pulled Opilio	\$8	\$9	\$11	\$19	\$12	\$9	\$20	\$25	\$36	\$14	\$27	\$32	\$22	

	Pre-Rationalization										Post-Rationalization			
	1996-1997	1997-1998	1998-1999	1999-2000	2000-2001	2001-2002	2002-2003	2003-2004	2004-2005	2005-2006	2006-2007	2007-2008	2008-2009	
<b>Red King Crab</b>														
Vessels Fishing	196	256	274	257	246	230	242	252	251	89	81	74	77	
CPUE	16	15	15	12	12	19	20	18	23	25	34	28	22	
Price	4.01	3.26	2.64	6.26	4.81	4.81	6.14	5.08	4.71	4.24	3.48	4.46	5.15	
Royalty	0%	0%	0%	0%	0%	0%	0%	0%	0%	70%	70%	70%	70%	
Lbs/Crab	6.7	6.7	6.7	6.1	6.5	6.5	6.4	6.2	6.8	6.7	6.4	6.7	6.6	
Pots/Day	100	85	104	118	98	83	102	101	109	90	90	90	90	
Average Catch	42,886	34,205	52,154	43,077	30,675	33,854	36,598	57,655	56,225	185,151	171,507	247,297	238,026	
Amt Caught Non-Royalty	42,886	34,205	52,154	43,077	30,675	33,854	36,598	57,655	56,225	66,000	55,568	73,200	73,312	
Amt Caught Royalty	-	-	-	-	-	-	-	-	-	119,151	115,939	174,097	164,714	
Days Actually Fishing	4	4	5	5	4	3	3	5	3	12	9	15	18	
Gross Revenue for RKC	\$171,972	\$111,508	\$137,687	\$269,661	\$147,549	\$162,838	\$224,715	\$292,889	\$264,819	\$431,400	\$314,417	\$559,414	\$632,040	
Revenue/Fishing Days RKC	\$42,993	\$27,877	\$27,537	\$53,932	\$36,887	\$49,345	\$80,255	\$57,429	\$80,248	\$35,125	\$35,903	\$38,193	\$34,700	
RKC Total Crew Share	\$61,910	\$40,143	\$49,567	\$97,078	\$53,117	\$58,622	\$80,897	\$105,440	\$95,335	\$155,304	\$113,190	\$201,389	\$227,534	
RKC Average Crew Share	\$10,318	\$6,691	\$8,261	\$16,180	\$8,853	\$9,770	\$13,483	\$17,573	\$15,889	\$25,884	\$18,865	\$33,565	\$37,922	
RKC Crew Share/Days Working	\$15,477	\$10,036	\$9,913	\$19,416	\$13,279	\$17,764	\$28,892	\$20,674	\$28,889	\$12,645	\$12,925	\$13,750	\$12,492	
RKC Average Crew Share/Days Working	\$2,580	\$1,673	\$1,652	\$3,236	\$2,213	\$2,961	\$4,815	\$3,446	\$4,815	\$2,107	\$2,154	\$2,292	\$2,082	
Pots Pulled Per Boat RKC	400	340	519	588	393	274	286	517	359	1,105	788	1,318	1,639	
Crewman \$ Earned Per Pot Pulled RKC	\$26	\$20	\$16	\$27	\$23	\$36	\$47	\$34	\$44	\$23	\$24	\$25	\$23	

	Pre-Rationalization										Post-Rationalization			
	1996-1997	1997-1998	1998-1999	1999-2000	2000-2001	2001-2002	2002-2003	2003-2004	2004-2005	2005-2006	2006-2007	2007-2008	2008-2009	
<b>Combined Opilio/Red King Crab</b>														
Total Days Working	104	103	106	47	54	62	47	48	44	73	64	79	86	
Gross Revenue for Year	\$869,652	\$706,949	\$812,238	\$478,324	\$334,549	\$385,168	\$450,605	\$502,227	\$471,446	\$749,771	\$817,882	\$1,408,228	\$1,292,624	
Total Revenue/Total Days	\$8,362	\$6,864	\$7,663	\$10,177	\$6,195	\$6,182	\$9,628	\$10,441	\$10,642	\$10,299	\$12,798	\$17,876	\$15,090	
Total Crew Share	\$313,075	\$254,502	\$292,406	\$172,197	\$120,437	\$138,661	\$162,218	\$180,802	\$169,721	\$269,917	\$294,438	\$506,962	\$465,345	
Average Crew Share for Year	\$52,179	\$42,417	\$48,734	\$28,699	\$20,073	\$23,110	\$27,036	\$30,134	\$28,287	\$44,986	\$49,073	\$84,494	\$77,557	
Total Crew Share/Total Days Worked	\$3,010	\$2,471	\$2,759	\$3,664	\$2,230	\$2,226	\$3,466	\$3,759	\$3,831	\$3,708	\$4,607	\$6,435	\$5,432	
Average Crew Share/Total Days Worked	\$502	\$412	\$460	\$611	\$372	\$371	\$578	\$626	\$639	\$618	\$768	\$1,073	\$905	

01-02 to 04-05 Ave	97 to 04-05 Ave	05-06 to 08-09 Ave
185	208	76
157	151	295
\$1.79	\$1.42	\$1.50
0%	0%	50%
1.3	1.3	1.35
64	68	55
122,390	382,225	579,755
122,390	382,225	179,900
-	-	399,855
-	-	-
12	29	27
\$216,047	\$358,613	\$582,808
\$23,742	\$18,611	\$21,741
\$77,777	\$129,101	\$209,811
\$12,963	\$21,517	\$34,968
\$8,547	\$6,700	\$7,827
\$1,425	\$1,117	\$1,304
755	1,967	1,475
\$23	\$17	\$24

0 0

01-02 to 04-05 Ave	96-97 to 04-05 Ave	05-06 to 08-09 Ave
244	245	80
20	17	27
5.19	4.64	4.33
0%	0%	70%
6.5	6.5	6.6
99	100	90
46,083	43,037	210,495
46,083	43,037	67,020
-	-	143,475
-	-	-
4	4	13
\$236,315	\$198,182	\$484,318
\$66,819	\$50,723	\$35,980
\$85,073	\$71,345	\$174,354
\$14,179	\$11,891	\$29,059
\$24,055	\$18,260	\$12,953
\$4,009	\$3,043	\$2,159
359	409	1,213
\$40	\$30	\$24

0 0 0  
0 0 0

01-02 to 04-05 Ave	96-97 to 04-05 Ave	05-06 to 08-09 Ave
50	68	75
\$452,362	\$556,795	\$1,067,126
\$9,224	\$8,462	\$14,016
\$162,850	\$200,446	\$384,165
\$27,142	\$33,408	\$64,028
\$3,320	\$3,046	\$5,046
\$553	\$508	\$841

Pre and Post Crab Rationalization Revenue Analysis

Prepared by Edward Poulsen

14-Apr-09

Source: NPFMC Crab SAFE Document 2007

<b>Assumptions:</b>	
% of TAC Owned (No Royalties)	0.00%
Days travelling from/to Dutch	15
Days working on gear/boat	20
Total Net Crew Share %	36%
Number of Crew	6

	← Pre-Rationalization										Post-Rationalization →			
<u>Bering Sea Opilio Crab</u>	1996-1997	1997-1998	1998-1999	1999-2000	2000-2001	2001-2002	2002-2003	2003-2004	2004-2005	2005-2006	2006-2007	2007-2008	2008-2009	
Vessels Fishing	226	229	241	229	207	191	192	189	169	78	69	78	77	
CPUE	133	209	160	137	97	76	154	157	239	204	332	349	295	
Price	\$0.79	\$0.56	\$0.88	\$1.81	\$1.53	\$1.49	\$1.83	\$2.05	\$1.80	\$1.13	\$1.65	\$1.78	\$1.45	
Royalty	0%	0%	0%	0%	0%	0%	0%	0%	0%	50%	50%	50%	50%	
Lbs/Crab	1.2	1.3	1.3	1.3	1.4	1.3	1.2	1.3	1.4	1.5	1.3	1.3	1.3	
Pots/Day	85	61	56	92	60	63	74	63	57	55	55	55	55	
Average Catch	883,139	1,063,286	766,535	115,284	122,222	149,215	123,438	102,116	114,793	429,487	478,261	726,923	684,351	
Amt Caught Non-Royalty	883,139	1,063,286	766,535	115,284	122,222	149,215	123,438	102,116	114,793	-	-	-	-	
Amt Caught Royalty	-	-	-	-	-	-	-	-	-	429,487	478,261	726,923	684,351	
Days Actually Fishing	65	64	66	7	15	24	9	8	6	26	20	29	32	
Gross Revenue for Opilio	\$697,680	\$595,440	\$674,551	\$208,664	\$187,000	\$222,330	\$225,891	\$209,339	\$206,627	\$242,660	\$394,565	\$646,962	\$496,154	
Revenue/Fishing Days Opilio	\$10,734	\$9,304	\$10,220	\$29,809	\$12,467	\$9,264	\$25,099	\$26,167	\$34,438	\$9,509	\$19,584	\$22,209	\$15,292	
Opilio Total Crew Share	\$251,165	\$214,359	\$242,838	\$75,119	\$67,320	\$80,039	\$81,321	\$75,362	\$74,386	\$87,358	\$142,043	\$232,906	\$178,616	
Opilio Average Crew Share	\$41,861	\$35,726	\$40,473	\$12,520	\$11,220	\$13,340	\$13,553	\$12,560	\$12,398	\$14,560	\$23,674	\$38,818	\$29,769	
Opilio Crew Share/Days Working	\$3,864	\$3,349	\$3,679	\$10,731	\$4,488	\$3,335	\$9,036	\$9,420	\$12,398	\$3,423	\$7,050	\$7,995	\$5,505	
Opilio Average Crew Share/Days Working	\$644	\$558	\$613	\$1,789	\$748	\$556	\$1,506	\$1,570	\$2,066	\$571	\$1,175	\$1,333	\$918	
Pots Pulled Per Boat Opilio	5,533	3,913	3,685	647	900	1,510	668	500	343	1,404	1,108	1,602	1,784	
Crewman \$ Earned Per Pot Pulled Opilio	\$8	\$9	\$11	\$19	\$12	\$9	\$20	\$25	\$36	\$10	\$21	\$24	\$17	

<u>Red King Crab</u>	1996-1997	1997-1998	1998-1999	1999-2000	2000-2001	2001-2002	2002-2003	2003-2004	2004-2005	2005-2006	2006-2007	2007-2008	2008-2009
Vessels Fishing	196	256	274	257	246	230	242	252	251	89	81	74	77
CPUE	16	15	15	12	12	19	20	18	23	25	34	28	22
Price	4.01	3.26	2.64	6.26	4.81	4.81	6.14	5.08	4.71	4.24	3.48	4.46	5.15
Royalty	0%	0%	0%	0%	0%	0%	0%	0%	0%	70%	70%	70%	70%
Lbs/Crab	6.7	6.7	6.7	6.1	6.5	6.5	6.4	6.2	6.8	6.7	6.4	6.7	6.6
Pots/Day	100	85	104	118	98	83	102	101	109	90	90	90	90
Average Catch	42,886	34,205	52,154	43,077	30,675	33,854	36,598	57,655	56,225	185,151	171,507	247,297	238,026
Amt Caught Non-Royalty	42,886	34,205	52,154	43,077	30,675	33,854	36,598	57,655	56,225	-	-	-	-
Amt Caught Royalty	-	-	-	-	-	-	-	-	-	185,151	171,507	247,297	238,026
Days Actually Fishing	4	4	5	5	4	3	3	5	3	12	9	15	18
Gross Revenue for RKC	\$171,972	\$111,508	\$137,687	\$269,661	\$147,549	\$162,838	\$224,715	\$292,889	\$264,819	\$235,512	\$179,053	\$330,884	\$367,750
Revenue/Fishing Days RKC	\$42,993	\$27,877	\$27,537	\$53,932	\$36,887	\$49,345	\$80,255	\$57,429	\$80,248	\$19,175	\$20,446	\$22,591	\$20,190
RKC Total Crew Share	\$61,910	\$40,143	\$49,567	\$97,078	\$53,117	\$58,622	\$80,897	\$105,440	\$95,335	\$84,784	\$64,459	\$119,118	\$132,390
RKC Average Crew Share	\$10,318	\$6,691	\$8,261	\$16,180	\$8,853	\$9,770	\$13,483	\$17,573	\$15,889	\$14,131	\$10,743	\$19,853	\$22,065
RKC Crew Share/Days Working	\$15,477	\$10,036	\$9,913	\$19,416	\$13,279	\$17,764	\$28,892	\$20,674	\$28,889	\$6,903	\$7,360	\$8,133	\$7,268
RKC Average Crew Share/Days Working	\$2,580	\$1,673	\$1,652	\$3,236	\$2,213	\$2,961	\$4,815	\$3,446	\$4,815	\$1,151	\$1,227	\$1,355	\$1,211
Pots Pulled Per Boat RKC	400	340	519	588	393	274	286	517	359	1,105	788	1,318	1,639
Crewman \$ Earned Per Pot Pulled RKC	\$26	\$20	\$16	\$27	\$23	\$36	\$47	\$34	\$44	\$13	\$14	\$15	\$13

<u>Combined Opilio/Red King Crab</u>	1996-1997	1997-1998	1998-1999	1999-2000	2000-2001	2001-2002	2002-2003	2003-2004	2004-2005	2005-2006	2006-2007	2007-2008	2008-2009
Total Days Working	104	103	106	47	54	62	47	48	44	73	64	79	86
Gross Revenue for Year	\$869,652	\$706,949	\$812,238	\$478,324	\$334,549	\$385,168	\$450,605	\$502,227	\$471,446	\$478,173	\$573,618	\$977,845	\$863,904
Total Revenue/Total Days	\$8,362	\$6,864	\$7,663	\$10,177	\$6,195	\$6,182	\$9,628	\$10,441	\$10,642	\$6,568	\$8,976	\$12,413	\$10,085
Total Crew Share	\$313,075	\$254,502	\$292,406	\$172,197	\$120,437	\$138,661	\$162,218	\$180,802	\$169,721	\$172,142	\$206,503	\$352,024	\$311,006
Average Crew Share for Year	\$52,179	\$42,417	\$48,734	\$28,699	\$20,073	\$23,110	\$27,036	\$30,134	\$28,287	\$28,690	\$34,417	\$58,671	\$51,834
Total Crew Share/Total Days Worked	\$3,010	\$2,471	\$2,759	\$3,664	\$2,230	\$2,226	\$3,466	\$3,759	\$3,831	\$2,365	\$3,231	\$4,469	\$3,631
Average Crew Share/Total Days Worked	\$502	\$412	\$460	\$611	\$372	\$371	\$578	\$626	\$639	\$394	\$539	\$745	\$605

01-02 to 04-05 Ave	97 to 04-05 Ave	05-06 to 08-09 Ave
18	208	76
157	151	295
\$1.79	\$1.42	\$1.50
0%	0%	50%
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122,390	382,225	-
-	-	579,755
-	-	-
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\$23,742	\$18,611	\$16,648
\$77,777	\$129,101	\$160,231
\$12,963	\$21,517	\$26,705
\$8,547	\$6,700	\$5,993
\$1,425	\$1,117	\$999
755	1,967	1,475
\$23	\$17	\$18
-	-	-
0	0	0

01-02 to 04-05 Ave	96-97 to 04-05 Ave	05-06 to 08-09 Ave
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5.19	4.64	4.33
0%	0%	70%
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46,083	43,037	-
-	-	210,495
-	-	-
4	4	13
\$236,315	\$198,182	\$278,300
\$66,819	\$50,723	\$20,600
\$85,073	\$71,345	\$100,188
\$14,179	\$11,891	\$16,698
\$24,055	\$18,260	\$7,416
\$4,009	\$3,043	\$1,236
359	409	1,213
\$40	\$30	\$14
0	0	0
0	0	0

01-02 to 04-05 Ave	96-97 to 04-05 Ave	05-06 to 08-09 Ave
50	68	75
\$452,362	\$556,795	\$723,385
\$9,224	\$8,462	\$9,511
\$162,850	\$200,446	\$260,419
\$27,142	\$33,408	\$43,403
\$3,320	\$3,046	\$3,424
\$553	\$508	\$571

**PACIFIC NORTHWEST CRAB INDUSTRY ADVISORY  
COMMITTEE (PNCIAC)**  
c/o 4209 21<sup>st</sup> Ave. West, Ste. 403  
Seattle, Washington 98199  
360 440 4737  
[steve@wafro.com](mailto:steve@wafro.com)

Meeting date: March 23, 2009  
Meeting called to order at 9:15 am

NPFMC, June 2009, Agenda C-3

Quorum is present:

Lance Farr, Phil Hanson, Kevin Kaldestad, Gary Loncon, Steve Minor, Gary Painter, Rob Rogers, Vic Scheibert, Dale Schwarzmiller. Absent: Keith Colburn, Gary Stewart, Tom Suryan.

Via teleconference: Rachel Baker, Tom Meyer, NMFS, Juneau, Alaska; Mark Fina, NPFMC

Also in room: Ron Felthoven, Brian Garber-Yonts, Everette Anderson, Walt Casto, Jarid Waltz.

1. EDR Reports: After lengthy discussion, Phil Hanson made a motion, seconded by Kevin Kaldestad and approved unanimously as follows:

**PNCIAC would like to acknowledge and thank the Alaska Fisheries Science Center, the Alaska Department of Fish and Game and the North Pacific Fishery Management Council for the collaborative work that has resulted in a final BSAI Crab Metadata product that should improve the collection of industry data and the research borne out of this data.**

**PNCIAC supports adoption of the final Metadata Table(s) as presented at this meeting, by the North Pacific Fishery Management Council.**

It was also agreed that Brian Garber Yonts would submit to PNCIAC his recommendations for EDR form revisions, and that a workshop would then be held to review those recommendations prior to the June Council meeting.

2. PNCIAC and members of the public discussed recent ASMI and MSC projects and activities. No action was taken.

The meeting was adjourned at 10:45 am.

Respectfully submitted,

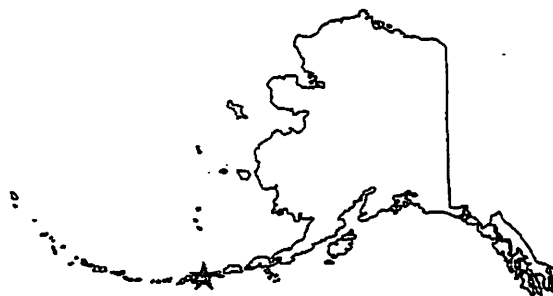


Steve Minor, Chair, PNCIAC, [steve@wafro.com](mailto:steve@wafro.com)



**CITY OF UNALASKA**

P.O. BOX 610  
UNALASKA, ALASKA 99685-0610  
(907) 581-1251 FAX (907) 581-1417



June 4, 2009

Eric Olson, Chairman  
North Pacific Fishery Management Council  
605 4<sup>th</sup> Avenue Suite306  
Anchorage, Alaska 99501

**Subject C-3(b) BSAI Crab Program Review of Discussion Papers**

Dear Chairman Olson:

On behalf of the City of Unalaska, I am submitting comments on the issues listed under item (b) Review of Crab Discussion Papers items 1.2. 3. Unalaska is silent on discussion paper 4. The City of Unalaska supports the NPFMC Advisory Panel motions on items 1-3 under this agenda item.

The Unalaska City Council has passed three Resolutions in support of the Crab Rationalization Plan since 2002. Unalaska has also supported the current crab plan in written and verbal testimony during the 18 month and three year review of the current plan. Unalaska is the largest crab processing community in the state of Alaska and has been a major supporter of the crab rationalization plan since its inception. We feel that the plan is achieving its intended purpose as laid out in the 2002 problem statement. In Unalaska, we have seen many benefits of the plan. Crab revenues in the community have increased. TAC's on Red King Crab and Opilio Snow Crab have also increased the past two years, leading to longer seasons and a stronger economy within the community, which means benefits to the local support sector businesses. During the past four years, we have seen increased investments in the BSAI crab fisheries by Alaskan communities and CDQ groups. These investments in purchasing PQS, IFQ and vessels are in the many millions of dollars, and this investment and its impact should not be overlooked.

Many of the goals of the crab rationalization plan are being met; the arbitration system is working, and the harvesters are getting a fair price for their product. Safety in the BSAI crab fishery has been greatly improved; during the first four years of the plan, not one vessel has been lost. We believe the health of the resource is benefiting greatly with this plan. We are seeing less bycatch of small crab due to

longer soak times, and fewer pot lifts and pots on the grounds. We believe, in the next few years, the resource will continue to be positively impacted as a result of this plan. Unalaska comments on the staff discussion papers are as follows.

1.) Rights of First Refusal (ROFR) – We have supported and continue to support changing the period for exercising the rights of first refusal from 60 days to 90 days. This change gives ECCO community entities extra time to see if they want to exercise the right. The second amendment would extend the period for performing under the contract from 120 days to 150 days after receiving the contract we support that change. This additional time may be needed to acquire financing and negotiate for the purchase. Making the ROFR permanent was also discussed in the NPFMC crab committee and was supported. Under the current contract terms, the RORF can lapse. We strongly support making the RORF permanent, which will create a permanent link between the PQS and the place where the processing occurred. We not only believe a loan program to support community purchases is needed, but such program should be supported by the Council and recommended to NMFS. A loan program would be very important for small communities, allowing them to get loan support for purchasing PQS, thereby keeping those quota shares in the community.

2.) Western Aleutian Island Golden King Crab Regionalization and PQ Issues – We support the AP motion that harvesters, processors, and communities work together to develop proposals for an exemption from regionalization of deliveries in the event that processing capacity is unavailable. It should also be pointed out that arbitration has not yet been tried between the harvesters and processors on price issues in the Western Aleutian Island Golden King Crab fishery, and the custom processing use cap exemption will just go into effect in the next month or so. We would hope that all parties would use the tools they have available before major changes are made in the Western Aleutian Island Golden King Crab fishery.

3.) Extinguishing Crab Processor Quotas – The removal of processor quota shares (PQS) would be a major change to the crab program. In the discussion paper, the author states that by doing away with processor shares, the Council may be creating a new limited-access program. In order to adopt a new program, the Council would have to take into consideration a host of new measures under MSA. Such measures include allocations to fishing communities, small owner operated vessels, set asides for entry level captains and crew, consideration of auctions of crab shares, and collection of royalties in the fisheries.

These measures would all erode a harvester-only allocation program. If PQS went away, compensation might or might not have to be paid to PQS holders. I would believe a good case could be made that they should be compensated. In addition, community protection measures and ROFR's would go away. The arbitration program that has been so successful for the harvesters would be impacted and most likely would be eliminated. The regionalization of crab deliveries could be kept in the program, but there would be issues about keeping it, and it is likely some changes would be made. Under MSA, two other measures would not be allowed. Those measures could help offset the loss of community protections and would bring

harvester IFQ back to a community as community quota and port landing requirements. Unalaska does not support this change. The program is just completing its fourth year, and wholesale changes would cause turmoil and uncertainty for the industry, CDQ groups, and for communities that have invested millions of dollars in the BSAI crab fisheries. The program is not broken. We do not need to continue to spend time on this over-analyzed program. We have bigger issues to deal with in the crab fisheries, including the situation in the Opilio snow crab fishery that may face major quota impacts over the next few years. The Council should move forward with the five-year review of this successful program and follow what the AP stated on this issue: no further action needed!

4.) Leasing Restrictions Issue – Unalaska stands silent on this issue.

In conclusion, Unalaska supports the AP motion on issues listed as 1, 2, and 3 under item (b) Review of Crab Discussion Papers. We thank you for the consideration of our comments.

Sincerely

A handwritten signature in black ink, appearing to read 'Frank Kelty', with a long horizontal flourish extending to the right.

Frank Kelty,  
Resource Analyst

CC: Mayor Shirley Marquardt  
Unalaska City Council members  
Chris Hladick, City Mgr.

Karen Montoya  
C-3(b-d)



RESOLUTION NO. 09-01

**RESOLUTION OF THE BOARD OF DIRECTORS OF ALEUTIA RECOGNIZING COMMUNITY PROTECTIONS ASSOCIATED WITH PROCESSOR QUOTA SHARES**

**WHEREAS**, Aleutia is a 501(c)(3) non-profit organization operated by fishing families to support fisheries development and seafood marketing activities in communities along Alaska's Eastern Aleutian Islands and Western Alaska Peninsula.

**WHEREAS**, Aleutia was designated by the Aleutians East Borough and the City of King Cove as the Eligible Crab Community Organization to exercise the right of first refusal to obtain crab quota shares or purchase shares under the crab rationalization program.

**WHEREAS**, Aleutia made a significant investment in the community of King Cove in 2008 when it purchased processor quota shares of Bristol Bay Red Crab and Bairdi Crab in association with the crab rationalization program.

**WHEREAS**, Aleutia's purchase of quota shares provided necessary community protections by guaranteeing that crab quota remained in the community of King Cove and within the Aleutians East Borough.

**WHEREAS**, Aleutia's crab quota and its successful management and marketing of its processor quota shares will support additional community projects, fisheries development, regional and seafood marketing activities.

**WHEREAS**, Aleutia's successful implementation of the program, its ability to protect communities and support community projects, fisheries development and regional and seafood marketing is dependent on the community protections associated with the processor quota shares it holds as part of the current crab rationalization program.

**WHEREAS**, in furtherance of its mission, Aleutia will likely purchase additional crab quota if and when it becomes available in the future.

**THEREFORE BE IT RESOLVED**, the Aleutia Board of Directors recognizes the beneficial role processor quota shares with associated community protection measures play in fulfilling the Aleutia mission to protect and enhance the communities it serves.

Chair

Secretary

**Alaska Crab Coalition**  
3901 Leary Way N.W. Suite #6  
Seattle, Washington 98107  
206.547.7560  
Fax 206.547.0130  
accrabak@earthlink.net

June 5, 2009

Eric A. Olson, Chairman  
NPFMC  
605 West 4<sup>th</sup> Avenue, Suite 306  
Anchorage, Alaska 99501-2252

**Re: Second Set of Comments on Agenda Item C-3(b), Comments on the NPFMC Discussion Paper, Leasing Practices in BSAI Crab Fisheries**

**Conclusions:**

The general conclusions in this analysis track well with ACC's first set of comments in that both analyses show that despite the fact that crew members' pay has decreased as a percentage of vessel revenue, their total income has dramatically improved. Crew positions in the fisheries are more stable, the crew typically know the amount of quota that will be harvested and terms of payment prior to beginning fishing, allowing them to project income for a season. Prior to implementation of the rationalization program, compensation hinged entirely on success in the limited access derby fishery. The consolidation of catch under the rationalization program has reportedly allowed some crew to rely exclusively on crab fishing for their incomes (Discussion Paper, page 11).

**Pre rationalization crew leverage in derbies led to extraordinary crew shares:**

Prior to implementation of the program, license holders of large numbers of vessels were compelled to compete in the crab fisheries as a result of investments and mortgages, regardless of whether returns were expected to be substantial (or even cover the full costs of participation). Jobs were readily available. The large numbers of vessels simultaneously participating in the fisheries provided persons willing to work on vessels with substantial leverage in any negotiation for a position (page 2).

This leverage was reflected in two ways. Crew were paid on a share system, under which payment is a percentage of vessel revenues after deduction of specified costs (food, fuel and bait). Crewmembers on average might have received a higher share percentage for their work, than would have been paid in a more competitive labor market. It is unlikely that any vessel owner who attempted to pay less the going rate would have been able to retain a crew. **"The magnitude of the difference in daily revenues compared to the cod pot fishery suggests that crew may have received extraordinary shares (and pay) in the crab fisheries under the LLP program" (page 3).**

The leverage of crew in negotiations also shows in the payment of late (or last minute) hires in the fisheries. It was not uncommon for some vessel owners to make hires to fill out their crews in the last few days before the season opened. Crews hired for these positions were typically hired at the same share they would have received had they been hired earlier, a few weeks or a month prior to the opening. **“These late hires would have done little gear and boat work prior to the opening, but received a share comparable to other crew, as they were needed for the vessel to compete in the fishery. These late hires clearly exploited their leverage with both vessel owners and other crew”** (page 3).

**Fleet conditions just prior to rationalization:**

A few factors likely contributed to the substantial consolidation that occurred in the first years of the program. **The short seasons and low catches (relative to historic highs) created an environment ripe for consolidation. In addition, industry participants maintain that many of the vessels that departed in the first year of the program would have been retired from the fishery earlier, but for the prospect of the rationalization program.** This lingering capacity led to a far more precipitous drop in the first year of the program. Consolidation was also encouraged by the cooperative structure under the program (page 4).

Consolidation resulted in the loss of hundreds of crew jobs. However, as the ACC noted in its post rationalization crab vessel analysis submitted to the Council (February 6, 2007, Agenda D-2(c)), the bulk of the vessels and hence crews were from the State of Washington. Fully two-thirds of the fleet of 256 vessels were located in Washington ports. Most of the vessels that left the crab fisheries are still operating in other fisheries in Alaskan waters and providing employment for tendering and some are doing long term research related charters.

Although crab job losses were substantial, one must also consider the terms of employment in the prerationalization fisheries in assessing the magnitude of the loss. Few crab deck jobs, particularly in the two large fisheries, fully supported a crewmember. Because of the small quotas in the fisheries in years leading up to the rationalization program, most crew worked only a month or so in the crab fisheries. Crew typically worked other jobs (including crew jobs in other fisheries) throughout the remainder of the year. In addition, since pay was based on performance in the derby, pay was subject to risk. The relatively short tenure of crab crew jobs was attractive to many crew, since they were able to negotiate (or take) short periods away from other employment to fish crab. In the case of crew from remote communities with few job opportunities, replacing income from lost crab crew jobs is reported to be problematic (page 6). However, the bulk of crew members from Washington State have reportedly been assimilated into other fishing jobs or related maritime employment.

**Increase in crew revenue share with rationalization:**

Since crew compensation arrangements vary across the fleet, changes in crew share payments can be best assessed by examining the change in the percentage of gross vessel revenues paid to crew before and after implementation of the program. Available data

suggest that mean and median crew payments as a percentage of vessel revenues declined by approximately one-third under the rationalization program (see Table 4). **Although the decline in percentage of vessel revenues is substantial, on average, the increase in revenues from consolidation (due to the dramatic increases in vessel harvests) more than compensated for additional deductions and charges and decreased share percentages (page 7).**

In reviewing crew compensation on a fishery basis, two seasons in the Bering Sea C. opilio fishery stand out. In 1998, the extremely large total catch supported a very high average vessel harvest – more than twice the average vessel harvest any other year for which Economic Data Reporting data are available. This high vessel harvest level, supported a very high crew compensation. Despite the high vessel catches in 1998, in 2007 (the second year of the rationalization program), crew compensation in the fishery approached the 1998 level. This relatively high compensation arose because of a relatively high price for crab in 2007 (\$1.71 per pound based on Economic Data Reporting data) and despite the lower percent of gross vessel revenues paid to crew. The 2006 year in the fishery shows an opposite price effect. In that year crew compensation increased only slightly from levels seen in the years immediately preceding implementation of the program. In that year, crab prices dropped by more than one-third (to \$1.11 in 2006 from \$2.03 in 2004 and \$1.80 in 2005 based on Economic Data Reporting data). As a result of this price drop (and the changes in deductions, charges, and crew shares), crew compensation increased only slightly, despite a substantial increase in vessel harvests (Table 4, page 7).

**Examining compensation on vessels that participate in both the Bristol Bay red king crab and Bering Sea C. opilio fisheries provides a more complete view of compensation on vessels that were used in both fisheries.** In 2006, when Bering Sea C. opilio prices were particularly low, the average crew earned substantially greater compensation than in the years preceding rationalization, with the exception of 1998, when harvests from the C. opilio fishery were substantially greater than for any other year for which data are available. **“Despite these reinforcing factors, the average crew on a vessel that participated in both fisheries received comparable compensation in 1998 and 2006”,(Table 4, page 7).**

**If one calculates averages of mean crew member pay from Table 4, pre rationalization and post rationalization years there are even more substantive conclusions. The average/mean crew share for Bristol Bay king crab increased from \$9,244 to \$24,550, a 166% increase, and for C. opilio crab it shows and increase from \$14,220 to \$18,939 on average, a 33 percent increase. The overall comparisons for the two fisheries combined is \$25,474, pre rationalization to \$43,489 for post rationalization years (Table 4, page 7).**

Treatment of most vessel operating expenses has remained relatively constant under the rationalization program, but a notable change in deductions and charges since program implementation is the additional deduction of quota expenses. Prior to the program implementation, a small portion of the fleet deducted CDQ quota expenses prior to the

the payment of crew compensation. Since implementation of the program, most of the fleet deducts IFQ quota expense. The magnitude of deductions on any vessel are not consistently reported. In addition, the number of vessels and percentage of the fleet deducting CDQ quota expenses has increased substantially. Most QS holders assert that these changes reflect the change in vessel owner revenues arising from the acquisition of shares to harvest. Many crew are said to have received full crew share on IFQ owned by the vessel owner. In most cases, shares paid on leased IFQ fished by a vessel were computed after deduction of any lease payments to the IFQ owner (page 9).

A similar practice is in place in the halibut sablefish IFQ program (pages 13-14) and lease rates are also comparable at the 50 to 70 percent level. On an average, vessel crew shares have fallen by approximately 10 percent of gross revenues. As with the crab fisheries, despite this decline, the annual income of a typical crewmember is said to have increased substantially with the consolidation of quota on fewer vessels and the increase in halibut prices. It is said that a typical crewmember now makes between two and three times the income of a typical crewmember in the years immediately prior to implementation of the IFQ program (page 15).

**Examination of changes in crew compensation with changes in harvests:**

Examining changes in crew compensation with changes in pounds of harvests suggests that quota costs are the primary determinant of percentage of gross vessel revenues paid to crew (see Table 8). As expected, vessels that harvest greater amounts of crab will incur greater quota costs. Prior to implementation of the rationalization program, crews received a relatively similar share of gross vessel revenues regardless of a vessel's catch. Vessel harvests varied greatly, with crew on vessels harvesting in the highest quartile harvesting and earning between two and three times the amount harvested and earned by crew on vessels in the lowest quartile. Since implementation of the program, two changes in these relationships are notable. First, vessel harvests vary more greatly across the fleet. In the Bristol Bay red king crab fishery, average harvests of vessels in the highest quartile are now between four and five times the average harvest of vessels in the lowest quartile, while in the Bering Sea C. opilio fishery, average harvests of vessels in the highest quartile are between five and six times the average harvests of vessels in the lowest quartile (page 9).

The second effect is a change in the percentage of gross vessel revenues paid to crew. In the quartile with the lowest harvests, crews in the Bering Sea C. opilio fishery received a comparable percentage of gross vessel revenues before and after implementation of the rationalization program. In the Bristol Bay red king crab fishery, crews in the lowest harvesting quartile have received slightly less of the gross vessel revenues than received prior to the the rationalization program, but continue to receive in excess of 30 percent of the gross vessel revenues. The absence of a noticeable change in the percent of gross vessel revenues paid to crew since implementation of the program suggest that most of the quota harvested on these vessels are fished without deduction or charge of quota fees or an adjustment in crew share payments. In the second quartile of harvests in both fisheries, vessel harvests are approximately double those in the first quartile. Crew on




these vessels are paid a lower percentage of gross vessel revenues (in the mid 20s on average). The combination of additional harvests and a lower percentage of gross vessel revenues results in an increase in compensation of approximately one-third over the lowest quartile. In general, this relationship continues. Vessel harvests generally increase by between 50 percent and 100 percent with each successive quartile. **“In addition, average crewmember compensation increases by approximately one-third on average” (page 10, Table 8).**

**“Overall, data and anecdotal reports suggest that remaining crew positions in the fisheries are more stable and better paying under the crab rationalization program. Crew typically know the amount of quota that will be harvested and terms of payment prior to beginning fishing, allowing them to project income for a season. Prior to implementation of the rationalization program, compensation hinged entirely on success in the limited access derby fishery.”** The consolidation of catch under the rationalization program has reportedly allowed some crew to rely exclusively on crab fishing for their incomes. Other crew are reported to work on the crab vessel in other fisheries or tendering, relying on employment from their crab fishing vessels for all their income (page 11).

The leasing paper illustrates that consolidation under share-based management in the crab and halibut sablefish programs has resulted in reduced pay to crews as a percentage of revenues. However, the data shows that individual crew pay has increased substantially for most of the crew members. This occurs if the effect of additional vessel revenues on crew pay outweighs the decline in crew pay arising from quota fees. Limits on consolidation may limit the effect of the share-based management program on crew employment, but it may also limit potential production efficiency benefits from retirement of vessels. If quota fees are likely to be charged against crew in the long run, the efficiency benefit of allowing consolidation could lead to fewer but better paying jobs (page 20).

Arni Thomson  
Executive Director  
Alaska Crab Coalition



Submitted by  
Arni Johnson  
c-3(a-b)

Deep Sea Fisherman's Union  
Of the Pacific  
5215 Ballard Avenue N.W.  
Seattle, Washington 98107  
(206) 783-2922

June 3, 2009

Eric A. Olson, Chairman  
North Pacific Fishery Management Council  
Anchorage, Alaska

Agenda c-3 (b) (5) Leasing Practices Discussion Paper

Dear Mr. Chairman:

My name is Oystein Lone I'm writing you today on behalf of our crab fishermen Deep Sea Union members. We would like to thank Mark Fina on all his hard work on this paper. It is an interesting and substantive report. I would like to state that the crewmembers that have purchased C shares and are working on deck are making the program work at this time. It seems to us that lease fees are working for our members. Of course there are always a few owners that will take advantage of the program but that will sort itself out. I think that crews on a crab boat are inherently more of a skilled labor force and the owners know this. So in that part this will help shake out any bad lease deals, and this is already happening.

We have all worked on a vessel that has had a poor paying situation sometime in our fishing career. I am sure if you talk to any deck hand he has a story to tell. This is the nature of fishing whether you are crabbing, or any other fishery.

At this time we recommend that no changes be made to the leasing program and we can look at this further in the 5-year review if needed.

Sincerely,



Oystein Lone  
Deep Sea Fishermen's Union  
of the Pacific

**For the Record: re C-3 BSAI Crab Program**

**RE: Extinguishing PQs & Leasing Restrictions & Plan for 5-yr. Review**

Public Comment – Stephen R. Taufen, public fishery rights advocate.

Honorable Secretary Gary Locke, Chairman Eric Olson & the NPFMC members:

Introduction: I am Stephen Taufen, a public watchdog and citizen-taxpayer advocate for fisheries, and founder of the Groundswell Fisheries Movement.<sup>1</sup> The privatization of BSAI crab has caused restraints of trade and destroyed competition in favor of protecting certain large competitors, via the corridors of briberization. Commerce and the Council have willfully allowed the majority of BSAI crab revenues to be shifted outside of the operational hub of our crab fisheries to the detriment of the industry and regional economies. The main culprits are the anticompetitive Processor Quotas and (high rent) Lease Extractions, which are the topics we will address today.

**C-3 (b)-3 Extinguishing Crab PQ:**

**Position – In Favor of PQS Removal without Compensation:**

The United States and its citizen-taxpayers would be best served by the Removal of Processor Quota Shares in the Crab Rationalization management regime for the Bering Sea and Aleutian Islands without Compensation — especially without any conversion of harvester shares in replacement of extinguished PQS. **The PQS-enforced oligopsony holds the overwhelming majority of crab harvesters (sellers) captive. It is time to right this wrong.**

Extinguishing this impediment to open trade will so significantly alter the management regime that the new LAPP process under the MSA Reauthorized 2006 should be undertaken, especially regarding a Reallocation of IFQ to include Crewmembers as historical participants (who earned approx. 35-40% of the economic pie).<sup>2</sup>

In addition, **the Council should not engage in an Auction approach**, if for no more basic reason than shares have already been distributed, but primarily because it would further harm boots-on-deck fishermen and new entrants who actually participate in the harvesting of crab.

Rationalization schemes have been a technocratic project with so-called experts hatching and pushing reformation on the fisheries industry from above (using corrupt political powers) for the sake of greed, instead of resource economic management being a participatory project where two-way dialogue allows initiatives to percolate from the fishing grounds up (as the GAO's 2006 report verified).

Political powers inevitably dominate the process and still loom over the NPFMC and its deliberations. The public truly has a minimal role once the large parties who have already benefited from the greed of privatization put their financial backing into legislative end-runs. **That the BSAI fisheries encompass a large presence of Foreign-Controlled Corporations, who were gifted United States' owned commonweal in the form of PQS, should be of major concern not only to the NPFMC but to Congress — especially during this deep global financial crisis.**

You have crossed the Rubicon, over and over, in the species-by-species march of Rationalization schemes. It's not unfair to liken you to the authoritarian corporate state operation behind the policy of the current General Motors bankruptcy, which will leave alone offshore assets and serve foreigners over the rights of U.S. workers, jobs and markets and our right to economic benefits.

## **Antitrust & Restraints of Trade must be considered:**

The existing economic structure (an oligopsony) of PQS ownership—together with 90/10 provisions and the forced-linkages of Cooperative IFQ—is a serious antitrust concern and Restraint of Trade. This abuse of market power continues to reflect the plain fact that this unique system of resource management was otherwise illegal until ex-Senator Ted Stevens overrode existing law to serve special interests by establishing new statutory authority via the non-debated route of a must-pass Appropriations rider.

We also believe that the Council should request the Department of Justice and Federal Trade Commission to investigate the current economic structure and its implications on antitrust and restraints of trade, and enforce the condition that participants provide the records as required by law. This should begin immediately, as the 5-year review process would benefit from their findings. It would also help for the GAO to again review stakeholder participation—especially why stakeholders have been denied access to the EDR information.

### **A (long overdue) GAO-level review of ownership in processors and of the financing underlying all crab vessels should also be undertaken and its report made public.**

By prioritizing “property rights” for the corporatocracy represented by distant investors, but not recognizing the actual participants, rationalization schemes create a new political-economy for our national ocean commonweal. Can the participants truly point to any pre-implementation ‘market failure’ or condition of overfishing that justifies the neoliberal privatizations?

Would not the science-based Allowable Catch Limits and other tools have (and did they not alone) guaranteed no overfishing? Would not the improved Coast Guard safety efforts have handled safety (and did they not already)—an issue removable from the actual quantification of catch limitations?

Administering and regulating for access to ocean resources only for the select few—especially under the gifted-quota model where processors and vessel owners (and a small share for skippers) creates a reason for a Faustian bargain to exclude actual working crewmembers—is enclosing participants and fishery-dependent communities within a framework of monopoly capitalism (i.e., PQS create bilateral coercive monopolies, and Coop linkages ensure adherence to the ill bargain in order to suppress labor). The result is the high lease rates (rent extractions), which derive their excessive profits from the exploitive extraction of surplus value from laborers.

### **Compensation Not Justifiable:**

There should be no compensation because the benefits to processors from the resultant decrease in competition have already brought them an indeterminable increase in financial wealth.

Just ask some basic questions. Has the individual market share of the major players (large shoreside processors or the Western Alaska CDQs) gone down or up?! And were their market powers broken apart in any way, or doesn't the truth reveal that their competitive position has been solidified into excessive market power?

Today, no one can convert a boat to a crab processor. No one can contemplate building a new shoreside crab processor. In addition, the consolidation to date in this ill-designed CR program has severely changed the ability of independent competition to finance its way into the fishery.

So, how can the processors come before you today with a straight face and claim they were harmed or will be harmed if PQS are eliminated and the restraints of trade loosened?

It is important to note that in a NOAA memorandum of September 10, 1993 to the NPFMC, regarding MSA authority to allocate fishing and processing privileges to processors, that you were already well on the way to a Comprehensive Rationalization Plan (CRP) and had failed to identify and inform all stakeholders—especially crewmembers—about what that would mean.

The memorandum of legal opinion found that “the term ‘fishing’ ... includes harvesting activities and operations at-sea in support of or in preparation for harvesting activities. At-sea processing is an operation at-sea in support of harvesting. On-shore processing is not ‘fishing’.” And fishing definitions centered in on catching, taking or harvesting of fish.

In addition, “in 1978, NOAA General Counsel prepared a legal opinion analyzing the Secretary’s statutory authority to deny applications for permits that would authorize foreign vessels to operate in the EEZ.”

The reason we bring this up is that an attempt to carve off 20% of Harvester privileges (which are actually treated in the market as in perpetuity, tradable and salable rights of quota) for shoreside processors clearly requires a deeper investigation into both the ownership of those plants and any vessels at-sea which those firms may be closely affiliated with or providing the underlying financing.

That’s aside from the glaringly obvious fact that crewmembers have not been gifted any quota, let alone and equivalent to their historical participation privileges, while non-participating (i.e. not on deck or in the wheelhouse) distant investors were gifted harvester shares. It would be egregious for shoreside processors to now be awarded shares for an economic activity those buying-power entities never performed – catching and taking or harvesting of fish at-sea.

But it would border on criminal to now award harvesting rights to Foreign-owned and –controlled processors, on the grounds of compensating them for what were already unwarranted gifted quota rights – a loss of economic sovereignty to this Nation. Can this Council really contemplate such further economic treason? We say no to compensation. We say ‘hell no!’ to giving harvester rights to those non-Americans.

Moreover, firms like Trident Seafoods have such a tight ownership structure that the Council must consider investor-family businesses such as the “Bundrant and Ness families” vessel ownerships which already endow them with a strong share of harvester privileges (IFQ).

While recognizing the separate statutory authority of Ted Stevens nefarious Crab Rationalization rider in the Consolidated Appropriations Act of 2004, a NOAA GC letter of October 30, 2007 more recently affirmed the 1993 memorandum, and said:

**“As we noted in our June 10, 2005, letter, it is “NOAA’s longstanding opinion that the MSA does not provide the legal authority to establish a ‘processor quota’ system for shorebased processors,” because shorebased processing is not ‘fishing’ as that term is defined in the statute.”**

So, this long-standing position bears strong consideration, even if statutory authority has moved onto shifting sands in more recent, but not yet defined contexts. Because, while Congress may have recognized that legal opinion and therefore “specifically passed legislation to authorize processor quota shares” (such as crab ratz), we doubt that the intent of Congress extends to the award of Harvester rights to shoreside entities, especially those foreign-owned and –controlled corporations operating as hollow subsidiaries, practicing abusive transfer pricing to launder the profits offshore and evade U.S. taxes.

At some point, this Council must finally come to grips with these interconnections and serious matters. Why not now, under the Obama Administration that has promised greater IRS efforts to stop transfer pricing abuses and deal with the hybrid corporate structures that have harmed the Nation as TNCs operate globally, stateless?

In addition, for the Alaskan members of this Council, we’d like to remind you that at statehood, Ordinance #3 for the Abolition of Fish Traps passed and became operative on the effective date of the Alaska Constitution, **“as a matter of immediate public necessity, to relieve economic distress among individual fishermen and those dependent upon them for a livelihood, ...**

**[and] to insure fair competition among those engaged in commercial fishing, and to make manifest the will of the people of Alaska...**

### **CDQ Quota Buys Present New Problem:**

Likewise, the substantial bleed-off resulting from 10.7% gifted off-the-top to Community Development Quota entities has allowed them to pool funds and self-bank the acquisition of an estimated 17% to 23% of crab quota (PQS and IFQ) in the largest (poundage) crab harvests. Crewmembers and independent entities without that estimated 35% gifted capital presence and the CDQs' non-profit tax advantages (est. to be over 30%) will never be able to compete against those CDQs — when and if quota is available.

It will be argued that here will be no give-and-take and therefore CDQs' PQS should be exempted. This presents a significant problem — unless all PQS, regardless of ownership or how they came about, are fully extinguished. This is an issue of fairness and equity.

All new holders of PQS (subsequent to original gifted holder-ship) fully understood by law that they had no “right, title, or interest” and that shares “may be revoked or limited at any time” — “without compensation.” After all, the crab is in the public commons.

### **Concurrence with Significant Change in Program Identity:**

Any element of change — be it the removal of PQS (which we endorse), or any conversion of IFQ in lieu or any compensation (not endorsed), or the consideration of any auction (not endorsed), or even the utilization of a royalty fee system — would constitute a significant change in the program's identity. The Council should fully follow MSA §303A(c.)5(A) requirements, and not simply dismiss a thorough review of any element simply because the current beneficiaries of the program ask you to leave alone their greed-serving program's architecture or its individual bricks.

The original Purpose and Needs Statement was flawed. Earlier Groundwell/Taufen testimony before the NPFMC put on the record before implementation that “safety” was merely a trick to avoid the restriction that economic allocation alone not be a reason for a management regime. We noted that never were the marine architects and engineers, insurance experts, Coast Guard and other safety personnel present to fully discuss “safety”. Greedy corporate powers led the way.

It is time for the Council to fairly and logically re-examine the Purpose and Needs of the CR program. We agree with the discussion paper, in that the Council must establish its Authority based on its Rationale for Action, and demonstrate a clear and appropriate connection between Action, Purpose and its Authority. There must be a serious consideration of reallocations, and the EDR information and other evidence must provide a supporting record.

The Goals of the program must be respecified, especially regarding crewmembers as stakeholders. The crews have the best established case law record supporting a portion of the IFQs be used to protect their traditional compensation, far superior to any specious arguments that processors should now be able to chip off 20% of harvesting quotas for unsubstantiated reasons.

The Coop structure should be scrapped and sellers should then re-unite for price-negotiation purposes under a federally approved association (e.g. FCMA) in order to more fairly balance market powers between sellers and buyers.

Unless the PQS and linkages are removed at a minimum, this corporate collectivism known as “Crab Rationalization” will continue to harm the Nation, its citizen-taxpayers, and consumers.

### **Closing comments on PQ removal:**

It remains a crime to knowingly give false testimony to the Secretary, Council and governors regarding these federal proceedings. But never do we see a prosecution for such criminal activity,

in part because of the grayness of many comments. But we'd like to note that an advance copy of the City of Unalaska's comments on C-3(b) claims that:

"in order to adopt a new program, the Council would have to take into consideration a host of new measures under the MSA [like] small owner operated vessels, set asides for entry level captains and crew [etc.]" and that "those measures would erode a harvester-only allocation program."

Now, isn't it clear that that is demonstrably false? After all, the smaller vessels and all matters concerning captains and crew are at the heart of mounting—not eroding—a harvester-only allocation program.

In addition, the letter states that "the program is not broken". But, doesn't the stream of current actions and amendments and emergency order fixes etc. belie that clearly false statement?

Seriously, the FCC Occupied Territory of Dutch Harbor/Unalaska has thrown truth and principals into the gurry trough simply because they are a branch economy of the Japanese corporatocracy and cannot consider surviving without this plantation mentality. They really doth protest too much, too absurdly.

This Council knows that coercive monopolies and excessive buyer market powers deny fulfillment of the legal requirement to maximize the net national benefits from our United States fisheries. Need we remind you any further of your legally bound duties? Throw out the PQS without compensation and end this economic travesty today.

### C-3 (b)-4) Leasing Restrictions:

Groundswell and other public-serving organizations, our local officials in the boroughs and cities of Alaska, and the crewmember groups are greatly disadvantaged by the Advisory Panel's motion to stop any further discussion of the recently released "leasing practices" discussion paper.

We believe that Ed Poulson should not only have declared loudly his serious conflicts of interest, but should have recused himself from making any motions or taking any vote on this matter. NOAA Office of Law Enforcement and General Counsel offices should seriously review the role he plays on suppressing crew rights and in tainting the AP process.

That said, even though we've had little time to review this C-3 (b)(5) [sic – it is now agenda item (b)(4)] paper that only appeared days before the meeting on the website, we'd like to comment in general on this beginning paper and offer some suggestions.

Please take these suggestions in light of not having thoroughly examined the document in all aspects, nor having read it word for word all the way through.

This Leasing Practices paper needs expansion, and the inclusion of more EDR information and follow-on tables. Council staff should – instead of relying on Ed Poulson and other skewed positioners as their primary contacts – actually engage the Crewmember associations and all skippers and crewmen themselves as is possible. This paper is order of magnitudes off on some of its crew income calculations, according to settlement sheets and other data we've seen, and from what is commonly known to be the real truth. A **crew-only workshop with staff** would help.

There was also no separation for the CDQs, and no separate comparisons for them or straight-paying independents versus cooperatives where crew "lay shares" have been significantly reduced, and how that relates to high lease fees. The paper does not really cover leasing, in the sense that it fails to show the remarkably high rents and resultant incomes to lessors (sealords or arm-chair investors, or actively involved, or actually participating leaseholders). Instead, Poulson brashly made a big deal out of the false statistical conclusions about crew doing just fine under Ratz. Why is he afraid to let the crewmembers access the data, become informed, and speak for themselves?

The deductions and expenses and their effects on the stair-stepping down of resultant net share incomes need to be better demonstrated. No mention is made – and this could require an entire section by itself – of “lay share” contracting rights, and how actions of the sealords/leaseholders have altered contractual relationships and moved crewmembers into third-party status, often harmed by the dealings of the two opposing parties engaged in the lease arrangement: the quota holder and the vessel owner leasing the share.

**The Council should seriously consider getting more analysis on practices where crews are charged for original quota and to pay off the debts of others.**

We need to see the overall dollars; the crew take home incomes, especially versus the sealords’ take home enrichments. And there must also be consideration and discussion of the incomes lost by crewmembers as they engage in longer crab seasons, displacing them from other opportunities and income as compared to historical patterns. There needs to be greater separation of captain shares from the crew, and discussion of the role of the 3% C-shares, and whether or not that gains captains additional compensations in ways crewmembers will never benefit. These and other items are just the beginning list.

What is most obvious is that here we are, in the fourth year after implementation, and neither the EDR raw data nor any reports have been made available for public purposes, or to the crew. The very concept of “proprietary information” regarding these PUBLIC COMMONS RESOURCE GIVEAWAYS is ludicrous.

We encourage the Council to keep the discussion paper ongoing and EDR information releases moving forward. We believe that accounting and tax data, seasonal settlement sheets and other easily obtainable information be part of the data collection and truth verification system. Again, this delay is all part of an apparent racketeering effort to push the crew off for five years and keep them under the sealords’ and processors’ thumbs, as the lowest rank of the plantation system. The Council needs to find some courage to stop this senselessness now.



Sincerely,

Stephen Taufen – Groundswell Fisheries Movement

Mail care of: P.O. Box 714, Kodiak, AK 99615

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<sup>1</sup> Groundswell is an effort to recover billions of dollars stolen from North Pacific fisheries by Transnational Corporations (TNC) using tax evasion and profit-shifting schemes as they transfer revenues and charges amongst their global affiliates. Of special concern is the illicit accounting technique of Abusive Transfer Pricing (ATP) by Foreign-Controlled Corporations using Hollow Subsidiaries in Alaska to accomplish such profit and product laundering. On the grander scale, we are concerned about the ill Conduct of Trade and the economic structural aspects of global trade that allow the growth of stateless corporatocracy, in the framework of the unworkable neoliberalism that grants public resources through privatization (rationalization) regimes to this kleptocracy. And we promote the law enforcement and education needed to stop the political economic briberization process that led to Alaska’s “resource curse” and the regulatory capture of the NPFMC by the TNCs operating in our fisheries commonweal.

<sup>2</sup> The body of fisheries case law regarding many species across this Nation well establishes that the standard “lay share” compensation of crewmembers —independent contractors with rights recognized under 46 U.S.C. §10601 *et seq*— is typically from 30% to 40% over the past century. The tax and accounting records of crab settlements in the BSAI historically establish this right at 35% to 40%, when including the skippers. A large body of insurance payments and related compensation cases also establishes individual shares for an injured and inactive crewmember in line with this historical participation.



## Draft Crab Motion

(Agenda C-3b)

1. Add to Problem Statement of main motion, second paragraph, line 3 after "in-season flexibility:" the words "long term crew equity and participation;"
2. Restate the language of the April motion regarding Crew:

"Long-term crew participation in the program. The initial issuance of C shares was limited to skippers and, although the skipper/crew loan program was recently implemented to support long-term investments, the high cost of IFQ and low turnover rate in IFQ ownership provide very few actual investment opportunities and made it difficult for some long-term participants to secure and maintain their full positions in the fisheries. The Council has determined that this problem requires additional analysis."

Therefore the Council tasks its crab advisory committee to work with Council staff in developing the following options for long term crew equity and participation. It is anticipated that the committee will work in good faith to develop necessary elements and options within each alternative and not comment regarding the merits of the alternatives.

### Alternative 1

Status Quo

### Alternative 2

(Incorporate the language in Alternative 2 in the April Motion to Committee)

### Alternative 3

Up to 20% of the total TAC for each BSAI crab fishery be allocated annually to a "pool" that is distributed as "C" shares to "qualified crewmen".

### Alternative 4

Up to 40% of that portion of the TAC for each BSAI crab fishery that is above the average of the TAC levels in the qualifying years, be allocated to annually to a pool that would be distributed as "C" shares to "qualified crewmen".

### Alternative 5

For those crewmen that have received 1099 income from BSAI crab fisheries for two or more years, set a minimum amount for their crew shares as follows: No less than 5, 6 or 7% of the vessel's gross earnings less food, fuel, bait and taxes, for the time the crewman is aboard the vessel.

It is expected that the committee will complete its work on long term crew equity and participation alternatives prior to the December 2008 meeting. The BSAI crab plan crew equity and participation alternatives will be scheduled for the Council's review, as a distinct agenda item, at the December 2008 meeting.

CREW SETTLEMENT

COREY EISENBARTH

FW CORNELIA MARIE

BRISTOL BAY RED KING CRAB 2008

POUNDS FISHED :

66,076 lbs

NO % LEASE, BUT \$65,240 FEE

441,000 lbs

FISHED FOR \$1.00 A LB. OR

80% LEASE FEE

507,076 <sup>TOTAL</sup> lbs FISHED

x \$5 A LB

\$2,535,380 GROSS REVENUES BBRKLC 2008

441,000 lbs

x \$4 a lb.

\$1,764,000 80% LEASE

65,240 STRAIGHT FEE

1,829,240 NET PROFIT TO HIGHLAND LIGHT

CONRY'S COMPENSATION

\$ 24,955.00

- 1,271.00 GROCERIES

\$ 23,624

NET COMPENSATION AFTER GROCERIES  
CONRY'S EARNINGS

ON. \$ 2,535,380 GROSS REVENUES

\$ 1,829,240 NET PROFIT TO HIGHLAND LIBAT INC  
EXPENSES + TAX BURDEN UNKNOWN

FV Cornelia Marie LLC  
 King Crab Settlement  
 Corey Eisenbarth  
 December 31, 2008

Gross Income:

IF Shares	65,240#	\$5.00	\$326,200.87
	Less Taxes and fees		<u>-51.957.59</u>
Net income:			\$244,243.07
Harvest Fee			\$441,880.00
Less #2's			<u>-9086.00</u>
Total:			\$432,794.00
Total Income:			\$677,037.00

Expenses:

	Fuel:	\$165,517.00	
	Bait:	\$19,071.00	
	Less Credit	<u>-6651.00</u>	(Yardarm Reimbursement)
Total Expenses:		\$177,937.00	

Net Income: \$499,100.00

Percentage: .65 24,955.00

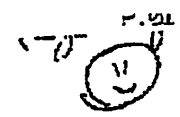
Expenses:

	Groceries	\$1271.00	
	Owed to Josh	\$350.00	
	Draw	\$1000.00	10/31
	Draw	\$10,000.00	11/18
	Draw	\$1000.00	12/09
	LFS	\$203.00	
	Airfare	\$324.00	
	Phone	\$84.00	

Total Expenses: \$14,232.00

Net Income: \$10,723.00

Check No: 7621



**HIGHLAND LIGHT SEAFOODS, LLC  
2008 RED KING CRAB PRELIMINARY SETTLEMENT**

**NAME OF IFQ HOLDER COLLINS AND HARRIS**

	IFQ AVAILABLE TO GOOP	IFQ HARVESTED BY GOOP	DEAD LOSS INCURRED	NET POUNDS HARVESTED BY GOOP
"A" SHARES	803,328	803,311	(8,371)	584,940
"B" SHARES	55,450	55,450	(199)	55,251
"CREW" SHARES	2,698	2,688	(7)	2,689

SECTOR	CLASS	SHARE HOLDER IFQ POUNDS	SHARE HOLDER POUNDS CAUGHT	SHARE HOLDER DEAD LOSS	SHARE HOLDER NET POUNDS CAUGHT
CVO	A	58,046	58,044	(805)	57,239
CVO	B	8,030	8,030	(28)	6,001
CVC	NONE	-	-	-	-
CPC	NONE	-	-	-	-
<b>TOTAL POUNDS</b>		<b>66,076</b>	<b>66,074</b>	<b>(834)</b>	<b>65,240</b>

AVERAGE PRICE PER POUND \$ 5.00

GROSS STOCK VALUE \$ 326,200.87

LESS:

- HARVESTING FEE @ \$1 PER POUND - NET POUNDS \$ (65,240.00)
- LOCAL TAXES \$ (5,859.22)
- BUYBACK FEE @ 2.5% \$ (1,712.55)
- COST RECOVERY @ .525% \$ -
- FUEL SURCHARGE @ \$.04/LB \$ 247,243.07

NET PROCEEDS \$ 441,889.00

HARVEST FEE - \$ PER POUND \$ (1,986.00)

LESS NOV 15 DELIVERY \$.50/LB OVER 5% PZS (18,172 LBS) (7 STG. 3P) \$ 3,650.57

FUEL REIMBURSEMENT \$ 683,587.64

TOTAL BEFORE ADVANCES (290,327.27)

ADVANCES 393,160.37

NET PAYMENT

# PRE-PRIVATIZATION

HAD CONY EISENBART BEEN PAID WITH THE PREVIOUS SETTLEMENT METHOD OF GROSS REVENUES MINUS THE FUEL & BAIT EXPENSE, TIMES 0.06 OR 6% (LANSHIRE) MINUS GROCERIES/PROVISIONS:

507,076 lbs

x \$5 a lb

---

\$2,535,380.<sup>00</sup> GROSS REVENUES  
- 165,577.<sup>00</sup> FUEL EXPENSES  
- 19,071.<sup>00</sup> BAIT EXPENSES

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2,350,488.<sup>00</sup>

x 0.06 ← 6%

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141,029.28 NET COMPENSATION

1,271.00

**PRE-RATE COMP**  
\$139,758.28

NET ADJUST. COMPENSATION

VS

\$23,624

POST-RATE COMP

DIFFERENCE IN PAY \$116,134.28

DUE TO EXORBITANT LEASE FEES

OCEAN FRESH SEAFOOD CO. LLC  
4257 24<sup>th</sup> Avenue West  
Seattle, WA 98199

Margaret Hall  
et al  
C-3(b)

Roger Thomas  
Hilton Hotel  
Anchorage, Alaska

Dear Roger:

Thank you for your inquiry regarding our interest in using the M/V Ocean Fresh (formerly Blue Wave) again as a crab processor in the Bering Sea. As we discussed, although the vessel has a long history of processing crab, it would need to rely on "B" shares for product. It is our opinion that at the current 10% level, insufficient crab would be available to justify the venture. Should additional quota become available, we would certainly like to discuss this with you further.

Best regards,



William R. Orr  
Co-Manager  
Ocean Fresh Seafood Co. LLC

Daily crew compensation – with and without 10 days for boat and gear work.

Fishery	Year	Number of vessels	Fishing, transiting and offloading				Fishing, transiting and offloading plus 10 days boat and gear work			
			Mean number of days	Mean daily crew pay (excluding captain) (\$)	Mean daily captain pay (\$)	Mean daily crew member pay (\$)	Mean number of days	Mean daily crew pay (excluding captain) (\$)	Mean daily captain pay (\$)	Mean daily crew member pay (\$)
Bristol Bay red king crab	1998	178	8.1	4,552	2,247	880	18.1	1,959	964	379
	2001	171	5.9	6,671	3,543	1,418	15.9	2,387	1,269	506
	2004	208	6.9	9,949	4,760	1,869	16.9	3,832	1,830	723
	2005	83	26.6	4,932	2,642	1,032	36.6	3,316	1,771	684
	2006	77	22.5	4,752	2,499	987	32.5	3,076	1,599	630
	2007	70	32.5	4,972	2,549	1,008	42.5	3,623	1,852	730
Bering Sea C. opilio	1998	144	66.1	2,179	1,078	369	76.1	1,892	936	320
	2001	148	33.4	1,054	524	191	43.4	813	404	147
	2004	156	13.9	4,289	2,183	878	23.9	2,433	1,232	497
	2005	137	11.1	5,968	3,142	1,289	21.1	2,898	1,525	624
	2006	73	40.3	1,908	1,016	386	50.3	1,435	752	287
	2007	62	37.1	3,599	1,769	709	47.1	2,699	1,311	525

Source: Crab Economic Data Reporting.

Notes: Mean crew size is a count of all crew paid shares excluding the captain. Excludes any vessels on which crew were paid in excess of 75 percent of the vessel's gross revenues. Excludes vessels harvesting CDQ allocations for Bristol Bay red king crab in 1998, 2001, and 2004 and for Bering Sea C. opilio for 1998, 2001, 2004, and 2005.

Daily crew compensation by quartile of pounds harvested – without any boat or gear work days.

Fishery	Year	Number of vessels per quartile	First quartile of pounds harvested				Second quartile of pounds harvested			
			Mean days fishing, days transiting and days offloading	Mean pounds harvested	Mean daily pay to captain	Mean daily pay to crewmember	Mean days fishing, days transiting and days offloading	Mean pounds harvested	Mean daily pay to captain	Mean daily pay to crewmember
Bristol Bay red king crab	1998	44/45	8.0	23,867	986	410	8.4	41,882	1,563	632
	2001	42/43	5.7	13,857	1,311	600	6.2	24,554	2,502	978
	2004	52	7.0	27,383	2,178	862	6.6	46,830	3,815	1,542
	2005	20/21	19.3	61,177	1,552	690	21.7	111,565	2,170	943
	2006	19/20	15.6	67,866	1,508	764	19.8	126,775	2,560	885
	2007	17/18	25.4	98,619	1,865	790	27.2	192,984	2,439	936
Bering Sea C. opilio	1998	36	65.8	514,225	581	215	65.8	896,222	946	305
	2001	37	32.0	44,501	236	76	33.2	74,982	352	136
	2004	39	13.5	65,259	1,197	458	14.0	95,177	1,616	666
	2005	34/35	12.0	83,649	1,418	578	10.8	120,083	2,596	1,034
	2006	18/19	25.9	152,887	696	296	32.2	308,944	779	323
	2007	15/16	23.2	185,828	1,578	649	28.6	351,032	1,704	681

Fishery	Year	Third quartile of pounds harvested				Fourth quartile of pounds harvested			
		Mean days fishing, days transiting and days offloading	Mean pounds harvested	Mean daily pay to captain	Mean daily pay to crewmember	Mean days fishing, days transiting and days offloading	Mean pounds harvested	Mean daily pay to captain	Mean daily pay to crewmember
Bristol Bay red king crab	1998	8.1	59,234	2,293	880	7.9	90,741	3,718	1,409
	2001	6.0	33,917	3,519	1,352	5.9	58,887	6,120	2,358
	2004	6.6	61,095	5,282	1,910	7.3	86,763	6,492	2,623
	2005	28.5	209,205	2,495	900	36.7	390,937	2,831	973
	2006	24.4	209,534	2,377	867	29.7	393,957	2,296	934
	2007	35.0	294,186	2,399	912	42.2	482,900	2,475	949
Bering Sea C. opilio	1998	66.9	1,153,789	1,181	369	66.2	1,581,534	1,596	532
	2001	33.6	109,102	579	204	34.8	181,538	924	337
	2004	13.4	124,774	2,344	952	14.7	186,341	3,135	1,254
	2005	10.2	149,065	3,362	1,351	11.1	245,256	4,005	1,590
	2006	38.4	480,274	1,127	379	63.5	850,049	904	334
	2007	39.3	506,536	1,569	616	51.9	931,170	1,776	679

Source: Crab Economic Data Reporting.

Notes: Excludes any vessels on which crew were paid in excess of 75 percent of the vessel's gross revenues. Excludes vessels harvesting CDQ allocations for Bristol Bay red king crab in 1998, 2001, and 2004 and for Bering Sea C. opilio for 1998, 2001, 2004, and 2005.



Daily crew compensation by quartile of pounds harvested – with 10 days of boat or gear work days.

Fishery	Year	Number of vessels per quartile	First quartile of pounds harvested				Second quartile of pounds harvested			
			Mean days fishing, days transiting and days offloading plus 10 days boat and gear work	Mean pounds harvested	Mean daily pay to captain	Mean daily pay to crewmember	Mean days fishing, days transiting and days offloading plus 10 days boat and gear work	Mean pounds harvested	Mean daily pay to captain	Mean daily pay to crewmember
Bristol Bay red king crab	1998	44/45	18.0	23,867	438	182	18.4	41,882	713	288
	2001	42/43	15.7	13,857	477	218	16.2	24,554	956	374
	2004	52	17.0	27,383	896	354	16.6	46,830	1,519	614
	2005	20/21	29.3	61,177	1,022	454	31.7	111,565	1,486	646
	2006	19/20	25.6	67,866	920	466	29.8	126,775	1,702	589
	2007	17/18	35.4	98,619	1,337	567	37.2	192,984	1,783	684
Bering Sea <i>C. opilio</i>	1998	36	75.8	514,225	504	187	75.8	896,222	821	265
	2001	37	42.0	44,501	180	58	43.2	74,982	271	105
	2004	39	23.5	65,259	688	263	24.0	95,177	943	389
	2005	34/35	22.0	83,649	773	315	20.8	120,083	1,346	536
	2006	18/19	35.9	152,887	502	213	42.2	308,944	594	246
	2007	15/16	33.2	185,828	1,102	454	38.6	351,032	1,262	504

Fishery	Year	Third quartile of pounds harvested				Fourth quartile of pounds harvested			
		Mean days fishing, days transiting and days offloading plus 10 days boat and gear work	Mean pounds harvested	Mean daily pay to captain	Mean daily pay to crewmember	Mean days fishing, days transiting and days offloading plus 10 days boat and gear work	Mean pounds harvested	Mean daily pay to captain	Mean daily pay to crewmember
Bristol Bay red king crab	1998	18.1	59,234	1,024	393	17.9	90,741	1,637	620
	2001	16.0	33,917	1,316	506	15.9	58,887	2,273	876
	2004	16.6	61,095	2,106	762	17.3	86,763	2,728	1,103
	2005	38.5	209,205	1,847	666	46.7	390,937	2,224	764
	2006	34.4	209,534	1,686	615	39.7	393,957	1,717	699
	2007	45.0	294,186	1,866	710	52.2	482,900	2,001	767
Bering Sea <i>C. opilio</i>	1998	76.9	1,153,789	1,027	321	76.2	1,581,534	1,386	462
	2001	43.6	109,102	446	158	44.8	181,538	718	262
	2004	23.4	124,774	1,340	544	24.7	186,341	1,865	746
	2005	20.2	149,065	1,696	682	21.1	245,256	2,111	838
	2006	48.4	480,274	894	301	73.5	850,049	781	288
	2007	49.3	506,536	1,250	491	61.9	931,170	1,490	569

Source: Crab Economic Data Reporting.

Notes: Excludes any vessels on which crew were paid in excess of 75 percent of the vessel's gross revenues. Excludes vessels harvesting CDQ allocations for Bristol Bay red king crab in 1998, 2001, and 2004 and for Bering Sea *C. opilio* for 1998, 2001, 2004, and 2005.

**North Pacific Fishery Management Council**  
604 West 4<sup>th</sup> Avenue Suite #306  
Anchorage, Alaska 99501

**193<sup>rd</sup> Plenary Session – June 3-9, 2009**  
Hilton Hotel, Anchorage, AK

**Re: C-3 (b) 3&4 BSAI Crab Program**

**Public Comment By: Mr. Shawn C. Dochtermann for the  
Crewman's Association & Bering Sea Crab Crewmen's Association**

PO Box 3886 Kodiak, Alaska 99615 — Tel: (907) 486-8777

Secretary Locke, Dr. Lubchenko, Chairman Olson, Council members,  
and Honorable Citizens of the United States,

For the record I am Shawn Dochtermann, a 2<sup>nd</sup> generation fisherman from Kodiak a 23 year veteran of the Bering Sea crab fisheries. I'm here today representing the Crewman's Association and the Bering Sea Crab Crewmen's Association.

We're here today once again to inform you of the drastic reduction to BS crab crewmen's compensation ratios due to exorbitant lease rates that are being charged as a result of excessive harvest quota shares that were initially allocated to LLP holders. Coercion in the industry is a major issue that must be dealt with, otherwise, crews and vessel owners will suffer due to excessive lease rates and unfair layshare compensation ratios. Safety is still an issue due to the pot limit being removed just watch the Deadliest Catch!

As promised, I brought with me the settlement sheets for Corey Eisenbarth that I previously spoke for at the Seattle NPFMC meeting in February 2009 (191<sup>st</sup> Plenary Session). His settlement shows that Highland Light Seafoods Inc charged 80% lease fees on most of their harvest quota shares (HQS) for the 2008 Bristol Bay Red King Crab season that was fished on the F/V Cornelia Marie. The settlement sheet displays that the crew and vessel receive \$1 a lb. for the vessel and crew as compensation on \$5 a pound red king crab they delivered. They caught 507,076 lbs of red king crab at \$5 a lb, which comes to \$2,535,380 gross proceeds for the HQS harvested. Highland Light Inc then took an 80% lease on 441,000 lbs which at \$5 is \$1,764,000, plus they leased 66,076 lbs for a fee of \$65,240. That would make the net profit \$1,829,240 for the HQS holder minus the unknown expenses and tax burdens.

Corey's compensation was \$24,955.00 minus provisions/groceries of \$1,271.00, which comes to a net compensation of \$23,624.00 for 45 days of shipyard and gear work and 64 days at sea fishing. The Deadliest Catch flashes on their show that the crew made

\$54,000 for the 2008 Bering Sea red king crab season, so the general public is being misinformed.

Pre-rationalization Corey would have made 6% of the gross revenues minus expenses. Let compute what he would have made \$2,535,076 gross minus fuel \$165, 517 and bait \$19,071 equals \$2,350,488 as net revenues times 0.06 is \$141,029.28. Take off \$1,271 for groceries he would have made \$139,758.28 as his compensation for catching a little over a million pounds of red king crab. This is the kind of comparison model that should be included in the leasing paper. It's fair to assume that to do high leases by HQS holders gifted by the CR program that this crewman made 1/6<sup>th</sup> of what he would have made using the previous settlement method. He use to make 6% and now he makes 1%.

After reviewing the draft of the leasing paper we find it to be flawed in many aspects, however, while it still provides pertinent information that proves that excessive HQS were initially distributed to the LLP holders.

#### **National Standard #4**

##### **Sec. 600.325 Allocations:**

**(c) 3 (iii) Avoidance of excessive shares. An allocation scheme must be designed to deter any person or other entity from acquiring an excessive share of fishing privileges, and to avoid creating conditions fostering inordinate control, by buyers or sellers, that would not otherwise exist.**

You are fully aware that the CR program has allowed HQS holders the ability to extract exorbitant leases that have given them inordinate control over crewmen and vessel owners.

The leasing paper should list the lease rate percentages of HQS and CDQ leased out and what percentage of the quota is leased out. The leasing paper needs to derive the percentages and dollar amounts made as an aggregate for crews, vessels and LLP holder made pre-rationalization. Similar data needs to be made available under the privatized program for the crews, vessel owners, and HQS holders. We need to be able to compare these amounts and ratios, pre and post rationalization. We can suggest other tables and data needs and council staff needs to work with crab crewmembers to provide more complete and useful information. The data tables in the leasing paper are worthless without know the lease rates so ratios can be formed between crews & vessel and HQS holders.

The first thing my college stats professor spoke to the class is that you can manipulate statistics to fit your needs.

There is no reason to cast out the leasing paper as the AP voted. That an AP member puts a motion forward to stop the leasing paper and he controls a co-op that harvests 10% of both BBRKC and BSOC (with the three vessels his father sold to a CDQ

group) we call attention to the very sore conflict of interest by Ed Paulson. We insist that the leasing paper move forward unencumbered by those that have agendas to stop it repeatedly.

We've come forward and put on the record that coercion is occurring in the industry by, as the processors and HQS holders keep the vessel owners and crew captured in their low compensation ratios due to the CR program. Crews are scared of speaking at council meetings or putting their settlement sheets forward because of job loss and other forms of retaliation. Some vessel owners if they speak out take the risk of their leased quotas being removed by a Co-op controller. We wonder when a council member will even ask us a question about it. Are any of you even interested in the issue?

The NMFS Crew Study (Draft): **"Post Rationalization Restructuring of Commercial Crew Member Opportunities in the Bering Sea and Aleutian Island Crab Fisheries"** is still not complete, but it contains information that is valuable in displaying how the crews are being paid unfair and inequitable compensation ratios and that they are fishing in adverse conditions for a longer period of time. If all council members would read the entire study they would come to the conclusion that crews are being taken advantage of by the HQS holders. We look forward to its completion and an executive summary with due diligence, since it was initially an ethnographic study only.

Crewmen's safety and CG airmen's safety is not being discussed this remains to be a serious and costly issue.

We're still curious about what happened to the five alternatives especially #3, 4, & 5 that were suggested for the motion that disappeared after the 188<sup>th</sup> Plenary Session last June in Kodiak. We put a whole suite of alternatives on the table, but the council only asked a very few brief question about our detailed chart of solutions. We were ready to give in depth suggestions for our alternatives. We tired of being shined on, as this program can be legally changed at any meeting. It seems that the Council has it own agenda and does not recognize crewmen's rights as private contractors.

In Conclusion:

PQs must be removed due to their clearcut restraint of trade. Lease fees for HQS must be limited to 33%, as well as crews (on each vessel) and vessel owners receiving 33% of the net proceeds each after expenses. Otherwise, QSH will keep charging lease fees that drain the economy of the harvesting sector (especially the on deck fishermen) unjustly. Crews need the ability to participate as skippers and become partial owners in operations, but this can only be achieved by setting reasonably small vessel caps and lease fee limits or allocating 33% of the HQS to the crew as a pool that has no private ownership.

Sincerely,

Shawn Dochtermann