

MEMORANDUM

TO: Council, SSC and AP Members  
FROM: Chris Oliver *Chris*  
Executive Director e  
DATE: September 20, 2012  
SUBJECT: Crab arbitration

ESTIMATED TIME 12 HOURS (all C-6 items)
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ACTION REQUIRED

- (d) Workgroup report on binding arbitration – golden king crab
- (e) Discussion paper on binding arbitration issues

BACKGROUND

When adopting the crab rationalization program, the Council recognized the novelty of that program and the need to evaluate its performance periodically. As a part of its response to that need, the Council scheduled a comprehensive review to be complete after the fifth year of fishing under the program. In conducting the review, the Council identified issues which it believes need additional attention related to the arbitration system, which is used to settle disputes between harvesters and processors over prices for crab deliveries to holders of individual processing quota (IPQ). These two agenda items address those issues.

- (d) Workgroup report on binding arbitration – golden king crab

As a part of the arbitration program, an arbitrator annually produces a report that includes a formula defining an ex vessel price that would preserve the historical division of first wholesale revenues, while considering a variety of other factors in the fisheries. In Council deliberations concerning the arbitration system, it was noted that in the Bristol Bay red king crab and Bering Sea *C. opilio* fisheries, the arbitrator has prepared a formula that has been uncontested by either sector for several years. In the golden king crab fisheries, however, participants have disputed the price formula each year, with either harvesters or processors dissatisfied with the annual formula. To address this issue, the Council created a workgroup of representatives from the harvest and processing sectors to attempt to resolve disputes concerning the formula. The attached report (Item C-6(d)) is the work product of the workgroup, along with comments from each sector on the committee's work.

- (e) Discussion paper on binding arbitration issues

The Council heard testimony concerning three aspects of the arbitration system that some stakeholders believed should be given additional consideration: 1) the lengthy season approach to arbitration and its effects, 2) the potential for publishing arbitration findings, and 3) the potential for allowing either side to initiate arbitration proceedings. In response, the Council asked staff to prepare a discussion paper, which is attached (see Item C-6(e)).

Report of the  
Golden king crab arbitration workgroup to the  
North Pacific Fishery Management Council  
October 2012

Workgroup members – Duncan Fields (chair), Larry Cotter, Joe Sullivan, Dick Tremaine, Brett Reasor, Mark JoHahnson, Greg White

The workgroup met 6 times between February and August of 2012.

The Council formed the committee to address dissatisfaction with the golden king crab price formula that is developed through the arbitration system as developed by the non-binding price formula arbitrator. The formula is intended to define an ex vessel price that preserves the historic division of first wholesale revenues in the fishery while considering several other factors, such as crab markets, innovations, efficiency and productivity in the sectors, and the interest of maintaining healthy and stable harvesting and processing sectors. The standard does not state how these factors should be weighted relative to the primary interest of preserving the historic division of first wholesale revenues or when it is appropriate to consider establishing a price that differs from the historic division of first wholesale revenues.

Processor representatives suggested that the available data in the fishery may not accurately reflect historical pricing for establishing the historical division of revenues as specified by the standard. The primary sources of data for establishing that division are COAR data collected by the State of Alaska and revised by Council staff (see Attachment A) and a processor survey conducted by John Sackton for the 2008 formula (see p.73 of that report) as well as data that were voluntarily advanced by one processor during negotiations soon after implementation of the program. Despite the shortcomings perceived by processor representatives, the group agreed that these data should be the starting point for discussions concerning establishing the historical division of revenues as required by the standard. Committee members acknowledged that these data have some error (as suggested by the recovery rates that may be generated by COAR data), but the degree of error and its effects on any estimation of the formula are not settled. Due to disagreements on the accuracy of the data, the committee did not agree on a specific historical division of first wholesale revenues. COAR data suggest that annually the percentage of the first wholesale price represented by the ex-vessel price in the fishery has varied from the low to mid 40s to the low to mid 50s annually. Multiple data sources using processor reported data discussed by the workgroup suggested that, on average, the ex-vessel price that reflects the historical division of revenues in the fishery is between 48 and 49 of the first wholesale price (see Attachment A). No data inconsistent with this interpretation were presented.

The group discussed conditions in each sector under the rationalization program. Processors suggested that processing of golden king crab has not historically and does not currently stand on its own. On the other hand, harvesters engaged in the fishery stated that they are almost exclusively dependent on it. Processing of golden king crab has been supported by multispecies plants that most efficiently process the crab on the shoulders of season for other crab and groundfish. Integration with other activity has allowed processors to use existing crews reducing operating costs.

Processors contend that seasons in the Eastern fishery were relatively short (e.g., few months long) since the early 1990s, and that under the rationalization program, deliveries have been extended over a longer period, in large part due to fleet consolidation. Seasons in the Western fishery were several months long

prior to the rationalization program. Some processors contend that the extension of deliveries over the longer season has limited their ability to access certain markets, particularly the holiday season market in the late fall/early winter. These processors also are concerned that golden king crab deliveries after the New Year can conflict with other activities at their plants, including pollock, cod, and opilio processing. These conflicts could limit the ability of processors to sort crab and produce higher quality products. In addition, processors suggested that quota costs have affected their bottom line under the rationalization program.

Harvesters challenged processor assertions that harvesters have inappropriately extended season duration under rationalization. Harvesters noted that the West region fishery often remained open for an extended period pre-rationalization, and that landings were made throughout the season. Further, harvesters note that processors can and do stipulate the timing and location of deliveries in the rationalized fishery, by deciding which plants will accept golden king crab deliveries, and when they will do so. Harvesters contend that this gives processors effective control over season duration. In some cases, harvesters suggested that their flexibility to time deliveries has been limited by processing plant closures (or refusals to take golden king crab deliveries during certain periods or after certain dates). Harvesters also suggested that the processing sector has likely achieved some efficiency gains through consolidation of processing at fewer plants under the program.

Both sides agreed that further processing consolidation may allow for additional processor efficiency gains. Since consolidation in some locations is constrained by caps, it was suggested that removal of processing caps could be considered. Harvesters also suggested that the rise in fuel costs in the fishery have limited their gains in recent years.

Harvesters suggested that both sectors have quota costs under the rationalization program and the arbitration program was not intended nor designed to address quota costs arising from individual choices and transactions by participants in either sector. Therefore, harvesters consider quota costs irrelevant to the development and application of the arbitration formula and standard. Harvesters have in part relied on consolidation to address these costs.

The committee agreed that the standard establishes the historical division of first wholesale revenues as only a starting point for establishing an ex-vessel price formula and that the various other considerations included in the standard could justify deviating from that percentage when appropriate. The group also agreed that issues with respect to deriving the historic division of revenues should be explored prior to considering adjustments arising from other circumstances.

Overall, the group generally agreed that a fair application of the standard should enable persons making reasonable business decisions should be able to succeed in the fishery. However, the formula should not be applied to ensure that any individual should be absolutely protected by the standard, but that application of the standard at the sector level should protect the sector as a whole. Further, harvesters agree with this general principle should be applied to protect harvesting and processing operations, as opposed to quota investors, and therefore do not believe that it justifies taking either sector's quota acquisition costs into account when setting a price in arbitration. For this reason and others, application of the arbitration standard may not create a circumstance under which all participants in the fishery are profitable in any given year.

Given the relatively narrow range of percentages that seem to be supported by the available data and concerns related to formulas that have been generated under the standard, the committee agreed to consider other issues that might be relevant under the standard. The committee agreed that identifying a list of relevant issues could be used to facilitate discussions of the standard. The following list identifies issues raised by one or more committee members. Listing an issue does not imply that the committee agreed that the issue had merit or was properly addressed by the committee.

- 1) Differential pricing of Western fishery crab and Eastern fishery crab – these differences could arise from differences in quality and size of crab and from added harvesting and processing costs that might arise from the West region landing requirement.
- 2) The need for pricing that protects both harvesters and processors during periods of relatively low market prices, along with a commensurate recognition that a party that accepts less than its share of the historic division of revenues when first wholesale prices are low should be able to recoup some of the costs associated with providing that protection during periods of high market prices
- 3) A concern that establishing a price based on a division of first wholesale revenues may result in an incentive for processors to move product quickly (including presales of products) to avoid holding and marketing costs. Consideration could be given to establishing a distribution of returns from marketing that creates incentives for processors to exert reasonable marketing efforts. In developing such incentives it should also be recognized that holding and timing of sales of product are affected by several factors beyond the incentives arising under the standard. This concern might be addressed by development of a system that provides for shared risks or a system that results in early season final ex vessel price settlements under which subsequent risks and rewards are borne by the processor.
- 4) Harvester risks, including the risk of failing to fully harvest IFQ allocations could be a relevant consideration under the standard.
- 5) Any formula should recognize the golden king crab fishery operations independent of operations in other fisheries, rather than as ancillary operations that may be subsidized by operations in other fisheries.
- 6) In considering the health of the harvesting and processing sectors, the party applying the standard should consider the sector generally (as opposed to each individual). The committee members acknowledge that each sector is made up of a variety of different participants, including vessel and plant operators some of which lease shares, quota holders that hire custom processing services, recipients of initial allocations, and new entrants. However, committee members did not reach agreement that any specific class of participants should receive special consideration under the standard.
- 7) The application of a formula dependent on first wholesale prices could justify the development of a system for verifying those prices.
- 8) Harvesters contend that the system should be developed in a manner that provides for comparison of market performance across processors to ensure that processors have an incentive to perform at a reasonable level in the first wholesale market.
- 9) The standard could consider changes in cost structures that might affect returns from the fishery for either sector. Changes that might dictate a change in how the standard is applied could be defined.
- 10) The committee acknowledged that the arbitration system is intended as a backstop for failed price negotiations. Consequently, it may be expected that prices will vary across processors for a number of reasons including differences in market prices and cost factors. These discrepancies may result in prices above and below the price that may be dictated by strict application of a

formula. Discrepancies, however, are not intended to simply provide leeway for either side to simply demand a higher (or lower) price, but to support reasonable price fluctuations that arise from vagaries in the fisheries and markets. Chronic poor performance or failure to exercise good business judgment from a participant should not justify price adjustments.

Processors expressed their opinion that the arbitration formula, as the backstop for all negotiations, needs adjustment in their favor. Harvesters responded that at current price levels, the revenues generated by the fishery were adequate for all parties to make a profit, and that processors had not presented evidence sufficient to convince the harvesters that a regulatory modification of the existing arbitration formula and standard is needed. Processors responded by asserting that they were not able to operate profitably at low price levels, presenting evidence from one processor to support this contention. As such, processors believe that an adjustment to the formula is needed to provide protection at those levels. Harvesters responded that the standard already provided protection, as deviation from the formula to protect the financial health and stability of the harvesting and processing sectors is explicitly contemplated under the standard.

Harvesters stated that a single flat percentage may not adequately address the problem identified by the processors. If first wholesale prices are low, even at relatively low percentages, a processor may not receive sufficient revenue to cover operating costs. An alternative may be to have the harvesters' historical percentage of first wholesale revenue adjusted downward at low first wholesale prices. This would allow processors a margin at low prices (as they would pay a low percentage of first wholesale revenues). As prices increased a larger share would be paid to harvesters to make up for the relatively low percentage paid in the low price market. However, processors rejected this proposal.

It was noted that custom processing is an added cost and that IPQ holders who have crab custom processed by others may not be able to make money in low price years, if custom processing costs are high. While harvesters believe quota acquisition and custom processing costs to be generally irrelevant for purposes of setting a price in arbitration, they noted that applying a low percentage in low price years could alleviate this problem.

Both sides believe that verifiable supporting information is needed to support any calculations for making adjustments in the formula. In addition, it was suggested that the focus in developing accommodations in the formula should be on differences that have arisen since the program was implemented, as those are most relevant to the adjustments.

The group discussed the application of the formula to value added products. Harvesters clarified that the formula should be applied to traditional product form (i.e., cluster) prices only (allowing processors to gain any additional revenues from value added production), provided that the value added production does not affect harvester costs. If a harvesters costs were affected (for example, by requiring smaller deliveries), harvesters would need to negotiate the distribution of those added costs (or added revenues from the value added production).

Both sides agreed that any consensus formula generated by this group could be delivered to the Council and possibly to the formula arbitrator as comments on the formula that operates as a backstop. If accepted by the formula arbitrator, this process could generate a formula to be used to effectively change the backstop. Participants in the fishery are free to express their opinions concerning the formula to the arbitrator, which might include lending their support to adoption of the consensus formula. Sector

representatives suggested that this arrangement is unlikely to pose any antitrust risk, as recommendations would be provided to the Council and the Council would have the discretion of whether to make recommendations to the formula arbitrator.

The committee discussed several different percentage formulas, with the two sides each advancing many proposals over the course of several meetings. This report includes only the last offers of the two sides (see Attachment B). The processors' last offer included arbitration system modifications, restrictions on IFQ transfers and a price formula. The committee had previously discussed many of these measures, some of which did not appear to be contested by harvesters. Processors' position was that formula modifications would address some of their issues, but that other aspects of their offer were important to resolving their concerns with the arbitration system. As a result, processors stated that the price formula offer is contingent on the acceptance of other arbitration provisions by harvesters, including a provision that would prohibit IFQ transfers among vessels within a cooperative after entry of a contract between that vessel and the IPQ holder.

The processors last offer provides for a percentage of first wholesale revenues to be paid to harvesters that generally decreases as first wholesale prices increase. This percentage is a flat 48.8 percent at first wholesale prices of \$5 and below. From \$5 to \$8 the percentage decreases to 47.38 percent of the first wholesale price. These percentages are generally consistent with a previous offer from the harvesters. The processor offer differs substantively from the previous harvester proposal between \$8 and \$10. From \$8 to \$8.70, the percentage gradually decreases to 46.69 percent, then remains constant at 46.69 percent from \$8.70 to \$9.30, from \$9.30 to \$10 the percentage increases back to 47.38 percent. At prices above \$10, the percentage would remain 47.38. In addition, the processors proposed for a \$0.12 reduction in ex-vessel price for all landings in the West region. They stated that this adjustment is intended to equally share the custom processing costs. Harvesters rejected this offer.

Harvesters' last offer is a variation on John Sackton's final formula for the 2012-2013 season. That variation would fix the percent at 48.51 percent of first wholesale price, for any price of \$4.80 and below. From \$4.90 to \$9.80, the percent would decrease to 47.29, as set out in John Sackton's formula. For prices above \$9.80, the percent would remain 47.29.

Over the course of several meetings, the two sides have discussed the possible difference in recovery rates between the Eastern fishery and Western fishery. The processors brought to the meeting annual recovery rates collected from processors in the fishery that suggest a difference in recovery rates of approximately 1.282 percent. The processors contend that this difference is relevant for establishing a price differential between the East and West fisheries. Harvesters contend that the processor assertions regarding recovery rate differentials are inaccurate and contain mathematical errors. Further, harvesters noted that processors have not offered any evidence that recovery rates in either region had dropped since rationalization, and therefore, any regional recovery rate differential that may exist is subsumed in the historical price differential for landings from the two areas.

In addition, harvesters proposed an adjustment of the ex-vessel price for West designated WAG that is processed in the West. That price generated by applying the formula would be adjusted down by \$.048 per round pound delivered. Harvesters estimated this adjustment on the following basis:

A \$0.25 per finished pound higher custom processing fee in the West region is assumed. This difference is offset \$0.17 for the incremental increase in sales tax paid by harvesters (i.e., Adak

sales tax is \$.17 higher than Dutch Harbor per finished pound). The price adjustment increment is therefore \$0.08 on a finished pound basis. Applying an assumed recover rate of 60 percent to determine the adjustment to the round pound price, results in the \$0.048 adjustment. ( $\$0.08 \times .60 = \$0.048$ .)

The meeting was adjourned when processing sector participants rejected this offer as the chair (based on the discussions) concluded that no progress beyond these two proposals would be possible and that no further meetings would be needed prior to reporting to the Council in October.

#### **Additional issues discussed by the group**

While committee's purpose was to address perceived problems with the golden king crab price formula, as noted above, processor proposals included a variety of other elements that were stipulated as conditions to any agreement on a price formula. These included:

- a. An explicit structure for defining lengthy season agreements, which would set a deadline for initiating arbitration based on the timing of landings and product sales. Harvesters agreed in concept that under some circumstances, it may be appropriate to set an arbitration initiation deadline in a lengthy season agreement that is earlier than the end of the crab fishing year, but believe such an arrangement should be negotiated on a case by case basis, rather than set by regulation. Further, harvesters noted that lengthy season agreements can be entered into only with both parties' consent, so processors can insist on earlier arbitration dates as a condition to entering into a lengthy season agreement under the current rules, and some of them have done so. The processor proposal specifically provided:

*Once an IPQ holder (a) receives 50% of the matched IFQ and sells 50% of that product (25% of the total match), the IPQ holder shall notify the IFQ holder (and make a price proposal); the IFQ holder then has 30 days to initiate arbitration.*

- b. The identification of delivery windows, with price adjustments based on the date of landing to ensure that processing capacity is available and preferred markets can be accessed. Harvesters noted that processors have the ability to dictate delivery timing and location under the current arbitration system rules, and often do so as a condition to accepting IPQ matches during the voluntary match period. Harvesters believe that to the extent any price adjustments related to delivery timing and location are appropriate, they should be negotiated.
- c. Price adjustments based on the lease of IFQ, as lease payments are argued to limit the ability of harvesters to agree to lower ex vessel prices. Harvesters believe that IFQ lease payments are not relevant for purposes of setting prices in arbitration. Harvesters said that they determined the ex-vessel prices they seek based on crab market conditions, not IFQ lease rates, and that ex-vessel prices (and other considerations such as the cost of vessel operations) drive IFQ lease rates, rather than the converse. Harvesters also noted that custom processing arrangements and IPQ leasing are comparable to IFQ leases in nature, and if arbitration takes IFQ leasing into account, it should take those arrangements into account as well.
- d. Processor initiation of arbitration should be permitted by regulation. Harvesters do not agree that processors should be allowed to initiate price arbitration. Harvesters believe

processors have sufficient recourse under the current advance and settlement pricing approach, as processors stipulate the advance price, which is less than the estimated final price, and hold the harvesters' share of crab sales proceeds pending agreement on a final price. Processors can therefore effectively force harvesters to initiate arbitration by either delaying their final price settlement offer, or by offering a price below that which harvesters consider acceptable. Processors believe that the shared margin arrangement lends itself to processor initiated arbitration. Harvesters believe that processor initiation of performance arbitration (as is currently permitted in regulation) should address this concern, is acceptable, and can be addressed in any contract between the parties.

- e. Processors contend that harvesters should be required to pay a penalty for failure to delivery matched IFQ, equal to the gross revenues that would have been generated by the related product sales. Harvesters strongly object to any form of penalty for failure to deliver matched quota. Harvesters note that they have very strong incentives to catch and deliver all available IFQ, as they only are paid for pounds delivered, and the actual damages processors suffer if they fail to do so are lost profits, which would be far less than the lost gross revenues and that contract law provides an adequate remedy.
- f. Processors suggested that multiyear agreements could be developed, as an alternative to annual negotiations and the potential for arbitration to ensure stability. Harvesters expressed concern that multiyear agreements could be considered to establish an affiliation with an IPQ holder that would prevent harvesters from using the arbitration system.
- g. Processors suggested that they should be able to recover overpayments relative to those derived by applying the formula defining revenue division. Harvesters do not accept this proposition.
- h. Processors proposed additional regulatory restrictions on transfers of matched IFQ. Harvesters rejected this proposal.

Harvesters suggested that a provision for the issuance of B shares in the event that no processor applies for their IPQ should be adopted. In the absence of such a provision, all Class A IFQ would be undeliverable. This element would be needed, particularly if a formula is adopted that increases the percentage of first wholesale price that is paid to the harvester at low first wholesale prices. In these circumstances, harvesters believe the provision could be applied, if a PQS holder elected not to apply for IPQ to avoid a loss. The group reached a consensus supporting a regulatory change adopting this provision.

Committee members expressed interest in the development of a regulatory provision for the publication of arbitration results. Both sides agreed to work together to address legal/antitrust issues that might arise from the release of decisions. A delay in the release of the decisions is believed to be useful for addressing some of those concerns.

#### **Measures to address incentives to pursue greatest value**

Both sectors expressed concerns that an advance and settlement payment structure under which the ex-vessel price is calculated as percentage of actual first wholesale price reduces the incentive for processors to aggressively seek the best market opportunities, as processors must absorb all carrying and marketing costs while sharing a percentage of any gains from those expenditures with harvesters. Some participants pointed to a transaction this year that deviates from the formula established under the standard as an example of how agreeing to terms other than the formula can improve the circumstances of both sides



(and improve market incentives). Participants also suggested that lengthy season agreements may affect these incentives in some cases.

In discussions, two possible methods of pricing that could be used to create an incentive for processors to pursue the highest price for their crab products were discussed. The first method suggested was a **shared margin arrangement**. Under such an arrangement, certain costs of operations (which could include processing costs, broker fees, cold storage, transportation, fees and taxes, the cost of money and delivery down time costs) would be shared by the parties (i.e., harvester and processor). In addition, certain aspects of operations (such as market choices or certain production decisions) could be subject to joint decision making of the parties. Specific shared margin arrangements would likely depend on the circumstances and the parties. For that reason, along with antitrust considerations, these arrangements would need to be negotiated independently by individual processors and cooperatives.

The second method of addressing incentives would be an **index pricing arrangement**. Under this arrangement, parties would agree prior to fishing that the price for a landing would be established based on a public index price on a particular date rather than the processor's product sales price. For example, the price could be the Urner Barry price for red king crab 20-24 count on the date of landing. An index that is unlikely to be affected by any single processor's performance in the market. The use of the index removes the disincentive for pursuing the highest market price that arises, if a processor's first wholesale price is used to determine the ex vessel price. Under the much of the current pricing, the processor's price is used to determine the ex vessel price. By using the processor's price, every incremental increase in price realized on the processor's sale of crab is shared with the harvester. Using an index for pricing shifts all revenues above the index (and any decrease in revenues below the index) to the processor. The processor also bears any cost of carrying the crab to wait for a better market. The processor, therefore, has an incentive to realize the greatest net gain from the sale, since all revenues and costs are realized by the processor alone. As with the shared margin arrangement, the index pricing arrangement could be negotiated by the parties. The use of an index pricing arrangement would avoid any need for reviews of processor prices (which have been controversial in applying the historical division of first wholesale revenues standard to date). Instead the index price would rely on a publicly published price for determining an estimated first wholesale price.

Processors suggested that an index price arrangement could be applied by an offer from one side (e.g., harvesters) identifying an index and formula, which the other side (e.g., the processor) could then choose to accept on a delivery by delivery basis. Effectively, the harvesters would make a standing offer that could be accepted (or rejected) by the processor at the time of each delivery. If the offer is not accepted, the delivery price would be subject to negotiation and the standard arbitration process.

While processors believe that both the shared margin and index price agreements may have merit, they believe that the arbitration system needs adjustments to provide an appropriate backstop for the development those agreements. Harvesters do not agree. Harvesters assert that processors have not provided any justification for a regulatory adjustment to the existing arbitration formula and standard. Harvesters also assert that a catcher/processor operating in the fishery regularly obtains first wholesale prices for its products that are substantially higher than the prices attained by shoreside processors. They believe that some processors' failure to aggressively market golden king crab has hurt markets generally and other processors. Harvesters argue that some processors market crab to long term, reliable customers at lower prices, rather than to markets that may have the greatest return for crab sales, and do not believe

that changing the arbitration formula or standard to protect that activity is appropriate. Harvesters believe that better processor marketing efforts would alleviate any perceived processor revenue shortfalls.

### **West region landings**

Participants agreed that West regionalization has complicated operations for both sectors and will require separate consideration of factors affecting those deliveries. Low output from other fisheries delivering to West region plants and their remote locations can limit the ability to efficiently operate in the region. In addition, transportation is costly and limited, which could limit access to certain markets. These factors will be considered by the workgroup separately from the consideration of factors that generally arise in the fisheries.

Processors suggested that possible adjustments from Eastern and Western fishery deliveries include:

- 1) Product mix adjustments (quality – ratio of #1 and #2) – the group discussed whether this adjustment could be avoided by simply focusing on the first wholesale price of deliveries of Western fishery crab – the group generally agreed that using the first wholesale prices of deliveries from Western fishery landings would address this differential.
- 2) Recovery rate adjustment applied to all West (WAG) fishery prices regardless of the location of landing – Processors have suggested that this adjustment should be based on approximately 1-2 percent difference in recovery rates across the two fisheries (resulting in a reduction in ex vessel price of approximately \$0.05 per round pound). Harvesters contend that the recovery rate for WAG has not dropped since rationalization, and therefore any adjustment for differential recovery rates is already addressed by the historical first wholesale percentage.
- 3) Cost differences for West region deliveries – which could include holding costs, processing costs, and transportation costs. Processors suggest that the difference is approximately \$0.25 per pound, which should be split evenly between the parties through a \$0.125 downward price adjustment to West region deliveries. Harvesters noted that custom processing fees are charged based on finished pounds, and therefore the appropriate ex-vessel price adjustment would be calculated by multiplying the custom processing fee differential by the recovery rate. Harvesters developed a competing proposal that acknowledges a difference in prices in the Eastern and Western fisheries, with the adjustment determined by the location of delivery. Under the proposal, deliveries of Western fishery catch:
  - to an East region plant would be subject to a \$0.075 premium,
  - to a West region plant would be subject to a \$0.075 discount.

These adjustments would be intended to address the different costs of processing in the different regions. Harvesters suggested that additional operating costs and losses in the harvest sector are relevant, as well as are additional higher tax rates on deliveries in the West region. In addition, harvesters cited losses from the stranding of in excess of \$1 million worth of quota during the 2006-2007 season because no processing capacity was available to accept deliveries of West region IFQ in that year. The participants agreed that higher processing costs should be shared costs, rather than borne by one side.

### Other issues

The group agreed that any proposals discussed by the workgroup should not affect or influence the outcome of the formula arbitration process, unless a consensus is reached on all elements that is forwarded through the Council. In addition, all participants agreed that any consensus on or discussion of a pricing

formula in this workgroup should not be construed as supporting the application of the pricing formula or its structure to any other fisheries.

Attachment A

COAR Report historical first wholesale and ex vessel prices (1990-2010)

Year	Processors	First wholesale price	PRR*	Ex vessel price	Annual division
1990	10	\$7.0704	0.602335	\$3.2002	45.26%
1991***	3	\$5.9100	0.4258	\$3.0500	51.70%
1992	4	\$5.1033	0.093965	\$2.1318	41.77%
1993	8	\$4.5164	0.533248	\$2.4212	53.61%
1994	8	\$6.1816	0.861967	\$3.4908	56.47%
1995	7	\$5.9438	0.562323	\$2.9393	49.45%
1996	9	\$5.1619	0.590898	\$2.1806	42.24%
1997	6	\$4.6528	0.58512	\$2.2909	49.24%
1998	7	\$4.1263	0.523448	\$1.9258	46.67%
1999	6	\$7.1151	0.56857	\$3.2728	46.00%
2000	6	\$7.2405	0.585066	\$3.3888	46.80%
2001	5	\$7.0645	0.659854	\$3.3355	47.22%
2002	5	\$7.3784	0.588593	\$3.4212	46.37%
2003	6	\$7.7718	0.591336	\$3.5519	45.70%
2004	5	\$5.8447	0.518523	\$3.0754	52.62%
2005	5	\$5.9290	0.567116	\$2.7373	46.17%
2006	5	\$4.2728	0.327069	\$1.9175	44.88%
2007	5	\$5.3355	0.637223	\$2.1638	40.56%
2008	5	\$6.7860	0.587736	\$3.5825	52.79%
2009	5	\$5.0415	0.59717	\$2.4452	48.50%
2010	7	\$7.6637	0.731629	\$3.8020	49.61%

\*PRR Calculation took the lbs bought in coar\_buy (which were all wholefish), subtracted whole fish in coar\_prod at 1 for 1 then divided the the shellfish products by the difference.

\*\*Query filtered out Catcher Processors and areas A-D and Z

\*\*\* Prices from Sackton report.

Note: The rationalization program was implemented for the 2005-2006 season.

Attachment B  
Last offers from the two sectors

First wholesale price	Sackton 2012-13	Processor proposal	Harvester proposal	Difference (\$)	First wholesale price	Sackton 2012-13	Processor proposal	Harvester proposal	Difference (\$)
\$4.10	48.74	48.8	48.51	\$0.012	\$7.60	47.87	47.4	47.87	-\$0.036
\$4.20	48.7	48.8	48.51	\$0.012	\$7.70	47.83	47.39	47.83	-\$0.034
\$4.30	48.67	48.8	48.51	\$0.012	\$7.80	47.8	47.39	47.8	-\$0.032
\$4.40	48.63	48.8	48.51	\$0.013	\$7.90	47.77	47.38	47.77	-\$0.031
\$4.50	48.6	48.8	48.51	\$0.013	\$8.00	47.74	47.38	47.74	-\$0.029
\$4.60	48.57	48.8	48.51	\$0.013	\$8.10	47.71	47.28	47.71	-\$0.035
\$4.70	48.54	48.8	48.51	\$0.014	\$8.20	47.68	47.18	47.68	-\$0.041
\$4.80	48.51	48.8	48.51	\$0.014	\$8.30	47.65	47.08	47.65	-\$0.047
\$4.90	48.48	48.8	48.48	\$0.016	\$8.40	47.62	46.99	47.62	-\$0.053
\$5.00	48.45	48.8	48.45	\$0.017	\$8.50	47.6	46.89	47.6	-\$0.060
\$5.10	48.43	48.79	48.43	\$0.018	\$8.60	47.57	46.79	47.57	-\$0.067
\$5.20	48.4	48.77	48.4	\$0.019	\$8.70	47.54	46.69	47.54	-\$0.074
\$5.30	48.38	48.76	48.38	\$0.020	\$8.80	47.52	46.69	47.52	-\$0.073
\$5.40	48.36	48.74	48.36	\$0.021	\$8.90	47.49	46.69	47.49	-\$0.071
\$5.50	48.34	48.73	48.34	\$0.021	\$9.00	47.47	46.69	47.47	-\$0.070
\$5.60	48.32	48.58	48.32	\$0.015	\$9.10	47.44	46.69	47.44	-\$0.068
\$5.70	48.29	48.44	48.29	\$0.009	\$9.20	47.42	46.69	47.42	-\$0.067
\$5.80	48.27	48.29	48.27	\$0.001	\$9.30	47.4	46.69	47.4	-\$0.066
\$5.90	48.26	48.15	48.26	-\$0.006	\$9.40	47.38	46.79	47.38	-\$0.055
\$6.00	48.24	48	48.24	-\$0.014	\$9.50	47.35	46.89	47.35	-\$0.044
\$6.10	48.22	47.94	48.22	-\$0.017	\$9.60	47.33	46.99	47.33	-\$0.033
\$6.20	48.2	47.88	48.2	-\$0.020	\$9.70	47.31	47.09	47.31	-\$0.021
\$6.30	48.19	47.82	48.19	-\$0.023	\$9.80	47.29	47.18	47.29	-\$0.011
\$6.40	48.17	47.75	48.17	-\$0.027	\$9.90	47.27	47.28	47.29	-\$0.001
\$6.50	48.15	47.69	48.15	-\$0.030	\$10.00	47.25	47.38	47.29	\$0.009
\$6.60	48.14	47.64	48.14	-\$0.033	\$10.10	47.23	47.38	47.29	\$0.009
\$6.70	48.12	47.59	48.12	-\$0.036	\$10.20	47.21	47.38	47.29	\$0.009
\$6.80	48.11	47.53	48.11	-\$0.039	\$10.30	47.19	47.38	47.29	\$0.009
\$6.90	48.1	47.48	48.1	-\$0.043	\$10.40	47.18	47.38	47.29	\$0.009
\$7.00	48.08	47.43	48.08	-\$0.046	\$10.50	47.16	47.38	47.29	\$0.009
\$7.10	48.05	47.42	48.05	-\$0.045	\$10.60	47.14	47.38	47.29	\$0.010
\$7.20	48.01	47.42	48.01	-\$0.042	\$10.70	47.12	47.38	47.29	\$0.010
\$7.30	47.97	47.41	47.97	-\$0.041	\$10.80	47.11	47.38	47.29	\$0.010
\$7.40	47.94	47.41	47.94	-\$0.039	\$10.90	47.09	47.38	47.29	\$0.010
\$7.50	47.9	47.4	47.9	-\$0.038	\$11.00	47.07	47.38	47.29	\$0.010

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**Harvester Representative Comments on the Golden King Crab  
Work Group Minutes and Report**

**September 24, 2012**

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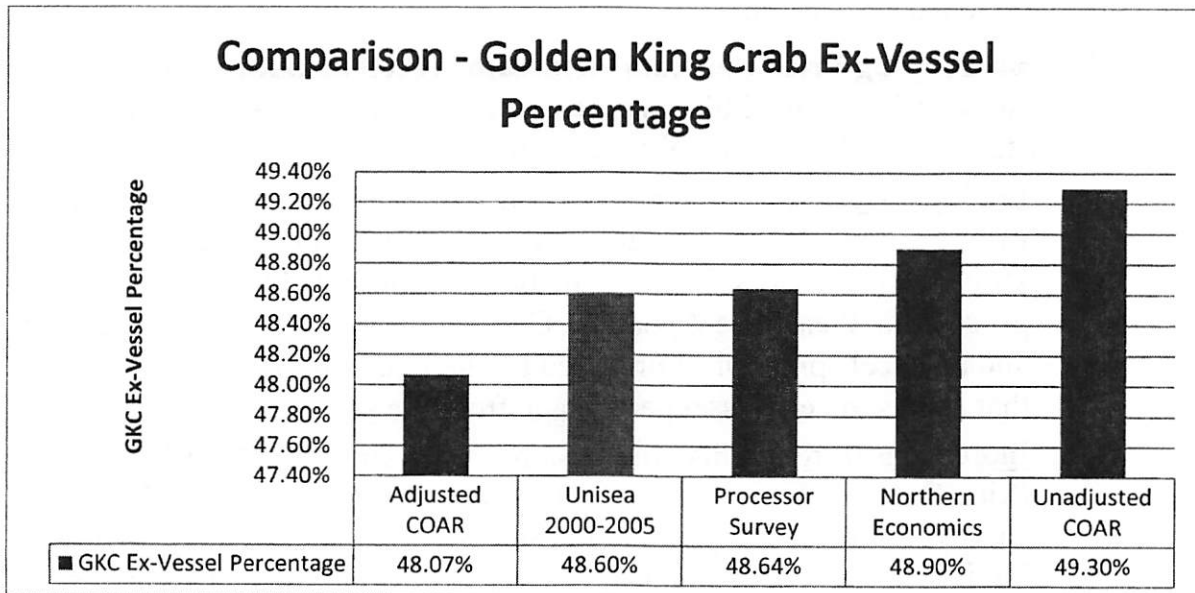
**I. Background**

The North Pacific Fishery Management Council formed a workgroup to examine the golden king crab price formula that is developed through the arbitration system by the non-binding price formula arbitrator. In the course of preparing data for the meetings, crab harvesters assembled a variety of data that was presented to the committee. The workgroup report<sup>1</sup> discusses this data and notes the following points:

- “Multiple data sources using processor reported data discussed by the workgroup suggested that, on average, the ex-vessel price that reflects the historical division of revenues in the fishery is between 48 and 49 of the first wholesale price. . .”
- “No data inconsistent with this interpretation were presented.”

**II. Available Data Sources and Indications of Their Reliability**

A number of different data summaries provide information on the historical division of revenues between harvesters and processors. The original source data was initially compiled by crab processors. Presumably these crab processors had direct access to the underlying documents. The data can be graphically summarized as follows:



<sup>1</sup> Report of the Golden king crab arbitration workgroup to the North Pacific Fishery Management Council, October 2012



**1. Revised COAR data (48.07% ex-vessel percentage)**

- a. Background- Notwithstanding the many indications of accuracy (please see discussion below), COAR data have been criticized by some. As a part of the Committee's process, a NPFMC economist reviewed the COAR data and adjusted the underlying data for some apparent errors. Please see Appendix A for the actual data summary.
- b. Indications of reliability- COAR data are inherently reliable. However, the review and adjustment provided by Council staff provide an added level of assurance.

**2. UniSea Data (48.6% ex-vessel percentage)**

- a. Background- UniSea, Inc., a large golden king crab processor, provided its own historical ex-vessel prices and first wholesale prices to harvesters shortly after the inception of the program.
- b. Indications of reliability- The CEO of UniSea who provided this information also indicated in his e-mail that the numbers provided were accurate and that UniSea's "accounting department would be happy to show you how they were derived." A copy of the e-mail is attached at Appendix B.

**3. The Non-Binding Price Formula Arbitrator received data from crab processors and prepared his own summary of historical ex-vessel percentages (48.64% ex-vessel percentage)**

- a. Background- in the 2008 golden king crab report<sup>2</sup> the Non-Binding Price Formula Arbitrator published the results of his survey of golden king crab processors. The information was provided to him by crab processors. Please see Appendix C for an extract from the 2008 report and an excel spreadsheet prepared by the Inter-Cooperative Exchange that shows the ex-vessel percentage from the survey.
- b. Indications of reliability- In the same 2008 report<sup>3</sup> the Non-Binding Price Formula Arbitrator wrote the following with respect to his survey: "It is not complete, in the sense that it includes all companies, but it does include the annual sales data provided by the two largest sellers of golden king crab, who together account for around 80% of

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<sup>2</sup> Golden King Crab Price Formula Arbitrator and Market Analyst Report (pg. 24- 25).

<sup>3</sup> Ibid.

all processor quota. It also does not include years before 1995. However, the company data is extremely statistically robust, meeting all tests for correlation and statistical validity.”

**4. Northern Economics Report- (48.9% ex-vessel percentage)**

- a. Background- Northern Economics, in collaboration with Daniel Huppert, Ph.D., Gunnar Knapp, Ph.D., and Gil Sylvia, Ph.D., prepared the *2005 Aleutian Islands Brown King Crab & Non-Binding Price Formula* report. Please see Appendix D for an excerpt from the report.
- b. Indications of reliability- The authors of this report have stellar qualifications. Drs. Huppert, Knapp and Sylvia are highly respected marine economists associated with major universities.

**5. Unmodified Commercial Operator Annual Report (COAR) (49.3% ex-vessel percentage)**

- a. Background- the Commercial Operator Annual Report is filed with the Alaska Department of Fish & Game. Each Alaskan fish processor files this report annually. Processors report both the ex-vessel price paid to fishermen and the wholesale price they received for each type of fish and shellfish. This data is summarized and is available to the public. It allows for the computation of ex-vessel percentage. Please see Appendix E for the data summary.
  - i. Illustration- If the compiled COAR data showed that the average price paid to fishermen for golden king crab in 1995 was \$5.00 per pound and also showed that the average wholesale price by processors was \$10.00 per pound, the ex-vessel percentage of 50% can be readily computed.
- b. Indications of reliability-
  - i. Jurat- the COAR form contains a jurat and each processor signs the return under penalties of perjury.
  - ii. Statements by credible third parties support the reliability of COAR data-
    1. Source- The *2005 Aleutian Islands Brown King Crab Market Report and Non-Binding Price Formula* Report. This report was co-authored by the consulting firm Northern Economics and three highly respected marine

economists (Gunnar Knapp, Ph.D.<sup>4</sup>, Gil Sylvia, Ph.D.<sup>5</sup>, and Daniel Huppert, Ph.D.<sup>6</sup>).

- a. Statement- The report notes that “COAR data are widely acknowledged as being an excellent source of price and value per pound data. . .” The report notes, however, that COAR data is relatively less reliable with respect to volume. Since volume isn’t an issue in determining the ex-vessel percentage, this concern isn’t relevant to the task at hand.
2. Source- North Pacific Fisheries Management Council and National Marine Fisheries Service, *Regulatory Impact Review/Initial Regulatory Flexibility Analysis Voluntary Three-Pie Cooperative Program for the Bering Sea and Aleutian Islands Crab Fisheries* (August 2004), Appendix 1, pg 386.
    - a. Statement- The COAR database is referred to as “the best publicly collected source of price information. . .”
      - i. The RIR later expresses concern about separating one fishery from another. This issue was subsequently resolved.
  - iii. Consistency with other data bases- COAR data can be verified through comparison to other data bases.
    1. Comparison of COAR ex-vessel prices in other crab fisheries to the Alaska Business Tax return and CFEC return data bases. John Sackton published ex-vessel prices from the Alaska Business Tax return data base and the Commercial Fisheries Entry Commission data bases in his 2007 draft report<sup>7</sup>. The ex-vessel prices from these data bases are almost identical to COAR. This corroborates the accuracy of COAR data. Although it involves difference fisheries, it nonetheless corroborates the accuracy of COAR data generally.

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<sup>4</sup> Dr. Knapp is a professor at University of Alaska Anchorage.

<sup>5</sup> Dr. Sylvia is a professor at Oregon State University.

<sup>6</sup> Dr. Huppert is a professor (emeritus) at the University of Washington.

<sup>7</sup> *Draft King Crab, Opilio, and Bairdi Non-Binding Price Formulas* (August 5, 2007), pg. 20.

- a. Over a 13 year period, the difference between these three data bases was significantly less than 1%.
  - i. Note: the ABT is also signed under penalties of “unsworn falsification.”

### **III. Comments on Data Supporting the Historical Division of Revenues**

The following comments are offered to summarize the data:

1. **Original source of data-** All the data introduced at committee meetings by harvesters was based upon source data *originally* submitted by processors. For example, processors provided information that underlies COAR. Additionally, UniSea itself provided its own historical ex-vessel percentages, and processors (apparently RAS and Westward Seafoods) provided the data utilized by John Sackton in his survey.
2. **Provision of data at committee meetings-** Harvesters introduced all of the historical evidence of ex-vessel percentages into the record at committee meetings. Processors were advised repeatedly that they should provide relevant information; however, processors failed to produce any evidence over the five-month period that the committee meetings spanned.
  - a. **A presumption should be drawn against processors-** since processors that were represented on the Committee had evidence as to the historical division of revenues but *chose* not to introduce it, it should be presumed that evidence in their possession would show even higher ex-vessel percentages. Otherwise, they presumably would have introduced it.
3. **Overall Evaluation of the Data: The best documented data in the North Pacific-** although golden king crab is a relatively minor fishery, harvesters believe that the body of evidence supporting the historical division of revenues is the most complete record of any fishery in the North Pacific.

### **IV. Are There “Market Distortions” in the Data?**

An argument has been advanced that the underlying data has market distortions. Specifically, the following arguments have been set forth:

1. **First flawed argument**- It has been argued that in the five or six years preceding rationalization (i.e., 1999-2004 or 2000-2004) that intense competition drove up prices.

a. **This argument is belied by actual evidence**- If this claim were true we would expect to find that ex-vessel percentages were higher during the period of alleged intense competition that immediately preceded rationalization. In fact, ex-vessel percentages were *lower* during both the five year and six year periods preceding rationalization. Please see F for a detailed calculation. The following chart illustrates the actual ex-vessel percentages over the five-year period preceding rationalization<sup>8</sup>:

Period	5-year Comparison
2000-2004	47.74%
1990-1999	48.24%

2. **Second flawed argument**- The second argument that processors have advanced is that Royal Aleutian Seafoods (RAS) had golden king crab markets where it acted as a sole supplier with no competition. This argument asserts that RAS achieved a large market share in some years by outbidding other companies because it could easily pass along its higher costs to its exclusive pool of customers.

a. **Flaws in argument**- The argument is premised on the fact that Royal Aleutian Seafoods (RAS) paid both higher prices to fishermen and received higher prices from its customers. In essence, this means that both the numerator (ex-vessel price) and denominator (first wholesale price) are higher than average. There are multiple flaws inherent in this argument:

- i. **Lack of data**- there is simply no data that has been provided to support that RAS either had higher first wholesale prices or paid fishermen higher ex-vessel prices.
- ii. **Flawed mathematics**- Even if RAS paid higher ex-vessel prices and received higher first wholesale prices (as the argument suggests) the ex-vessel *percentage* it paid would have been mathematically unaffected.

1. **Illustration**- Assume that other processors paid an ex-vessel percentage of 50% (\$5.00 ex-vessel and \$10.00 first

<sup>8</sup> Source: COAR data as revised by Council staff for all years except 1991 (data from 1991 is from the non-binding price formula arbitrator).

wholesale). Also assume that RAS paid a 10% higher ex-vessel price (\$5.50) and received a 10% higher first wholesale value (\$11.00). Since both the numerator and denominator increased proportionately, its ex-vessel percentage would be identical to those of its competitors ( $\$5.50/\$11.00=50\%$ ).

iii. Overall theoretical conceptual flaw- All markets have some participants that are relatively more successful (presumably like RAS<sup>9</sup>) and some that are relatively less successful (like RAS's peers). *Both* the successful and less successful participants must be included in any analysis in order to give a picture of the overall market. Otherwise we would be analyzing an incomplete picture of the historical division of revenues.

3. Third flawed argument- This argument suggests that fishermen negotiated high prices from processors who were forced to compete in order to purchase golden king crab on a load-by-load basis.

a. Overall conceptual flaw- These facts don't suggest a "distorted" market. A normally functioning marketplace involves buyers who compete with one another to purchase product from knowledgeable sellers.

#### **V. Do Product Recovery Rate Differences between the EAG and WAG Fisheries Indicate That an Adjustment Should Be Made to the Formula?**

It has been suggested that ex-vessel percentages should be discounted for WAG deliveries. Processors assert that product recovery rates are lower for crab harvested in the Western Aleutians than crab harvested in the Eastern Aleutians, and therefore an adjustment should be made. This contention is problematic for a number of reasons:

1. Logical inconsistency- The underlying premise of this approach is flawed. It makes no more sense to take a discount for WAG crab than it does for processors to a pay premium for EAG crab since EAG crab is alleged to have higher recoveries. The mere fact that a *relative* difference exists doesn't suggest that one-sided adjustment be made to the formula.
2. Additional flaw in logic- Using the flawed logic of this proposal, even if recoveries had greatly improved since rationalization (and therefore

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<sup>9</sup> No data has been presented to support the assertion that RAS sold for higher prices than its peers. However, this is presumed to be the case for the sake of argument.

processors were making significantly more money than prior to rationalization), harvesters should be subject to a discount for WAG if *any* difference between EAG and WAG remained.

3. Inconsistency with the rationalization standard: The rationalization standard already incorporates differences in historic yield.
  - a. Even if there is a difference between EAG recoveries and WAG recoveries, we don't know whether there has been a change *since* rationalization. Such a change would be the only basis under the standard for an adjustment.
  - b. The underlying requirement to harvest crab in the Western region predates the rationalization program by many years. Therefore, this difference doesn't relate to the rationalization program.
4. Inconsistency with the historical pricing- Fishermen provided testimony at the golden king crab arbitration workgroup meetings to the effect that prior to rationalization processors had paid the same price for WAG crab as for EAG crab. Therefore, a taking a discount for WAG crab would be inconsistent with the historical division of revenues.
5. Insufficient data- Information provided to date is insufficient in at least two respects:
  - a. Data presented thus far doesn't show the differences between individual processors. Therefore, assuming there's a difference in recoveries, there's no way to gauge whether the differences relate to the crab itself or whether it relates to inefficiencies of some WAG processors.
  - b. There's no indication of the total number of pounds included in the data provided thus far. The data provided also fails to identify the particular processors and pounds that are included in each year. Therefore, it might represent an insignificant sample size.
6. Mathematical errors in data presented- Data presented to the committee contained an obvious mathematical error. Please see Appendix G for the data summary provided by NPCA and the margin of error.
  - a. If there is an obvious error on the face of the summary document, it's quite possible that the underlying calculations are similarly inaccurate.
7. Any such adjustment would be more than offset by additional harvester costs of WAG- Even if these flawed premises were to be accepted, harvesters' have additional fuel costs in the West of 35 cents per finished pound. This

would greatly exceed the proposed discount related to any product recovery issues.

8. Economic flaw- This proposal is flawed on an economic basis. It proposes to shift the burden of any processor inefficiencies to harvesters, even though harvesters have no control over them.
  - a. In this regard, it is indistinguishable from harvesters demanding a discount for slow fishing rates in the WAG fishery.

### **Conclusion**

The system appears to be working well. Processors concede that they are making money. Only two arbitrations have been held during the entire seven-year history of the golden king crab rationalized fishery. Neither of the two major processors (Westward and Royal Aleutian) has filed for arbitration in this fishery. In fact, APICDA, a recent investor in the fishery (that merely arranges for others to process its crab) is the only IPQ holder that has ever filed for arbitration.

In short, the proposal put forth by the processing sector is a “solution in search of a problem.”



Attachment A

COAR Report historical first wholesale and ex vessel prices (1990-2010)

Year	Processors	First wholesale price	PRR*	Ex vessel price	Annual division
1990	10	\$7.0704	0.602335	\$3.2002	45.26%
1991***	3	\$5.9100	0.4258	\$3.0500	51.70%
1992	4	\$5.1033	0.093965	\$2.1318	41.77%
1993	8	\$4.5164	0.533248	\$2.4212	53.61%
1994	8	\$6.1816	0.861967	\$3.4908	56.47%
1995	7	\$5.9438	0.562323	\$2.9393	49.45%
1996	9	\$5.1619	0.590898	\$2.1806	42.24%
1997	6	\$4.6528	0.58512	\$2.2909	49.24%
1998	7	\$4.1263	0.523448	\$1.9258	46.67%
1999	6	\$7.1151	0.56857	\$3.2728	46.00%
2000	6	\$7.2405	0.585066	\$3.3888	46.80%
2001	5	\$7.0645	0.659854	\$3.3355	47.22%
2002	5	\$7.3784	0.588593	\$3.4212	46.37%
2003	6	\$7.7718	0.591336	\$3.5519	45.70%
2004	5	\$5.8447	0.518523	\$3.0754	52.62%
2005	5	\$5.9290	0.567116	\$2.7373	46.17%
2006	5	\$4.2728	0.327069	\$1.9175	44.88%
2007	5	\$5.3355	0.637223	\$2.1638	40.56%
2008	5	\$6.7860	0.587736	\$3.5825	52.79%
2009	5	\$5.0415	0.59717	\$2.4452	48.50%
2010	7	\$7.6637	0.731629	\$3.8020	49.61%

PRR - PART RATIONALIZATION

AVG = 48.07%

\*PRR Calculation took the lbs bought in coar\_buy (which were all wholefish), subtracted whole fish in coar\_prod at 1 for 1 then divided the the shellfish products by the difference.

\*\*Query filtered out Catcher Processors and areas A-D and Z.

\*\*\* Prices from Sackton report.

Note: The rationalization program was implemented for the 2005-2006 season.

TERRY STAFF E-MAIL

**Crab History 2000-2004**

Opilio E  
2000  
2001  
2002  
2003  
2004

**5 year average**

<b>Brown King</b>	<b>Ex-Vessel</b>	<b>Avg. Sales</b>	
			49.0%
			52.5%
			47.3%
			46.8%
			48.0%
<b>5 year average</b>			<u>48.6%</u> *

<b>Red King</b>	<b>Ex-Vessel</b>	<b>Avg. Sales</b>	
			52.7%
			51.4%
			51.9%
			51.6%
			52.4%
<b>5 year average</b>			<u>52.0%</u>

GAR

Greg White

From: Terry Shaff [terry.shaff@unisea.com]  
Sent: Thursday, November 10, 2005 9:33 AM  
To: 'Greg White'  
Subject: RE: follow-up on crab history

Greg,

The numbers I sent earlier were for UniSea. Those are the ones we have the best access to and had already pulled the numbers together for our reference. They are actuals from our system and our accounting department would be happy to show you how they were derived.

The Royal Aleutian equivalent numbers are hard to come by. They had a quite crude data base system that is making it difficult to sort out history. It appears that they did not distinguish between FOB and CIF sales, did a profit sharing with some boats and custom processing of some crab for others.

Given the way crab prices were negotiated in the past, their purchase prices should be the exact same as UniSea history. A price was set for the industry. And market prices are market prices. They are always very standard across the board. RAS did a limited amount of fresh in the past but that was only on CDQ crab which is a totally different structure.

Terry

From: Greg White [mailto:gwhite@wtcpa.net]  
Sent: Thursday, November 10, 2005 7:47 AM  
To: Terry Shaff  
Subject: follow-up on crab history

Hi Terry,

Did you get my earlier e-mail re: crab history? I wanted to know if the numbers you sent were UniSea's or Royal Aleutian's?

Thanks,

Greg White  
4209 21st Avenue West, Suite 301  
Seattle, WA 98199  
Phone:(206)286-8556  
Fax: (206)284-4114

This message contains information which may be confidential and privileged. Unless you are the addressee (or authorized to receive for the addressee), you may not use, copy or disclose to anyone the message or any information contained in the message. If you have received the message in error, please advise the sender by reply e-mail, and delete the message. Thank you.

7/23/2007

APPENDIX B

**Greg White**

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**From:** Terry Shaff [terry.shaff@unisea.com]  
**Sent:** Monday, November 07, 2005 11:24 AM  
**To:** Greg White (gwhite@wtcpa.net)  
**Subject:** Crab History 3yr/5yr  
**Attachments:** Crab History 2000-2004.xls

Greg, this is the UniSea history for the last 3 and 5 years. I had Robin put it together from our actual numbers.

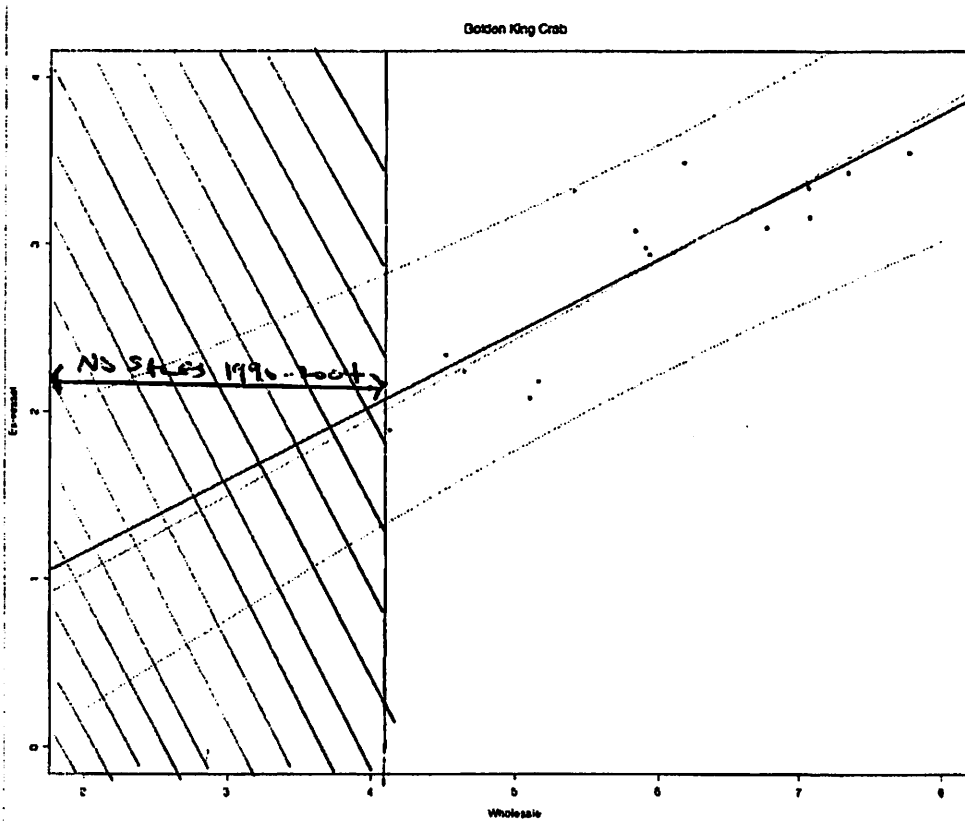
Terry

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<<Crab History 2000-2004.xls>>

Robin

Figure 4. shows the company data based regression formula superimposed on the COAR regression formula.



**Figure 4: Company data regression plotted against non-binding price formula.**

The company data used in this plot is historical company data. It is not complete, in the sense that it includes all companies, but it does include the annual sales data provided by the two largest sellers of golden king crab, who together account for around 80% of all

processor quota. It also does not include years before 1995. However, the company data is extremely statistically robust, meeting all tests for correlation and statistical validity.

The plot shows that at lower wholesale price levels, companies tended to pay lower ex-vessel values than in the non-binding price formula, and that at higher wholesale prices, they paid slightly higher wholesale values.

In the mid-range, between wholesale price values of \$5.50 to \$7.00, the ex-vessel payments calculated from company data, and from COAR data, are virtually the same.

This suggests that despite the problems in this COAR data set the non-binding price formula derived from COAR is reasonably close to data derived from other sources. It is likely that the market timing issues cancel each other out to some degree over the course of the historical period.

Nevertheless, the fact that COAR data is not suitable for price formulation is important because it reinforces the importance of both the statistical mean, and the variability around that mean described in the confidence bounds.

Resource economists who deal with commodity pricing issues say that the only true way to estimate future raw material pricing is through a set of simultaneous equations that measure supply and demand, and include cost factors which are critical to price formation. Their simplest rule is that no business can survive if it consistently sells, or is forced to sell, its products below its cost. This applies to both harvesters and processors.

When faced with pressure to sell below costs, either from weak demand, or from an increase in costs that cannot be recovered (also a form of weak demand) businesses must adjust costs, get external subsidies, or stop producing.

The crab rationalization program rejected the supply/demand/cost model for creating the non-binding price formula for two reasons. One was that the data simply was not available at reasonable cost and effort. The second was that the program wanted to allow market pressure to continue for both innovation and efficiencies in the crab industry. For this reason, the program was built around a model where each party received its historical share of revenue, not their historical share of rents.

But whether intended or not, the crab program opened the possibility for a business to be forced to sell below its costs in the event that a contract arbitrator set a disputed raw material price retroactively above cost after the final product had already been sold.

**Calculation of Ex-Vessel Percentage Using Processor Survey**

Estimated first wholesale value	\$ 10.00
Formula percentage	<u>48.77%</u>
Result	\$ 4.88
Formula subtractive element	<u>\$ (0.0127)</u>
Ex-vessel price	\$ 4.864
Ex-vessel percentage from processor survey	<u>48.64%</u>

Data source: John Sackton's 2008 processor survey

**2005 Aleutian Islands Brown King Crab Market Report & Non-Binding Price Formula**

This starting price of \$2.27 per round pound would also be the Final Price if the 2005 FOB Wholesale Price is less than \$4.63/processed lb. At prices above \$4.63/processed lb., the Final Price would increase by 0.815 cents for each 1 cent increase in the FOB wholesale price in dollars per round lb. In terms of wholesale prices per processed pound, ex-vessel prices would increase 1 cent for each 0.489 cent increase in the FOB wholesale price per processed pound, assuming a 60 percent yield.

<b>Non-Binding Price Formulas</b>	
<b>Starting Price:</b>	= \$2.27 per pound
<b>Final Price</b>	= Whichever of the following is higher:
	Starting Price = \$2.27
	OR
	"Sharing Formula" Price
	= 0.815 × (2005 FOB Wholesale Price in \$/round lb)

Table ES-3 shows how starting ex-vessel prices, final ex-vessel prices, processor margins per round lb, and the distribution of revenue would change if the wholesale price varies from the predicted price. Note that as long as the first wholesale price is above the minimum set in the non-binding price formula, the historical distribution of first wholesale revenues is preserved.

**Table ES-3 2005 Brown King Crab Non-Binding Price Formula Results at Various Wholesale Prices**

2005 average FOB wholesale price per processed lb	2005 average FOB wholesale price per round lb.	Final wholesale price as a percent of predicted wholesale price	Final ex-vessel price per round lb.	Post-season price adjustment per round lb.	Processor Margin per round lb.	Fisherman share of wholesale value	Processor share of wholesale value
\$4.05	\$2.43	70.0%	\$2.27	\$0.00	\$0.17	83.1%	6.8%
\$4.20	\$2.52	72.5%	\$2.27	\$0.00	\$0.25	89.9%	10.1%
\$4.34	\$2.61	75.0%	\$2.27	\$0.00	\$0.34	86.9%	13.1%
\$4.49	\$2.69	77.5%	\$2.27	\$0.00	\$0.43	84.1%	15.9%
\$4.63	\$2.78	80.0%	\$2.27	\$0.00	\$0.51	81.5%	18.5%
\$4.78	\$2.87	82.5%	\$2.34	\$0.07	\$0.53	81.5%	18.5%
\$4.92	\$2.95	85.0%	\$2.41	\$0.14	\$0.55	81.5%	18.5%
\$5.07	\$3.04	87.5%	\$2.48	\$0.21	\$0.58	81.5%	18.5%
\$5.21	\$3.13	90.0%	\$2.55	\$0.28	\$0.58	81.5%	18.5%
\$5.36	\$3.21	92.5%	\$2.62	\$0.35	\$0.59	81.5%	18.5%
\$5.50	\$3.30	95.0%	\$2.69	\$0.42	\$0.61	81.5%	18.5%
\$5.65	\$3.39	97.5%	\$2.76	\$0.60	\$0.63	81.5%	18.5%
\$5.93	\$3.58	102.5%	\$2.90	\$0.64	\$0.68	81.5%	18.5%
\$6.08	\$3.65	105.0%	\$2.97	\$0.71	\$0.67	81.5%	18.5%
\$6.22	\$3.73	107.5%	\$3.04	\$0.78	\$0.69	81.5%	18.5%
\$6.37	\$3.82	110.0%	\$3.11	\$0.85	\$0.71	81.5%	18.5%
\$6.51	\$3.91	112.5%	\$3.19	\$0.92	\$0.72	81.5%	18.5%
\$6.66	\$4.00	115.0%	\$3.26	\$0.99	\$0.74	81.5%	18.5%
\$6.80	\$4.08	117.5%	\$3.33	\$1.06	\$0.76	81.5%	18.5%
\$6.95	\$4.17	120.0%	\$3.40	\$1.13	\$0.77	81.5%	18.5%
\$7.09	\$4.26	122.5%	\$3.47	\$1.20	\$0.79	81.5%	18.5%
\$7.24	\$4.34	125.0%	\$3.54	\$1.27	\$0.80	81.5%	18.5%
\$7.38	\$4.43	127.5%	\$3.61	\$1.34	\$0.82	81.5%	18.5%
\$7.53	\$4.52	130.0%	\$3.68	\$1.42	\$0.84	81.5%	18.5%
\$7.67	\$4.60	132.5%	\$3.75	\$1.49	\$0.85	81.5%	18.5%
\$7.82	\$4.69	135.0%	\$3.82	\$1.56	\$0.87	81.5%	18.5%
\$7.96	\$4.78	137.5%	\$3.89	\$1.63	\$0.88	81.5%	18.5%
\$8.11	\$4.86	140.0%	\$3.96	\$1.70	\$0.90	81.5%	18.5%

Note: Shaded cells show the formula results at the predicted 2005 FOB wholesale price per processed pound of \$5.79. The un-shaded bolded cells show the results at the projected lower bound of the predicted FOB wholesale price—this lower bound represents the starting ex-vessel price for fishermen



**Division of Commercial Fisheries**

**Title:** 1990-2007 Golden King Crab COAR Buying, excluding Southeast Alaska

**For:** John Sackton, jsackton@seafish.com

**Contact:** Lorraine Mullins; lorraine.mullins@alaska.gov; 907.465.6131

**Data Source:** COAR (Commercial Operator Annual Report) Database; Run 6/19/2008

**Note:** All - Except\* = all COAR areas except Southeast Alaska - areas A1, A2, B, C, & D

**CAPRs (Catcher Processors) & DMCPs (Direct Marketer Catcher Processors) are excluded.**

1990	All - Except*	All - Except CAPRs and DMCPs	923	- \$3.20	10	- \$7.07	45.27%
1991	All - Except*	All - Except CAPRs and DMCPs	923	- \$3.05	7	- \$5.91	51.69%
1992	All - Except*	All - Except CAPRs and DMCPs	923	- \$2.13	7	- \$5.10	41.77%
1993	All - Except*	All - Except CAPRs and DMCPs	923	- \$2.42	9	- \$4.52	53.58%
1994	All - Except*	All - Except CAPRs and DMCPs	923	- \$3.49	11	- \$6.18	56.45%
1995	All - Except*	All - Except CAPRs and DMCPs	923	- \$2.94	8	- \$5.94	49.45%
1996	All - Except*	All - Except CAPRs and DMCPs	923	- \$2.18	8	- \$5.16	42.25%
1997	All - Except*	All - Except CAPRs and DMCPs	923	- \$2.29	7	- \$4.65	49.24%
1998	All - Except*	All - Except CAPRs and DMCPs	923	- \$1.83	7	- \$4.13	46.67%
1999	All - Except*	All - Except CAPRs and DMCPs	923	- \$3.27	6	- \$6.77	48.36%
2000	All - Except*	All - Except CAPRs and DMCPs	923	- \$3.39	7	- \$5.41	62.62%
2001	All - Except*	All - Except CAPRs and DMCPs	923	- \$3.34	6	- \$7.06	47.22%
2002	All - Except*	All - Except CAPRs and DMCPs	923	- \$3.42	6	- \$7.34	46.83%
2003	All - Except*	All - Except CAPRs and DMCPs	923	- \$3.55	6	- \$7.77	45.70%
2004	All - Except*	All - Except CAPRs and DMCPs	923	- \$3.08	6	- \$5.84	52.62%
							<u>49.30%</u>

**Analysis of Historical Division of Revenues  
1990-1999 and 2000-2004**

1990	45.26%	
1991	51.70%	
1992	41.77%	
1993	53.61%	
1994	56.47%	
1995	49.45%	
1996	42.24%	
1997	49.24%	
1998	46.67%	
1999	46.00%	48.24% (Prior period from 1990-1999)
2000	46.80%	
2001	47.22%	
2002	46.37%	
2003	45.70%	
2004	52.62%	47.74% (Five-year period preceding rationalization)
Average for 15-year period	48.07%	

Data source: COAR data after adjustment by Council staff.



**REVISED 08/05/2012 with additional data**

**Data includes APICDA, Westward and RAS for most (but not all) years**

**RECENT PRODUCT RECOVERY RATES**

**AVERAGE SPREAD 1.282% s/B 1.06832**

**RANGE 0.51% TO 1.72%**

	<b>CY 2006/7</b>	<b>CY 2007/8</b>	<b>CY 2008/9</b>	<b>CY 2009/10</b>	<b>CY 2010/11</b>	<b>CY 2011/12</b>
<b>EAG Aggregate</b>	60.11%	60.51%	59.97%	61.24%	59.91%	60.47%
<b>WAG Aggregate</b>	58.97%	59.49%	59.46%	60.33%	58.80%	58.75%
<b>Spread</b>	1.14%	1.02%	0.51%	0.91%	1.11%	1.72%



**September 23, 2012**

**The Golden King Crab Arbitration Workgroup**

**Report By Processor Representatives: Larry Cotter (APICDA), Brett Reasor (Unisea), Mark Johahnson (Westward Seafoods)**

**Overview**

The North Pacific Fishery Management Council appointed a Workgroup and tasked it with a very focused goal:

*The Council will form a workgroup to develop means of establishing the golden king crab formula.*

The Council took this action based on significant testimony and analysis presented by NPCA member companies. On several occasions, Chairman Duncan Fields reminded both sides that it was better to address those problems through the Workgroup process, rather than have them kicked back to the Council.

After six meetings, the harvest sector representatives did not agree to significantly modify a single aspect of the current binding arbitration process, including the price formula.

The Workgroup tried to work within the confines of the existing binding arbitration standard, but in the end it was too difficult to get the harvesters past the limitation of "Historic Division of Revenues". As noted below, the Workgroup discussed alternative ideas, but there is no incentive for the harvest sector to move away from status quo. In the long run the GKC fisheries need to operate profitably on their own. Price formation should be divorced from the historical data and, instead, should be viewed in light of current market conditions.

**The Benefits of the Workgroup Process**

**COAR Corrections.** Early in the Workgroup process, a discussion of the problems surrounding COAR data took place. This is not a new issue: the State of Alaska has formally cautioned the Price Formula Arbitrator about the problems associated with COAR, and the Price Formula Arbitrator(s) have acknowledged those problems and the impact on their work.

Dr. Fina attempted to clean up the COAR data for the committee. In doing so, he identified two significant errors and attempted to correct them. When those corrections are applied to the Price Formula for the previous years under this program, it illustrates that the processors may have overpaid harvesters approximately One Million Dollars in these fisheries.

In spite of Dr. Fina's best efforts, serious problems still exist within the COAR data, as evidenced by the illogical Recover Rates that are generated by the data. The average Recovery Rate should be between 59.5% and 61%; in 13 out of 20 years examined, it fell well outside these bounds.

**Detailed Disclosure of PQS/IPQ Revenue Declines and Losses.** One committee member released detailed financial summaries to document the losses incurred under the current price formula process. Other PQS representatives provided specific, written examples of the sorts of revenue declines and losses they have experienced due to season elongation and fleet consolidation (notably, costs associated with long periods of downtime and missed and market timing). As evidenced by the data presented, processing sector representatives made proposals to address these issues. Harvest sector representatives initially agreed that these were valid issues, but later in the process none of the proposals were accepted, nor were counter-proposals made by the harvest sector representatives to address the issues.

**Agreement to Proceed With A Regulation Requiring that Arbitration Results Be Published.** This was one of the several structural changes requested by the NPCA last December, and although it is not the most important it should help add an element of consistency to the process.

**Agreement to Remove the EAG Processing Use Cap.** This would be done in a manner consistent with the processing use cap regulations established for the other major crab fisheries.

**Important Program Characteristics Were Identified.** Although the Workgroup failed to agree on solutions, in some instances the dialogue helped define certain terms and concepts; most notably:

**The "Backstop".** The "Backstop" is the default price formula and binding arbitration process that harvesters can resort to if no other agreement is in place. It was clearly recognized early on that it was necessary to change the "Backstop"; otherwise there was no incentive for the harvest sector to enter into a new price formula agreement, shared risk/reward agreements or other relationships. In the end, the harvesters did in fact resist all changes to the "Backstop".

**"Maintaining Healthy Sectors".** This is both a program goal and binding arbitration standard. Harvest sector representatives have consistently argued against evidence provided by PQS/IPQ holders and conclusions drawn by the Price Formula Arbitrator that this standard is not being met. Harvester sector representatives have also tried to cloud the issue by equating IPQ holders who use Custom Processing agreements (and still incur all costs and market risks) with QS/IFQ holders who are sitting on the beach with no ownership in a vessel and no operating capital risk; thus maintaining the position that the only PQS holders that should be afforded Net Revenue are PQS holders that have operating plants, and that they should be operating close to their variable costs, leaving little or no margin.

**"Historic Division of Revenues".** Processing representatives and the Price Formula Arbitrator have documented that the historic division of revenues has been between the low 40% to the mid 50% range; yet harvesters continue to insist that the only acceptable range is between 48% and 49%. In addition significant dialogue took place about both the COAR errors and the context in which these ranges were established: during a race for history in both sectors that created atypical markets which are not sustainable in the long-term.

**Discussions About Alternative Revenue Sharing Plans.** A significant amount of time went into discussions and analysis of alternative revenue sharing plans. The discussion reached an impasse because the harvest sector stated that they would only consider new approaches to price formation if they saw some upside over the current system (the "Backstop"), and they were unwilling to change the "Backstop".

One specific example of this came out during the meeting: in 2011/12 ICE entered into a "margin sharing" agreement with one PQS/IPQ holder which at that time resulted in the highest ex-vessel prices ever paid; later in the season at least one other PQS/IPQ holder paid a higher price based on the Price Formula, and ICE then complained they had "lost \$100,000". This illustrates the failure of the current system.

## **Some of The Reasons This Process Was Not Successful**

### ***The Committee Structure***

It was NPCA's understanding that the Committee was supposed to be composed of frontline stakeholders, and made its appointments in accordance with this understanding. The harvesters however appointed two members who are not involved in the actual prosecution of the Golden King Crab fisheries, and who have a wider responsibility to ICE members in other fisheries who feared that any agreement at the GKC level would become a precedent for other fisheries. On more than one occasion the harvest sector representatives stated that they "...could not respond to any ideas under consideration until they took it to the full ICE board."

### ***Early "Agreements" That Were Not Honored***

During the first few meetings, the harvest sector representatives expressed support for specific proposals made by processing representatives, but in the end the harvest sector representatives would not reaffirm their support for any of the proposals, nor make any counter-offer. Those proposals included:

**Delivery Windows:** Season elongation and fleet consolidation (as documented in the Five Year Review) have extended the operating period for processors, and in some cases processing labor sits idle for several days between deliveries. Market timing is also critical to a processor. Initially the processing sector representatives provided some analysis of the costs associated with this down time and a modest proposal to discount deliveries outside of established delivery windows. And initially, the harvest sector agreed to the concept. They have since rejected the concept and instead have tried to shift the responsibility for delivery timing to the processing sector, by claiming that processors somehow "force" them to deliver at specific times. The reality is that the fleet has consolidated from around 17 vessels to just three, and dramatically slowed the pace of the fishery.

**Equal Access to the Binding Arbitration Process.** There are two reasons this has become a significant issue: first, the binding arbitration system was planned as a safety net for the "last man standing" who was not otherwise afforded the protection of a Coop or other remedies; second, because some of the proposals made by harvesters themselves include cost sharing aspects which a processor should be allowed to arbitrate - just as a harvest can arbitrate the performance of a processor under the current system.

Discussion paper on arbitration system  
Bering Sea and Aleutian Islands crab fisheries  
October 2012

At its December 2011 meeting, the Council received a staff report reviewing the first 5 years of fishing under the Bering Sea and Aleutian Islands crab rationalization program. After receiving that report and public testimony, the Council chose to further consider some aspects of the program, including certain provisions in the arbitration system. The Council specifically requested staff to prepare a discussion paper examining three aspects of the arbitration program: 1) examine the lengthy season approach to arbitration and the dynamics of arbitration proceedings under that approach, (including the timing of proceedings and the effects of the lengthy season approach on the relative position of the parties in arbitration), 2) the potential for publishing arbitration findings, and 3) the potential for allowing either side to initiate arbitration proceedings. This paper examines the three issues, as requested by the Council.

## Background

Under the crab program, historical harvest participants were issued quota shares. These quota shares (QS), in turn, yield annual allocations of individual fishing quota (IFQ), which are a privilege to harvest a specific poundage of crab from a fishery. Quota shares issued based on catcher vessel history yield two types of IFQ. 90 percent of the catcher vessel owner IFQ are issued as Class A IFQ, which must be delivered to a holder of individual processing quota (IPQ), are issued. The remaining 10 percent of catcher vessel owner IFQ are issued as Class B IFQ, which may be delivered to any processor.<sup>1</sup> Historical processors in the crab fisheries were allocated processor quota shares (PQS) under the program. These processor quota shares annually yield individual processing quota, which are a privilege to receive a specific poundage of crab landings made with Class A IFQ. The total issuances of Class A IFQ and IPQ are the same, creating a one-to-one correspondence between pounds of Class A IFQ and pounds of IPQ.

In the development of the program, harvesters requested that the Council consider binding arbitration as a mechanism to resolve ex-vessel price disputes between harvesters and processors. Prior to the program, harvesters often negotiated prices collectively at the beginning of each season, delaying fishing after the opening of the season until an acceptable price was offered or promising additional deliveries to the processors that offered price premiums. In a fishery that allocates both harvesting and processing privileges, these inducements are no longer feasible. The arbitration system is intended to provide a method of determining a fair price for sales of crab in the fishery.

To develop the arbitration system, the Council appointed a workgroup of harvesting and processing representatives. The group identified the following purpose and need statement to guide their discussions:

Issuing harvesting and processing quota raised concerns regarding changes in bargaining power between the harvesting and processing sectors in ex-vessel price formation. Binding arbitration is a mechanism intended to address that issue, and to help achieve the goals articulated in the North Pacific Council's Crab Rationalization Problem Statement (see Appendix A to this discussion paper).

As reflected in that workgroup's statement, maintaining the balance of bargaining power in price setting under the new share structure was the committee's primary concern. The Council purpose and need statement indirectly identifies additional objectives for the arbitration system, including the intention to

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<sup>1</sup> Holders of catcher vessel QS that holder PQS, or are affiliated with a PQS holder, receive have Class A IFQ to match to IPQ that are yielded by those PQS prior to receiving any Class B IFQ.

Discussion paper on arbitration system  
Bering Sea and Aleutian Islands crab fisheries  
October 2012

develop a rationalization program that "maintains healthy harvesting and processing sectors" and "achiev[ing] equity between the harvesting and processing sectors, including healthy, stable and competitive markets."

The arbitration system serves several important purposes in the program, including dissemination of market information to facilitate negotiations, the coordination of matching Class A IFQ held by harvesters to IPQ held by processors, and a binding arbitration process to resolve terms of delivery. The arbitration process begins with the two sectors (harvesters and processors) jointly selecting a "market analyst," who produces a market report, a "formula arbitrator," who develops a price formula specifying an ex vessel price as a portion of the first wholesale price, and a pool of "contract arbitrators," who preside over any binding arbitration proceedings. Neither the market report nor the formula price has any binding effect. Rather, they are intended to provide baseline information concerning the market and a signal of a reasonable price.

Matching of Class A IFQ with IPQ is facilitated through a process of share commitments and dissemination of information concerning available shares. Although this share matching process may aid in establishing commitments to deliver and receive Class A IFQ landings, the terms of those transactions may be disputed (i.e., the commitments need not define the terms of the delivery). An IFQ holder that is not able to resolve all terms of delivery with a processor to whom it has committed deliveries may unilaterally initiate an arbitration proceeding. IPQ holders are not authorized to initiate a binding arbitration proceeding. Once a proceeding is initiated, harvesters that are party to the proceeding select an arbitrator to preside over the specific proceeding from the pool of arbitrators jointly selected earlier. The window for initiating arbitration is 10 days long, beginning 5 days after the allocation of IFQ and IPQ. Once an arbitration proceeding is initiated with an IPQ holder, any holder of IFQ that has committed shares to that IPQ holder may join the arbitration proceeding. This ability to join is critical because the system limits each processor to a single arbitration proceeding. A last opportunity to make use of arbitration is available for harvesters that choose not to join a proceeding. After arbitration is completed, any holder of uncommitted IFQ can bind the IPQ holder to the terms of the proceeding by committing deliveries to the IPQ holder.

Binding arbitration proceedings are conducted on a "last best offer" basis. Under this system, each party to the proceeding submits a "last best offer". The role of the arbitrator is to select one offer from each of the two competing offers. In binding arbitration involving two or more harvesters, each harvester may either submit an independent offer or join a collective offer (as part of a Fishery Collective Marketing Act (FCMA) cooperative). The processor submits a single offer. For each harvester offer, the arbitrator's role is to select either that harvester's offer or the processor's offer (which applies to all harvesters).

Since the full effects of the program on the timing of fishing and marketing activities were not predictable, the arbitration system allows participants to modify the arbitration timeline. This "lengthy season" approach allows IFQ and IPQ holders that have committed deliveries to negotiate a modified schedule for arbitration. If the parties are unable to agree on the lengthy season approach, they may arbitrate whether to adopt that approach and the timing of the proceeding. Agreements to use the lengthy season approach to arbitration must be entered into prior to the opening of the applicable program fishery.

To ensure predictability and fairness, the arbitration system sets forth standards to be followed by formula arbitrators and contract arbitrators. Although different standards apply to the formula arbitrator and the contract arbitrator, the differences between the standards are very limited making the standards substantively the same. The regulations state that both the non-binding price formula and contract arbitrator's decision must "(A) Be based on the historical distribution of first wholesale revenues between



fishermen and processors in the aggregate based on arm's length first wholesale prices and ex-vessel prices, taking into consideration the size of the harvest in each year; and (B) Establish a price that preserves the historical division of revenues in the fishery while considering" several listed factors. The formula arbitrator is required to consider the "highest arbitrated price" from the previous season. To ensure that the price is generally applicable, it must apply to at least 7 percent of the IPQ in the fishery. In turn, the contract arbitrator is required to consider the non-binding price formula produced by the formula arbitrator in deciding a contract in a last best offer proceeding. These two requirements effectively create a feedback between the non-binding arbitration of the formula arbitrator and the binding arbitration of the contract arbitrator. By providing the formula arbitrator with the submissions from the binding proceedings, the formula arbitrator can provide some guidance on factors at issue in the prior year's binding proceedings. Less structured than a formal record of opinion from a binding process, this informal feedback is intended to create a flexible system under which the application of the standard is both adaptive and predictable.

Both formula and contract arbitrators are instructed to consider any relevant information presented by the parties. In this context, the standards appear to direct the arbitrators to establish a price that preserves the historical division of first wholesale revenues, while at the same time allowing them to consider other relevant information, including information relevant to the listed considerations.

#### ***Share matching and the initiation of binding arbitration***

A critical aspect of the program is the process by which Class A IFQ/IPQ are matched and binding arbitration proceedings are initiated. The one-to-one relationship between Class A IFQ and IPQ raises the importance of making available information concerning uncommitted shares and establishing an efficient system for matching those shares and initiating arbitration, in the event a negotiated settlement of delivery terms cannot be reached.

The system of negotiated and unilateral matching of shares is intended to facilitate the orderly commitment of Class A IFQ deliveries to processors holding IPQ. The process for initiating a binding arbitration proceeding is coordinated with share matching. The regulatory process for matching Class A IFQ to IPQ begins on the issuance of those shares. For the first 5 days after shares are received, holders of Class A IFQ can, by negotiated agreement, commit their shares to holders of unused IPQ. A commitment need not settle all terms of delivery, but prevents either share holder from committing their shares to a different person. After this period of negotiated commitments, holders of Class A IFQ may unilaterally commit their shares to the holder of uncommitted IPQ. In addition, at any time during the first 10 days after the period of negotiated commitments, a holder of Class A IFQ that has committed those shares to an IPQ holder may unilaterally initiate an arbitration proceeding to settle outstanding terms of delivery. This structure, under which a harvester may unilaterally commit deliveries and initiate arbitration, effectively allows a Class A IFQ holder to compel an IPQ holder to accept deliveries at the arbitrated price. IPQ holders cannot either compel an IFQ holder to commit to deliveries or initiate arbitration.

#### ***The lengthy season approach***

The arbitration workgroup recognized that the brief, prescriptive, preseason arbitration timeline may not be conducive to price settlements. To allow for flexibility, the workgroup developed an alternative approach to arbitration. Under the "lengthy season approach", the parties may agree to delay any arbitration proceeding until a specific time during the season. The lengthy season approach must be adopted prior to the season opening (which under the current timelines for some fisheries occurs prior to the end of the period for initiating arbitration). If the parties disagree on whether to adopt the lengthy season approach, the IFQ holder may choose to arbitrate either of those issues. Although not directly stated in the regulation, as a part of this arbitration, the date of the arbitration would likely be decided, as

that is the most critical aspect of any lengthy season agreement. Since the timeline for initiating arbitration and the timeline for establishing a lengthy season agreement differ, the ability of a IFQ holder to access arbitration is not consistently timed. If IFQ and IPQ are issued fewer than 15 days prior to a season, the end of the period during which an IFQ holder may enter (or arbitrate) a lengthy season agreement will expire prior to the end of the period for initiation of arbitration. If the share issuance occurs more than 15 days prior to the season opening the period for initiating arbitration will lapse prior to the period for entering (or arbitrating) lengthy season agreements expiring.

Table 1 shows the compressed time frame under which share holders are required to either negotiate terms of deliveries or arbitrate those terms under the current TAC setting schedule.<sup>2</sup> Within this time frame, harvesters and processors must match shares and either settle terms of delivery for those landings or commence arbitration for all Class A IFQ and IPQ in the two primary fisheries (the Bristol Bay red king crab and Bering Sea *C. opilio* fisheries) and any open small secondary fisheries (which may include the Western and Eastern Bering Sea *C. bairdi* fisheries and the St. Matthew Island blue king crab and Pribilof red and blue king crab fisheries).<sup>3</sup> In considering these time pressures, it should be borne in mind that most of the fishing and processing activity in the king crab fisheries occurs in late October and November. Consequently, not only must participants concern themselves with share matching and negotiations, but they also must prepare facilities, vessels, gear, processing lines and position vessels and crews for those fisheries.

**Table 1 Schedule for share matching and arbitration (2011-2012).**

Fishery	TAC Announcement	IFQ/IPQ Issuance/Start of negotiated commitments	End of negotiated commitments/Start of initiation of arbitration actions	Season opening - End of period to agree to lengthy season agreement	End of arbitration initiation period
Bristol Bay red king crab	October 3	October 6	October 11	October 15	October 21
Bering Sea <i>C. opilio</i>	October 5	October 6	October 11	October 15	October 21
St. Matthew Island blue king crab	October 3	October 6	October 11	October 15	October 21
Aleutian Islands golden king crab	July 15	August 10	August 15	August 15	August 25

Source: ADF&G TAC and closure announcements; RAM website.

### **Process for binding arbitration**

This section describes the process used once an IFQ holder has initiated a binding arbitration proceeding. The first step in that process occurs simultaneously with the initiation of the arbitration proceeding. At that time, the IFQ holder that initiated the proceeding selects a contract arbitrator to preside over the arbitration from the pool of jointly selected contract arbitrators.

The regulation provides that the arbitrator should meet with the participants as soon as possible after the arbitration is initiated to schedule the proceeding (50 CFR 680.20(h)(3)(vii)). In addition, the regulation directs the contract arbitrator to meet with the parties to determine the terms that must be included in the last best offer submissions, which may be collectively submitted by harvesters that are members of an FCMA cooperative (50 CFR 680.20(h)(3)(viii) and (xi)).<sup>4</sup> The arbitrator is limited to selecting from the

<sup>2</sup> It should be noted that due date for the market report and formula in the golden king crab fisheries will be moved to 30 days prior to the season opening under an amendment that has yet to be implemented.

<sup>3</sup> The Bering Sea *C. bairdi* fishery is divided into two fisheries, one east of 166° W longitude (the Eastern Bering Sea *C. bairdi* fishery) and one west of 166° W longitude (the Western Bering Sea *C. bairdi* fishery).

<sup>4</sup> The regulation identifies several price structures that may be included in the terms of last best offers (see 80 CFR 680.20(h)(3)(viii)). The rule also refers to the last best offers as defining the "terms of delivery" (see 80 CFR

two last best offers (50 CFR 680.20(h)(3)(viii) and (xi)). The arbitrator's finding must be delivered to the parties within 5 days of submission of the offers (or within 10 days of submission, if the arbitration takes place at least 15 days prior to the season opening, which is an impossibility under the current timelines) (50 CFR 680.20(h)(3)(xi)). Beyond these specific requirements, the arbitration procedure is undefined by the regulation. In development of the arbitration system, the Council sought to provide industry with a flexible system that could be efficiently administered by participants (through the arbitration organizations who represent them). The Council reinforced this principle in a recent action to amend the regulations to specifically provide the arbitration administrators (i.e., arbitration organizations, arbitrators, and third party data providers) with the authority to adopt procedures and make administrative decisions in addition to those specified in the regulations, provided those procedures and decisions are not inconsistent with any regulations. With the exception of quality and performance disputes, which may be arbitrated, participants in the fishery are expected to seek remedies only through civil law. Furthermore, the regulations do not provide a process for appealing an arbitration decision.

### **Contract Arbitration proceedings to date**

During the first year of the program (2005/6), two binding arbitration proceedings occurred. Both concerned deliveries in the Bering Sea *C. opilio* fishery, with one proceeding also resolving terms for landings in the Bering Sea *C. bairdi* fishery. In the second year of the program (2006/7), three arbitration proceedings were brought to resolve terms for landings in the Bering Sea *C. opilio*, Bering Sea *C. bairdi* and Bristol Bay red king crab fisheries. In the third and fourth years of the program (2007/8 and 2008/9), no proceedings were brought. In the fifth year (2009/10), three proceedings were brought, two in the Western Aleutian Island golden king crab fishery and one in the Bering Sea *C. opilio* fishery. In the sixth year (2010/11), a single arbitration occurred in the Western Aleutian Islands golden king crab fishery. In the most recent season (2011/2012), a single price has yet to be settled and may yet be arbitrated. Results of arbitration proceedings cannot be reported, but it can be reported that harvesters have prevailed in most (but not all) arbitration proceedings concerning ex vessel prices.

In all the proceedings, harvesters were represented by the Inter-Cooperative Exchange (ICE), an FCMA cooperative whose members hold of a large majority of the IFQ eligible for arbitration. While anti-trust law allows IFQ holders that are members of an FCMA cooperative (such as the Inter-Cooperative Exchange) to negotiate prices collectively, processors participating in arbitration must act independently.<sup>5</sup> Consequently, the Inter-Cooperative Exchange has access to information obtained from negotiations with each individual processor to which its members delivery crab. The result is that the Inter-Cooperative Exchange is likely to have more comprehensive information about competing processors' activities and first wholesale prices than the processor with whom it is negotiating. Costs of acquiring information and negotiation are also reduced by consolidation of this activity in a single entity. It is likely that most

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680.20(h)(3)(ix)). This statement that the last best offers define the terms of delivery, together with the breadth of factors that must be considered under the standard, clearly imply that any and all terms of delivery may be specified in an offer and decided in an arbitration proceeding.

<sup>5</sup> Under the rationalization program, IFQ holders may form "harvest cooperatives" that serve the exclusive purpose of coordinating catch of the allocations of their members. Under antitrust law, harvesters that intend to negotiate ex vessel prices collectively must comply with the requirements of the FCMA. Because of their different purposes, the limitations on and requirements for forming cooperatives under the FCMA differ from those of the rationalization program. For the first four years of the program, the Inter-Cooperative Exchange acted exclusively as a marketing and price negotiating entity for several member cooperatives. In the fifth year of the program, the Inter-Cooperative Exchange modified its structure, becoming a "harvest cooperative" under the program, as well as an FCMA cooperative for price negotiation purposes. This new structure allows the Inter-Cooperative Exchange to directly administer the IFQ harvests of its members (including any intra-cooperative share transfers).

harvesters have more information available to them through this coordinated system than they might have under a less structured program (i.e., one that did not include such an arbitration system).

In the first six years of the program, all participants who have used the binding arbitration process have relied on the lengthy season approach, whereby arbitration proceedings are delayed until a time during the crab fishing year. To date, all proceedings concerning pricing and delivery terms have occurred at the earliest in the late spring or summer, more than 6 months after the original deadline for initiation of arbitration proceedings in these fisheries. In two cases, proceedings were delayed well into the following season. The parties to one of those disputes settled their disagreement, while the other used the arbitration system to resolve the dispute. To date, arbitration has been used twice to resolve procedural issues; one of which resolved the timing of a lengthy season proceeding.

The use of the lengthy season approach has relieved the time pressure under the standard arbitration timeline and has allowed participants in both sectors to negotiate with more complete market information. Some processors, however, contend lengthy season arbitration works to their disadvantage. The reliance on the lengthy season approach (particularly, if arbitration is delayed long beyond the sale of their product) can prevent a processor from timely reconciling its books. In addition, processors also contend that harvester reliance on the lengthy season approach produces an unfair competitive advantage in arbitration proceedings by allowing the Inter-Cooperative Exchange to gather product price information from across the fishery, which can then be used selectively to induce processors that performed poorly in the product market to pay a higher price. Harvesters contend that this dynamic is important to ensure that processors aggressively pursue high prices in the product market. The Inter-Cooperative Exchange may gain an advantage (particularly in a rising market) by delaying proceedings until sales information is available from several processors, which can then be selectively used in an arbitration proceeding. In some instances, however, a processor may prefer to delay a proceeding until its product is sold, thereby knowing its net return on any offer in arbitration.

### **Processor initiation of arbitration proceedings and lengthy season arbitration**

This section consolidates the discussions of the initiation of arbitration proceedings and lengthy season arbitration. Since the prescribed arbitration process and lengthy season arbitration are two alternatives for arbitrating price, interactive effects arise from modification of either of these provisions.

Some PQS holders assert that the current system favors IFQ holders by allowing only IFQ holders to initiate arbitration. According to this argument, providing IFQ holders with the unilateral authority to initiate arbitration allows IFQ holders to control the timing of any arbitration proceeding and influence negotiations. An IPQ holder may be reluctant to assert a strong position or counter-position for fear of inducing an IFQ holder to initiate a proceeding. The extent of any advantage gained by IFQ holders, however, is affected by both the limited time for initiating arbitration and the option of using lengthy season agreements to postpone arbitration proceedings. To date, no arbitration proceedings have relied on the standard timeline for initiating arbitration. In other words, IFQ holders have never used the unilateral authority for initiating arbitration under the prescribed timeline, instead using lengthy season agreements to determine arbitration timing. To influence the timing of arbitration, IPQ holders could resist lengthy season agreements in an attempt to compel the IFQ holder to initiate an arbitration proceeding; however, whether this tactic would result in the IFQ holder initiating a proceeding is uncertain. The rules for arbitration allow an IFQ holder to arbitrate whether a lengthy season arbitration should be undertaken. It is possible that an IFQ holder would request the arbiter to allow for a lengthy season proceeding, rather than force the IPQ holder to immediately arbitrate the price. The arbiter would need to decide whether establishing a price under the prescribed timeline is more equitable than deciding a price at a later date in a lengthy season arbitration proceeding. The outcome would depend on the circumstances and the

arguments advanced by the parties. The arbiter would likely assess the benefits of establishing a price with certainty at the start of the season relative to the benefits of having additional information for establishing the price later in the season. Establishing a dollar price with certainty could be argued to be beneficial, as it would create an incentive for the processor to pursue the highest return from products, as the processor would directly benefit from any marginal sales price increase. Harvesters would be provided price certainty, but at the cost of its loss of any bonus that might be paid, if the processor achieves greater than anticipated success in the product market. Under the arbitration standard, as applied to date, IPQ holders have shared the benefits associated with improved returns with harvesters based largely on the historical division of first wholesale revenues in the fishery. The result has been that IPQ holders have less incentive to pursue the greatest total return from sales (as a portion of those returns are shared with IFQ holders). Although setting the price preseason may alter incentives, the arbiter may be persuaded to adopt lengthy season arbitration to allow for more price information to come available. Using more prices from actual sales could allow the arbiter to establish a price that more closely reflects the historical division of first wholesale revenues. Given that no processor has attempted to compel an IFQ holder to initiate a proceeding under the prescribed schedule, the response of an arbiter to these arguments is largely speculative.

In considering allowing IPQ holders to initiate arbitration, additional factors, including the interactions with other aspects of the program are important. Perhaps most relevant, the system allows for only a single arbitration proceeding with each IPQ holder. Allowing an IPQ holder the opportunity to initiate arbitration could provide a shift in leverage, by allowing the IPQ holder to dictate that the proceeding would occur under the prescribed timeline (rather than as a lengthy season arbitration). IFQ holders would then be unable to initiate a second arbitration at a different time.<sup>6</sup> Currently, IPQ holders could resist lengthy season arbitration, but with the authority to initiate an arbitration proceeding, the IPQ holder's ability to alter the timing of proceedings could be changed substantially.

As noted above, processor have concerns that delaying of arbitration to a time during or after the season under the lengthy season approach can change the negotiating positions of the parties, particularly with the current cooperative structure of the harvest sector). When proceedings are delayed, additional price information is available to IFQ holders (through monitoring crab markets and negotiations of the FCMA cooperative with several processors) that can be used in the negotiation and arbitration with an IPQ holder. While some processors may derive an advantage from delays from waiting until after their product sales are final, the business operations of others are disrupted, as the delayed arbitration prevents parties from finalizing their accounts. While ensuring that reasonable market information is available is a legitimate concern of both parties, delays can allow IFQ holders (particularly those in a single cooperative) to amass relatively comprehensive market information from all processors through their FCMA cooperative. Given the limits on IPQ holders attaining complete access to this information, extended delays may be detrimental (and may be perceived to be unfair) to IPQ holders. Under the current structure, IPQ holders could contest long delays of arbitration proceedings under the lengthy season approach through an arbiter. To date, in only one such delay has been contested. Given the lack of contested delays under the lengthy season approach, it is unclear the extent to which IPQ holders have been unfairly disadvantaged.

### **Release of arbitration decisions**

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<sup>6</sup> It is possible that an IFQ holder would respond to the initiation of the proceeding by requesting the arbiter to allow a lengthy season proceeding, instead of the proceeding on the prescribed timeline. Whether an arbiter would determine that a lengthy season proceeding should be permitted (or even whether the arbiter would consider such a request) is uncertain, since the IPQ holder would have already initiated the arbitration proceeding.

Participants in the arbitration system have questioned whether the process for release of arbitration decisions could be improved. Specifically, some participants have requested that arbitration decisions be required to provide the rationale for the decision. Participants have also suggested that release of the decisions to the public could improve information available to participants, which could aid parties in reaching price agreements.

Current rules require the contract arbitrator to release arbitration decisions to the participants on or before the later of: 1) 10 days prior to the season and 2) 5 days after the submission of last best offers by the parties (see 50 CFR 680.20(h)(3)(xi)). No further guidance is provided concerning the contents of any decision (or whether the arbitrator's decision should inform the parties of his rationale). In most cases, the arbitrator has simply informed the parties of the offer selected with no additional information concerning the rationale for the decision, as is common practice in last best offer arbitration.

The rules governing arbitration are administered through contracts among arbitration organizations representing QS holders, PQS holders, IFQ holders, and IPQ holders. These contracts are required to contain certain specific provisions that define the arbitration system (including the provisions setting the time for release of arbitration decisions). Since the system is not fully defined by the rules, the arbitration organizations are also permitted to define other procedures (and decisions concerning the administration of the system), provided those procedures are not inconsistent with any other provisions of the regulations (50 CFR 680.20(i)). Under this authority, the arbitration organizations could, by agreement, direct contract arbitrators to provide additional information concerning the rationale for their decisions, as nothing in the current rule suggests that the arbitrators should not provide a rationale for their decisions.

Current regulations provide for limited release of arbitration decisions beyond parties to the proceeding. Holders of uncommitted Class A IFQ who are not affiliated with any processor are provided with decisions, as the system provides them with the opportunity to 'opt in' to any arbitration decision by committing delivery of their Class A IFQ harvests to the IPQ holder (50 CFR 680.20(e)(2)(iii)(B)(3)). In addition, the formula arbiter for the following year is provided with decisions, which may be used in the development of the following year's formula (50 CFR 680.20(g)(2)(ix)). In addition, the regulation includes several prohibitions on the releases of decisions and information from arbitration proceedings (see 50 CFR 680.20(h)(5) and (6), 50 CFR 680.20(e)(2)(iii)(B), and 50 CFR 680.20 (g)(2)(ix)).

The arbitration regulations generally reflect an opinion received by NOAA General Counsel during development of the arbitration system concerning anti-trust issues that might arise. That opinion specifically recommended that the results of arbitration proceedings be provided only to the parties to the proceeding, arbitrators, and holders of uncommitted IFQ that are permitted to opt-in to the arbitration decision. The opinion cautions that access to decision "could influence a harvester's or processor's final offer to the arbitrator in later proceedings or facilitate pricing coordination for other seafood or in future crab seasons."<sup>7</sup> The opinion also states that:

sharing this type of current pricing information...could facilitate illicit price stabilization or even collusion. Moreover, if processors shared the results before all arbitrations were complete, a processor could alter its final offer to the arbitrator and make it closer to the price of the previous arbitrations in a manner similar to what would occur if the processors coordinated on prices.<sup>8</sup>

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<sup>7</sup> Memorandum of Debbie Feinstein, Donna Patterson, Jon Nathan (Arnold & Porter LLP) and Andrew Dick (CRA), NOAA Proposed Crab Arbitration Program, May 18, 2004 at p.5. It should also be noted that throughout the opinion, it is acknowledged that FCMA cooperatives are permitted to share information among members

<sup>8</sup> Memorandum of Feinstein, et al. at p. 34.

The opinion suggests that the release of decisions could lead non-participants to offer prices and final offers in arbitration that reflect arbitration outcomes in a manner similar to price coordination. The opinion concludes stating that:

*because we are unable to determine any procompetitive justification* for providing these entities with the results, we believe that the release of arbitration results should be limited to arbitrators and harvesters who have not committed their shares (*emphasis added*).<sup>9</sup>

In essence, the opinion suggests that a risk of use of the information in decisions for anticompetitive purposes exists and no procompetitive purpose can be determined. If those circumstances are true, prohibiting release of decisions would seem wholly justified; however, some participants in the fishery believe that release of decisions may serve a competitive price setting purpose. These participants assert that arbitration decisions can be used by participants to gauge the reasonableness of price offers under the arbitration standard. They suggest that release of decisions could be delayed until all price settlements for a season are final to reduce the risk of use of a decision for anticompetitive purposes. In the following year, these arbitrated prices could be used by participants in both sectors to gauge the application of the arbitration standard, rather than to set a specific price. Whether these possible benefits overcome the potential for use of the decisions for anticompetitive purposes is not certain. If the Council wishes to pursue a modification that allows for release of arbitration decisions, further justification for releases should be provided from proponents, including a demonstration that the release would serve a procompetitive purpose and that the potential for use of decisions for anticompetitive purposes is minimal. These justifications could be shared with NOAA General Counsel to assess whether a release of decisions could be pursued without raising antitrust concerns.

Any modification of the arbitration system to provide for the release of decisions will need to carefully evaluate the potential for the decisions to be used for anticompetitive purposes. In addition, a procompetitive purpose should be unequivocal. No release should be pursued unless it is clearly established that the risk of anticompetitive behavior is *de minimus* and a procompetitive purpose is clearly established.

### **Conclusion**

This paper addresses three potential modifications to the arbitration system: 1) allowing processors to initiate arbitration proceedings, 2) constraining the timing of lengthy season proceedings, and 3) providing for the release of arbitration decisions. If the Council wishes to pursue any modification of the system, it should proceed with the development of a purpose and need statement and alternatives that specifically define a potential action. Any proposed change in the release of arbitration decisions should also be developed in a manner that provides a procompetitive purpose and limits the potential for the use of decisions for anticompetitive purposes.

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<sup>9</sup> Memorandum of Feinstein, et al. at p. 35.

## Appendix A

### **Bering Sea and Aleutian Islands crab rationalization program purpose and need statement:**

*Vessel owners, processors and coastal communities have all made investments in the crab fisheries, and capacity in these fisheries far exceeds available resources. The BSAI crab stocks have also been highly variable and have suffered significant declines. Although three of these stocks are presently under rebuilding plans, the continuing race for fish frustrates conservation efforts. Additionally, the ability of crab harvesters and processors to diversify into other fisheries is severely limited and the economic viability of the crab industry is in jeopardy. Harvesting and processing capacity has expanded to accommodate highly abbreviated seasons, and presently, significant portions of that capacity operate in an economically inefficient manner or are idle between seasons. Many of the concerns identified by the NPFMC at the beginning of the comprehensive rationalization process in 1992 still exist for the BSAI crab fisheries. Problems facing the fishery include:*

- 1. Resource conservation, utilization and management problems;*
- 2. Bycatch and its' associated mortalities, and potential landing deadloss;*
- 3. Excess harvesting and processing capacity, as well as low economic returns;*
- 4. Lack of economic stability for harvesters, processors and coastal communities; and*
- 5. High levels of occupational loss of life and injury.*

*The problem facing the Council, in the continuing process of comprehensive rationalization, is to develop a management program which slows the race for fish, reduces bycatch and its associated mortalities, provides for conservation to increase the efficacy of crab rebuilding strategies, addresses the social and economic concerns of communities, maintains healthy harvesting and processing sectors and promotes efficiency and safety in the harvesting sector. Any such system should seek to achieve equity between the harvesting and processing sectors, including healthy, stable and competitive markets.*



C-6(e) Supplementa  
October 2012

**BERING SEA ARBITRATION ORGANIZATION**

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4917 LEARY AVENUE N.W.  
SEATTLE, WA 98107

May 1, 2012

Mr. Mark Fina  
Senior Economist  
North Pacific Fishery Management Council  
605 West 4th Avenue, #306  
Anchorage, AK 99501

RE: BSAO Comments to IPQ Issues

Dear Mr. Fina:

The Bering Sea Arbitration Association ("BSAO") is an organization that includes all Class A QS holders and Class A IFQ Arbitration holders, which together with the processor and the affiliated harvester organizations, administer the binding arbitration system (the "Arbitration System") in accordance with arbitration system regulations, primarily codified at 50 CFR 680.20 et seq. (the "Arbitration Regulations").

At the initiative of certain IPQ holders, the Council has asked Council staff to produce a discussion paper concerning the following three issues (the "IPQ Issues") relating to the operation of the Arbitration Program and the Arbitration Regulations:

1. Providing IPQ Holder with the ability to initiate arbitration.
2. Issues with Lengthy Season approach to arbitration (specifically, the time to arbitrate is extended too far past the time of harvest/processing).
3. Release of arbitration findings/opinions.

BSAO respectfully provides the following comments with regard to those IPQ Issues concerning the Arbitration System:

**BRIEF SUMMARY.**

No changes to the Arbitration System or the Arbitration Regulations are warranted at this time. The IPQ Issues can already be resolved pursuant to the Arbitration Regulations. The IPQ Issues generally restate positions that the Council already considered and rejected. The fishing industry has adapted to the Arbitration System. It is functioning as intended under the Arbitration Regulations. Amending the Arbitration Regulations would likely de-stabilize the Arbitration System, increase the frequency and cost of arbitrations, and increase the cost to industry to operate the Arbitration System. Action on any of the IPQ Issues would diminish the effectiveness of the Arbitration System as a counter-balance to the noncompetitive attributes inherent to IPQ issuance.

To date, the Arbitration System is functioning effectively. As the Council originally intended, the industry has shown the ability to adjust to the Arbitration Regulations. Share-matches are accomplished. Except for only rare instances, Lengthy Season Agreements (“LSA”) and base crab prices have been mutually agreed without arbitration. The contractors hired by the arbitration organizations and the forms of contract for those contracts have been stable. The number of arbitrations per crab fishing year has consistently decreased.

**1. Providing IPQ Holder with the ability to initiate arbitration.**

The Arbitration Regulations provide at *50 CFR 680.20 (h)(3)(v)* that the IFQ holder initiates and selects the arbitrator. There is no need to change that allocation of rights. It is both simple and time effective. Even requiring mutual consent would delay the process, when time is of the essence. Requiring mutual consent may also create a situation where arbitration is stalemated by refusal of parties to agree on the arbitrator. By authorizing their arbitration organization to contract with a contract arbitrator, IPQ holders agree that the arbitrator is acceptable. The choice of which contract arbitrator to select is, as a practical matter, tied to the process of initiating an arbitration proceeding, a right specifically and exclusively given to IFQ holders in the Arbitration regulations. Moreover, according to the earlier opinions of the Justice Department and legal advisors to the Council, the availability of arbitration to IFQ holders allowed IPQ to exist. The IFQ Holders’ right to select an arbitrator from an available pool is an important part of that balance.

In implementing the Arbitration System, the Council rejected all proposals that would have allowed an IPQ holder to initiate arbitration. The reasons for that rejection remain; namely, (i) IPQ holders derived a noncompetitive advantage through the issuance of IPQ; and (ii) providing IFQ Holders the ability to initiate arbitration counter-balances that advantage.

The Arbitration Regulations allow only IFQ holders to initiate arbitration. That doesn’t mean the IPQ holders cannot easily get an arbitration proceeding. All they have to do is refuse to enter into a Lengthy Season Approach (“LSA”) or establish a reasonable fixed base price in a fishery. In such event, the IFQ Holders would have no alternative but to initiate arbitration. Yet, except for rare instances, IFQ and IPQ holders have been able to successfully negotiate and agree to LSAs and fixed base prices prior to commencement of the season. It is simply better business to agree than to arbitrate. The infrequent arbitrations provide a reasonable indication of the competitive balance existing under the current Arbitration System.

On the other hand, granting IPQ holders the right to initiate arbitration could materially disadvantage IFQ holders, effectively eliminating the effective counter-balance the Arbitration System provided in response to implementation of IPQ. For instance, smaller IFQ cooperatives are reluctant to arbitrate. As a practical matter, they have neither the financial or research resources nor the bargaining power of a larger IFQ cooperative. For each crab fishing year, the Arbitration Regulations permit only a single arbitration per fishery per IPQ holder.<sup>1</sup> However, if an IPQ holder could initiate arbitration, it could “cherry-pick” by initiating arbitration with the

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<sup>1</sup> For now, the BSAO does not recommend any changes in the Arbitration Regulations in response in the IPQ Issues, However, in the event the Council decides to possibly change the Arbitration Regulations in response to any of the IPQ Issues, IFQ holders will have their own recommendations, including allowing more than a single arbitration per IPQ holder per fishery per crab fishing year.

IFQ holder with the least resources (that would otherwise not choose to arbitrate). The other IFQ holders matched with that IPQ holder would be forced to either (i) lose their right to arbitrate with that IPQ Holder or (ii) join in the arbitration initiated by the IPQ Holder. With only a single arbitration per IPQ holder available, unless the parties agree to delay price determination, the IFQ holder would have to adjudicate final price in that proceeding. Pre- or early season fixed price determinations are much less likely to result in a price reflective of the actual crab market for that fishery when the product is harvested and sold. More important, a low pre- or early-season final price determination in a single arbitration could easily depress the prices offered or paid by other IPQ holders.

The right to initiate arbitration includes two elements. Pursuant to 50 CFR 680.20 (h)(3)(v), the IFQ holder initiates an arbitration and selects the arbitrator. Any concern that an IPQ holder may about the IFQ holder selecting the arbitrator is *de minimus*. Pursuant to the Arbitration Regulations, the Arbitration Organizations must annually mutually agree to the hiring of each contract arbitrator. Prior to hiring, each prospective arbitrator has been fully-vetted by the respective boards of each arbitration organization. In recent years, the arbitration organizations have secured a pool of four experienced and qualified contract arbitrators.<sup>2</sup> In the event IFQ or IPQ holders become dissatisfied with a particular arbitrator, they can simply instruct their respective arbitration organization to not rehire that arbitrator for the following crab fishing year. In practice, this system has operated as intended. After the 2005 crab fishing year, the processor's arbitration organization advised BSAO that it would not agree to re-hire one of the contract arbitrators for the following crab fishing year. That contract arbitrator was not re-hired.

The costs to operate the Arbitration System are shared equally by IFQ and IPQ holders. The number of arbitration proceedings has consistently decreased for each crab fishing year. Granting the IPQ holders power to initiate arbitration would likely result in more arbitrations, thereby increasing the cost to industry to operate the arbitration system.

In addition, the stability of the Arbitration Regulations has stabilized the form of contracts and contractors hired pursuant to the Arbitration Regulations, and in turn stabilized or even decreased the cost to industry to form those contracts. Changing the Arbitration Regulations in response to any of the IPQ Issues would likely not only increase the number of arbitrations, it would increase the costs to form the required contracts.

**2. Issues with Lengthy Season approach to arbitration (specifically, the time to arbitrate is extended too far past the time of harvest/processing.)**

Pursuant to 50 CFR 680 (h)(3)(iii)(B), a lengthy season approach "...allows the Arbitration IFQ holders and IPQ holder to postpone Binding Arbitration, if necessary, until a time during the crab fishing year." Pursuant to 50 CFR 680.2, the "crab fishing year" runs from July 1 of one calendar year to June 30 of the following calendar year.

The "crab fishing year" is an excellent deadline for arbitration under a LSA. It is known and immutable. An immutable deadline is important. Other possible deadlines proposed by

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<sup>2</sup> The schedules for qualified arbitrators fill quickly. A pool of four arbitrators is needed to assure a contract arbitrator will be available for determined dates for the arbitration.

certain IPQ holders (ADF&G fishing season, percent of crab landed, produced, or sold) are less firm. ADF&G fishing seasons are subject to change. The Board of Fisheries has power to change ADF&G seasons, even during the announced seasons. What if the BOF scheduled a meeting on early closure of a crab fishery? Would an IFQ holder have to schedule a premature arbitration just to reserve the right to arbitrate in the event the "season" was prematurely closed? What if the IFQ holder didn't know about the meeting? Would it lose its right to arbitrate if the BOF closed the season early?

Similarly, tying the deadline to initiate arbitration to a certain percentage of landed, produced, or sold crab would be even more unpredictable or unworkable. How would that be defined or even determined? What if landings increased unexpectedly or exceeded expectations? Again, the IFQ holder would be left guessing the deadline for arbitration. An uncertain or changeable deadline would impose an unfair burden on the IFQ holder, and could easily result in the involuntarily loss of its right to arbitrate.

Also, using the "crab fishing year" as the deadline for initiation conforms well with the terms of the contractors annually hired by the arbitration organizations. The formula arbitrator, market analyst, and contractor arbitrators, whose functions relate to arbitration proceedings are all hired from one crab fishing year to the next.

Most important, in practice, the regulatory deadline for initiation in the Arbitration Regulations seldom determines when an arbitration actually occurs. Arbitration dates are commonly set in the LSAs between the IFQ and IPQ holder entered into at the beginning of the season. Certain IPQ holders have reasons to determine the final price earlier than others. IPQ holders have the ability to establish the arbitration dates that best fit their operations in the LSAs. The IPQ holders have considerable leverage to establish those dates. Commonly and as a practical matter, because the Arbitration Regulations allow only a single arbitration per fishery per IPQ holder, to preserve their ability to arbitrate the final price if necessary, the IFQ holders accept the dates proposed by the IPQ holder in the LSA. In the uncommon event IFQ holders cannot agree to the arbitration dates proposed by the IPQ holders, they can initiate arbitration on the LSA.

Predictability aside, there are common sense motivations for holding the arbitrations later in the crab fishing year. First, the later an arbitration is held, there will have been more crab sales, and the market information available to the parties will be more reliable. Second, IPQ holders benefit because they delay payment of the true-up price. Third, IFQ holders benefit because the true-up price is more likely to fairly represent the actual market for the crab products in that fishery.

### 3. Release of arbitration findings/opinions.<sup>3</sup>

The Council elected to adopt last best offer (“LBO”) or “baseball” arbitration for the Arbitration System. Its choice was wise. LBO arbitration has many benefits and appears to be functioning as intended in the Arbitration System. LBO arbitration is lean and mean. It is time- and cost-effective. Arbitrations are not full litigations. There is no discovery. The contract arbitrators don’t have subpoena power. The decision of the arbitrator is binding.

In LBO arbitration, the arbitrator selects one party’s last best offer. No compromise is permitted. This encourages the parties to make more reasonable offers.

Except for the selected offer, there is no written opinion. The last best offer selected by the arbitrator is the only “decision.” Because the “decision” is the last best offer selected, the arbitrator does not provide his “reasons” for selecting one party’s last best offer. *50 CFR 680.20(3)(x) & (xi)*.

The Arbitration Regulations require the arbitrator to select the last best offer and that the decision is binding. Release of that decision is severely limited under the Arbitration Regulations, and the arbitration organizations have no regulatory authority to change those limitations. Changing the Arbitration Regulations to allow release of that decision to other IPQ holders could depress the price that other IPQ holders are willing to pay, and would upset the role the Arbitration System plays to counter-balance the anti-competitive attributes associated with the issuance of IPQ.

Unfortunately, any delivery of “reasons”, even an oral summary of “reasons” for a decision, invites challenge and appeals. For example, in an early arbitration, a contract arbitrator contacted the arbitration organizations advising that the parties to an arbitration had consented to the arbitrator providing a brief, oral summary of the “reasons” for his decision. Given the parties’ mutual consent, in that instance, the arbitration organizations allowed the arbitrator to give the requested oral summary. Not surprisingly, the next day the non-prevailing party filed a multi-page motion formally requesting reconsideration (even though the system rules did not provide for it), and challenging the “reasons” stated in his summary and asking the arbitrator to reconsider his decision.<sup>4</sup> After discussing the issue with the arbitration organizations, the motion was rejected.

For confidentiality and anti-competitive purposes, the Council severely restricted release of arbitration “decisions.” Similarly, release of any information presented or arising from an LBO arbitration is also restricted. Pursuant to the Arbitration Regulations each party to an arbitration must sign a “confidentiality agreement.” Release of an arbitrator’s “reasons” would also unavoidably likely also result in the release of confidential party information.

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<sup>3</sup> To avoid possible confusion, one must carefully distinguish the terms used in discussing this particular IPQ Issue. Pursuant to the Arbitration Regulations, the contract arbitrator issues a “decision.” That decision is simply the last best offer selected. Use of the terms “findings” or “opinions” are ambiguous and may be misleading. For instance, in a full trial, a court issues “findings” of fact and law as part of its written “opinion.” Thus, in this discussion “findings” and “opinion” are the “reasons” for a decision, not the decision itself.

<sup>4</sup> Because contract arbitrator decisions are binding, after review of the Arbitration Regulations and consultation with the arbitration organizations, the contract arbitrator disallowed the motion.

Mr. Mark Fina  
May 1, 2012  
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As contemplated in *50 CFR 680.20(h)(5)-(6)*, evidentiary materials provided in arbitrations should be NOT be made public. Making materials public creates potential anti-trust problems. IPQ holders would like the benefit of having and using other IPQ holder's data that they are precluded from receiving or using under U.S antitrust law.

The general decrease in the number of arbitrations since the implementation of the CR Program has occurred, in part, because the industry has accepted the "formula" developed for the two major fisheries, BBR and BSS. In addition, as the industry works together to develop a consistent formula for the WAG and EAG fisheries, arbitrations in those fisheries should also decrease. The uncertainty of results inherent to LBO arbitration is also a factor. IFQ and IPQ holders' willingness to mutually agree and not arbitrate is a strong indicator that the Arbitration Regulations as implemented are functioning as intended.

The LBO system is predicated on quick and cost-effective proceedings. Preparing "reasons" would increase the cost of the system and delay issuance of the decision. Moreover, LBO arbitrations promote settlement because the outcomes are uncertain and may result in an undesirable outcome. The purpose is not to provide a roadmap for arbitration success. If "reasons" were issued, parties would be able to prepare their next arbitration tailored to the previous "reasons" for the decision and would be less likely to settle.

Very truly yours,  
BERING SEA ARBITRATION ORGANIZATION

Erling Jacobsen

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Arbitration Org.,  
email=boatsafety@gmail.com, c=US  
Date: 2012.09.07 20:02:39 -08'00'

By:

Erling Jacobsen  
Executive Director



# PUBLIC TESTIMONY SIGN-UP SHEET

WORKGROUP Report

Agenda Item: C-6(d) BSAI Binding Arbitration - GKC

	NAME (PLEASE PRINT)	TESTIFYING ON BEHALF OF:
1	Joe Sullivan	ICE
2	Larry Cotter	ARICDA
3	<del>Mark</del> Jake Jacobsen	BSAO
4	David & Jim Capri	Alaska Trojan
5	Mark Sotthanson	Westwood Seafoods, Inc.
6	Brett Reasar	Unisea
7	Steve Minor	
8	Dick Tremaine	AK King Crab Harvester Assoc
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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.

## **C-6 (b) Initial Review of BSAI Crab active participation requirements**

*Motion: The Advisory Panel recommends the Council take no further action on agenda item C-6 (b) at this time. Rather, the Council should require the Bering Sea crab cooperatives to provide an annual report to the Council describing the measures they are taking to promote quota acquisition by crab crewmembers and active participants. These annual reports should include the following: a description of any efforts to promote QS acquisition by crab crewmembers and active participants and the number of transactions whereby QS is transferred to crab crewmembers and active participants. Motion passed 15-6.*

### **Reasons for supporting the motion included:**

- Inadequate description of specific objectives and benefits of the alternatives
- Little understanding of unintended consequences of moving forward with current motion
- Current motion easily allows for non-active participants to continue purchasing QS
- Significant administrative and enforcement burden on agency under current motion
- Analysis fails to capture powerful reason for active participants to purchase QS- they have a higher profit potential if QS fished on board vessel they own
- Many issues likely to arise in the future that will require Council action if the current motion moves forward. A few examples include:
  - developing ownership thresholds that would be meaningful but still encourage investment in the fishery
  - developing provisions for vessel replacement;
  - developing procedures for dealing with QS holdings where the holder may not meet active participation requirements on an ongoing basis
  - CDQ groups and communities not allowed to purchase QS
  - cooperative ownership of vessels would only work for QS holders with large holdings
  - new entrant opportunities would be limited
  - active participation being based on active crab vessels is difficult with radical swings in crab TACs and accompanied swings in fleet size
- RoFO process has support of some crab crewmembers and active participants as evidenced in December 2011 public testimony and letters to the Council
- RoFO process has support of Dock Street Brokers
- RoFO process endorsed by Council staff as likely “to result in owner quota share coming available to persons active in the fishery” as long as ICE members “operate in the spirit of the provision.”
- Industry is better equipped to privately monitor issues such as these.
- Industry has built web tools to move forward with a private solution.



### **C-6 (c) Discussion paper on BSAI Crab Cooperative Provisions for Crew**

*Motion: The Advisory Panel does not recommend moving forward with a regulatory amendment to address crew compensation at this time. Motion passed 13-7*

#### **Reasons for supporting the motion included:**

- Voluntary lease rate cap appears to have been effective in halting gradual erosion of the percentage of the gross paid to crew, according to industry data
- EDR data is being improved and will include better lease rate data in future, current data is extremely questionable
- Daily compensation has not declined post-rationalization, while the employment stability and predictability of compensation have substantially improved.
- Implementing a "minimum wage" for crab crew would likely communicate an acceptable minimum pay to some owners thereby hurting crew
- If owners want to take advantage of crew, they will find a way to do so regardless of Council action (i.e. increasing number of crew and working round the clock)
- Difficult to determine what is appropriate for any sort of minimum as if it is set too low it is ineffective if too high it disrupts new entrants
- Regulating and enforcing this sort of action would be extremely difficult

### **C-6(f) Crab Economic Data Reporting – Review forms and draft regulations**

*Motion: The AP believes the forms and draft regulatory package are consistent with the Council motion to revise EDR program and recommends the Council approve the package for implementation. Motion passed 20-0.*

#### **Reasons for supporting the motion included:**

- NMFS revised forms and provided drafts to industry months ago
- Industry workgroup has reviewed revised forms and provided feedback
- Revised forms are big improvement:
  - o less confusing
  - o more accurate data will result
  - o removed duplicative data elements
  - o much less of a burden on industry

CC(d)  
Mark  
Johansson

YEAR	COUNT(DISTINCTPROCESSOR	First wholesale p	PRR*	EX_VESSEL	Annual division	Sackton's COAR first wholesale prices	Difference
1990	10	\$7.0704	0.602	\$3.2002	45.26%	7.07	0.000
1991	3	Conf	0.426	\$3.0545	Conf	5.91	
1992	4	\$5.1033	0.094	\$2.1318	41.77%	5.10	0.003
1993	8	\$4.5164	0.533	\$2.4212	53.61%	4.52	-0.004
1994	8	\$6.1816	0.862	\$3.4908	56.47%	6.18	0.002
1995	7	\$5.9438	0.562	\$2.9393	49.45%	5.94	0.004
1996	9	\$5.1619	0.591	\$2.1806	42.24%	5.16	0.002
1997	6	\$4.6528	0.585	\$2.2909	49.24%	4.65	0.003
1998	7	\$4.1263	0.523	\$1.9258	46.67%	4.13	-0.004
1999	6	\$7.1151	0.569	\$3.2728	46.00%	6.77	0.345
2000	6	\$7.2405	0.585	\$3.3888	46.80%	5.41	1.830
2001	5	\$7.0645	0.66	\$3.3355	47.22%	7.06	0.004
2002	5	\$7.3784	0.589	\$3.4212	46.37%	7.34	0.038
2003	6	\$7.7718	0.591	\$3.5519	45.70%	7.77	0.002
2004	5	\$5.8447	0.519	\$3.0754	52.62%	5.84	0.005
2005	5	\$5.9290	0.567	\$2.7373	46.17%	5.88	0.049
2006	5	\$4.2728	0.327	\$1.9175	44.88%		
2007	5	\$5.3355	0.637	\$2.1638	40.56%		
2008	5	\$6.7860	0.588	\$3.5825	52.79%		
2009	5	\$5.0415	0.597	\$2.4452	48.50%		
2010	7	\$7.6637	0.732	\$3.8020	49.61%		

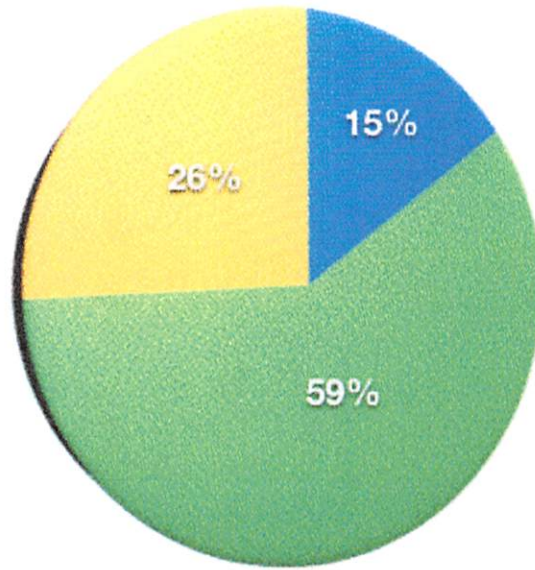
\*PRR Calculation took the lbs bought in coar\_buy (which were all wholefish), subtracted whole fish in coar\_prod at 1 for 1

\*\*Query filtered out Catcher Processors and areas A-D and Z

Note: difference from Sackton COAR data in 1999 and 2000

YEAR	FOB	EVP	%	TOTAL GKC TAC in pounds (Class A shares Only)	Gross EVP Payments
2005	\$5.9290	\$2.7373	46.17%	3,383,868.00	\$9,262,530.76
2006	\$4.2728	\$1.9175	44.88%	3,385,999.00	\$6,492,643.98
2007	\$5.3355	\$2.1638	40.56%	3,383,869.00	\$7,322,058.93
2008	\$6.7860	\$3.5825	52.79%	3,553,083.00	\$12,728,921.76
2009	\$5.0415	\$2.4452	48.50%	3,553,178.00	\$8,688,191.01
2010	\$7.6637	\$3.8020	49.61%	3,553,180.00	<u>\$13,509,148.31</u>
				<b>A Share Revenues</b>	<b>\$58,003,494.75</b>

Notes: Based on COAR Data  
2011 data not included; 2011 saw historic high market prices.



- IPQ Revenues
- Active IFQ Revenues
- Lease Payments

**Leasing By Inactive QS/IFQ Holders**

**EAG CV IFQ - 60.3%, Rate 50% - 60%**  
**WAG CV IFQ - 38.3%, Rate 20% - 25%**

	Total IFQ lbs	Leased IFQ lbs	% lbs leased of total	EVP	Total fishery value	Lease rate	Value of leased lbs	Leasing profit	% value lost from leasing
EAG	2,701,995	1,635,619.972	60.53%	\$4.12	\$11,132,219.40	50%	\$6,738,754.28	\$3,369,377.14	30.27%
WAG	1,374,924	527,750.1605	38.38%	\$4.12	\$5,664,686.88	20%	\$2,174,330.66	\$434,866.13	7.68%



# PUBLIC TESTIMONY SIGN-UP SHEET

Agenda Item: C-6(e) Discussion paper binding arbit

	NAME (PLEASE PRINT)	TESTIFYING ON BEHALF OF:
1	Take Jacobsen	BSAO
2	ENZABETH Wray	WESTWARD SFDS
3	Mark Jo Hahnson	Westward Seafoods
4	<del>Brett Peterson</del>	<del>Westward</del>
5	Steve Minor	NPLA
6	Joe Sullivan	ICE
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Steve  
Minor  
Cbe

**Overpayment based on COAR  
corrections**

DIFF AVG 1.2228%  
DIFF MEDIAN 1.4965%

YEAR	FOB	EVP	%	TOTAL GKC TAC in pounds (Class A shares Only)	Gross EVP Payments	Overpayment based on AVG	Overpayment based on median
2005	\$5.9290	\$2.7373	46.17%	3,383,868.00	\$9,262,530.76	\$113,263.30	\$138,612.20
2006	\$4.2728	\$1.9175	44.88%	3,385,999.00	\$6,492,643.98	\$79,392.80	\$97,161.31
2007	\$5.3355	\$2.1638	40.56%	3,383,869.00	\$7,322,058.93	\$89,534.98	\$109,573.37
2008	\$6.7860	\$3.5825	52.79%	3,553,083.00	\$12,728,921.76	\$155,650.73	\$190,486.15
2009	\$5.0415	\$2.4452	48.50%	3,553,178.00	\$8,688,191.01	\$106,240.21	\$130,017.30
2010	\$7.6637	\$3.8020	49.61%	3,553,180.00	\$13,509,148.31	\$165,191.43	\$202,162.11
						<b>\$709,273.45</b>	<b>\$868,012.43</b>

**C6(e) – Crab Binding Arbitration**  
**October 8, 2012**

The Council is interested in receiving annual reports from the binding arbitration organizations to allow the Council to assess whether the system is continuing to fulfill the expectations established in the program.

The Council requests the binding arbitration organizations provide regular reports on how the arbitration system is working, how many parties are using the system, and any issues or problems they identify that could be addressed by the Council. When feasible, the Council requests a joint report.

The Council directs staff to initiate analysis of:

1. Lengthy Season Agreements – The deadline for an IFQ holder to initiate arbitration shall be (30, 60, 90) days after the opening of the specific crab season.
  - a. The time period shall be the same for all rationalized crab fisheries.
  - b. The time period may differ for each rationalized crab fishery.