

MEMORANDUM

TO: Council, SSC and AP Members  
FROM: Chris Oliver *Chris*  
Executive Director  
DATE: December 1, 2010  
SUBJECT: Crab management

ESTIMATED TIME 14 HOURS (all C-2 items)
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ACTION REQUIRED

- (a) Receive BSAI crab program 5-year review.
- (b) Initial review of BSAI crab right of first refusal modification.
- (c) Initial Review and Final Action of BSAI regional exemption.

BACKGROUND

- (a) BSAI Crab program 5-year report.

In the development of the crab rationalization program, the Council requested a review of the program five years after its implementation. In response to this request, staff prepared a paper reviewing several aspects of the performance of the program to date. The paper was included in a mailing to the Council in mid-November. The paper reviews the distribution of allocations to both harvesters and processors under the program and examines changes in those distributions. The paper goes on to examine the participation patterns and distribution of activities of both sectors and changes in their operations. The paper also examines the effects of the program on crews in both sectors. Changes in ex vessel pricing brought on by the share structure and arbitration system of the program are also examined. Entry opportunities for both sectors are examined. Changes in management arising as a result of the change in allocations created by the program, as well as changes in management costs, are examined. The effects of the program on biological condition of crab stocks are also briefly discussed. The paper also includes two appendices; the first discusses social effects of the program; the second discusses the effects of the program on safety in the fisheries.

At its December 2009 meeting, the Council tabled a motion (last revised at its December 2008 meeting) containing alternatives to modify the program until it receives this review. A copy of that tabled motion is attached as Item C-2(a).

- (b) Initial review of BSAI crab right of first refusal modification.

At its February 2010 meeting, the Council revised alternatives for three actions that would modify community rights of first refusal on processing shares in the BSAI crab fisheries.

The first action would extend the time to exercise the right from 60 days to 90 days and the time to perform under the contract from 120 days to 150 days.

The second action would limit circumstances under which the rights would lapse. Currently, rights of first refusal lapse, if the community fails to exercise the right on a processor quota share (PQS) transfer or if the yielded IPQ are used outside the community of the right holder for three consecutive years. The action considers three options to the status quo. Under the first option, the provision under which rights lapse after three years of IPQ use outside of the community of the right holder would be removed. The second option would provide that the right lapses, if the right holder fails to exercise the right on a transfer of PQS that triggers the right. In addition, this second option would provide for the shifting of the right to the community in which the IPQ are used either immediately, after 3 years, or after 5 years. Under the third option, any holder of PQS that is subject to a right of first refusal on implementation of the program would be required to maintain a contract providing for a right of first refusal.

The third action would limit the assets to which the right applies. Currently, the right applies to any assets included in a contract that also includes PQS to which the right applies. The proposed action would apply the right to either: 1) PQS only (and no other assets) or PQS and any community-based assets included in the transaction. The proposed actions also include provisions for determining community-based assets to which the right applies and defining the price of the PQS (and any other assets to which the right may apply). To further the development of this action, the Council has also requested staff to examine a proposed structure defining the administration of the right.

The analysis identifies aspects of the second and third actions that will need further definition prior to Council action. The executive summary to the analysis is attached hereto as Item C-2(b).

(c) Initial Review and Final Action of BSAI regional exemption.

Based on public testimony from stakeholders concerning the potential need to address circumstances that might prevent compliance with regional landing requirements, the Council has developed alternatives to create an exemption from regional landing requirements under the BSAI crab rationalization program. The exemption would be established through contractual arrangements among stakeholders (including IFQ holders, IPQ holders, and community or regional representatives). At its April meeting, the Council adopted for analysis alternatives defining the exemption. The executive summary of the analysis is attached (see Item C-2(c)). In considering this action, the Council should note the description of alternatives in the analysis. At the end of that section, staff has reformatted the alternatives with one section devoted to the regulatory action proposed and another section providing a statement of Council intent. This reformatting is suggested to clarify the specific regulatory changes directed by the action. While the Council intent remains an important part of this action, the blending of intent statements with the regulatory action could create uncertainty concerning the scope of regulatory changes intended by this action. The reformatted alternatives are intended to avoid any potential uncertainties.