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AGENDA C-1(a)
OCTOBER 2002

MEMORANDUM

TO: Council Members
FROM: Chris Oliver
Executive Director
DATE: September 23, 2002
SUBJECT: Crab Management

ESTIMATED TIME
8 HOURS
For All C-1 Items

ACTION REQUIRED

Provide clarification on aspects of the June 2002 motion.

BACKGROUND

At its June 2002 meeting the Council adopted a motion identifying a preferred alternative for rationalizing the Bering Sea/Aleutian Islands crab fisheries (Item C-1(a)(1)). Although the motion identifies a comprehensive management structure, the intent of the Council concerning certain items requires clarification for preparation of the environmental impact statement for these fisheries. Clarification of the following items will aid the preparers of the EIS:

- 1) No control date on processor shares ownership cap grandfather provision - Ownership caps on harvest shares and caps on vertical integration both have control dates that would prevent persons from acquiring shares in excess of specific caps. The Council did not explicitly specify a control date for the grandfathering of processor shares in excess of that cap. The Council should clarify whether the control dates are intended to apply to the consolidation of processing shares.
- 2) Ownership/use cap distinction - The current council motion contains several provisions that limit ownership and use of the harvest and processing shares. These provisions include the following:
 - 1.6.3 contains provisions limiting the ownership of QS
 - 1.6.4 contains provisions limiting processor ownership of QS
 - 1.7.4 contains provisions limiting a vessels use of IFQs
 - 2.7.1 contains provisions limiting ownership of the PQS pool
 - 2.7.2 contains a use cap of 60 percent for the Northern region opilio crab fishery

Application of these provisions requires that the Council determine the shares subject to the ownership cap. Different levels of consolidation would be permitted under different interpretations of the scope of the caps. The following different interpretations are possible:

- A) Ownership caps limit only ownership of the QS and PQS, which carry a long-term privilege.

- B) **Ownership caps limit ownership of the QS and PQS, which carry a long-term privilege, and IFQs and IPQs, which are annual allocations.**

Application of the caps to both types of shares would be consistent with interpretation of caps in the halibut and sablefish IFQ program, in which use caps are interpreted as limiting IFQ use and the ownership of both QS and IFQs. A similar broad interpretation in this program would apply the ownership caps to both the ownership of QS and PQS and IFQs and IPQs. This broad interpretation would have two primary effects. First, this interpretation would prevent individuals from accumulating shares in excess of the cap through leasing arrangements. Long term leasing, unlimited under a narrow interpretation of the caps, could allow a person to effectively control shares well in excess of cap. Second, a broad interpretation of the cap would also operate as a use cap since IFQ holdings determine use. Under the narrow interpretation, the only "individual" use caps applicable to either harvesting or processing shares would be in processing in the North region *C. opilio* fishery.¹ Similar to IFQ and IPQ ownership caps, individual use caps would prevent consolidation of the fishery beyond that permitted by narrowly interpreted QS and PQS ownership caps. Each shareholder's share use would be limited to the specified cap.

Although custom processing is permitted by the Council motion, the applicability of the limits on ownership and use to custom processing should be clarified. Although custom processing can provide additional opportunities and markets for harvesters, if custom processing is permitted in excess of the cap, the resulting consolidation could limit markets for deliveries to harvesters.

- 3) **Norton Sound red king crab fishery CDQ allocation** - The Council action applies to several of the BSAI crab fisheries, but excludes the Norton Sound red king crab fishery. The Norton Sound fishery was excluded from the rationalization program because its currently regulated under a super exclusive permit program that prohibits its participants from participating in any of the other BSAI crab fisheries. This Norton Sound permit rules are for the benefit local, small vessel participants in that fishery. Section 4, Option 3 of the Council motion provides that the CDQ allocation would be increased to 10 percent for "all crab species". Since the Norton Sound fishery is part of the CDQ program but is not part of the rationalization program, an inference could be drawn that the motion is intended to increase the CDQ allocation in the Norton Sound fishery to 10 percent. The absence of discussion of the Norton Sound fisheries during deliberations suggest that the increase in CDQ allocations does not apply to the Norton Sound fisheries.
- 4) **Adak allocation in the WAI(Adak) golden king crab fishery** - The Council motion provides for the allocation of unused resource (up to 10 percent) in the WAI (Adak) golden king crab fishery to the community of Adak. The Council will need to decide the entity that will receive this allocation or outline the method by which the entity will be determined.
- 5) **Regionalization of the initial allocation in the WAI (Adak) golden king crab fishery** - In the Council's motion, the WAI golden king crab fishery is regionalized by designation of 50 percent of A shares (and corresponding processor shares) as west shares and by the remaining 50 percent of A shares (and corresponding processor shares) being undesignated. The Council should specify the method by which these regional designations will be made.

¹ The vessel use cap, which is double the individual ownership cap, would limit use of shares on a single vessel. The vessel use cap, however, would not prevent an individual from using any amount of shares on multiple vessels.

Two methods have been suggested. The Council may choose different methods for harvesters and processors, if appropriate. The methods are:

- A) Divide each allocation of shares 50 percent west and 50 percent undesignated. This could be justified on the basis that it would treat all shareholders equally. This method could result in allocations to persons in the west despite having no history or facilities in the west.
- B) Allocate the 50 percent west shares to participants with facilities (or history) in the west. If the allocations of those with facilities (or history) in the west does not equal 50 percent, the remaining west allocation could be allocated on a pro rated basis to participants without facilities (or history) in the west. These remaining west shares could be pro rated so that each shareholder with west facilities (or history) would get the same portion of its initial allocation as west shares. This could be justified as a means of minimizing allocations to participants in an area in which they have no historical participation (or no facilities).

Under either method share trades and custom processing may be required for efficiency. The number of those transactions might be reduced under option B.

- 6) Catcher/processor definition - A catcher/processor must be defined for purposes of applying the restriction on deliveries of B shares to catcher/processors (Section 1.3.3(b)). In a share based program, definition of this sector can be problematic because vessels used as catcher/processors are also used as floating processors. For purposes of implementing this provision, the Council must decide when a vessel is acting as a floating processor, as opposed to a catcher/processor. Under the current regulations of the State of Alaska, a vessel becomes a floating processor by registering with and providing notice of location to ADF&G (see 5 AAC 34.055 and 5 AAC 35.055).
- 7) Sector cap on catcher/processors - Catcher/processors are permitted to purchase PQS from shore based facilities for use within 3 miles of shore (Section 1.7.2.3, Option 2). The "catcher/processor sector" also is capped at "the aggregate level of the initial sector-wide allocation" (Section 1.7.2.3, Option 8). These provisions together raise several questions:
 - A) Does the catcher/processor sector-wide cap limit the ownership and use of PQS and IPQ by catcher/processors. Deliberations suggest that the catcher/processor sector-wide cap applies only to catcher/processor shares and not to the use or ownership of processing shares.
 - B) Are catcher/processors permitted to purchase PQS and Class A QS for use together as catcher/processor QS. If so, would that use be capped at the initial allocation, in effect limiting total catcher/processor activity to a share of each fishery in the amount of the initial allocation of catcher/processor QS. Deliberations suggest that catcher/processor shares cannot be created by combining PQS and Class A QS.
 - C) Would the cap on the aggregate level of the initial sector-wide allocation affect the ability of catcher/processors to purchase catcher vessel QS and IFQ for delivery to shore plants. Deliberations suggest that the catcher/processor sector-wide cap applies only to catcher/processor shares and not to the use or ownership of catcher vessel harvest shares.

- 8) Regionalization of PQS allocations to catcher/processors - Some catcher/processors have taken delivery of harvest during the qualifying years and meet the processor eligibility criteria. Under the rules of the program these catcher/processors would be allocated PQS for this processing activity. These PQS should be regionalized for consistency with the corresponding Class A QS pool. A few different alternatives exist for regionally classifying these shares:
- A) The shares could be regionally designated based on the historic area of processing. This would require accurate location records for processing history of these vessels, which might be difficult to obtain and verify.
 - B) These shares could be regionally designated by a one time choice of the share recipient made at the initial allocation. This would permit the recipient of the shares to make the designation based on operating requirements and for efficiency.

Under either of the potential methods for designating PQS, the coordination of regional shares between the two sectors will not be greatly affected, since the difference between regional distribution of harvest and processing shares will be rectified with an adjustment of harvest shares at the initial allocation.

Allocations to catcher/processors in the Western Aleutian Islands (Adak) golden king crab fishery could be subject to the rule selected for all other fisheries or all allocations could to catcher/processors in that fishery could be designated as West to accommodate processors that have no facilities or history in the West in that fishery (See 5 above).

- 9) Definition of a lease - The word "not" was omitted from the definition of a lease. Under the current language a lease would occur when an IFQ is used on a vessel on which the holder of the "underlying QS is present." (Section 1.6.2)
- 10) Grandfathering vessel use allocations in excess of the cap - The current vessel use cap provision does not appear to grandfather vessels with qualified catch in excess of the vessel use cap. All other activities of harvesting and processing are subject to the grandfathering of historical activities. If grandfathering provisions are intended to apply to all activities, vessels that are the basis for an allocation in excess of the vessel use cap would be grandfathered with respect to that allocation.
- 11) Cost recovery definition - The Council motion does not specify the details of the cost recovery arrangement. The current motion contains two provisions for the allocation of funds from the cost recovery program. One section allocates 25 percent of the collected funds to a low interest loan program for captains and crew (Section 1.8.1). A second provision would divide the remaining fees proportionally (Section 5, Option 5). These provisions suggest that a cost recovery program would be implemented but do not specify the amount of funds to be collected or from whom (i.e., from harvesters, processors, or both). These two different aspects of the program should be specified:
- A) The entity or entities from whom cost recovery funds should be collected.
 - B) The amount of funds to be collected from each such entity.

The Magnuson-Stevens Act currently authorizes the collection of up to 3 percent of ex vessel revenues from the harvest sector. This amount could be collected from either sector or could be split between the two sectors.

- 12) Regionalization of the WAI (Adak) red king crab fishery - Class A harvest shares and the corresponding processing shares are regionally designated under the program. While historical activity in each sector determines the regional designation of the specific shares, the overall regional split is based on the processor historical activity during the qualifying years. Harvest shares are subject to an adjustment so that the regional allocations of two sectors will be equal. The processor share allocation in the WAI (Adak) red king crab fishery would be based on the historical landings in the WAI (Adak) golden king crab fishery. No landings in the golden king crab fishery were in the North during the qualifying years. The Adak red king crab fishery would therefore be entirely South. Records from the WAI (Adak) red king crab fishery show that a portion of the harvests in the qualifying years was delivered in the North region. Anecdotal evidence suggests that these deliveries were made at the end of the season by catcher vessels that stored their pots in the Pribilofs. The Council should verify that it intends this fishery to be regionally designated based on the processing allocation, which results in the entire fishery being designated South.

- 13) Rules governing cooperatives - The Council motion describes several purposes for including cooperatives in the program and a general description of the function of cooperatives. The motion, however, lacks some clarity on the rules that would govern cooperatives and how those rules differ from the rules governing IFQ holders that do not join cooperatives. The following rules are consistent with the Council motion:
 - A) Exemption from use caps - Cooperative members would not be subject to either the individual or vessel use caps, which would apply to IFQ holders that are not cooperative members.
 - B) Application of ownership caps - To effectively limit ownership, the number of shares (IFQs and QS) that each cooperative member could bring to a cooperative would be subject to the ownership caps (with initial allocations grandfathered).
 - C) IFQ allocations to cooperatives - The annual allocations of IFQs of cooperative members would be made to the cooperative, with use of those shares governed by the cooperative agreement.
 - D) Leasing - Leasing among cooperative members would be unlimited. For IFQ holders that are not cooperative members, leasing would be prohibited after 5 years.
 - E) Inter-cooperative transfers - Transfers between cooperatives would be undertaken by the members individually, subject to ownership caps. Requiring the inter-cooperative transfers to occur through members is necessary for the application of the ownership caps.
 - F) Four entities are required for a cooperative - The requirement for four owners to create a cooperative could be interpreted two ways. The AFA requires four unique entities to form a cooperative. Independent entities must be less than 10 percent common ownership without common control. A weaker standard would not consider common ownership but simply require four distinct QS owners.

Adak Allocation

From Council's June motion on crab:

4. Community Development Allocation (based on existing CDQ program):

Option 2. Expand existing program to all crab fisheries approved under the rationalization program with the exception of the Western AI brown king crab.

Option 5. For the WAI brown king crab fishery, the percentage of resource not utilized (difference between the actual catch and GHL) during the base period is allocated to the community of Adak. In any year, that sufficient processing exists at that location, the percentage of the difference between the GHL and actual catch, that was not harvested in these 4 years is not to exceed 10%.

This paper is intended to help the Council determine the entity to receive the Adak community allocation. The State of Alaska has suggested that the Aleut Corporation represent the community of Adak for this purpose.

The rationale for supporting Adak through a direct allocation is premised on Adak's exclusion from the CDQ Program. The community was heavily populated by the Aleut people at the beginning of the historical era, but was eventually abandoned in the early 1800s as the Aleut hunters followed the Russian fur trade eastward. Subsistence activities continued on and around the island, however, until World War II. The military was engaged in activity on Adak Island during World War II, and a Naval Air Station was developed there after the war. Military operations on the island likely prevented Adak from being certified as a Native village under the Alaska Native Claims Settlement Act (1971), one of the qualifying criteria for community eligibility in the CDQ Program.

The Naval Air Station on Adak was officially closed on March 31, 1997, and upon closure, the majority of Adak Island and the naval facilities were acquired by the Aleut Corporation, the Alaska Native regional corporation of the Aleutian/Pribilof region. A land transfer agreement was concluded between the Department of the Interior and the U.S. Navy/Department of Defense. While a portion of the island will remain under U.S. Fish and Wildlife Service management, the land exchange will result in approximately 47,000 acres of the northern portion of Adak being transferred to the Aleut Corporation.

The Federal government and the State of Alaska fully support the redevelopment of the community of Adak. Under the Base Closure Community Assistance Act of 1993,¹ Congress made the following findings:

3) It is in the interest of the United States that the Federal Government facilitate the economic recovery of communities that experience adverse economic circumstances as a result of the closure or realignment of a military installation.

¹ The updated statute is the Base Realignment and Closure Act or BRAC.

(4) It is in the interest of the United States that the Federal Government assist communities that experience adverse economic circumstances as a result of the closure of military installations by working with such communities to identify and implement means of reutilizing or redeveloping such installations in a beneficial manner or of otherwise revitalizing such communities and the economies of such communities.

(7) The Federal Government may best contribute to such reutilization and redevelopment by making available real and personal property at military installations to be closed to communities affected by such closures on a timely basis, and, if appropriate, at less than fair market value. (Sec. 2901)

The Congressional language implies that economic reuse/redevelopment is the highest priority of BRAC. Further, it is the policy of the Department of Defense (32 CFR Part 175) to help communities negatively affected by base closures to achieve economic recovery based on local market conditions and locally developed reuse plans. To further this purpose, the Department of Defense identifies a Local Redevelopment Authority (LRA) in each base closure community. The LRA is defined as any authority or instrumentality established by state or local government and recognized by the Secretary of Defense, through the Office of Economic Adjustment, as the entity responsible for developing the redevelopment plan with respect to the installation or for directing implementation of the plan. Under 32 CFR Part 175, Revitalizing Base Closure Communities - Base Closure Community Assistance: "The LRA should focus primarily on developing a comprehensive redevelopment plan based upon local needs. The plan should recommend land uses based upon an exploration of feasible reuse alternatives" (Section 175.7). The Aleut Corporation is the recognized LRA in Adak.

Given that BRAC's focus is on economic redevelopment of the community, and that the Aleut Corporation is identified as the official LRA, this may provide sufficient justification for both allowing a community allocation to Adak and making that allocation to the Aleut Corporation. Designation of the Aleut Corporation as the LRA may be atypical in the sense that most of the guidance governing LRAs states that they should have a broad-based membership, including, but not limited to, representatives from those jurisdictions with zoning authority over the property. Thus, typically the LRA is a local government or commission with broad representation. However, as noted previously, the Aleut Corporation will control a substantial amount of the northern portion of Adak in the pending land exchange and does own the majority of the buildings located on the northeast half of the island, including the airport, docks, and fuel farm.

Considering that the Council's motion is for a "community development allocation," intended to benefit the community of Adak as a whole, a local governmental organization (City of Adak) or other entity with a broader representation of the entire community, may also be appropriate to receive the allocation. It is not necessarily intuitive that a community development allocation be made to the regional Native corporation, considering that the corporation has a specific mission and direct obligation to an identified group of shareholders.² In addition, while the Aleut Corporation is the recognized LRA in the community of Adak, it represents shareholders throughout the region (and beyond), including areas on the Alaska Peninsula and the Aleutian, Shumagin, and Pribilof Islands.

²The SSC noted, in its review of Amendment 66 (Gulf Community Quota Share Purchase), that in order for the benefits of a community allocation or fishing opportunity to be received by the whole community, it may be necessary for the entity receiving the allocation to be formed for the explicit purpose of managing those fishing resources and an entity that represents the community as a whole and not one segment of the population.

Understanding these concerns, the Council has some latitude in designating the entity to receive the crab allocation on behalf of Adak. The State supports using the Aleut Corporation to represent the community of Adak, as it is the designated entity responsible for creating and implementing the redevelopment plan with respect to the prior military installation. Should the Council determine that the Aleut Corporation is the appropriate entity, it may want to consider allocating directly to the Aleut Enterprise Corporation (AEC). The AEC is a for-profit subsidiary of the Aleut Corporation, created in 1997 to use the infrastructure and property assets of Adak as a foundation for further economic development in Adak and the surrounding region. The long-term plan for the AEC states that its mission is to optimize returns to the Aleut Corporation from fuel, fisheries, and commercial lease ventures (S. Moller, pers. comm. 9/23/02). Thus, the AEC is focusing its redevelopment efforts in Adak but continues to act as the economic development arm on behalf of the entire Aleut Corporation and its shareholders. Given the more specific fisheries and community development mission relative to that of the parent corporation, it may be appropriate to designate the AEC as the receiving entity.³

³The Aleut Corporation's mission is: "To maximize profits, provide benefits to our shareholders, and preserve our culture."

DRAFT Council Motion for Item C-5 BSAI Crab Rationalization
June 10, 2002

Prologue: The following motion incorporates the preferred portions of the "Draft Council Motion for item C-5 BSAI Crab Rationalization," dated April 14, 2002, as outlined in the Bering Sea Crab Rationalization Program Alternatives – Public review Draft (pages 12-33) issued in May 2002. For ease of reference, the numbering system of the April 14, 2002 motion is retained here. However, only those preferred elements of the April motion are included here. This motion advances a VOLUNTARY THREE PIE COOPERATIVE, designed to recognize the prior economic interests and importance of the partnership between harvesters, processors and communities.

C-5 BSAI Crab Rationalization

BSAI Crab Rationalization Problem Statement

Vessel owners, processors and coastal communities have all made investments in the crab fisheries, and capacity in these fisheries far exceeds available fishery 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:

Resource conservation, utilization and management problems;
Bycatch and its' associated mortalities, and potential landing deadloss;
Excess harvesting and processing capacity, as well as low economic returns;
Lack of economic stability for harvesters, processors and coastal communities; and
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.

Elements of the Crab Rationalization Program

Harvesting Sector Elements

Harvester shares shall be considered a privilege and not a property right.

1.1 Crab fisheries included in the program are the following fisheries subject to the Federal FMP for BSAI crab:

Bristol Bay red king crab
Brown king (AI Golden king) crab
Adak (WAI) red king crab – West of 179° W
Pribilof Islands blue and red king crab
St. Matthew blue king crab
Opilio (EBS snow) crab
Bairdi (EBS Tanner) crab

3. Exclude the EAI Tanner, WAI Tanner, Dutch Harbor (EAI) red king crab, and Adak (WAI) red king crab east of 179° West longitude.
- 1.2 Persons eligible to receive an initial allocation of QS must be:
 - Option 1. Any person that holds a valid, permanent, fully transferable LLP license.
- 1.3 Categories of QS/IFQs
 - 1.3.1 Crab Fishery Categories - QS/IFQs will be assigned to each of the crab fisheries included in the program as identified in paragraph 1.1 except Dutch Harbor red king, EAI Tanner, and WAI Tanner and WAI red king crab east of 179° West longitude.
 - 1.3.1.1 Brown king crab (AI golden king crab) option.
 - Option 1. Split into two categories: Dutch Harbor (EAI) brown king crab (east of 174° W long.) and Western Aleutian Islands brown king crab (west of 174° W long.).
 - 1.3.2 Harvesting sector categories - QS/IFQs will be assigned to one of the following harvesting sector categories:
 - a. catcher vessel (CV), or
 - b. catcher/processor (CP)

QS-IFQ for the Catcher/Processor sector is calculated from the crab that were both harvested and processed onboard the vessel. This shall confer the right to harvest and process crab aboard a catcher processor in accordance with section 1.7.2.
 - 1.3.3 Processor delivery categories - QS/IFQs for the CV sector shall be assigned to the following two processor delivery categories (the percentage split between class A/B shares is defined under the Processing Sector Elements, 2.4):
 - (a) Class A – allow deliveries only to processors with unused PQs
 - (b) Class B – allow deliveries to any processor, except catcher processors
 - 1.3.4 Regional Categories - QS/IFQs for the CV sector is assigned to regional categories. The two regions are defined as follows (see Regionalization Elements for a more detailed description of the regions):

North Region - All areas on the Bering Sea north of 56° 20' N. Latitude.
South Region - All areas not included in the North Region.
- 1.4 Initial allocation of QS
 - 1.4.1. Calculation of initial QS distribution will be based on legal landings excluding deadloss.
 - (a) Calculation of QS distribution. The calculation is to be done, on a vessel-by-vessel basis, as a percent of the total catch, year-by-year during the qualifying period. Then the sum of the yearly percentages, on a fishery-by-fishery basis, is to be divided by the number of qualifying years included in the qualifying period on a fishery-by-fishery basis to derive a vessel's QS.

For each of the fisheries for which such a vessel holds valid endorsement for any years between the sinking of the vessel and the entry of the Amendment 10 replacement vessel to the fishery and was active as of June 10, 2002, allocate QS according to 50% of the vessel's average history for the qualifying years unaffected by the sinking.

(b) Basis for QS distribution.

Option 1. For eligibility criteria in paragraph 1.2, the distribution of QS to the LLP license holder shall be based on the catch history of the vessel on which the LLP license is based and shall be on a fishery-by-fishery basis. The underlying principle of this program is one history per vessel.

(Option 1) Persons who have purchased an LLP, with GQP, EQP and RPP qualifications to remain in a fishery may obtain a distribution of QS on the history of either the vessel on which the LLP is based or on which the LLP is used, NOT both. License transfers for purposes of combining LLPs must have occurred by January 1, 2002.

(Old Option 3) In cases where the fishing privileges (i.e. moratorium qualification or LLP license) of an LLP qualifying (i.e. GQP, EQP, RPP and Amendment 10 combination) vessel have been transferred, the distribution of QS to the LLP shall be based on the aggregate catch histories of (1) the vessel on which LLP license was based up to the date of transfer, and (2) the vessel owned or controlled by the LLP license holder and identified by the license holder as having been operated under the fishing privileges of the LLP qualifying vessel after the date of transfer. Only one catch history per LLP license. The only catch histories that may be credited by transfer under this suboption are the individual catch histories of vessels that generate a valid permanent fully transferable LLP license.

1.4.2. Qualifying Periods for Determination of the QS Distribution:

1.4.2.1 Opilio (EBS snow crab)

- Option 4. 1996 - 2000 (5 seasons)
a. Best 4 seasons

1.4.2.2 Bristol Bay red king crab

- Option 3. 1996 - 2000 (5 seasons)
a. Best 4 seasons

1.4.2.3 Bairdi (EBS Tanner crab)

- Option 2. 91/92 - 1996 (best 4 of 6 seasons)

1.4.2.4 and 1.4.2.5 Pribilof red and blue king crab

- Option 2. 1994 - 1998
b. Drop one season

1.4.2.6 St. Matthew blue king crab

- Option 2. 1994 - 1998
b. Drop one season

1.4.2.7 Brown king crab (based on biological seasons)

(Options apply to both Dutch Harbor (EAI) and Adak western Aleutian Island brown king crab)

Option 4. 96/97 2000/01 (all 5 seasons)

Suboption: Award each initial recipient QS based on:
b. historical participation in each region.

1.4.2.8 Adak (WAI) red king crab - west of 179° west long.

Option 1. 1992/1993 – 1995/1996 (4 seasons)

d. Best 3 seasons

1.5 Annual allocation of IFQs:

1.5.1 Basis for calculating IFQs:

Option 2. Convert GHQ to a TAC and use the TAC as the basis.

1.6 Transferability and Restrictions on Ownership of QS/IFQs:

1.6.1 Persons eligible to receive QS/IFQs by transfer:

Option 2. US citizens who have had at least:

(b). 150 days of sea time

Option 3. Entities that have a U. S. citizen with 20% or more ownership and at least:

(b). 150 days of sea time

Suboption: Initial recipients of harvesting quota share grandfathered
*Definition of sea time

Option 1. Sea time in any of the U.S. commercial fisheries in a harvesting capacity.

Option 4. Allow a CDQ organization to be exempted from the restriction for the 150 days of sea time requirement under 1.6 Transferability and Restrictions on Ownership of QS/IFQs.

1.6.2 Leasing of QS (leasing is equivalent to the sale of IFQs without the accompanying QS.)

Leasing is defined as the use of IFQ on vessel which QS owner holds less than 10% ownership of vessel or on a vessel on which the owner of the underlying QS is present:

Option 1. Leasing QS is allowed with no restrictions during the first five years after program implementation.

1.6.3 Separate and distinct QS Ownership Caps - apply to all harvesting QS categories pertaining to a given crab fishery with the following provisions:

a. Initial issues that exceed the ownership cap are grandfathered at their current level as of June 10, 2002; including transfers by contract entered into as of that date.

b. Apply individually and collectively to all QS holders in each crab fishery;

c. Percentage-cap options for the Bristol Bay red king crab, Opilio, Bairdi, Pribilof red and blue king crab and St. Matthew blue king crab fisheries (a different percentage cap may be chosen for each fishery):

- Option 4. 1.0% of the total QS pool for Bristol Bay red king crab.
- Option 5. 1.0% of the total QS pool for Opilio crab.
- Option 6. 1.0% of the total QS pool for Bairdi crab.
- Option 7. 2.0% of the total QS pool for Pribilof red and blue king crab.
- Option 8. 2.0% of the total QS pool for St. Matthew blue king crab.

- d. A percentage-cap of 10% is adopted for the Dutch Harbor (EAI) brown king crab, and a 10% cap for western Aleutian Island (Adak) brown king crab.
- e. A percentage-cap of 10% is adopted for WAI (Adak) red king crab west of 179° West longitude.

1.6.4 Controls on vertical integration (ownership of harvester QS by processors):

Option 2: A cap of 5% with grandfathering of initial allocations as of June 10, 2002, including transfers by contract entered into as of that date.

Option 3: Vertical integration ownership caps on processors shall be implemented using both the individual and collective rule using 10% minimum ownership standards for inclusion in calculating the cap. PQS ownership caps are at the company level.

Catcher Processor Elements

1.7.2.1.1 Catcher/Processors shall be granted CP-QS in the same manner as catcher vessels.

1.7.2.3 Allowance for Catcher/Processors:

Option 2. Catcher/Processors are allowed to purchase additional PQS from shore based processors as well as PQS from other Catcher/Processors as long as the crab is processed within 3 miles of shore in the designated region.

Option 4. Catcher/Processors may sell unprocessed crab to any processor

Option 5. Only catcher processors that both caught and processed crab onboard their qualifying vessels in any BSAI crab fishery during 1998 or 1999 will be eligible for any CP QS in any IFQ or Coop program.

Option 6. CP-QS initially issued to a catcher/processor shall not be regionally or community designated.

Option 8. The CP sector is capped at the aggregate level of initial sector-wide allocation.

1.7.2.4 Transfers to shore-based processors:

- c. Catcher/Processors shall be allowed to sell CP/QS as separate Catcher Vessel QS and PQS. The shares shall be regionally designated when sold (both shares to same region).

Other Harvester Options

1.7.3 Catch accounting under IFQs - All landings including deadloss will be counted against IFQs. Options for treatment of incidental catch are as follows:

Option 4. Discards of incidentally caught crab will be allowed

Option 5. Request ADF&G & BOF & BOF/NPFMC Joint Protocol Committee to address concerns of discard, highgrading, incidental catch and need for bycatch reduction and improved retention in season with monitoring to coincide with implementation of a crab rationalization program.

1.7.4 Use caps on IFQs harvested on any given vessel are provided for those vessels not participating in a voluntary cooperative described under section 6.1.:

Option 1.

c. Two times the ownership cap:

2.0% for BS Opilio crab

2.0% BB red king crab

2.0% BS bairdi crab

4.0% for Pribilof red and blue king crab

4.0% for St. Matthew blue king crab

20% for EAI (Dutch Harbor) brown king crab

20% for Adak (WAI) brown king crab

20% for Adak (WAI) red king crab west of 179° West longitude

1.8.1 Options for captain and crews members:

1.8.1.2 Percentage to Captain:

1. Initial allocation of 3% shall be awarded to qualified captains.

2.

a. Holders of captain QS are required to be on-board vessel when harvesting IFQ.

b. Formulate a trailing amendment to include elements contained in Sections 1.8.1.3 through 1.8.1.7

The Council Chairman will appoint an industry workgroup to develop a framework program to implement the provisions of the captain share amendments.

1.8.1.3 Species specific:

1. As with vessels.

1.8.1.4 Eligibility:

1. A qualified captain is determined on a fishery by fishery basis by 1) having at least one landing in the qualifying years used by the vessels and 2) having recent participation in the fishery as defined by at least one landing per year in the fishery in the last two seasons prior to June 10, 2002.

2. A captain is defined as the individual owning the Commercial Fishery Entry Permit.

1.8.1.5 Qualification period:

1. As with vessels.

1.8.1.6 Distribution per captain:

1. QS based on landings (personal catch history based on ADF&G fish tickets) using harvest share calculation rule.
2. Captain with C/P history shall receive C/P captain QS at initial issuance. The same rule applies to C/P captain QS if they leave the C/P sector as in section 1.7.2.3

1.8.1.7 Transferability criteria:

1. Sale of QS.
 - a. QS may be purchase only by persons who are US citizens who have had at least 150 days of sea time in any of the US commercial fisheries in a harvesting capacity.
2. IFQ leasing
 - a. Captains QS are leasable for the first three years after program implementation for the following fisheries only:
 - Pribilof red and blue crab
 - St. Matthew blue crab
 - b. In cases of hardship (injury, medical incapacity, loss of vessel, etc.) a holder of captain quota shares may lease QS, upon documentation and approval, (similar to CFEC medical transfers) for the term of the hardship/disability or a maximum of 2 years.

1.8.1.8 Loan program

1. A low-interest rate loan program consistent with MSA provisions, for skipper and crew purchases of QS, shall be established for IFQ purchases by captains and crew members using 25% of the Crab IFQ fee program funds collected.

1.8.1.9 Captain/Crew on Board requirements

1. Holders of captain QS or qualified lease recipients are required to be onboard vessel when harvesting IFQ.
2. Captain QS ownership caps for each species are the same as vessel caps for each species (i.e. section 1.7.4).
3. Use caps on IFQs harvested on any given vessel shall not include captain QS in the calculation.

1.8.2 Overage Provisions for the Harvesting Sector:
Allowances for overages during last trip:

Option 2. Overages up to 3% will be forfeited. Overages above 3% results in a violation and forfeiture of all overage.

1.8.3 AFA Vessel Option. Eliminate harvester sideboard caps.

1.8.5 Sideboards. Sideboards shall be addressed through a TRAILING AMENDMENT.

Options:

1. Non AFA vessels that qualify for QS in the rationalized opilio crab fisheries would be limited to their
 - a. GOA groundfish catch history excluding sablefish or
 - b. Inshore pcod catch history in the GOA fisheries (with offshore pcod exempt).
2. The years for qualification would be the same as the qualifying period selected from 1.4.2.1.
 - b. Sideboard exemptions:
3. Exempt vessels from sideboards which had opilio landings in the qualifying years of:
 - Option a. <100,000 pounds
 - Option b. <70,000 pounds
 - Option c. <50,000 lbs
 - Option d. <25,000 lbs
4. Exempt vessels with more than 100, 200, or 500 tons of cod total landings in the years 95-99
5. Vessels with <10, <50 and <100 tons total groundfish landings in the qualifying period would be prohibited from participating in the GOA cod fishery.

Suboption a: Council staff should analyze economic dependency of participants in the Bering Sea Korean hair crab fishery to determine if sideboards are warranted.

2. Processing Sector Elements

Processor shares shall be considered a privilege and not a property right.

2.1 Eligible Processors - processors (including catcher-processors) eligible to receive an initial allocation of processing quota shares (PQs) are defined as follows:

- (a.) U.S. corporation or partnership (not individual facilities) that processed crab during 1998 or 1999, for any crab fishery included in the IFQ program.

Hardship provisions for processors that did not process crab in 1998 or 1999 but meet the following provisions:

- A processor (not Catcher/Processor) that processed opilio crab in each season between 1988 and 1997 and
- Invested significant capital in the processing platform after 1995, will be determined to be a qualified processor.
- Significant capital is defined as a direct investment in processing equipment and processing vessel improvements in excess of \$1 million.

2.2 Categories of Processing Quota Shares

2.2.1 Crab fishery categories - processing quota shares shall be issued for the same crab species identified in Section 1.1

2.2.2 Regional categories - processing quota shares will be categorized into two regions (see Regionalization Elements for description of regions):

Northern Region - All areas on the Bering Sea north of 56° 20' N. latitude

Southern Region - All areas not in the Northern region

2.3 Initial allocation of processing quota shares

Option 1. Processing quota shares shall be initially issued to Eligible Processors based on three-year average processing history¹ for each fishery, determined by the buyer of record listed on ADF&G fish tickets, as follows:

- (a) 1997 - 1999 for Bristol Bay red king crab
- (b) 1996 - 1998 for Pribilof red and blue king crab,
- (c) 1996 - 1998 for St. Matthew blue crab
- (d) 1997 - 1999 for opilio crab
- (e) EBS bairdi crab based on 50/50 combination of processing history for BBRKC and opilio
- (f) 1996/97 - 1999/00 seasons for brown king crab
- (g) The qualifying years for issuance of IPQ in the Adak (WAI) red king crab fishery west of 179° West longitude will be:

Option B. Based on Western Aleutian Islands brown king crab IPQ

Option 4. If the buyer can be determined, by NMFS using the State of Alaska Commercial Operators Annual Report, fish tax records, or evidence of direct payment to fishermen, to be an entity other than the entity on the fish ticket, then the IPQ shall be issued to that buyer.

2.4 Percentage of season's GHJ or TAC for which IPQs are distributed:

2.4.1 IPQs will be issued for a portion of the season's GHJ or TAC for each species to provide open delivery processing as a means to enhance price competition:

Option 3. 90% of GHJ (or TAC) would be issued as IPQs - the remaining 10% would be considered open delivery.

2.5 Implementation of the open delivery-processing portion of the fishery:

Catcher vessel QS/IPQs are categorized into Class A and Class B shares. Purchases of crab caught with Class A shares would count against IPQs while purchases of crab caught with Class B shares would not. Crab caught with Class B shares may be purchased by any processor on an open delivery basis.

- ### 2.6 Transferability of processing shares - provisions for transferability include the following:
- a. Processing quota shares and IPQs would be freely transferable, including leasing
 - b. IPQs may be used by any facility of the eligible processor (without transferring or leasing)
 - c. Processing quota shares and IPQs categorized for one region cannot be transferred to a processor for use in a different region.

¹The three-year average shall be the three-year aggregate pounds purchased by each Eligible Processor in a fishery divided by the three-year aggregate pounds purchased by all Eligible Processors in that fishery.

d. New processors may enter the fishery by purchasing IPQ or by purchasing Class B Share crab or by processing CDQ crab.

2.7 Ownership and use caps –

2.7.1 Ownership caps

Option 4. No ownership to exceed 30% of the total PQS pool on a fishery by fishery basis with initial issues grandfathered.

PQS ownership caps should be applied using the individual and collective rule using 10% minimum ownership standards for inclusion in calculating the cap. PQS ownership caps are at the company level.

2.7.2 Use Caps.

Option 3. In the Northern Region annual use caps will be at 60% for the opilio crab fishery.

2.8 Other Optional Provisions:

The crab processing caps enacted by Section 211(c)(2)(A) of the AFA would be terminated

Append Binding Arbitration Committee minutes/report to the Report to Congress as indication of direction of the Committee.

2.8.3 A private sector managed (non-governmental), binding arbitration process for failed price negotiations, between fishermen and processors will be implemented through a TRAILING AMENDMENT .

The Council requests that the Binding Arbitration Committee review the following provisions when considering the development of the binding arbitration program:

- continue its efforts to refine the system of Binding Arbitration that will accomplish the goals articulated in the Council Crab Rationalization Problem Statement. The Committee should meet over the course of the summer and return with a report at the October 2002 Council Meeting.
- that the system of binding arbitration will create a mechanism to establish a minimum or formula price for all crab delivered using Class A harvesting shares.
- this minimum or formula price to be the “safety net” for the “last man standing” facing the last IPQ holder. It is intended to ensure that any harvester without market options has the option of an arbitrated minimum price.
- that there be one arbitration event per IPQ holder per season. Once through arbitration of price, price shall not be the subject of arbitration for that IPQ holder again for that season.
- that the system of price formation encourage the tradition of harvesters voluntarily engaged in collective bargaining with individual processing firms for the minimum ex-vessel price or formula in large GHL fisheries.

Listing these possible elements is not intended to restrict the committee from considering other arbitration program elements that it believes will be effective for protecting the interests of the parties.

3. Regionalization Elements

3.1 Two regions are proposed:

a. Northern Region - All areas on the Bering Sea north of 56° 20' N. latitude. (This region includes the Pribilof islands and all other Bering Sea Islands lying to the north. The region also includes all communities on Bristol Bay including Port Heiden but excludes Port Moller and all communities lying westward of Port Moller.)

b. Southern Region - All areas not in the Northern Region.

Suboption: Regional categories for deliveries of Aleutian Islands brown king crab are split into a "Western" (west of 174° West longitude) and "Eastern" (east of 174° West longitude) area. 50% of the WAI IPQ brown king crab QS shall be processed in the W AI region.

3.2 Regional categorization of processing and/or harvesting quota shares

3.2.1 Categorization will be based on all historical landings. Periods used to determine regional percentages are the same as in Section 3.2.5.

There shall be no regional designation of the bairdi fishery shares. When there is a harvestable surplus of bairdi, an open season, and the vessel has bairdi quota, bairdi will be retained and delivered as incidental catch in the red /blue king crab and opilio fisheries.

3.2.2 Options for the harvesting sector:

Option 2. Only Class A CV quota shares are categorized by region (applies to point of delivery and not point of harvest).

3.2.3 Options for the processor sector:

Option 1. Processing quota shares and IPQs are categorized by region

3.2.4 Once assigned to a region, processing and/or harvesting quota shares cannot be reassigned to a different region.

3.2.5 Options for addressing any remaining mismatch of harvesting and processing shares within the region.

1. The base years for determining processing shares and the base period for determining the share assigned to each region shall be the same.

2. If the cumulative harvester quota associated with each region differs from the total regional share, by species, the harvester share, by species, shall be adjusted, up or down, in the following manner:

a. The adjustment shall apply only to harvesters with share in both regions.

b. The adjustment shall be made on a pro rata basis to each harvester, so that the total share among those harvesters, by region, equals the total share assigned to each region.

3. The adjustment shall only be on shares that carry a regional designation; Class B quota would be excluded from the adjustment.

3.3 Delivery and processing restrictions - the following provisions apply to the delivery and processing of crab with IFQs or IPQs that are categorized by region:

- a. Crab harvested with catcher vessel IFQs categorized for a region must be delivered for processing within the designated region
- b. Crab purchased with IPQs categorized for a region must be processed within the designated region.

3.4 Alternative Regionalization/Community Protection Option: This option in its entirety will be considered as part of the trailing amendment.

Options for this trailing amendment are defined in the April 14, 2002 Council Motion plus the following options:

Trailing Amendment – Community Protection

Transfers of IPQ out of a region are prohibited.

If an owner of IPQ decides to sell the IPQ, the right of first refusal to purchase the IPQ shall be granted to cdq groups (for IPQ in the Bering Sea) or a community organization approved by the local government (for IPQ in the GOA) providing that any IPQ so purchased is processed at a facility owned at least 50% by the CDQ organization or community group.

The amount of IPQ in any year shall not exceed the percentage of the TAC for any crab species as follows:

Option 1: IPQ percentage times a TAC of 150 million pounds.

Option 2: IPQ percentage times a TAC of 200 million pounds.

4. Community Development Allocation (based on existing CDQ program):

Option 2. Expand existing program to all crab fisheries approved under the rationalization program with the exception of the Western AI brown king crab.

Option 3. Increase for all species of crab to 10%. A minimum of 25% of the total CDQ allocation must be delivered on shore.

Option 5. For the WAI brown king crab fishery, the percentage of resource not utilized (difference between the actual catch and GHLL) during the base period is allocated to the community of Adak. In any year, that sufficient processing exists at that location, the percentage of the difference between the GHLL and actual catch, that was not harvested in these 4 years is not to exceed 10%.

5. Program Elements

RAM Division in conjunction with State of Alaska will produce annual reports regarding data being gathered with a preliminary review of the program at 3 years.

Option 2. Formal program review at the first Council Meeting in the 5th year after implementation to objectively measure the success of the program, including benefits and impacts to harvesters (including vessel owners, skippers and crew), processors and communities by addressing concerns, goals and objectives identified in the Crab Rationalization problem statement and the Magnuson Stevens Act standards. This review shall include analysis of post-rationalization impacts to coastal communities, harvesters

and processors in terms of economic impacts and options for mitigating those impacts. Subsequent reviews are required every 5 years.

Option 5. A proportional share of fees charged to the harvesting sectors and processing sectors for management and enforcement of the IFQ/IPQ program shall be forwarded to the State of Alaska for use in management and observer programs for BSAI crab fisheries

6. Cooperative model options:

6.1 Coop model with the following elements and options:

1) Individual harvesting and processing histories are issued to both catcher and processors. (Harvesters under Section 1.3.2 a) which meet program qualifications. Processors under Section 2.1, 2.3, and 2.4 (Options 1-4) which meet qualifications of the program).

2) Cooperatives may be formed through contractual agreements among fishermen who wish to join into a cooperative associated with one or more processors holding processor history for one or more species of crab. Fleet consolidation within this cooperative may occur either by internal history leasing and vessel retirement or by history trading within the original cooperative or to a different cooperative. A coop agreement would be filed annually with the Secretary of Commerce, after review by the Council, before a coop's catch history would be set aside for their exclusive use.

3.) Suboption only : There must be at least 4 or more unique harvester quota share holders engaged in one or more crab fisheries to form a coop associated with a processor. Vessels are not restricted to deliver to a particular plant or processing company.

4. New processors may enter the fishery by purchasing IPQ or by purchase of crab caught with B share landings or by processing CDQ crab. New processors entering the fishery may associate with cooperatives.

5. Custom processing would continue to be allowed within this rationalization proposal.

7. Regional Categories: As adopted earlier

8. Duration of coop agreements.

Option 4. A harvester quota shareholder may exit the cooperative at any time after one season. One season shall mean the season established by the Alaska Board of Fisheries for the fishery associated with the quota shares held by the harvester.

10. Observer requirements: Defer observer requirements to the Alaska Board of Fisheries.

11. Length of program: Same as earlier in Section 5.

12. Option for skipper and crew members: Same as developed earlier.

13. Catch Accounting - All landings including deadloss will be counted against a vessel's quota. Options for treatment of incidental catch are as follows: Same as developed earlier.

14. The North Pacific Fishery Management Council and the National Marine Fisheries Service shall have the authority to implement a mandatory data collection program of cost, revenue, ownership and employment data upon members of the BSAI crab fishing industry harvesting or processing fish under the Council's authority. Data collected under this authority will be maintained in a confidential manner and may not be released to any party other than staffs of federal and state agencies directly involved in the management of the fisheries under the Council's authority and their contractors.

A mandatory data collection program shall be developed and implemented as part of the crab rationalization program and continued through the life of the program. Cost, revenue, ownership and employment data will be collected on a periodic basis (based on scientific requirements) to provide the information necessary to study the impacts of the crab rationalization program as well as collecting data that could be used to analyze the economic and social impacts of future FMP amendments on industry, regions, and localities. This data collection effort is also required to fulfill the Council problem statement requiring a crab rationalization program that would achieve "equity between the harvesting and processing sectors" and to monitor the "...economic stability for harvesters, processors and coastal communities". Both statutory and regulatory language shall be developed to ensure the confidentiality of these data.

Any mandatory data collection program shall include:

A comprehensive discussion of the enforcement of such a program, including enforcement actions that would be taken if inaccuracies in the data are found. The intent of this action would be to ensure that accurate data are collected without being overly burdensome on industry for unintended errors.

VOTE ON FINAL KD MOTION AS AMENDED: PASSES UNANIMOUSLY.

PUBLIC TESTIMONY SIGN-UP SHEET FOR
 AGENDA ITEM C-1

PLEASE SIGN ON THE NEXT BLANK LINE.
 LINES LEFT BLANK WILL BE DELETED.

	NAME	AFFILIATION
1.	Paul Patton	BBCDC group
2.	Gary Hennigh / Bob Juetter	5th CORNER City King Cove Aleutians East Borough
3.	Dick Miller	Controller Bay JV
4.	Joe Sullivan	Munt MacGregor
5.	Kevin Suydam	Lady Alaska
6.	DEAN BERGERON	Deputy + 1122nd Union of the Pacific
7.	XXXXXXXXXX	
8.	Frank Kelly	city of UNA Alaska
9.	Pat Carlson	Kodiak Island Borough
10.	Max McLANSKILL	City of St. George
11.	Larry Cotter	APICIA
12.	Gary Painter	FLV Traci (blaze)
13.	DAVE FRAYER	FLV Mon Milauk
14.	Tom Casey	AFCG
15.	Julie Benny	AGDB
16.	Gordon Blue	
17.	Ann Thompson	A.C.C.
18.	Tom Suryan	SEA
19.	Rich Shefford	Aleutian Lady
20.	Terry Cosgrove	
21.	RUSS MOORE	FLV NORTH PACIFIC
22.	Times Mizc	Blue North Fisheries
23.	Duncan Fields	GOAC ³
24.	John Ganner	North Pacific Club Assn
25.	Steve Minor	Saint Paul

PUBLIC TESTIMONY SIGN-UP SHEET FOR PAGE 2
 AGENDA ITEM C-1

PLEASE SIGN ON THE NEXT BLANK LINE.
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#26

	NAME	AFFILIATION
1.	Stephen Taufen	Groundswell Fisheries Movement
2.	Margaret Hall	Randys, Inc. - Flu Provider
3.	JAY ANDERSON	ALICE BAZUNVA I & II
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PUBLIC TESTIMONY SIGN-UP SHEET FOR
 AGENDA ITEM C-1

PLEASE SIGN ON THE NEXT BLANK LINE.
 LINES LEFT BLANK WILL BE DELETED.

	NAME	AFFILIATION
1. ✓	Pavel Penton	BBEOC / CPQ groups
2. ✓	Bary Hennigh / Bob Juetter	(S'inn cottow) City King Cove, Aleutians East Borough
3. ✓	Dick Miller	Controller Bay JV
4. ✓	Joe Sullivan	Mundt MacGregor
5. ✓	Kevin Suydam	Lady Alaska
6.	BEAU BERGERON	Deep Sea Fishermen's Union of the Pacific
7.	XXXXXXXXXXXX	
8.	Frank Kelly	City of UAA Alaska
9.	Pat Carlson	Kodiak Island Borough
10.	MAX MALAUANSKI	City of St. George
11.	Larry Cotter	APTCA
12. ✓	Gary Painter	FLV Trailblazers
13. ✓	DAVE FRAZER	FLV Muir Milach
14.	Tom Casey	AFCG
15.	Julie Benny	AGPB
16.	Gordon Blue	
17.	Anni Thomson	A.G.C.
18.	Tom Suryan	SEA
19. ✓	Rich Shelton	Aleutian Lady
20. ✓	Terry Cosgrove	
21. ✓	RUSS MOORE	FLV NORTH PACIFIC
22. ✓	Times Mize	Blue North Fisheries
23.	Duncan Fields	GOAC ³
24.	John Garner	North Pacific Crab Assn
25. ✓	Steve Minor	Saint Paul

PUBLIC TESTIMONY SIGN-UP SHEET FOR PAGE 2
 AGENDA ITEM C-1

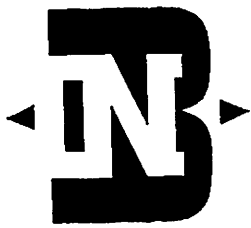
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	NAME	AFFILIATION
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BLUE NORTH FISHERIES

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Tollfree 1-877-TRUECOD • email: bluenorth@bluenorthfisheries.com

AGENDA C-1(a)
OCTOBER 2002
Supplemental

September 24, 2002

AGENDA ITEM C-1 (A)
CRAB MANAGEMENT - Clarifications

Mr. Dave Benton
Chairman, NPFMC
605 West 4th, Suite 306
Anchorage, AK 99501-2252

RECEIVED
SEP 24 2002
N.P.F.M.C.

Dear Chairman Benton,

We own and operate the vessel "Blue Dutch", which we use as both a catcher-processor and as a floating processor in the Bering Sea crab fisheries.

We bought this boat in December 1998, about six weeks after the passage of the American Fisheries Act (AFA). As I am sure you remember, part of AFA included restrictions on shoreside processors favored by this legislation in processing non-pollock species, among these the crab fisheries which we participate in.

There was some concern among crab fishermen about the possibility of having constrained markets as a result of these "sideboards", we were among such fishermen as we also own and operate crab harvester vessels. We purchased the Blue Dutch to respond to this concern, choosing this particular vessel over many others available at the time, specifically for the design of the processing line and its capacity as a processor. Since then, we have consistently participated in both activities.

As a floating processor, we have processed crab in the Pribilof Islands, flying in personnel and supplies and arranging freighter support as well. We have heard public testimony pointing out the importance of keeping the economic activity affiliated with multiple processors in this community. By discriminating against any subset of processors in their ability to process "B" share crab, this community is put at risk, particularly in low quota years when it may not be profitable for other processors to mobilize - in effect, our C/P shares can subsidize the mobilization costs of processing in the Pribilofs.

In the June Council motion, the definition of "B" shares at 1.3.3(b) specifies that they allow "deliveries to any processor, except catcher-processors." This language is confusing, because there are vessels (such as ours) that currently and historically operate as both floating processors and as catcher processors. The distinction is based upon action: a catcher-processor harvests crab; a floating processor buys them over the side.

We are entirely dependent not only on the C/P operation of this vessel, but also on the operation of this vessel as a floating processor. To be deprived of either activity would be discriminatory and have significant adverse effects for our company.

Our understanding is that crab caught with "B" shares are not to be processed aboard the same vessel on which they are harvested, but that we would still be able to participate as a floating processor just as we have been. Respectfully, we request this Council to confirm our understanding.

Sincerely,



Michael F. Burns
President & Co-Owner
Blue Dutch, LLC



Patrick T. Burns
Vice President & Co-Owner
Blue Dutch, LLC

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August 26, 2002

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RECEIVED
AUG 26 2002

N.P.F.M.C

SENT VIA FAX

Mr. Chris Oliver
Executive Director
North Pacific Fisheries Management Council
605 West Fourth, Suite 306
Anchorage, Alaska 99501-2252

Re: Crab Rationalization - Ownership Caps

Dear Chris:

We are writing to you on behalf of Bristol Bay Economic Development Corporation ("BBEDC"). We are asking that an additional range of quota share ownership caps specifically for Community Development Quota ("CDQ") groups be added to the crab rationalization elements and options. The range we propose for analysis is as follows:

<u>Area/Species</u>	<u>Quota Share Pool Percentages</u>
Bristol Bay red King crab	1% - 3% - 5%
Opilio crab	1% - 3% - 5%
Baird crab	1% - 3% - 5%
Pribilof red and blue King crab	2% - 4% - 6%
St. Matthew blue King crab	2% - 4% - 6%
Eastern Aleutian Island brown King crab	10% - 20% - 30%
Western Aleutian Island brown King crab	10% - 20% - 30%
Western Aleutian Island red King crab	10% - 20% - 30%

Mr. Chris Oliver
August 26, 2002
Page 2

MUNDT MACGREGOR LLP
ATTORNEYS AT LAW

We are requesting that a preliminary analysis of the caps reflected above be prepared for initial review by the Council at the October 2002 meeting.

If you have any questions or comments regarding this matter, please feel free to contact me.

Yours,

MUNDT MacGREGOR L.L.P.



Joseph M. Sullivan

JMS:lrg

cc: Mr. Robin Samuelsen (via fax)
Ms. Hazel Nelson (via fax)

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MUNDT MACGREGOR LLP.

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SPECIAL COUNSEL
LISA RIVELAND PAGÁN

July 12, 2002

VIA E-MAIL

Re: Crab Rationalization - Sunk Vessel Provision

Dear Council Members:

We are writing to you on behalf of Controller Bay Joint Venture ("Controller Bay"), and its principals, Richard Miller and Allen Edgar. Controller Bay built the vessel CONTROLLER BAY in 1988, and operated it in Alaska fisheries (including Bering Sea crab fisheries) for 11 years. The vessel qualified for Bering Sea crab LLP license # LLC3342, including a recent participation endorsement.

The vessel sank on May 8th, 1999. Fortunately, no one was injured. However, the vessel missed the 1999 Bristol Bay King crab fishery, and both the Opilio and Bristol Bay King crab fisheries in 2000.

Messrs. Miller and Edgar took steps to replace the vessel shortly after it sank. By December of 2000, they had resolved the related insurance issues and were prepared to sign a construction contract for the replacement vessel with Fred Wahl Marine Construction. However, Controller Bay then received notice from the NMFS RAM Division that under the original Bering Sea Crab Capacity Reduction Act (PL 106-554), it was no longer eligible to operate a crab vessel in the Bering Sea. Mr. Miller contacted our firm, and we recommended that Controller Bay delay construction of a replacement vessel unless and until PL 106-554 was amended. Controller Bay did so while we pursued the amendment. In the meantime, the IRS gave Controller Bay an IRC 1033 Involuntary Conversion Extension, permitting it to retain the insurance proceeds from the sinking pending resolution of its eligibility to operate a replacement vessel.

Council Members

July 12, 2002

Page 2

In the summer of 2001 Congress amended the Crab Capacity Reduction Act to make it consistent with the LLP rules. As a result, Controller Bay once again qualified to employ a vessel in the Bering Sea crab fisheries as the holder of the original vessel's LLP license. When Mr. Miller returned from salmon fishing in September of 2001, we notified him that Controller Bay was once again eligible to replace its vessel. Mr. Miller had the vessel construction drawings finalized by Jensen Maritime and signed a contract with Fred Wahl Marine Construction late last year. The vessel is scheduled to be delivered in September of this year.

Mr. Miller has been following Council action on crab rationalization, albeit from a distance. Mr. Miller was aware that Council added an option at its April meeting that would have given owners of sunk crab vessels credit for the years between the sinking and entry of the replacement vessel into the fishery. That option would have benefited Controller Bay by whatever percentage the Council chose.

Mr. Miller is dismayed by the sunk vessel provision the Council adopted in June. It limits the credit for the years a sunk vessel was out of the fishery to circumstances where the replacement vessel was active by June 10, 2002, and it limits the credit to Amendment 10 replacement vessels. Controller Bay did not have its replacement vessel in the water by June 10, 2002, because of the delay in construction associated with PL 106-554. The delay in replacing the vessel was not its choice or fault. Further, because the original CONTROLLER BAY qualified under Amendment 10, we are concerned that the new boat might not be considered an "Amendment 10 replacement vessel".

We understand that the Council will not take final action on crab rationalization until Congress acts on the Council's report on the preferred alternative adopted in June, and an Environmental Impact Statement has been completed. Controller Bay is asking that the Council reconsider the sunk vessel provision when the Council is ready to take final action, and modify it to credit Controller Bay for the years that its vessel was out of the fishery.

Controller Bay would suffer a severe adverse financial impact if it receives no credit for the years missed as a result of the sinking and the delay in replacement associated with PL 106-554. On the other hand, it would not dilute the overall QS pool by a significant amount to credit Controller Bay for the years of fishing missed as a result of the sinking.

Mr. Miller would like to meet with each of you between now and the Bristol Bay King crab season to discuss our situation. He will be calling you directly to see if it is possible to set up an appointment.

Council Members

July 12, 2002

Page 3

Thank you for considering this matter. If you have any questions or concerns, please feel free to contact me.

Very truly yours,

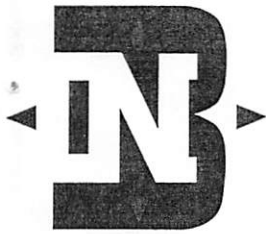
MUNDT MacGREGOR L.L.P.


Joseph M. Sullivan

JMS:lrg

cc: Mr. Richard Miller

\\FILE01\USERDOCS\JMST\LETTERS\LOUNCIL MEMBERS.DOC



BLUE NORTH
FISHERIES

James Mize
c-1

2930 Westlake Ave. N. • Suite 300 • Seattle, WA 98109 • (206) 352-9252 • Fax (206) 352-9380
Tollfree 1-877-TRUECOD • email: bluenorth@bluenorthfisheries.com

October 3, 2002

AGENDA ITEM C-1 (A)
CRAB MANAGEMENT – Clarifications
(Supplement to earlier written testimony)

Mr. Dave Benton
Chairman, NPFMC
605 West 4th, Suite 306
Anchorage, AK 99501-2252

Dear Chairman Benton,

As previously discussed, we own and operate the vessel "Blue Dutch". We use this vessel both as a catcher-processor and as a floating processor. These operations supplement each other every year, both are vital to our business plan and we rely on these operations for our continuing livelihood.

Respectfully, we ask that the Council clarify its intent that existing vessels which operate as "floating processors" shall be able to continue to do so with respect to "B" share crab, irrespective of the vessels additional operations in a given year.

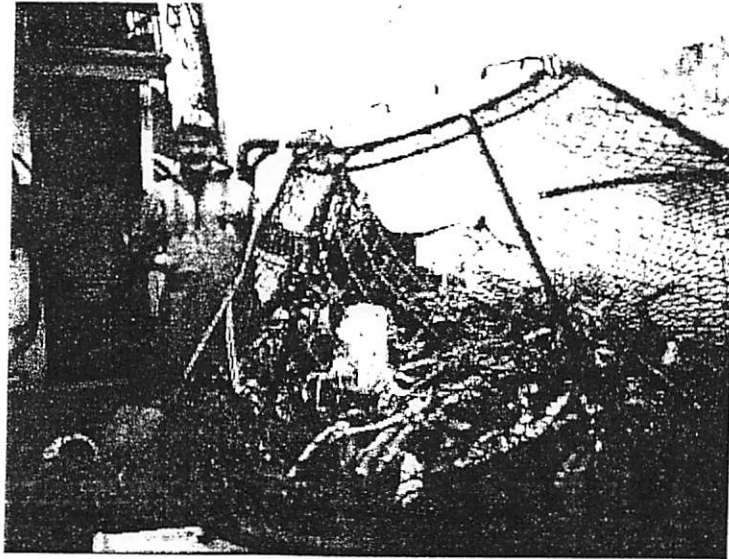
Sincerely,

Capt. James Mize
Government Affairs
Blue North Fisheries

P.S. - Attached please find copies of the applicable regulations governing "floating processors" and documentation of our certification in the Bering Sea crab fisheries as a "floating processor" ("Primary Fish Buyer/Processor").

2000-2002

Commercial Shellfish Fishing Regulations



ALASKA DEPARTMENT OF FISH AND GAME



KING CRAB FISHERY

(b) In registration areas where a king crab pot limit is in effect, each king crab pot must have one identification tag issued by the department placed on the main buoy or on the trailer buoy if more than one buoy is attached to the pot.

(c) Identification tags are issued before each fishing season, are uniquely numbered for each registration year, and will be issued at the time of vessel registration for that vessel only. The vessel owner, or the owner's agent, shall apply for identification tags at a department office designated to issue the tags. Replacement of tags lost during the season is permitted if the vessel operator submits a sworn statement or affidavit describing how the tags were lost and listing the numbers of the lost tags. Tags shall be renewed annually before each fishing season.

5 AAC 34.052. KING CRAB GEAR STORAGE REQUIREMENTS.

(a) Unless otherwise specified in this chapter, during the closed season for king crab in a registration area, king crab pots must be removed from the water, except rectangular king crab pots with all bait and bait containers removed and all doors secured fully open, and cone or pyramid king crab pots with all bait and bait containers removed and all doors not secured closed, may be stored in waters

- (1) of 25 fathoms or less in depth; or
- (2) deeper than 25 fathoms for only

(A) seven days following the season closure for king crab in a registration area; or

(B) 72 hours following the closure of any district, portion of a district, or portion of the registration area.

(b) Unless otherwise specified in this chapter, king crab pots with all doors secured fully open and with all bait containers removed may be stored in water deeper than the maximum permissible depth if the vessel owner, or the owner's agent, has contacted, in person or by radio or telephone, the local representative of the department at a landing port or inspection point specified in this chapter or by the department, and has been granted an extension of time to remove and store pots due to a major vessel breakdown or extreme weather conditions.

(c) A pot stored under this section may not have any portion of the line attaching the pot to a buoy or buoys floating on the surface of the water at any time, except for that portion of the line connecting the main buoy to an auxiliary buoy or buoys.

(d) The provisions of this section may be modified by regulations in effect for other specified registration areas.

5 AAC 34.053. OPERATION OF OTHER POT GEAR.

Unless otherwise specified in 5 AAC 31 - 5 AAC 38.

(1) a person or vessel that operates commercial, subsistence, personal use, or sport pots, during the 14 days immediately before the opening of a commercial king crab season in a king crab registration area, may not participate in the commercial king crab fishery in the king crab registration area or, with respect to

KING CRAB FISHERY

Registration Area Q, in that district or section of Registration Area Q, where the fishing with pots occurred; a person or vessel that participates in a commercial king crab fishery in a king crab registration area or, with respect to Registration Area Q, in that district or section of Registration Area Q where the fishing with pots occurred, may not operate commercial, subsistence, sport, or personal use pots in that registration area during the 14 days after the close of the commercial king crab season: a vessel or person may operate commercial, subsistence, sport, or personal use pots in a king crab registration area after putting king crab pots in storage, as specified in 5 AAC 34.052, and, unless the registration is already invalidated under 5 AAC 34.020(k), after invalidating the vessel's king crab registration by contacting, in person, a local representative of the department:

(2) during a commercial king crab fishery, a person or vessel validly registered for that fishery may not operate commercial, subsistence, sport or personal use pots other than commercial king crab pots, except that a person or vessel may stop participating in the commercial king crab fishery and instead operate commercial pots other than king crab pots

(A) if the king crab pots are put in storage as specified in 5 AAC 34.052, and

(B) the vessel owner, or the owner's agent, contacts a representative of the department, in person, and requests that the king crab registration be invalidated.

5 AAC 34.055. PERMITS FOR PROCESSING VESSELS.

The owner or operator of a vessel used in the processing of king crab must obtain a permit from the department before starting processing operations. The permit must contain the following requirements:

- (1) reporting of vessel location to the department;
- (2) reporting of harvesting or processing operations to the department;
- (3) reporting of unloading and transport operations to the department;
- (4) permission for local representatives of the department to inspect, at any time, the vessel's holds, live tanks, freezers, processing areas, and processed and unprocessed king crab; and
- (5) reporting of any other information required by the department for the conservation and development of king crab resources.

5 AAC 34.057. POSTSEASON KING CRAB POT RECOVERY PERMIT. (a)

The department may issue, under the provisions of this section, a permit for Registration Area O, Q, or T to a person or vessel to recover

- (1) lost king crab pot gear belonging to another vessel or person; or
- (2) king crab pot gear for a vessel that has experienced a major mechanical breakdown.

(b) The permit issued under this section may specify

- (1) requirements for a vessel area check-in and check-out procedure to be used by the vessel or person;

TANNER CRAB FISHERY

(A) seven days following the season closure for Tanner crab in that registration area;

(B) 72 hours following the closure of any portion of that registration area;

(3) if the vessel owner, or the owner's agent, has contacted, in person or by radio or telephone, the local representative of the department at a landing port or inspection port specified in this chapter for a specific registration area or a port specified by the department and has requested and been granted an extension of time to remove and store pots due to a major vessel breakdown or extreme weather conditions.

(b) A pot stored under this section may not have any portion of the line attaching the pot to a buoy or buoys floating on the surface of the water at any time, except for that portion of the line connecting the main buoy to a trailer buoy or buoys.

(c) Provisions in this section may be modified by regulations for specific registration areas.

5 AAC 35.053. OPERATION OF OTHER POT GEAR.

Unless otherwise specified in 5 AAC 31 - 5 AAC 38,

(1) a person or vessel that operates commercial, subsistence, sport, or personal use pots, during the 14 days immediately before the opening of the commercial Tanner crab season in a Tanner crab registration area or, with respect to Registration Area J, in that district of Registration Area J where the fishing with pots occurred, may not participate in the commercial Tanner crab fishery in the Tanner crab registration area where the fishing with pots occurred; a person or vessel that participates in a commercial Tanner crab fishery in a Tanner crab registration area or, with respect to Registration Area J, in that district of Registration Area J where the fishing with pots occurred may not operate commercial, subsistence, sport, or personal use pots in that registration area during the 14 days after the close of the commercial Tanner crab season; a vessel or person may operate other commercial pots in a Tanner crab registration area after putting Tanner crab pots in storage, as specified in 5 AAC 35.052, and, unless the registration is already invalidated under 5 AAC 35.020(k), after invalidating the vessel's Tanner crab registration by contacting, in person, a local representative of the department;

(2) during a commercial Tanner crab fishery, a person or vessel validly registered for that fishery may not operate commercial, subsistence, sport or personal use pots other than commercial Tanner pots, except that a person or vessel may stop participating in the commercial Tanner crab fishery and instead operate commercial pots other than Tanner crab pots

(A) if the Tanner crab pots are put in storage, as specified in 5 AAC 35.052; and

(B) the vessel owner, or the owner's agent, contacts a representative of the department, in person, and requests that the Tanner crab registration be invalidated.

5 AAC 35.055. PERMITS FOR PROCESSING VESSELS.

COPIES

TANNER CRAB FISHERY

The owner or operator of a vessel used in the processing of Tanner crab shall obtain a permit from the department before starting processing operations. The permit must contain the following requirements:

- (1) reporting of vessel location to the department;
- (2) reporting of harvesting or processing operations to the department;
- (3) reporting of unloading and transport operations to the department;
- (4) permission for local representatives of the department to inspect at any time the vessel's holds, live tanks, freezers, processing areas, and processed and unprocessed Tanner crab; and
- (5) reporting of any other information required by the department for the conservation and development of Tanner crab resources.

5 AAC 35.057. POSTSEASON TANNER CRAB POT RECOVERY PERMITS. (a) The department may issue, under the provisions of this section, a permit for the Bering Sea, Eastern Aleutian, and Western Aleutian Districts of Registration Area J to a person or vessel to recover

- (1) lost Tanner crab pot gear belonging to another vessel or person; or
 - (2) Tanner crab pot gear for a vessel that has experienced a major mechanical breakdown.
- (b) The permit issued under this section may specify
- (1) requirements for a vessel area check-in and check-out procedure to be used by the vessel or person;
 - (2) requirements for the vessel or person to notify the department by radio, telephone, or telex at the beginning and the completion of the pot gear recovery operations;
 - (3) requirements for vessel tank inspections before, and at the conclusion of, the pot recovery operation at locations specified by the department;
 - (4) other necessary conditions as determined by the department.

(c) Before receiving a permit under this section to recover Tanner crab pot gear belonging to another vessel or person, the permit applicant must furnish to the department written authorization for the requested pot gear recovery from the owner of the lost gear or the owner or operator of the vessel experiencing a major mechanical breakdown. If the recovery permit is being issued to recover lost gear, the authorization must contain the last known location of the Tanner crab pots and specific identification markings. If the recovery permit is being issued due to a major mechanical breakdown of a vessel, the authorization must include the exact location of the Tanner crab pots and specific identification markings and a written explanation by a qualified repair facility detailing the extent of the damage and estimated time for repairs.

(d) Pot gear recovery operations under this section may only be performed during a closed season and may not be conducted by or for any vessel or person that,

DEPARTMENT OF REVENUE

TAX DIVISION

TONY KNOWLES, GOVERNOR

State Office Building
PO Box 110420
Juneau, AK 99811-0420
907.465.2320

550 W Seventh, Suite 500
Anchorage, AK 99501-3566
907.269.6620

www.tax.state.ak.us

September 17, 2001

Blue Dutch LLC
4502 14th Ave NW
Seattle, WA 98107

CERTIFICATION FOR PRIMARY FISH BUYERS/PROCESSORS

VESSEL "BLUE DUTCH"

This is to certify that the above named company has complied with the requirements of AS 44.25.040 and is eligible to apply for an Alaskan Fisheries Business License as a Primary Fish Buyer/Processor or an Alaskan Business License as a Primary Fish Buyer.

This certification is effective from

September 22, 2001 to September 22, 2003



Michael J. Herrick
Licensing and Security Specialist
Fish & Excise Tax
Phone 907.465.4683
Fax 907.465.3566

STATE OF ALASKA

TONY KNOWLES, GOVERNOR

October 14, 1999

DEPARTMENT OF REVENUE

INCOME AND EXCISE AUDIT
P.O. BOX 110420
JUNEAU, AK 99811-0420
FAX: (907) 465-2375

Blue Dutch LLC
4502 14th Avenue NW
Seattle WA 98107

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*This certification is effective from
September 22, 1999 to September 22, 2001*

Edie Bundy

Edie Bundy

Licensing & Security Specialist

C-1
Paul Peyton
BBEDC

Crab Rationalization Trailing Amendment

CDQ Ownership Caps

I move that the Council initiate analysis to provide for a different quota share ownership cap for CDQ organizations.

The range for analysis is as follows:

<u>Area/ Species</u>	<u>Quota Share Pool Percentages</u>
Bristol Bay red king crab	1%, 3%, 5%
Bering Sea opilio crab	1%, 3%, 5%
Bering Sea bairdi crab	1%, 3%, 5%
Pribilof red and blue king crab	2%, 6%, 10%
St. Matthew blue king crab	2%, 6%, 10%
Eastern Aleutian Island brown king crab	10%, 20%, 30%
Western Aleutian Island red king crab	10%, 20%, 30%

Discussion:

- The Council chose a 1% cap on quota share ownership. This is the lowest level considered in the crab rationalization analysis. The action reflected concern about the effects of a buyback program and a desire to limit consolidation until the effects of such a program are known.
- CDQ group ownership in these fisheries is relatively new, and no group has reached their planned level of participation. A 1% cap thwarts their plans without the Council specifically having addressed the question of what the appropriate level of participation should be for CDQ groups. The Council has previously taken steps to allow CDQ groups more flexibility than private sector stakeholders, given their community development roles.
- It's appropriate for the Council to analyze the cap level for CDQ groups to see if the effects of the preferred alternative on CDQ group participation in the crab fisheries is what the Council intended.
- This is a time critical issue. Quality investment opportunities are limited, and the longer the Council delays action, the more constrained CDQ group options are likely to be.
- The analytical load for this action should be light, with no impact on the EIS content.
- All six CDQ groups support this amendment.

CITY OF KING COVE

BERING SEA CRAB RATIONALIZATION PLAN OPPOSITION AND IMPACTS

TESTIMONY TO THE
NORTH PACIFIC FISHERY MANAGEMENT COUNCIL
OCTOBER 2002



CITY OF KING COVE

BERING SEA CRAB RATIONALIZATION PLAN OPPOSITION AND IMPACTS

OPPOSITION

The City of King Cove has adopted a resolution in opposition to the Bering Sea crab rationalization plan as approved by the North Pacific Fishery Management Council in June 2002.

In addition to the reasons stated in the attached resolution, the potential financial impacts of the Bering Sea crab rationalization plan could be SEVERE to the City of King Cove. The City government, and just about every local household, are already in financial decline due to the major downturn in the local and regional salmon fisheries.

KING COVE, ALASKA

King Cove was incorporated as a first-class City in 1947 when Alaska was still a Territory of the United States. King Cove is fortunate to have a strategic location on the south side of the Alaska Peninsula and only five fishing-vessel hours from the Bering Sea (see attached map). The community has about 800 residents and is the second largest city in the Aleutians East Borough (AEB).

In 1911 the first cannery opened in King Cove. For at least 25 years, Peter Pan Seafood's has had its primary Alaskan operation located in King Cove.

The community has two boat harbors and a deep water dock. The newest harbor was opened in fall 2001. The new harbor is being partially paid for by general obligation bonds backed by the AEB, who also depends heavily on local fish taxes. The AEB also operates and funds King Cove's school system.

King Cove is both a very progressive, yet extremely conservative community. Most community facilities are modest, at best, as can be observed from the following photographs of the City's police station, tank farm,, public safety building for the community's fire truck and ambulance, elementary school, and administrative office,

During the last six years the City has committed to over \$3.5 million in debt to finance a new hydroelectric system and municipal water system. Early next year the City needs to assume another half million dollars additional debt to upgrade the community's diesel power plant that is required to supplement the hydroelectric facility.

The City is very concerned about our future. We find ourselves currently at the crossroads of many major fisheries' issues (political, environmental and global) that concern us greatly.

The Bering Sea crab rationalization plan, as approved by the Council, is one of these major concerns.

City of King Cove

RESOLUTION 03-04

A RESOLUTION OF THE KING COVE CITY COUNCIL OPPOSING THE CRAB RATIONALIZATION PLAN APPROVED THE NORTH PACIFIC FISHERIES MANAGEMENT COUNCIL AND FORWARDED TO CONGRESS

WHEREAS, the resident fishermen of King Cove are primarily small boat fishermen of Aleut descent; and,

WHEREAS, the small boat fishermen must retain the ability to catch several different species of fish in order to maintain a livelihood and our community; and

WHEREAS, seasons for crab in the Bering Sea have changed over the years to effectively remove the small boat fishermen from the Bering Sea; and

WHEREAS, the markets available to the small boat fishermen are severely limited to a few processing companies within the boundaries of the Aleutians East Borough; and,

WHEREAS, programs that vest the ownership of the commonly owned fishery resources in the hands of a few fishermen reduces the ability of small boat fishermen to diversify into other fisheries; and

WHEREAS, the North Pacific Fisheries Management Council had no legal authority to institute a crab rationalization program based upon individual fishing quotas and processor quota shares; and,

WHEREAS, the implementation of the crab rationalization plan will produce consequences that threaten the social and economic viability of our community, which is already impacted by federal fishery and environmental policies.

NOW, THEREFORE BE IT RESOLVED that the City Council of the City of King Cove that the crab rationalization plan approved by the North Pacific Fisheries Management Council and forwarded to Congress for legal action should be rejected.

BE IT FURTHER RESOLVED that until such time that the North Pacific Fisheries Management Council develops a plan that is legal and does not vest ownership of the publicly owned resource in the hands of individuals and corporations, the Bering Sea crab fishery should remain an open access fishery.

PASSED AND APPROVED by the City of King Cove this 31 of August, 2002.


Arthur Newman, Mayor

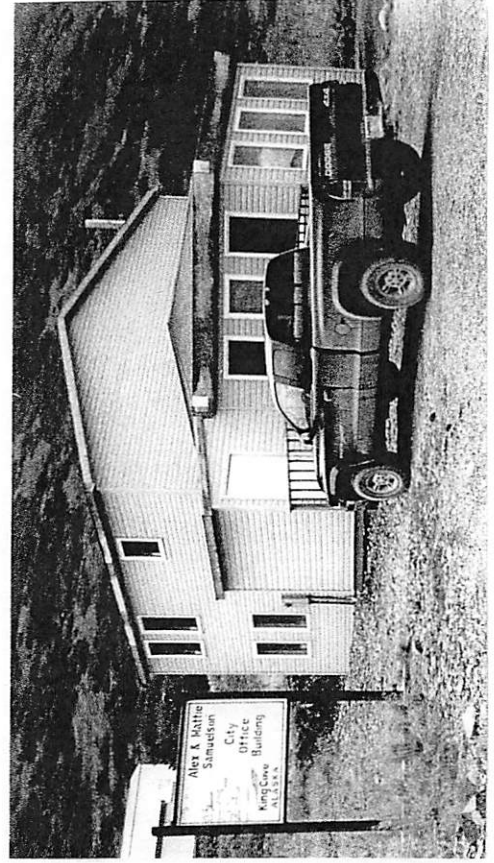
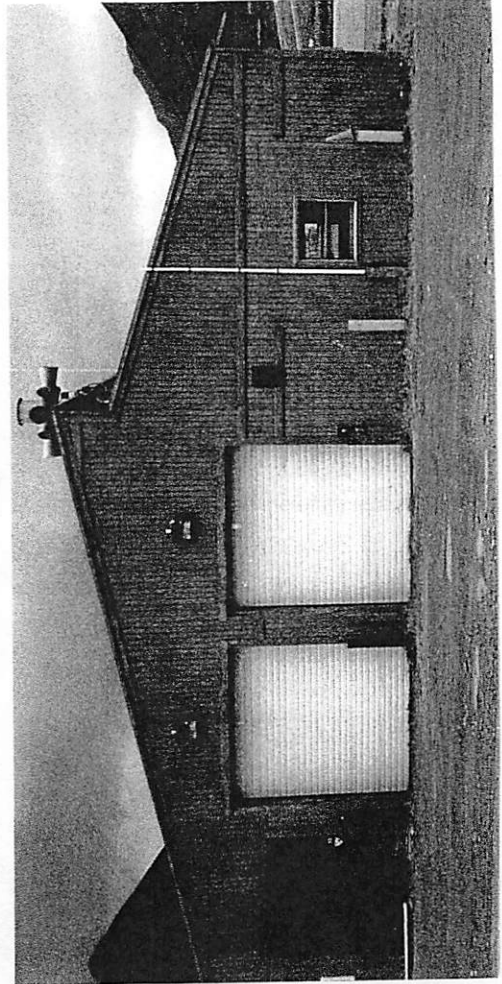
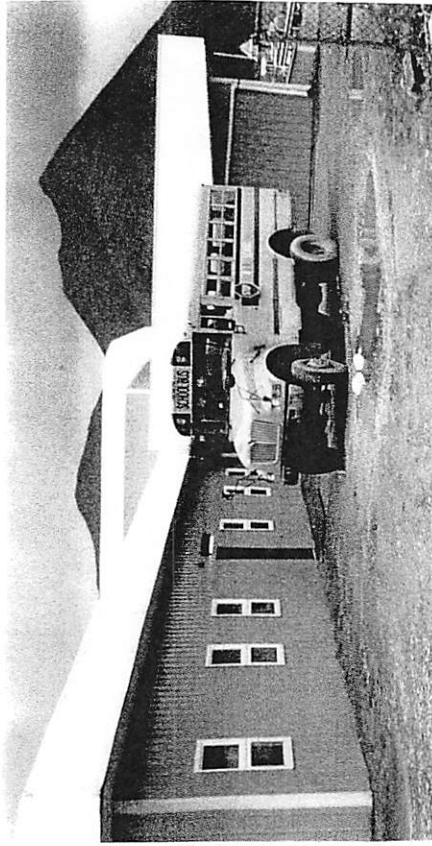
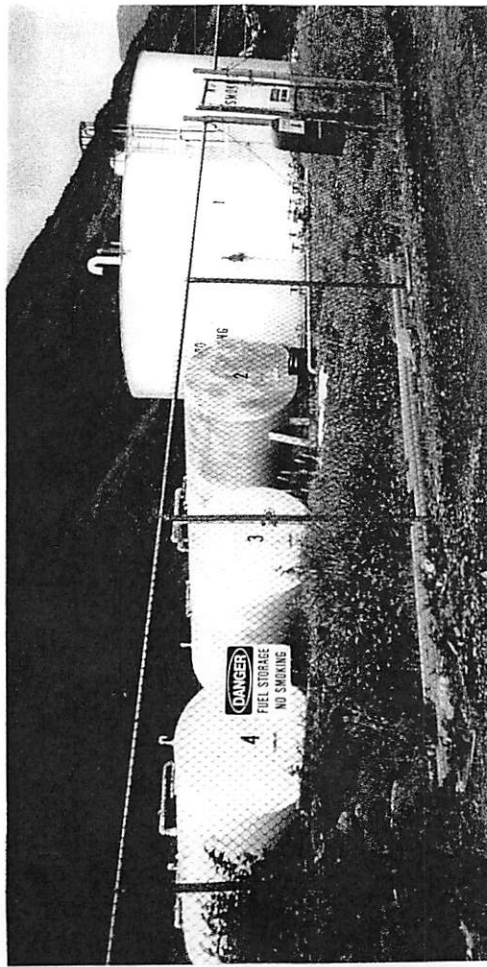
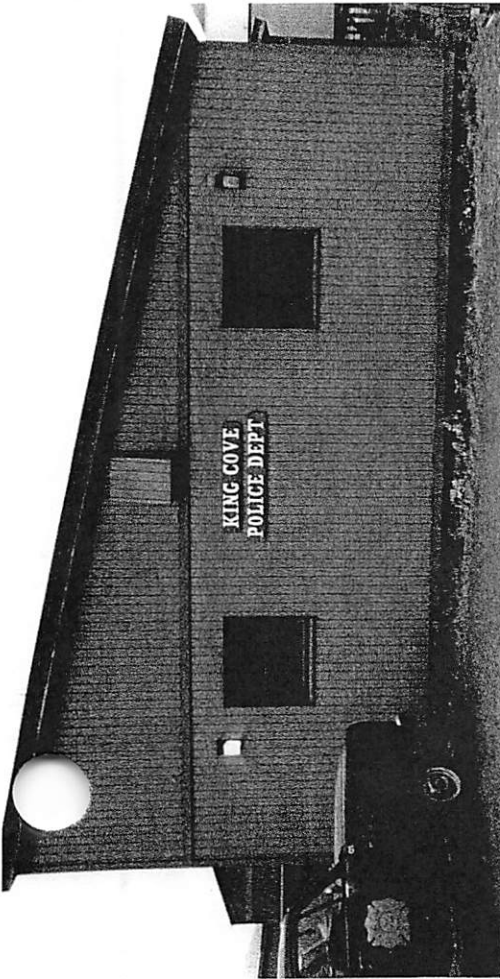
ATTEST:


Wanda Weiss, City Clerk

AYES	<u>5</u>	ABSTAINED	<u>0</u>
NAYS	<u>0</u>	ABSENT	<u>1</u>

**CITY OF KING COVE
PUBLIC FACILITIES**

- * Police Department
- * Elementary School
- * Tank Farm
- * City Office
- * Public Safety



WHY KING COVE IS CONCERNED ABOUT THE BERING SEA CRAB RATIONAIZATION PLAN

Crab processing in King Cove represents about \$270,000 annually in revenues from local and State fish taxes. This amount is 20% of the City's annual average general fund revenue base which is about \$1.38 million from FY 99 - 03.

Table 1 summarizes the City's general fund revenue and expenditure trends since July of 1998 which was the beginning of our FY 99 fiscal calendar. The City's primary revenues sources are its local 2% tax on fish and 3% general sales tax, State raw fish tax, and other State and miscellaneous revenue sources. Since the early 1980's, the City has not had any property taxes.

Note in Table 1 the major decreases in both City revenues and expenditures in the last two years. These decreases are primarily due to the over 50% DECLINE in local and state fish taxes that have occurred in our salmon fisheries.

Crab processing in King Cove represents about 30% of the local and State fish taxes shown in Table 1. Table 2 demonstrates the City's dependence on the three major fisheries (salmon, crab, and bottomfish) that make up the City's local and state fish tax base.

If any significant decrease in local crab revenues due to crab rationalization occur, combined with our current 15-year low in salmon tax revenues, the City's financial ability to sustain a reasonable level of local government services will be SEVERLY impacted.

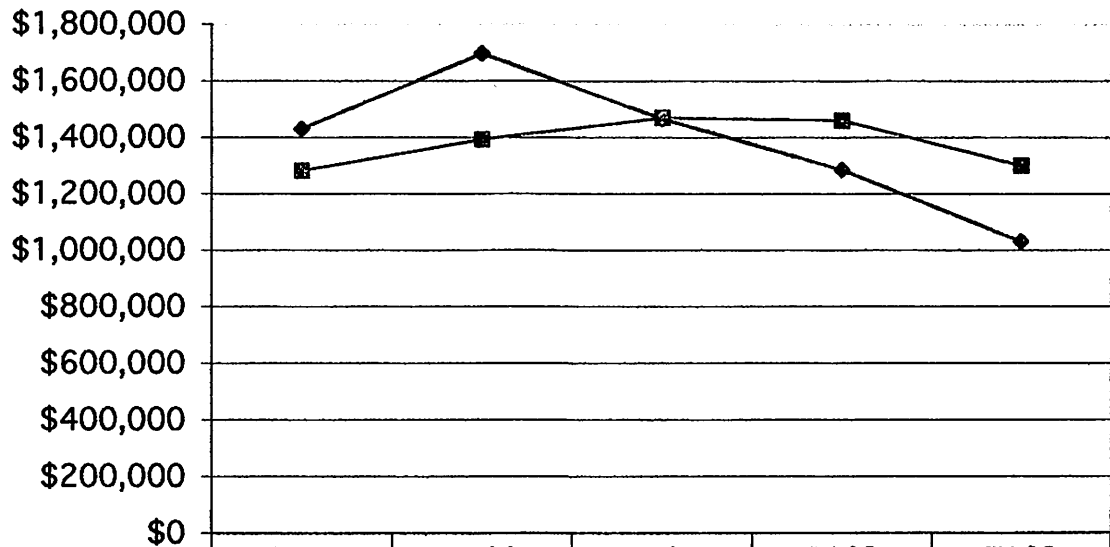
Besides fishing, King Cove has NO other realistic economic diversification or expansion opportunities to replace and/or substitute our historical and current fish tax base. This is simply a fact of geography, accessibility, and costs in remote coastal Alaska .

Finally, in addition to these potential tax losses, Bering Sea crab rationalization will reduce the total number of crab fishing vessels seeking moorage in the King Cove harbors and storing crab pots in the community. These two major revenue components in our harbor enterprise fund currently account for about \$275,000 in annual user fees.

Assuming a one-third reduction in vessel moorage and pot storage (and loss sales tax revenue on these fees) would mean another \$100,000 in lost revenue for the City. The City's harbor enterprise fund has already been fluctuating between a negative and positive fund balance for the last few years.

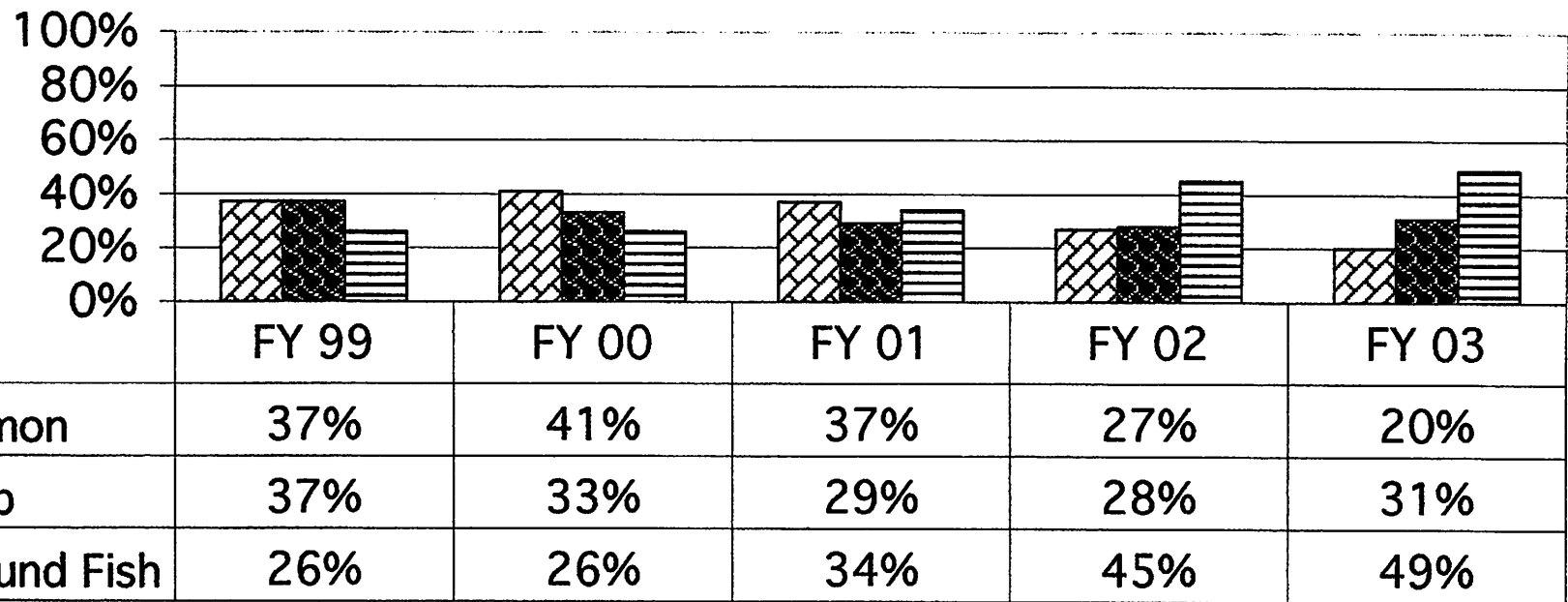
Revenue	FY 99	FY 00	FY 01	FY 02	FY 03
Local Sales Tax	\$1,011,597	\$1,165,613	\$806,691	\$690,000	\$700,000
State Fish Tax	\$257,554	\$313,467	\$465,412	\$344,400	\$195,000
Other State	\$74,755	\$68,374	\$72,372	\$76,100	\$78,000
Miscellaneous	\$21,359	\$101,400	\$78,816	\$125,000	\$10,000
Other State	<u>\$64,159</u>	<u>\$46,981</u>	<u>\$41,959</u>	<u>\$50,000</u>	<u>\$47,000</u>
TOTAL	\$1,429,424	\$1,695,835	\$1,465,250	\$1,285,500	\$1,030,000

**Table 1
CITY OF KING COVE
GENERAL FUND REVENUE EXPENDITURES**



	FY 99	FY 00	FY 01	FY 02	FY 03
◆ REVENUE	\$1,429,424	\$1,695,835	\$1,465,250	\$1,285,500	\$1,030,000
■ EXPENDITURES	\$1,282,000	\$1,393,000	\$1,470,000	\$1,460,000	\$1,300,000

Table 2
CITY OF KING COVE
PERCENTAGE OF STATE/LOCAL FISH
TAXES
(FY 99 - 03)



KING COVE'S CURRENT REQUEST TO THE NORTH PACIFIC FISHERY MANAGEMENT COUNCIL

- 1) Rescind the Bering Sea Crab Rationalization Plan adopted in June 2002 for the reasons stated in the City's resolution.
- 2) If this is not possible, then at least provide protection in the Plan's *TRAILING AMENDMENTS* for the City's local tax base by not allowing any of the City's historical/current processing shares of the Bering Sea crab quota to be allocated to a community other than King Cove.

Controller Bay

C-1
Dick Miller

> Vessel Sinking

9/30/02

- 3 Bill Passed to give us back maximum Pots Allowed to Fish
- 4 PL 106-554 vessels that were eliminated
5. Letter to IRS Asking For extension because of Ruling's beyond our control - Federal and State.
6. IRS extension because of Ruling's.
7. Notification that we got our rights back
8. Letter From Mundt MacGregor explaining what happened.
9. Cost that already have occurred From PL 106-554 - and still build
10. Photos
11. Proposed Motion.

①



Alaska
Department of
Environmental
Conservation

Oil and Hazardous Substance Incident Updates

F/V Controller Bay — Photo 01

Home
Status

- [5/14/99](#)
- [5/11/99](#)
- [5/10/99](#)

Maps

- [spill location](#)

Photos

- [5/10/99](#)
- [5/9/99](#)

This page was last updated 05/10/99

F/V Controller Bay -- Unimak Island

May 9, 1999

NOTE: Photos may be downloaded for free and used in publications provided credit is given to the source.



5/9/99 -- Vessel hard aground at Cave Point, Unimak Island. (Photo by U.S. Coast Guard)

[[Disclaimer](#)] [[SPAR Programs](#)] [[ADEC](#)] [[State of Alaska](#)]

*We welcome your comments.
Send feedback to the [Webmaster](#)
cstephen@envircon.state.ak.us*

2



Alaska
Department of
Environmental
Conservation

Oil and Hazardous Substance Incident Updates

F/V Controller Bay -- Photo 07

Home Status

- [5/14/99](#)
- [5/11/99](#)
- [5/10/99](#)

Maps

- [spill location](#)

Photos

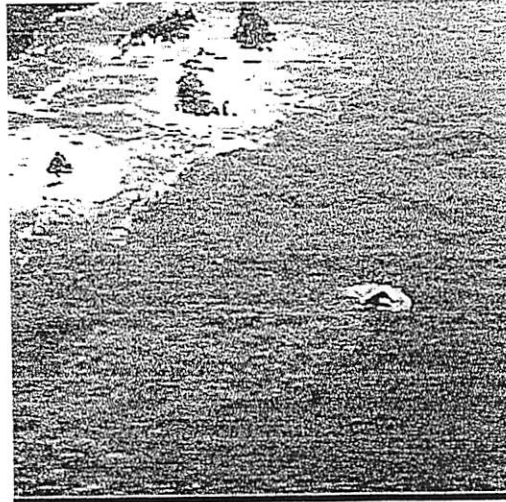
- [5/10/99](#)
- [5/9/99](#)

This page was last updated 05/12/99

F/V Controller Bay -- Unimak Island

May 10, 1999

NOTE: Photos may be downloaded for free and used in publications provided credit is given to the source.



5/10/99

(Photo by U.S. Coast Guard)

[[Disclaimer](#)] [[SPAR Programs](#)] [[ADEC](#)] [[State of Alaska](#)]

*We welcome your comments.
Send feedback to the [Webmaster](mailto:cstephen@envircon.state.ak.us)
cstephen@envircon.state.ak.us*

13

Subj: RE: Dick's Bill
e: 9/6/01 8:14:52 PM Pacific Daylight Time
m: AEQUUS
To: Salmonnet, Kerryt@wtcpa.net

Dick,
Here is the Bill. You are Section 2 only.
Hopefully an excuse signed by the Governor is good enough for the IRS, too.
Randy

SUBSTITUTE HOUSE BILL 1821

AS AMENDED BY THE SENATE

Passed Legislature - 2001 Regular Session

State of Washington 57th Legislature 2001 Regular Session

By House Committee on Natural Resources (originally sponsored by Representatives Buck, Doumit, Sump, Hatfield and Kessler)

READ FIRST TIME 02/27/01.

AN ACT Relating to the consideration of extenuating circumstances for gear and effort reduction for the coastal Dungeness crab resource plan provisions; amending RCW 77.70.400; and creating a new section.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

Sec. a. RCW 77.70.400 and 1998 c 245 s 154 are each amended to read as follows:

The department, with input from Dungeness crab-coastal fishery licensees and processors, shall prepare a resource plan to achieve even-flow harvesting and long-term stability of the coastal Dungeness crab resource. The plan may include pot limits, further reduction in the number of vessels, individual quotas, trip limits, area quotas, or other measures as determined by the department. The provisions of such a resource plan that are designed to effect a gear reduction or effort reduction based upon historical landing criteria are subject to the provisions of RCW 77.70.390 with respect to the consideration of extenuating circumstances.

NEW SECTION. Sec. (a) For the purposes of determining the number of shellfish pots assigned to a license authorizing commercial harvest of Dungeness crab adjacent to the Washington coast, if the license is held by a person whose vessel designated for use under that license was lost due to sinking in any one of the three qualifying seasons, then the department of fish and wildlife shall use the landings in February 1996 to determine the number of pots granted to the license holder as an exception to WAC 220-52-040(14). A license holder must notify the department of his or her eligibility under this section by September 30, 2001.

Passed the House April 16, 2001.
Passed the Senate April 11, 2001.
Approved by the Governor May 9, 2001.
Filed in Office of Secretary of State May 9, 2001.

We understand that the Council will not take final action on crab rationalization until Congress responds to the Council's report on the preferred alternative adopted in June, and an Environmental Impact Statement has been completed. Controller Bay is asking that the Council reconsider the sunk vessel provision when the Council is ready to take final action, and modify the sunk vessel option to include the Controller Bay for the years that its vessel was out of the fishery.

Neither we nor Mr. Miller are aware of any other vessel in this situation. Controller Bay would suffer a severe adverse financial impact if it receives no credit for the years missed as a result of the sinking and the delay in replacement associated with PL 106-554. On the other hand, it would not dilute the overall QS pool by a significant amount to credit Controller Bay for the years of fishing missed as a result of the sinking.

Mr. Miller would like to meet with each of you between now and the Bristol Bay King crab season to discuss our situation. He will be calling you directly to see if it is possible to set up an appointment.

Thank you for considering this matter. If you have any questions or concerns, please feel free to contact me.

Very truly yours,

MUNDT MacGREGOR L.L.P.

DRAFT

Joseph M. Sullivan

Mr. Richard Miller
Mr. Joe Plesha

Headers

Return-Path: <LGibson@mundtmac.com>

Received: from rly-xj03.mx.aol.com (rly-xj03.mail.aol.com [172.20.116.40]) by air-xj05.mail.aol.com (v86_r1.16) with ESMTP id MAILINXJ52-0711185157; Thu, 11 Jul 2002 18:51:57 -0400

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Subject: Council Letter

X-MimeOLE: Produced By Microsoft Exchange V6.0.5762.3

Date: Thu, 11 Jul 2002 15:51:30 -0700

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X-MS-Has-Attach:

X-MS-TNEF-Correlator:

Thread-Topic: Council Letter

Thread-Index: AcIpLX3NT6VjMZStEdajVQBgCApCag==

From: "Laura Gibson" <LGibson@mundtmac.com>

To: "Dick Miller" <salmonnet@aol.com>

(4)

206-954-6565
Chack

February 8, 2001, Revised Draft

DRAFT LIST OF NPFMC AMENDMENT 10, BSAI CRAB LRP QUALIFIED ORIGINAL AND REPLACEMENT VESSELS-- EXCLUDED FROM NMFS/RAM LIST OF PERMANENT CERTIFICATES OF ELIGIBILITY BY PL 106-554:

VESSEL	LTP	HISTORY
ARCTIC BURUNA I	68870	From Shelikof 59118
ARCTIC BURUNA II	68869	From Sea Producer 52014
ARCTIC VENTURE **	LLC 3916	From Rosie G 03400, see below
BEVERLY B **	LLC 3626	From All American 54670, see below
DEBRA D	61565	From Ocean Challenger 35670, sunk 1992
DOMINION	44342	Original LTP
DR. K	55131	From Silver Bay, Pacsetter 21436, sunk 1996
EXITO	54956	Original LTP
JENNIFER A	35277	From St. George 38746, sunk 1992
LADY ALASKA	61351	From Arctic Discovery 55175
LISA MARIE	70221	From Cape Devine 40855
MISS LINDA	17495	(Original LTP)
MR. B	34905	From Pacific Orion 62776
MYSTERY BAY	62920	From Bering Empire 59501
NORTHERN ENTERPRISE	53764	Original LTP, sold out of country, transfer to TT Acq.
PINNACLE **	LLC 3356	From original Pinnacle 61611, see below
RED BARON	32039	Original LTP
SANDRA S	55280	From Chevak 55280, sunk 1994
SAVAGE **	LLC 3705	From Kamishak Queen 38639, sunk 1995, see below
SEA WARRIOR	60804	From Lady Selkai 60224, sunk 1994
SEAWIND	04087	From American Empire 57042, sold out of country
STORM BIRD	46854	From Belair 17126, sunk 1994
VIXEN ** +	70030	From Shuyak 70135 to Massacre Bay 06689, sunk 1994 and Bristol Storm 59224, sunk 1996, see below
WINDY BAY	LLC 2061	From Windy Bay 54094
TOTAL: 24		
VESSEL	LTP	HISTORY
ALL AMERICAN **	54670	Sunk, transfer to Beverly B
AMERICAN STAR	06369	(Rounded, LTP transferred
BRISTOL STORM **	59224	Transfer to Vixen, see above
CAPRICE	00003	Sunk 1999
CONTROLLER BAY	57847	Sunk 1999, replacement delayed by PL 106 554
DEEP SEA HARVESTER	54822	Sold out of country, transfer to Deep Sea Harv. Inc.
DESTINY	35639	Sunk, 2000
EL DAN	38864	Sunk
KAMISHAK QUEEN **	38639	Sunk, 1995, transfer to Savage, see above
LIN J	00199	Sunk 1998, transfer to Viokoda Bay LLC 3777
MITROFANIA	34635	Sunk 2000
NOWITNA	36541	Sunk 1999
PARAMOUNT	55179	Sold out of fishery, transfer to Ocean Ballad Inc.
PINNACLE **	61611	Sold to AK DPS, 1998, transfer to new Pinnacle above
ROSIE G **	03400	Sunk 1998, transfer to Arctic Venture, sold out of country
TOTAL: 10		

DRAFT NMFS/RAM LIST OF VESSELS, NO LONGER IN THE FISHERY--REPLACEMENT VESSELS BASED ON TRANSFER OF LTP--DISALLOWED UNDER PL 106 554:

VESSEL	LTP	HISTORY
ALL AMERICAN **	54670	Sunk, transfer to Beverly B
AMERICAN STAR	06369	(Rounded, LTP transferred
BRISTOL STORM **	59224	Transfer to Vixen, see above
CAPRICE	00003	Sunk 1999
CONTROLLER BAY	57847	Sunk 1999, replacement delayed by PL 106 554
DEEP SEA HARVESTER	54822	Sold out of country, transfer to Deep Sea Harv. Inc.
DESTINY	35639	Sunk, 2000
EL DAN	38864	Sunk
KAMISHAK QUEEN **	38639	Sunk, 1995, transfer to Savage, see above
LIN J	00199	Sunk 1998, transfer to Viokoda Bay LLC 3777
MITROFANIA	34635	Sunk 2000
NOWITNA	36541	Sunk 1999
PARAMOUNT	55179	Sold out of fishery, transfer to Ocean Ballad Inc.
PINNACLE **	61611	Sold to AK DPS, 1998, transfer to new Pinnacle above
ROSIE G **	03400	Sunk 1998, transfer to Arctic Venture, sold out of country
TOTAL: 10		

** Cross referenced on both lists, not included in count of replacement vessels.)

Controller Bay Joint Venture

One Dogwood Place
Edmonds, WA 98020

District Director
Internal Revenue Service
915 2nd Avenue
Seattle, WA 98174

Re: Application for Extended Replacement Period
Taxpayer: Controller Bay Joint Venture
TIN: 91-1439883

Dear Director:

Pursuant to Regs. Section 1.1033(a)-2(c)(3), application is hereby made for an extension of time for the replacement of converted property. This application is based on the following facts and circumstances:

Summary of Facts and Circumstances

In May of 1999, the Controller Bay, a fishing vessel owned by Controller Bay Joint Venture ("Joint Venture") sank in the Bering Sea, with no salvage. Shortly after the Joint Venture's fishing vessel sank, new Federal and State regulations were passed. The new rules would effectively restrict a new replacement vessel from participating in our historical fisheries. We¹ challenged these rules. We ultimately prevailed, as evidenced by legislative amendments passed this summer. We promptly began finalizing design of the new vessel. We expect to finalize design in October, and begin construction in November. However, construction is not expected to be completed until late 2002. Therefore, we request an extension of time to replace the converted property.

Background

- Our vessel was used in the Joint venture's business of fishing for opilio crab, king crab, and pacific cod in the Bering Sea and Aleutian Islands areas off the coast of Alaska, and for Dungeness crab off of the coast of Washington State.
- We received \$1,300,000 in insurance proceeds pursuant to the sinking of our vessel.
- We timely elected nonrecognition of gain on our 1999 tax return filed before October 15, 2000.
- We contracted with a marine architect in the fall of 1999 to begin drawing up plans for a replacement vessel. We made diligent efforts to construct suitable replacement property by working extensively with the marine architect, and by negotiating with shipyards to secure a construction contract. We made a substantial deposit with a

¹ and others who were similarly situated.

shipyard in September of 1999 in order to secure a replacement vessel construction contract.

Enactment of Rules Restricting Fishing Activities

- In 2000, rules drafted by the National Marine Fisheries Service ("NMFS") restricting fishing activities were enacted. The rules restrict a vessel owner's ability to obtain a permit to fish for king crab, opilio crab, and pacific cod in the Bering Sea and Aleutian Island fisheries off the coast of Alaska².
- The NMFS rules restricted the granting of fishing permits to the owners of specific vessels which had participated in the fisheries in prior years. The fishing history restrictions applied to specific vessels, and did not allow for the histories to be transferred to replacement vessels for vessels lost at sea. Under these rules, we were not eligible to obtain any future fishing permits since the vessel to which the fishing histories were granted had been destroyed. This eliminated our ability to fish for crab and cod in Alaska, fisheries from which we had derived approximately 75% of historical revenues.
- In August of 2000, the State of Washington enacted amendments which restricted the number of crab pots a vessel could carry in participating in the Dungeness crab fishery off the coast of Washington. The pot restrictions were based on the number of pounds of crab caught by a vessel in earlier years. The new law did not allow for any extenuating circumstances to be considered for any vessel unable to fish during one of the earlier qualifying years. Because our vessel had been destroyed, we were unable to fish in one of the qualifying years, which reduced our vessel's catch history to a level where only a small, economically unviable amount of pots could be carried on the vessel. This effectively eliminated our ability to fish for Dungeness crab off the coast of Washington, a fishery from which we had derived approximately 25% of historical revenues.
- Because of the federal and state fishery restrictions enacted after the destruction of our vessel, our ability to utilize its catch history in order to participate in any of the fisheries from which it had earned revenue in the past had been effectively eliminated. Because the replacement vessel currently being designed had no prospect of operating in any fishery without purchasing expensive new fishing rights, and because we lacked adequate capital to purchase new fishing rights, we halted reconstruction work. Further, there were no similar Dungeness crab fishing rights for sale. In an effort to get the fishery restriction rules changed to allow the replacement vessel to fish, we began contacting State and Federal legislators and administrators.

Revocation of Rules Restricting Fishing Activities

²The rules were intended to implement the objectives of a fishery management plan structured to conform with the objectives of the Magnusen-Stevens Fishery Conservation and Management Act ("Magnusen Act"). The rules were codified as P.L. 106-554.

- As a direct result of our efforts, an amendment to the Revised Code of the State of Washington was enacted³ in May of 2001 allowing extenuating circumstances to be considered in the granting of pot limitation permits for vessels lost at sea. The amendment allowed us to obtain a pot limitation permit for the replacement vessel to fish Dungeness crab off the coast of Washington.
- Similarly, in July of 2001, an amendment was made to P.L. 106-554 (HR 2216-P.L. 107-20) which allowed us to obtain a permit for the replacement vessel to fish in Alaska.

We have attached copies of the relevant legislative and administrative pronouncements mentioned above for your reference.

Current Reconstruction Efforts

- Immediately after the above amendments were enacted, we contacted the marine architect to resume work on designing the replacement vessel. We are currently negotiating with the shipyard to schedule the construction of the replacement vessel.
- The design and construction of the vessel is expected to take at least 12 months. We are making diligent efforts to complete the construction of the replacement vessel as soon as possible.

Based on the foregoing statements, which are made under penalty of perjury, the Joint Venture hereby requests an extension of time to December 31, 2002 to replace the converted property.

Please contact Gregory L. White or Kerry P. Thompson, my authorized representatives, at the number shown on the attached Form 2848 to schedule a conference if you do not anticipate granting the extension of time.

Sincerely,

Richard L Miller

Richard L. Miller, President
 Controller Bay, Inc., Managing Partner
 Controller Bay Joint Venture

FILE
 COPY

7000 0520 0012 2949 0151

UNIT ID: 0018

Postmark Here
 Clerk: KK6GZB
 09/11/01

Postage	\$ 0.57
Certified Fee	2.10
Return Receipt Fee (Endorsement Required)	1.50
Restricted Delivery Fee (Endorsement Required)	4.17
Total Postage & Fees	\$ 8.34

**U.S. Postal Service
 CERTIFIED MAIL RECEIPT
 (Domestic Mail Only; No Insurance Coverage Provided)**

COSEM TITLE SEC 1033 Extension Request

Recipient's Name (Please Print Clearly) (To be completed by mailer)
 District Director - ILS
 Street, Apt. No., or PO Box No.
 915 2nd Ave
 City, State, ZIP+4
 Seattle, WA 98174

See Reverse for Instructions

³The amendment to RCW 77.70.400 was enacted as

5

Internal Revenue Service

SBSE Area 12
915 Second Avenue M/S W140
Seattle, WA 98174

Date: November 20, 2001

Controller Bay Joint Venture
One Dogwood Place
Edmonds, WA 98020

Department of the Treasury

Taxpayer Identification Number:
91-1439883
Form: Joint Venture

Tax Year Ended: 1999

Person to Contact:
Karen Y. Thompson
Telephone Number:
(206) 220-5634 ext 2

re: IRC 1033 Involuntary Conversion extension request

As you requested, we are giving you additional time to replace property that was involuntarily converted. You must replace the property by December 31, 2002.

Please write to us at the address above when you do replace the property.

You may postpone any gain you realize on the property disposition only to the extent allowed by law (under Section 1033 of the Internal Revenue Code).

Here are some important things to remember:

1. You must report the details of the property replacement on your income tax return for the year you replace the property.
2. Any interest you get on the payment for the property is taxable as ordinary income for the year in which you receive the interest. Don't include interest as part of the payment for the property when you figure your gain or loss.
3. If you don't replace the property by the revised date, please write to tell us at the address shown above. You must then file an amended income tax return to report any gain from the property.

If you have questions, please contact the person whose name and telephone number are shown above.

Sincerely yours,



Karen Y. Thompson
Technical Coordinator
Badge No. 91-06131



Special Notice

CRAB VESSEL CERTIFICATION

August 2001


To All Holders of Crab Vessel Eligibility Certificates,

Under Public Law No. 106-554 (the "Bering Sea/Aleutian Islands Crab Capacity Reduction Program"), which was enacted in December 2000, only vessels that had met certain prior participation requirements were authorized to continue fishing in the Bering Sea/Aleutian Islands (BSAI) crab fisheries. To establish a record of vessel eligibility, our office [Restricted Access Management (RAM) of the Alaska Region, National Marine Fisheries Service (NMFS)] issued a Certificate of Vessel Eligibility for qualifying vessels. The Certificates (some of which were designated as "interim") were required to be aboard any vessel participating in the BSAI crab fisheries.

Last month, amendments to Public Law No. 106-554 were enacted [HR 2216 (Public Law No. 107-20)]. Under the amended statute, there is no longer any need for vessel certification. The legislation provides that only vessels fishing under a valid LLP license may be used in the BSAI crab fisheries.

Copies of relevant information, including language from Public Law No. 107-20 pertaining to this matter, may be found on the NMFS, Alaska Region web site, at www.fakr.noaa.gov. Additionally, questions regarding this matter may be directed to RAM at:

800-304-4846 (press "2")
907-586-7202 (press "2")
E-Mail: RAM.Alaska@noaa.gov


Philip J. Smith
Program Administrator

Alaska Region, National Marine Fisheries Service (NMFS)
Restricted Access Management Program (RAM)
Post Office Box 21668 • Juneau, Alaska 99801
800-304-4846 • RAM.Alaska@noaa.gov





Subj: Council Letter
Date: 7/11/02 3:51:57 PM Pacific Daylight Time
From: LGibson@mundtmac.com (Laura Gibson)
To: salmonnet@aol.com (Dick Miller)

DRAFT
July 11, 2002

VIA E-MAIL

Re: Crab Rationalization - Sunk Vessel Provision

Dear Council Members

We are writing to you on behalf of Controller Bay Joint Venture ("Controller Bay"), and its principals, Richard Miller and Allen Edgar. Controller Bay built the vessel CONTROLLER BAY in 1988, and operated it in Alaska fisheries (including Bering Sea crab fisheries) for 11 years. The vessel qualified for Bering Sea crab LLP license # LLC3342, including a recent participation endorsement.

The vessel sank on May 8th, 1999. Fortunately, no one was injured. However, the vessel missed the 1999 Bristol Bay King crab fishery, and both the Opilio and Bristol Bay King crab fisheries in 2000.

Messrs. Miller and Edgar took steps to replace the vessel shortly after it sank. By December of 2000, they had resolved the related insurance issues and were prepared to sign a construction contract for the replacement vessel with Fred Wahl Marine Construction. However, Controller Bay then received notice from the NMFS RAM Division that under the original Bering Sea Crab Capacity Reduction Act (PL 106-554), it was no longer eligible to operate a crab vessel in the Bering Sea. Mr. Miller contacted our firm, and we recommended that Controller Bay delay construction of a replacement vessel unless and until PL 106-554 was amended. Controller Bay did so while we pursued the amendment. In the meantime, the IRS gave Controller Bay an IRC 1033 Involuntary Conversion Extension, permitting it to retain the insurance proceeds from the sinking pending resolution of its eligibility to operate a replacement vessel.

In the summer of 2001 Congress amended the Crab Capacity Reduction Act to make it consistent with the LLP rules. As a result, Controller Bay once again qualified to employ a vessel in the Bering Sea crab fisheries as the holder of the original vessel's LLP license. When Mr. Miller returned from salmon fishing in September of 2001, we notified him that Controller Bay was once again eligible to replace its vessel. Mr. Miller had the vessel construction drawings finalized by Jensen Maritime and signed a contract with Fred Wahl Marine Construction late last year. The vessel is scheduled to be delivered in September of this year.

Mr. Miller has been following Council action on crab rationalization, albeit from a distance. Mr. Miller was aware that Council added an option at its April meeting that would give owners of sunk vessels credit for the years between the sinking and entry of the replacement vessel into the fishery. That option would have benefited Controller Bay by whatever percentage the Council chose. Consequently, Mr. Miller didn't think it was necessary to attend the Council's June meeting.

Mr. Miller is dismayed by the sunk vessel provision the Council adopted in June. It limits the credit for the years a sunk vessel was out of the fishery to circumstances where the replacement vessel was active by June 10, 2002, and it limits the credit to Amendment 10 replacement vessels. Controller Bay did not have its replacement vessel in the water by June 10, 2002, because of the delay in construction associated with PL 106-554. The delay in replacing the vessel was not its choice.

Further, because the original CONTROLLER BAY qualified under Amendment 10, we are concerned that the new boat might not be considered an "Amendment 10 replacement vessel".

Cost Occurred From PK 106-554

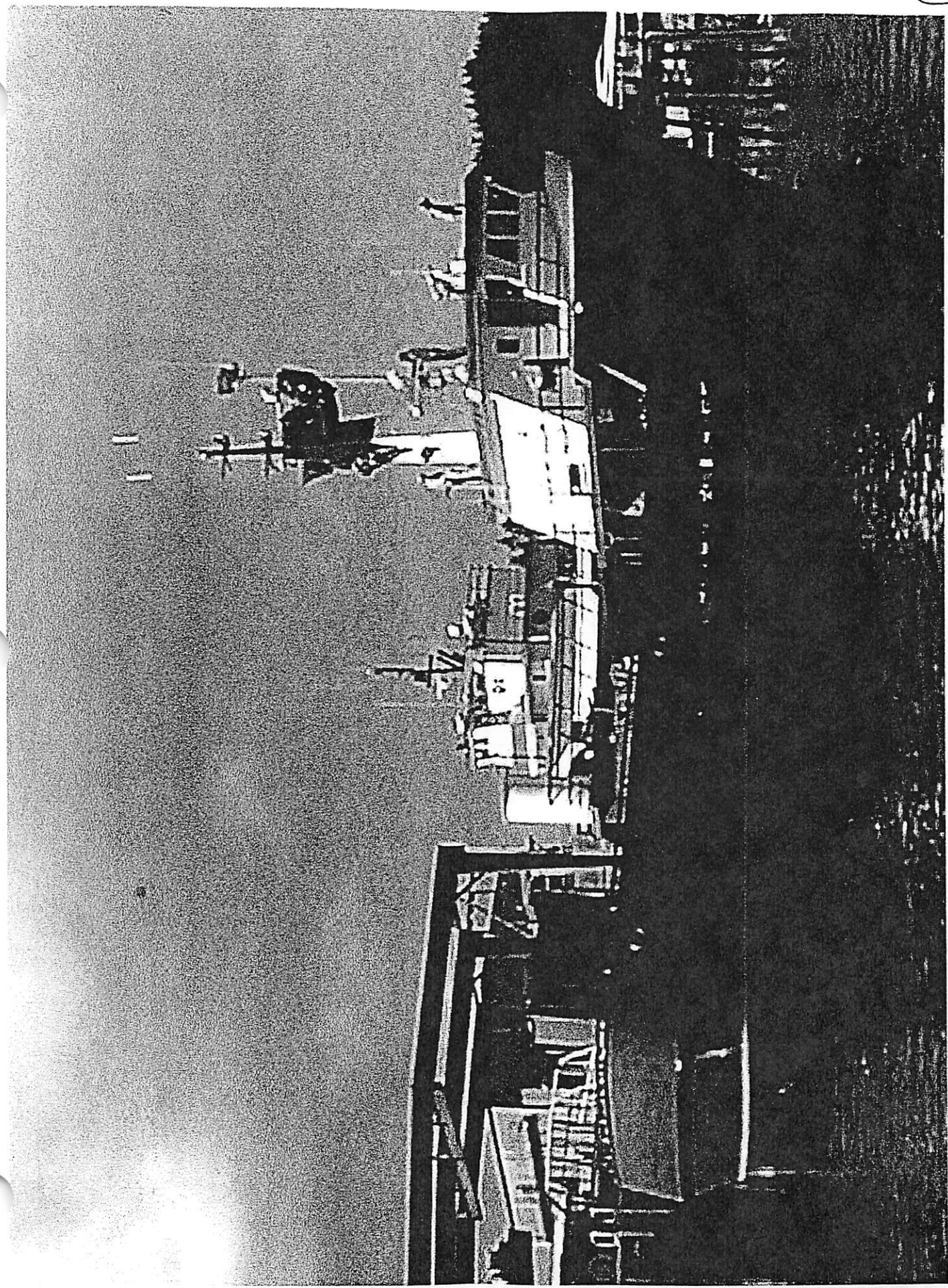
~~9~~
9

Tendering 2001	150,000
Red King CRAB 2001	175,000
Dungness Washington	200,000
Opilio's	150,000
Cod	100,000
Tendering	<u>150,000</u>
	925,000

Legal Fees 75,000

~~\$~~ 1,000,000 Gross Income

Inflation charge From 80,000
Shipyard For delay 1,080,000.00
of 1 year



(11)

Sunk vessel provision for persons whose eligibility to replace their vessel was denied under PL 106-554. The sunk vessel must have been replaced with a newly constructed vessel for a person to receive a benefit under this provision.

"For each of the fisheries for which such a vessel holds valid endorsement, for all seasons between the sinking of the vessel and the entry of the replacement vessel to the fishery within the IRS replacement period (as extended by IRS, if applicable), allocate Qs according to (75-100%) of the vessel's average history for the qualifying years unaffected by the sinking."

Submitted by Controller Bay Joint Venture.
September 30, 2002

\\FILS01\USERDOCS\JMST\DRAFT\PARAGRAPHS-999-999.DOC

C-1
Pat Carlson

Action:

Adopt language in the Community Protection Trailing amendment as follows:

3.4 Community Protection

Option 1. Governmental entities representing communities with at least 1% of the initial distribution of processing history of any BSAI crab fishery and not part of a CDQ group or in receipt of a direct allocation of any crab species, are provided the first right of refusal to purchase processing quota shares which are being proposed to be transferred for processing outside of the governmental entities boundaries of the community of original distribution. For purposes of this section, governmental entity means boroughs ~~and~~ ^{or} incorporated cities and villages outside of boroughs.

Please consider clarifying that municipalities are eligible to purchase quota share and that the exemption in Section 1.6.1 Option 4 regarding sea-time apply to those purchases also as an additional form of community protection.

C-1
Dave Fraser

Comments on EIS Alternatives and Analysis

June in Dutch Harbour was a "dress rehearsal." Certainly the 11-0 vote is indicative of a strongly held preference, and as human beings with free will we are all entitled to our preferences and prejudices. However, as Council members in a federal process under NEPA you are also required to set those aside when making a final decision based upon the record and the analysis in the EIS and RIR.

Some have suggested that the identification of a preferred option means that when you make the real decision in the future that the only options available will be those specifically identified in the EIS, and that (with the exception of the preferred option) the options identified in the RIR will be somehow buried away in Al Gore's "Lockbox."

Are There Adequate Alternatives in the EIS?

The Council identified three EIS options identified in Dutch:

- Economic Annihilation of Harvesters, Processors, and Communities (No Fishing)
- Continued slaughter of an average of 6 crabbers per year (Status Quo)
- "Three-pie" government sponsored market segmentation

None of these are viable alternatives. Though the last of the three contains many worthwhile features, it remains illegal.

i believe that NEPA requires at least one alternative that is both legal and viable be included in the analysis. Given that there is no longer a moratorium on a one-pie system, an IFQ based alternative should be included as an option. The simplest way to get there is to acknowledge that the alternatives analyzed in the RIR are not in a "lock box" but remain before the Council.

The EIS would also benefit from the inclusion of the alternatives identified in the AP motion.

Enhanced Analysis of B Share Performance in Preferred Option

The question of whether 10% B shares will fulfill the purposes for which they were included in the Council's preferred option deserves more analysis in the EIS and RIR for the final decision, than has been provided to date.

The State of Alaska's Issue Paper has said that 'B' shares will

- Protect harvester's bargaining power and guarantee a fair price for all crab deliveries.
- Provide a pool of product for new processors to enter the fishery.
- Increase the share of communities which have limited qualified 'A' share processors.

The function of an EIS and RIR is to evaluate such assertions by examining contrasting alternatives, so that decisions rely on analysis rather than unsupported assertions.

In order for the above assertions to be possible, it must be plausible that being a non-PQ endowed processor is a viable business. This raises the threshold question:

"How does a non-PQ endowed processor attract B share deliveries?"

Assume a base ex-vessel price of \$1/lb in the PQ sector.

Assume a Processor 1 is PQ endowed with 1,000,000 lbs and takes A share deliveries from 10 vessels with 100,000 lbs each.

Assume Processor 2, not PQ endowed needs 100,000 lbs to justify operating a crab line.

In order to attract deliveries from 10 vessels with 10,000 lb each of B share crab Processor 2 will have to pay some sort of incentive bonus. If Processor 2 determines it can pay \$1.10 (a 10 cent "competitive bonus") and still show a profit, will doing so attract deliveries of B shares?

In order to retain the deliveries of the 100,000 lbs of B share crab from its 10 vessels Processor 1 will have to pay some sort of "loyalty bonus." If Processor 1 determines it is willing to pay \$1.01 (a 1 cent "loyalty bonus") pro-rated over both A and B deliveries, why would the vessels deliver B shares to Processor 2?

Both Processor 1 and 2 are paying an 'extra' \$10,000 to get the B share deliveries. The difference is that Processor 1 is amortizing that \$10,000 over 1,000,000 lbs and Processor 2 is amortizing over just 100,000 lbs. This gives the PQ endowed processor a 10:1 advantage over the non-PQ processor. (If B shares had been set at 20% the PQ endowed processor would still have a 5:1 advantage, or about a 3:1 advantage if B shares had been set at 30%)

This suggests that entry by a non endowed processor will not occur unless PQ endowed processors are indifferent to retaining B share deliveries. This in turn suggests that none of the three functions that B shares are supposed to perform will actually be achieved. If there are no non-endowed B share processors, they can't fulfill the functions asserted in the "Issue Papers."

Enhanced Analysis of IPQ

One of the purposes of IPQs is to address the transitional costs associated with non-malleable capital in the processing sector. The analysis currently lacks any quantitative analysis of the crab specific fixed capital (malleable or otherwise) in the processing sector.

If analysis shows that there is 10 cents on the dollar of bargaining power at stake in the choice between PQs at levels between 0% to 100%, that difference represents a difference of \$10-50 million per year in ex-vessel revenue. The analysis should include an evaluation of the level and duration of the IPQ necessary to compensate the transitional costs of the processing sector.

Conclusion

The real and final decision on crab rationalization must be based on analysis not assertions, and that analysis requires inclusion of contrasting viable alternatives in the EIS.

dave fraser
FV Muir Milach

*C-1
Tom Casey*

2003

Alaskan of the Year

Denby Lloyd,
Westward Regional
Supervisor

ADFG Kodiak

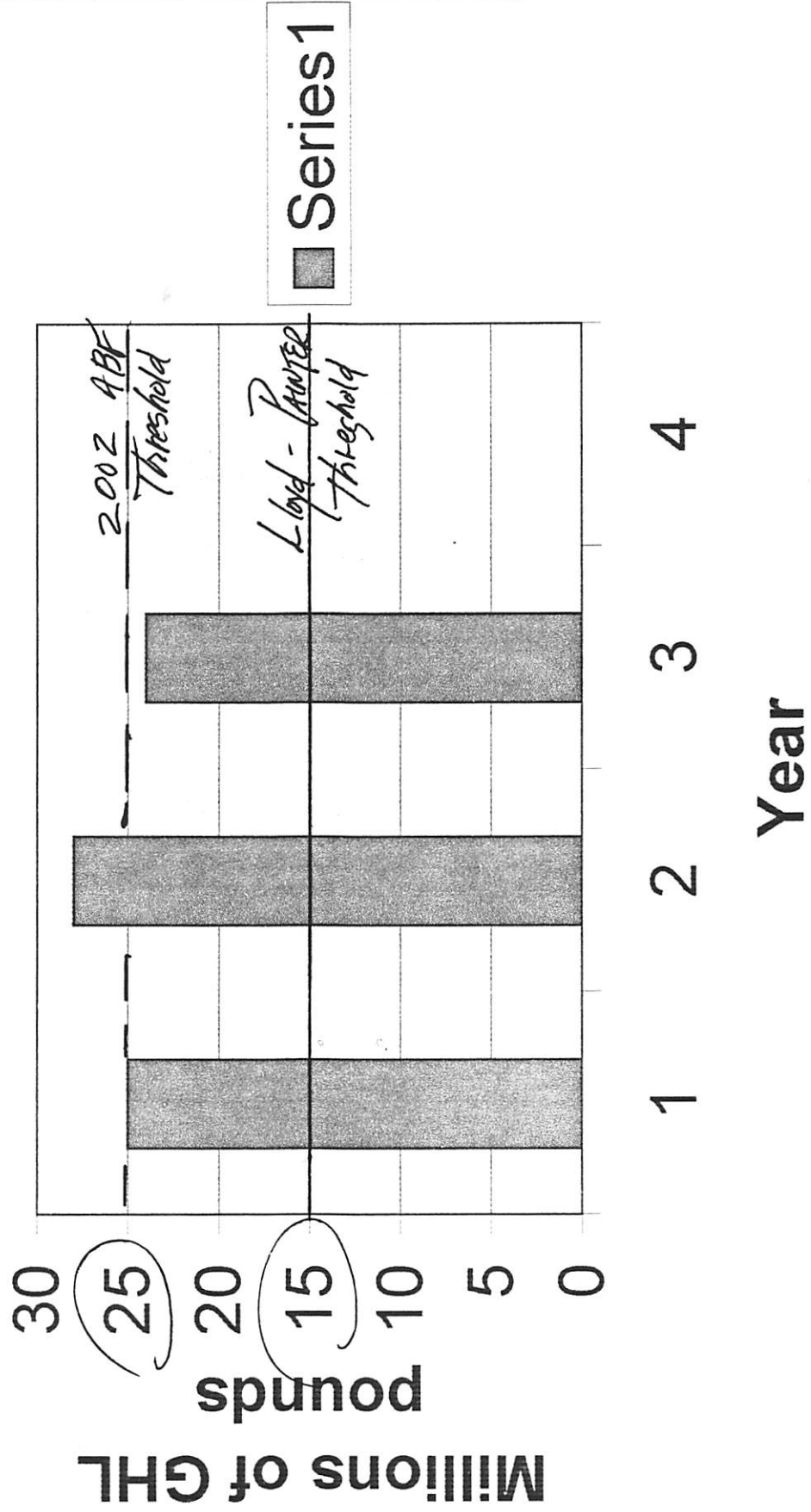
①

Justification:

His expertise, hard-assed leadership (See Denby's "Pound of Flesh") and concern for crab fishing families from Alaska, Washington and Oregon convinced the Alaska Board of Fisheries in March 2002 to approve Gary Painter's proposal to lower the Opilio GHL threshold from 25-million pounds in 2002 to 15-million pounds in 2003.

Result: The Bering Sea crab fleet will earn and deliver to Western Alaska ports over \$35-million of Opilio crab, instead of suffering through a closed season (as 23.8-million pounds of GHL goes unharvested).

Opilio GHL 2001-2003



Denby's "Pound of Flesh":

In exchange for his help, Denby insisted that the Bering Sea crab fleet agree to reduce their pot limit by 50% for all harvests under 25-million pounds.

Bottomline:

Gary Painter's crab boat TRAILBLAZER, may only fish 125-pots, instead of 250, which he fished last season.

Special "Thanks" to Mayor Frank Kelty, Mayor Simeon Swetzof, Steve Minor, John Hickman and Rick Shelford for meeting with Denby in Kodiak in June of 2001 to kick this project off the right way and to PNCIAC, Wayne Donaldson, Doug Pengilley and Forrest Bowers for helping us drive the ball into the end zone in the 4th Quarter.

Table 4.24: Harvest of Pollock in the Central Gulf by Vessel Class

Vessel	Area	Species	Tons-Retained (Thousands)									Ave.
			1992	1993	1994	1995	1996	1997	1998	1999	2000	95-00
01-TCV BSP i Å 12	CG	PLCK	1.94	3.77	3.21	1.54	0.13	0.64	1.44	2.14		
02-TCV BSP 60-124	CG	PLCK	7.08	6.35	8.20	9.26	1.41	3.29	7.63	3.57	2.50	4.61
03-TCV Div. AFA	CG	PLCK	37.14	49.33	43.99	10.80	6.53	20.19	40.21	35.37	26.55	23.27
04-TCV Non-AFA	CG	PLCK	12.99	16.31	16.91	11.96	12.94	20.02	33.96	25.18	19.37	20.57
05-TCV < 60	CG	PLCK	2.28	2.37	5.36	2.36	2.08	9.51	11.81	2.84	0.57	4.86
06-PCV	CG	PLCK						0.00			0.04	
07-LCV	CG	PLCK	0.00	0.00	0.00	0.00	0.00	0.00	0.01	0.00	0.01	0.00
08-FGCV 33-59	CG	PLCK	0.03	0.00	0.00	0.01	0.02	0.05	0.06	0.04	0.05	0.04
09-FGCV i Å 3	CG	PLCK	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
101-ST-CP	CG	PLCK										
102-FT-CP	CG	PLCK	0.17	0.00		0.04	0.04					
103-HT-CP	CG	PLCK	0.21	0.00	0.00	0.00	0.03	0.01	0.09	0.07	0.12	0.05
104-P-CP	CG	PLCK										
105-L-CP	CG	PLCK	0.00	0.00	0.00	0.00	0.00		0.00			
Total Value			61.84	78.13	78.04	36.07	23.27	53.72	95.21	69.22	49.22	54.45
% Harvest by Vessel Class	01-TCV BSP i Å 12	CG	3.13%	4.83%	4.12%	4.28%	0.56%	1.19%	1.51%	3.09%		
	02-TCV BSP 60-124	CG	11.45%	8.13%	10.51%	25.68%	6.07%	6.12%	8.02%	5.16%	5.07%	8.47%
	03-TCV Div. AFA	CG	60.06%	63.13%	56.37%	29.93%	28.04%	37.59%	42.23%	51.09%	53.94%	42.74%
	04-TCV Non-AFA	CG	21.00%	20.87%	21.66%	33.15%	55.60%	37.28%	35.67%	36.38%	39.35%	37.78%
	05-TCV < 60	CG	3.68%	3.03%	6.86%	6.55%	8.95%	17.70%	12.40%	4.11%	1.16%	8.93%
	06-PCV	CG						0.00%			0.09%	
	07-LCV	CG	0.00%	0.00%	0.00%	0.01%	0.01%	0.00%	0.01%	0.01%	0.02%	0.01%
	08-FGCV 33-59	CG	0.04%	0.00%	0.00%	0.03%	0.08%	0.10%	0.06%	0.06%	0.11%	0.07%
	09-FGCV i Å 3	CG	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
	101-ST-CP	CG										
	102-FT-CP	CG	0.27%	0.00%		0.11%	0.19%					
	103-HT-CP	CG	0.33%	0.00%	0.00%	0.01%	0.14%	0.02%	0.09%	0.10%	0.25%	0.10%
	104-P-CP	CG										
	105-L-CP	CG	0.00%	0.00%	0.00%	0.00%	0.00%		0.00%			

*Julie Bonney
C-1*

C-1
Gordon Blue

Fig. 1.

Most of the members of the binding arbitration committee agreed that without a competitive market for sales of crab, the next best surrogate would be the historic relative share of first wholesale price. On examination, this index is discovered to be variable, not constant. In the years shown, the harvester portion varied between 42% and 64% of the first wholesale price of opilio crab, with harvests from 30 to 240 million lbs. The Bristol Bay king crab fishery trended similarly, though not as strongly. The harvester share varied from 75% to 85%, while catches were in the range of 7.4 to 14.1 million lbs.

Relative Share Wholesale Price Basis

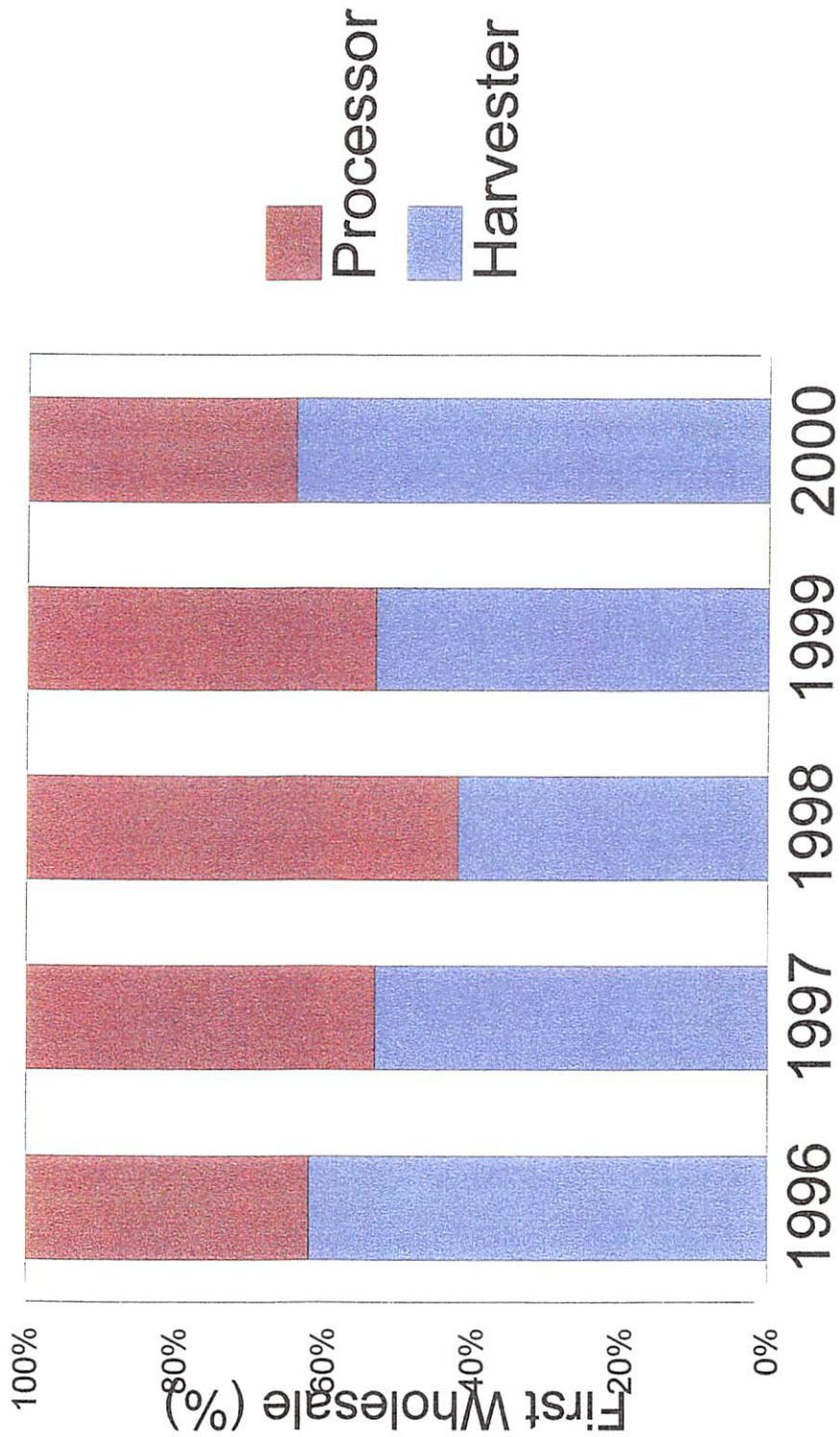


Fig. 2.

One suggestion to deal with the variability was to average the values. This may not be the best approach. When the first wholesale price is plotted against the catch of product, a different relationship emerges. The smaller the total available catch, the larger the harvester share of the revenue has been. This is a consequence of the differences in variable cost structures between harvesters and processors, which will become clearer at Fig. 4.

Price Relationship

Historic Harvester/Processor Share

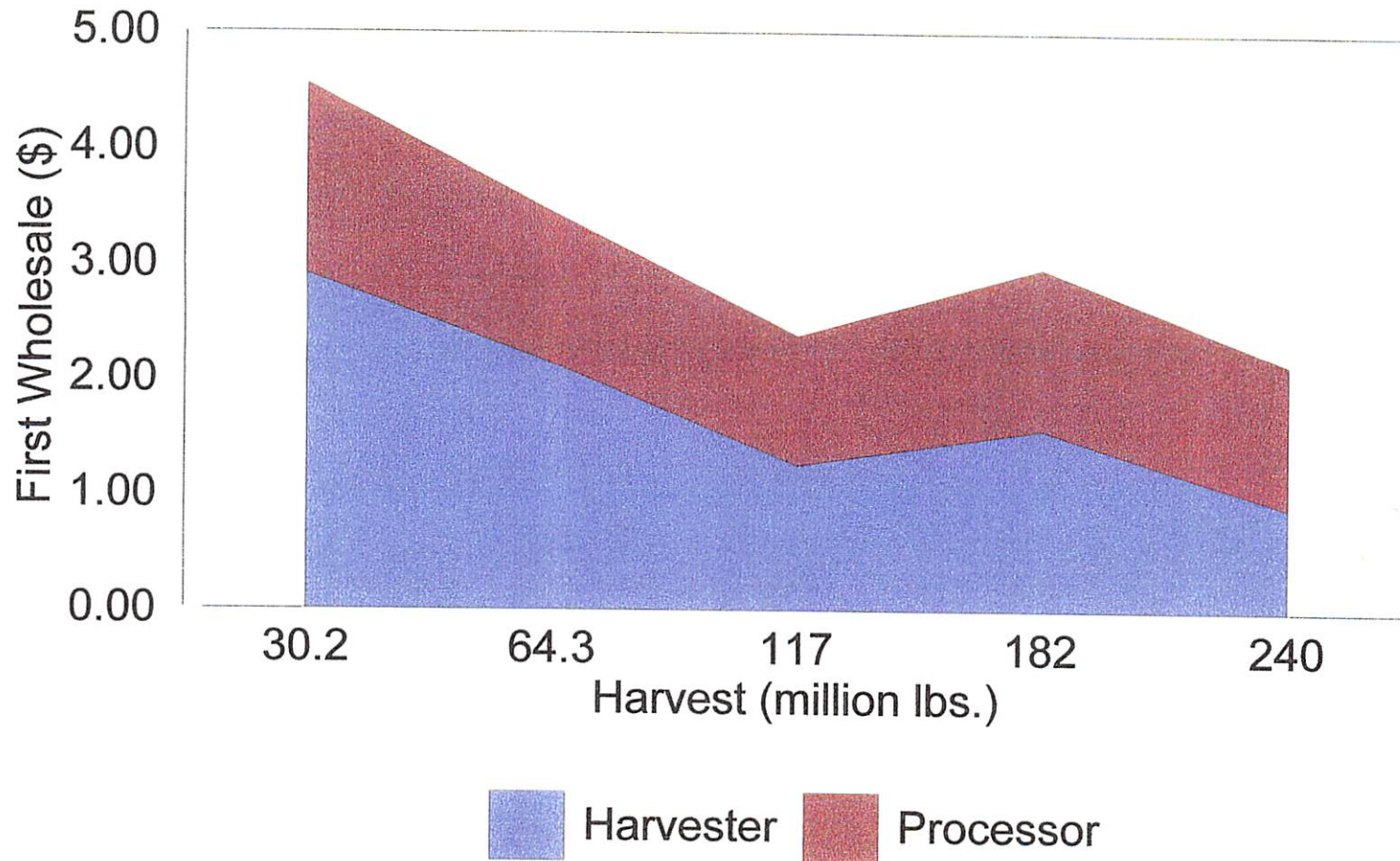


Fig. 3.

Two of the committee members felt that a better surrogate for competitive price would be given by the relative historic share of revenue net of variable costs, or 'quasi rents'. The revenue net of variable costs for harvesters and processors is shown here. Although the net revenue of processors has consistently remained higher than that of harvesters during the period considered, the relationship between the two is complex. There are a number of potential methods to define relative shares, based on historic net revenue, and no rationale of particular weight has emerged for choosing one method over another. Note that in 2000, the net value for harvesters was negative, and this adds to the complexity.

This also underscores the importance of making the correct choice of methods of sharing revenue.

Revenue Share

Historic Net of Variable Costs

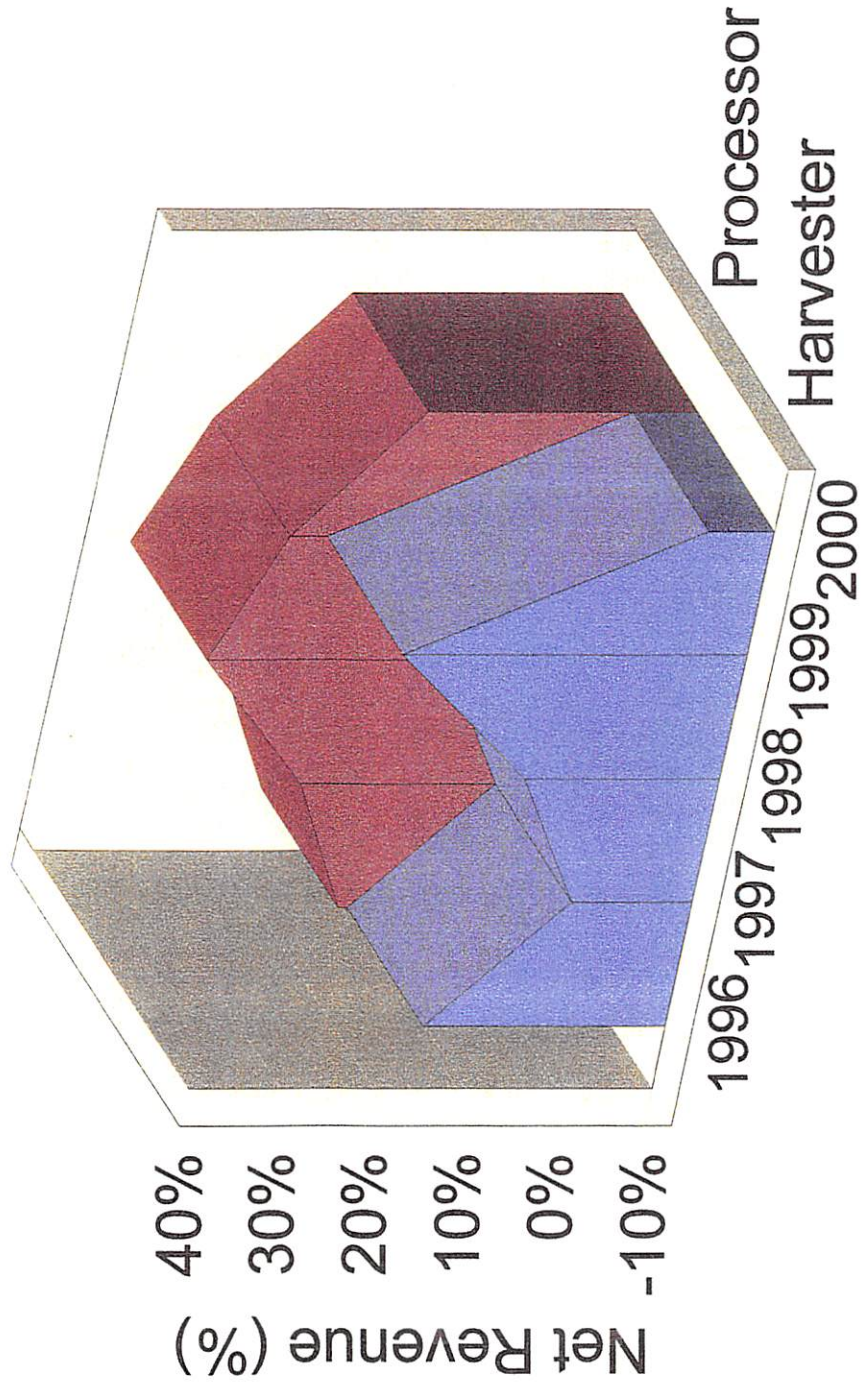


Fig. 4.

This is a spreadsheet presentation of the revenues and variable costs of processors and harvesters, in the Bering sea *opilio* fishery, for the years 1996 through 2000. The spreadsheet also presents two projections for the year 2003. Case (A) projects 'average' values for revenue per pound and for the relative harvester share of revenue. (\$3.50 and 51%, respectively.) Case (B) projects a higher wholesale price, and a slight increase of harvester share, over 2000. (\$4.60 and 65%, respectively.) Both increases relate to the reduced supply of product that goes to market.

Several items of note should be pointed out from the spreadsheet. The raw product costs, ex-vessel, are derived from processor data reported by NPCA. These provide a close, but inexact, match with available harvester data. This is probably a result of sampling different populations (some of the harvester deliveries were to processors not represented in the NPCA data.) The processor data for income was used for consistency. Both harvester and processor data agree, but differ significantly from the uniform price reported in index 2-2 of the crab analysis, for the value reported in 1999. Other values are in close agreement. Vessel revenue records examined showed that a substantial 'retroactive' settlement was paid (at least some) *opilio* harvesters, post season, in 1999. This probably accounts for the difference.

Note that the largest component of processor variable costs is the payment to harvesters for raw product, and the largest component of harvester variable costs is 'fishing expense.' The largest component of fishing expense is crew shares, closely followed by other crew costs. 'Other variable costs' reported by processors declined dramatically between 1998 and 1999. Harvester 'other variable costs' are far more variable.

COST DATA SPREADSHEET

	1996	1997	1998	1999	2000	2003	2003
Harvest, pounds	64,363,158	117,179,683	240,433,650	182,678,507	30,258,170	25,000,000	25,000,000
PROCESSOR SECTION	data source: North Pacific Crab Association					(A)	(B)
Revenues/ finished pound	3.44	2.38	2.14	2.97	4.55	3.50	4.60
Raw product cost/ finished pound	(2.14)	(1.25)	(0.89)	(1.59)	(2.90)	(1.79)	(2.99)
Other variable costs/ finished lb.	(0.73)	(0.55)	(0.44)	(0.48)	(0.79)	(0.60)	(0.78)
TOTAL variable costs/ finished lb.	<u>(2.87)</u>	<u>(1.80)</u>	<u>(1.33)</u>	<u>(2.07)</u>	<u>(3.69)</u>	<u>(2.38)</u>	<u>(3.77)</u>
Revenues net of variable costs/ lb.	0.57	0.58	0.81	0.90	0.86	1.12	0.828
TOTAL Revenues net of var. costs	<u>\$22,972,234</u>	<u>\$42,953,385</u>	<u>\$122,540,116</u>	<u>\$103,402,928</u>	<u>\$16,420,796</u>	<u>\$17,640,000</u>	<u>\$13,041,000</u>
Raw product, % revenue	62%	53%	42%	53%	64%	51%	65%
Other variable cost, % revenue	21%	23%	21%	16%	17%	17%	17%
TOTAL variable costs, % revenue	83%	76%	63%	69%	81%	68%	82%
Raw product / round lb. (ex-vessel)	1.34	0.79	0.56	1.00	1.83	1.12	1.88
<i>product recovery rate, derived</i>	-63%	-63%	-63%	-63%	-63%	-0.63	-0.63
HARVESTER SECTION	data source: CRAB Group					<small>note: 2003 projection assumes 200 vessel fleet</small>	
Revenues/ round lb.	1.34	0.79	0.56	1.00	1.83	1.12	1.88
Fishing expenses/ round lb.	(0.74)	(0.51)	(0.35)	(0.55)	(1.02)	(0.73)	(1.04)
Other variable costs/ round lb.	(0.38)	(0.26)	(0.15)	(0.19)	(0.87)	(0.84)	(0.84)
TOTAL variable costs/ round lb.	<u>(1.13)</u>	<u>(0.77)</u>	<u>(0.50)</u>	<u>(0.73)</u>	<u>(1.89)</u>	<u>(1.57)</u>	<u>(1.87)</u>
Revenues net of var. costs/ lb.	0.21	0.02	0.06	0.27	(0.06)	(0.45)	0.01
TOTAL Revenues net of var. costs	<u>\$13,667,979</u>	<u>\$2,583,170</u>	<u>\$14,195,706</u>	<u>\$48,582,104</u>	<u>(\$1,791,529)</u>	<u>(\$11,143,750)</u>	<u>\$243,500</u>
Fishing expenses, % revenue	55%	64%	63%	55%	56%	65%	55%
Other variable cost, % revenue	29%	33%	26%	19%	47%	74%	44%
TOTAL variable costs, % revenue	84%	97%	89%	73%	103%	140%	99%

Fig. 5

The binding arbitration process has been ballasted by the notion that, even though there will no longer be a competitive market for 'A' share product, that 'B' shares will continue to be sold competitively, and that this will provide assurance that the binding arbitration process functions smoothly.

The State of Alaska's Issue Paper has said that 'B' shares will:

- Protect harvester's bargaining power and guarantee a fair price for all crab deliveries.
- Provide a pool of product for new processors to enter the fishery.
- Increase the share of communities which have limited qualified 'A' share processors.

The function of an EIS and RIR is to evaluate such assertions by examining contrasting alternatives, so that decisions rely on analysis rather than unsupported assertions.

In order for the above assertions to be possible, it must be plausible that being a non-PQ endowed processor is a viable business. This raises the threshold question:

“How does a non-PQ endowed processor attract B share deliveries?”

Assume a base ex-vessel price of \$1/lb in the PQ sector.

Assume a Processor 1 is PQ endowed with 1,000,000 lbs and takes A share deliveries from 10 vessels with 100,000 lbs each.

Assume Processor 2, not PQ endowed needs 100,000 lbs to justify operating a crab line.

In order to attract deliveries from 10 vessels with 10,000 lb each of B share crab Processor 2 will have to pay some sort of incentive bonus. If Processor 2 determines it can pay \$1.10 (a 10 cent “competitive bonus”) and still show a profit, will doing so attract deliveries of B shares?

In order to retain the deliveries of the 100,000 lbs of B share crab from its 10 vessels Processor 1 will have to pay some sort of “loyalty bonus.” If Processor 1 determines it is willing to pay \$1.01 (a 1 cent “loyalty bonus”) pro-rated over both A and B deliveries, why would the vessels deliver B shares to Processor 2?

Both Processor 1 and 2 are paying an ‘extra’ \$10,000 to get the B share deliveries. The difference is that Processor 1 is amortizing that \$10,000 over 1,000,000 lbs and Processor 2 is amortizing over just 100,000 lbs. This gives the PQ endowed processor a 10:1 advantage over the non-PQ processor. (If B shares had been set at 20% the PQ endowed processor would still have a 5:1 advantage, or about a 3:1 advantage if B shares had been set at 30%)

This suggests that entry by a non endowed processor will not occur unless PQ endowed processors are indifferent to retaining B share deliveries. This in turn suggests that none of the three functions that B shares are supposed to perform will actually be achieved. If there are no non-endowed B share processors, they can't fulfill the functions asserted in the “Issue Papers”

90/10% Spreadsheet

The price of loyalty.

Here is how the game works:

Assume that there are three 'players' in the 90/10 game.

	<u>'A'</u>	<u>'B'</u>	<u>Total</u>
H Harvester with	90,000	10,000	100,000 live weight pounds
P Processor with	56,700	6,300	63,000 finished weight pounds
Q Processor with >	0	90,000	Processing Quota

Assume that both P and Q wish to buy the 'B' shares.

For this example, we have the following initial conditions:

First Wholesale Value of crab		3.00	per finished pound
Harvester Share of wholesale	53%		
Cost of product/ finished lb.		1.59	per finished pound
Product Recovery Rate	63%		
Ex-vessel price (/ live lb.)		1.00	per live weight pound
Q Other variable costs	17%	0.51	per finished pound
P Other variable costs	17%	0.51	per finished pound
Q Processor income net of variable costs:		0.90	per finished pound
P Processor income net of variable costs:		0.90	per finished pound

Processor Revenue Net of All Variable Costs

Harvester Gross Revenue (live weight basis)

1) Bidding Opens

	<u>Q</u>	<u>P</u>	<u>'A'</u>	<u>'B'</u>	<u>Total</u>
Q \$ 1.00 Q offer for crab	\$ 56,700	\$ 0	\$ 90,000	\$ 10,000	\$ 100,000
P \$ 1.10 P offer for 'B' crab	\$ 51,030	\$ 4,670	\$ 90,000	\$ 11,000	\$ 101,000

2) Q Counters, P Replies

Q \$ 1.01 Q offer, 'loyalty bonus'	\$ 55,700	\$ 0	\$ 90,900	\$ 10,100	\$ 101,000
P \$ 1.20 P offer for 'B' crab	\$ 50,130	\$ 3,670	\$ 90,000	\$ 12,000	\$ 102,000

3) Q Counters, P Replies

Q \$ 1.02 Q offer, 'loyalty bonus'	\$ 54,700	\$ 0	\$ 91,800	\$ 10,200	\$ 102,000
P \$ 1.30 P offer for 'B' crab	\$ 49,230	\$ 2,670	\$ 90,000	\$ 13,000	\$ 103,000

4) Q Raises, P is out of business

Q \$ 1.06 Q offer, 'loyalty bonus'	\$ 50,700	\$ 0	\$ 95,400	\$ 10,600	\$ 106,000
P \$ 1.60 P offer for 'B' crab	\$ 45,630	\$ (330)	\$ 90,000	\$ 16,000	\$ 106,000

In this example, the harvester succeeds in getting a better price - at a steep cost, the bankruptcy of processor P.

Since the game is rigged at such high odds favoring Q, not even a very efficient competitor can enter successfully.

There is no credibility to the claim that the 90/10 split will provide for new processors to enter the fishery and so, there is no validity to the claim that these competitive processors will ensure a fair price to harvesters.

It is difficult to fully grasp the change that a market share guarantee requires in our customary way of viewing the world. What appears to have been overlooked, is that the qualified processor is bidding for the last 10% of its production, against a competitor bidding for its first 10%. What this means is that the qualified processor can utilize a 'loyalty bonus' of one cent per pound for the delivery of all (100%) of a harvester's crab, to produce the same gross revenue to the harvester as a nonqualified processor must pay ten cents per pound (for 10%) to match. With a hefty ten cent per pound loyalty bonus, a qualified processor would compel a 'competing' processor to match with a \$1.00 per pound raise for a 10% share. The spreadsheet demonstrates how this allows competition to be driven from the market at will.

What is the impact of a lower ratio? For 80/20, the ratio is 100/20, or 5:1 in favor of the 'A' share processor.

For 70/30, the ratio is 100/30, or 10:3 in favor of the 'A' share processor.

For 60/40, the ratio is 100/40, or 5:2 in favor of the 'A' share processor.

For 50/50, the ratio is 100/50, or 2:1 in favor of the 'A' share processor.

This means, in a 50/50 split, a competitor would still have to pony up 20 cents extra for every 10 cents bonus an 'A' share processor was willing to pay.

C-1

Binding Arbitration
Public Testimony Outline
Joe Sullivan
October 3, 2002

1. Binding arbitration is a critical component of three pie. While we expect that many transactions will be negotiated outside of BA, it represents the "outside option" that will condition the results of those negotiations.
2. Simulation exercises are critical to building harvester (and processor?) confidence that the results of the binding arbitration model chosen will be fair, as intended.
3. Detailed and accurate data concerning product transactions through the first arm's length sale is critical, even for models based on maintaining a historical distribution of first wholesale revenues. Transfer pricing within a vertically integrated firm that is fair and in compliance with IRS requirements may nonetheless affect the first wholesale price.
4. Delivery timing is still a complicated issue. Share matching will help to some extent, and could be added to the fleet wide model as a component. In addition, the price smoothing function will be helpful in correcting disparity between reference prices at time of delivery versus reference prices at time of sale. However, the issue concerning disparate interests between processors and fishers as to crab fishing and processing timing relative to other fishery activities remains an issue for all models where it would not be resolved in arbitration. Further, it could be an issue in cases where a processor has both vessels it controls and independent vessels delivering to it. Under the fleet wide model, extending the price smoothing function to setting a price for an entire season may resolve these issues.
5. Quality standards are an essential element of transaction transparency and fairness. While it may not be necessary to establish industry wide grade standards, it will be important to have a method for resolving disputes concerning the grading of product at delivery. The binding arbitration committee would like to address this issue, if the Council decides to extend the committee's term.
6. Antitrust issues associated with the fleet wide model should be resolved. At first impression, it does not appear that antitrust law should pose a problem, as the arbitrator's serial meetings with processors are similar to the process currently used by the Alaska Marketing Association and other fishermen's marketing association. Further, the process should produce adequate data for the arbitrator, as the serial meetings appear to provide marketing association representatives with adequate data for price negotiations now. It may mean that the arbitrator will need to begin her or his work well before the season begins.

7. Choosing the arbitrator or arbitrators is critical to success of the program. Obviously, the arbitrator(s) must be unbiased. Further, under every model, the arbitrator will need to be very familiar with the industry, and will need to have access to and the ability to comprehend an extensive range of data. This applies even in the case of "last, best offer" models, as the arbitrator may have to choose between two substantially different last offers.
8. Enforcement mechanisms need further work. It appears that the committee's preference will be civil remedies, rather than use-it-or-lose-it or injunctive relief. However, if the remedy depends on the parties bearing their own costs of litigation, the disparity of resources between processors and fishers could leave fishers at a substantial disadvantage in connection with any dispute.
9. Under some models, it may not be appropriate to be "unsympathetic" to fishers who choose not to trigger or participate in binding arbitration. Under the discrete (processor by processor) models, the harvester(s) participating in the arbitration would be obligated to perform under the terms set by the arbitration. Absent strong assurances that the arbitrator will be fair and fully informed, harvesters may be concerned that the arbitrator's decision could leave them in worse financial condition than not fishing. The fleet wide model was developed in part to provide a mechanism for setting a floor price, without imposing an obligation to fish at that price.

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October 2, 2002

ITEMS FOR CLARIFICATION FROM JUNE 2002 MOTION;

REFERENCE MARK FINA MEMO, SEPTEMBER 13, 2002

Recommendations on the thirteen clarification issues are noted below and numbered in the same sequence as Mark Fina uses in his attached memorandum, as the ACC understood them at the June 10, 2002 meeting:

1. The Council adopted the control date of June 10th, 2002 for purchase of fishing quota shares, but they did not establish a control date for purchase of processor quota shares. Control dates are needed to prevent concentration and excessive ownership of shares. For whatever reason it occurred, (it was likely an oversight), the Council will likely clarify that it was their intent the same date apply to the purchase of processor shares.
RECOMMEND APPLICATION OF JUNE 10, 2002 CUTOFF DATE FOR PURCHASE OF PROCESSOR QUOTA SHARES.
2. The subject of use caps identified in #2 is primarily directed to the Council having omitted a use cap for processor quota shares in the Southern Region. This will likely be corrected at the meeting. The Council will have a discussion of their overall interpretation of ownership and use caps. Note what the memo has to say about ownership and use caps in the halibut and sablefish IFQ program, ownership caps became the same as use caps. Staff notes the Council could adopt the same approach to the crab program. However, the Council clearly adopted ownership caps for QS and use caps for IFQs. Clarification needs only to be made for PQS. The ownership cap for PQS is set at 30%.
RECOMMEND PROCESSOR QUOTA SHARE OWNERSHIP/USE CAP OF 30% TO BE APPLIED TO THE WHOLE FISHERY.
3. Norton Sound red king crab fishery CDQ allocation: The Norton Sound fishery was excluded from the rationalization program, but the motion to increase the CDQ allocation to 10 per cent is for "all species". The Council will likely clarify that it did not intend the increase to apply to the Norton Sound fishery.
RECOMMEND EXCLUSION OF THE NORTON SOUND RED KING CRAB FISHERY FROM THE CDQ PROGRAM.
4. Adak allocation in the WAI (Adak) golden king crab fishery: The Council needs to decide what entity to allocate the 10% (unused portion of the fishery, amount of the GHM not caught during the qualifying period).
FOLLOWING PUBLIC COMMENT, MAKE THE APPROPRIATE RECOMMENDATION.
5. Regionalization of the initial allocation in the WAI (Adak) golden king crab fishery, for harvesters and processors: This is a rather complicated issue as the memo describes and it only applies to the fishermen and processors involved in the WAI fishery. Option B seems to be the most equitable and practical way to resolve this issue, as it is based on participation and history in the fishery.
RECOMMEND OPTION B AND PRO RATA DISTRIBUTION OF REMAINING SHARES.

6. **Catcher/processor definition:** A catcher/processor (cp) must be defined for purposes of applying the restriction on deliveries of B share crab to catcher/processors (Section 1.3(b)). By the June 10th motion, catcher processors are currently prohibited from purchasing B share crab. Definition of this sector is problematic for purposes of implementing this program because vessels used as catcher/processors also act as floating processors. Catcher processors will potentially provide additional markets for catcher vessels. The Council will have to decide when a vessel is acting as a floating processor and this normally occurs following the close of the season, when it registers with and provides notice of location to ADF&G. Thus it is normal for CPs to act as both a CP and a floating processor in the same season. After it has processed its own crab, some CPs will anchor inside State waters, and after registering with the State, they will purchase crab from catcher vessels and process it (with an observer onboard, like other floaters).

There are apparently only three catcher processors that have operated as floaters in the CP recency qualifying period of 1998-1999.

RECOMMEND CPs BE ALLOWED TO OPERATE BOTH AS A CP AND A FLOATING PROCESSOR IN THE SAME SEASON.

7. **Sector cap on catcher/processors:** The staff requests clarification on several issues relative to the overall sector cap:
 - A) Does the cp sector-wide cap limit the ownership and use of PQS and IPQ by cps?
The staff says the deliberations suggest that cps can purchase A share crab provided that the cp has matching IPQ and that the processing is done within State waters.
RECOMMEND THAT CPs CAN PURCHASE A SHARE CRAB PROVIDED THAT THEY HAVE MATCHING IPQ.
 - B) Are catcher/processors permitted to purchase PQS and Class A QS and to combine them for use together as cp shares? Deliberations suggest that cp shares cannot be created by combining PQS and Class A QS.
RECOMMEND NO COMBINING OF CLASS A QS AND PQS FOR USE TOGETHER AS CP SHARES.
 - C) Can catcher processors purchase IFQ and act as a catcher vessel? Deliberations suggest that cps can purchase IFQ, but they must deliver the crab to a processor with IPQ.
RECOMMEND THAT CPs BE PERMITTED TO PURCHASE IFQ, BUT THEY MUST DELIVER TO A PROCESSOR WITH IPQ.
8. For catcher/processors that have taken delivery of crab from catcher vessels during the qualifying periods, and who meet the processor eligibility criteria, the Council will need to clarify the PQS regionalization designation and the corresponding Class A QS. This can be accomplished by one of two options: (a) through the use of historical records, or; (b) by a one time choice of the share holder at the time of initial allocation.
RECOMMEND OPTION A, REGIONALIZATION BASED ON HISTORICAL RECORDS.
9. The word "not" was omitted from the definition of a lease in the Council motion (Section 1.6.2) of June 10, 2002. Without the word "not", leasing would occur when an IFQ is used on a vessel on which the holder of the "underlying QS is present."
RECOMMEND INCLUSION OF THE WORD "NOT", OMISSION WAS AN OBVIOUS TYPOGRAPHICAL ERROR.
10. This point will clarify that the vessel use caps will allow for grandfathering vessels with qualified catch in excess of the vessel use cap.

RECOMMEND THAT THE COUNCIL CLARIFY THAT VESSEL USE CAPS WERE MEANT TO ALLOW GRANDFATHERING FOR VESSELS WITH QUALIFIED CATCH IN EXCESS OF THE VESSEL USE CAP.

11. **Cost recovery definition:** The Council needs to clarify provisions regarding the fees to be collected under the crab plan. The M-S Act authorizes up to a 3% fee. The Council needs to clarify what proportions will be collected from harvesters and processors. Following industry discussions, they will most likely split the fee equally for each sector based on the ex-vessel price for crab species. This should also include catcher/processors, who should assume the whole fee for species they catch and process.

RECOMMEND THAT THE COUNCIL SPLIT THE COST RECOVERY FEE EQUALLY BETWEEN HARVESTERS AND PROCESSORS. THE COUNCIL ALSO NEEDS TO DETERMINE WHAT LEVEL OF FEES SHOULD BE NEEDED FOR ADMINISTRATION OF THE PROGRAM.

12. **Regionalization of the WAI (Adak) red king crab fishery:** Class A harvest shares and the corresponding processing shares are regionally designated under the program. There is a significant mismatch between the harvesting qualifying period (91-92) and the processor qualifying period (96-2000). The Council needs to choose which qualifying period to base regionalization on and they will likely choose the most recent period, the PQS qualifying period, which means the entire fishery will be designated South.

RECOMMEND USE OF THE PQS QUALIFYING PERIOD, THIS REDUCES THE MISMATCH BETWEEN HARVESTING AND PROCESSING QUALIFYING PERIODS.

13. **Rules governing cooperatives:** The Council motion describes several purposes for including cooperatives in the program and a general description of the function of cooperatives. The memo clarifies six governing rules for cooperatives and helps to distinguish the differences for IFQ holders who will not be participating in cooperatives.

RECOMMEND THE STATE OF ALASKA AND THE COUNCIL CLARIFY WHAT APPEARS TO BE CONFLICTING LANGUAGE IN RULES A, B, C AND E, REGARDING OWNERSHIP AND USE CAPS; AND ANNUAL ALLOCATIONS OF IFQs TO COOPERATIVES.

RECOMMENDING THAT THE COST SHOULD BE SHARED EQUALLY BETWEEN THE STATE AND THE FEDERAL GOVERNMENT. THE STATE SHOULD ALSO CONSIDER THE NEEDS OF THE VARIOUS LOCALITIES.

11. The primary objective of the program is to provide financial assistance to the states in order to meet their needs for the construction of water supply projects. The program should be designed to meet the needs of the states in a manner which is equitable and efficient. The program should be designed to meet the needs of the states in a manner which is equitable and efficient. The program should be designed to meet the needs of the states in a manner which is equitable and efficient.

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Testimony of Duncan Fields
on behalf of GOAC³
October 3, 2002

**Comments Regarding Community Protections as part of
Bering Sea Crab Rationalization
Agenda Item C-1 Crab Management**

Mr. Chairman, Members of the Council

My name is Duncan Fields and I represent the Gulf of Alaska Coastal Communities Coalition. I will limit my comments to the community protection alternatives identified for analysis as trailing amendments. The coalition endorses the AP motion and strongly supports the suggestion that the Council appoint a committee of community and industry representatives to wrestle with the numerous questions subsumed in these alternatives and the issues identified by NOAA General Council. We would note that similar committees were formed for the data acquisition, skippers shares and binding arbitration issues.

As you are aware, the NOAA General Council letter regarding community protection alternatives mentions several due process concerns with the alternatives due to insufficient information about key terms and how to construe them. The opinion amplifies questions about opportunities for abuse and misuse of community protection and suggests incorporation of an Administrative Procedures Act process for community protection. Without further work on the alternatives due process concerns will continue and, thus far, there is little discussion or analysis of how incorporation of the APA would impact or further burden communities. All of these issues need further discussion among communities

The coalition understands that there are suggestions for the Council to tweak one alternative or the other to address a specific community or regions' concern. Such an approach may solve some of the problems identified but it is unlikely that any single proposal will resolve the suite of issues raised by NOAA General Council as well as concerns from a number of regions

or communities. For example, who is the "community" for purposes of the right of first refusal. Again, we encourage a wider discussion through the committee process.

The AP's motion regarding adding additional options to create ceiling for maximum IPQ allocations is a fairness issue and an attempt to provide all of the crab fisheries with opportunities for processing options should crab stocks rebound to historical levels. We support inclusion of these options in your trailing amendments.

The GOAC³ would encourage the Council to expand the Data Collection Committee's suggestions to include community specific information. Community interests were not present on the Data Collection committee and there are only a few data gathering suggestions that could provide community social/economic data. We're concerned about long term impacts to communities and believe that the Council's data collection efforts should include, as the AP suggested, "socio-economic information to evaluate the long-term impacts of rationalization" on communities.

Finally, Mr. Chairman, I will comment briefly on the Adak community development crab allocation. I appreciate the State of Alaska's suggestion that the Aleut Corporation through its wholly owned subsidiary, the Aleut Enterprise Corporation, representing the community of Adak, be given these shares. However, we believe that the gifting of quota shares to ANCSA corporation represents a new direction for the Council and may raise serious public policy concerns. Given the ongoing growth and development in Adak, we would suggest that the Adak Community Development Crab Quota Shares be given to a community entity but held in trust by the Aleut Enterprise Corporation to be administered by AEC as trustee.

Thank you for your consideration of the Gulf Community Coalition's comments.

C-1 Steffen Tawfen

L&P

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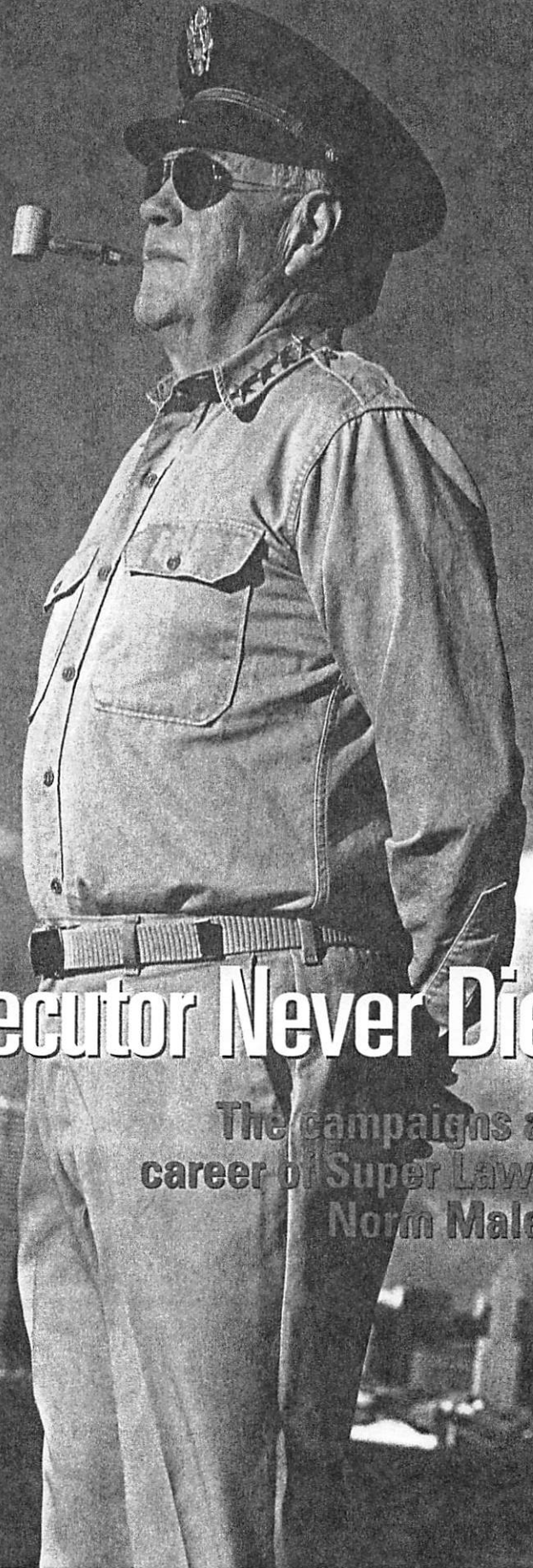
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Norm Maleng





Matt Taylor: A trucker who really delivered the goods

Whistle **While You Work**

Enron and the FBI had theirs; now meet some Washingtonians who have risked health and paycheck to right wrongs

By Todd Matthews

Photography by Michael Hipple

Whistle-blower.

The word conjures derision for some, nobility for others. Whistle-blowers have been romanticized by Hollywood (remember *Silkwood* and *The Insider*?), vilified by big business and government, and heralded in the news media. Earlier this year Colleen Rowley, a Minneapolis agent of the Federal Bureau of Investigation (FBI) blew the whistle heard around the world, and became around-the-clock news, when she accused FBI headquarters of putting roadblocks in the way of trying to

investigate suspected terrorist Zacarias Moussaoui, charged with conspiring with the hijackers in the September 11, 2001, attacks. For sounding the alarm, whistle-blowers are usually either "thrown into the volcano" (as one described his experience) or rewarded for their forthrightness. However the individual is described, one thing is certain: The whistle-blower is as much a part of American business as the chief executive officer.

"Blowing the whistle is like a snake shedding its skin—you are raw, vulnerable and empowered to grow, all at the same time." says Lea Mitchell, the Washington state director of the Public Employees for Environmental Responsibility (PEER), a private, nonprofit national organization that protects government employees who blow the whistle on alleged environmental wrongdoings. "Corporations and bureaucracies often label whistle-blowers as disgruntled, irrational workers who have an ax to grind. What whistle-blowing really comes down to is taking action to support the greater public interest. Look back in history, and some of the people we now applaud as heroes were labeled as hysterical kooks."

Labeling a whistle-blower as "disgruntled" or "irrational" or "kooky" serves two purposes: It discourages people from blowing the whistle and it assaults the individual once he or she has blown the whistle. "If you kill the messenger," adds Mitchell, "you don't have to deal with the message."

But labeling is only one of form of repercussion. Washington state whistle-blower Casey Ruud blew the whistle on safety violations and contamination at the Hanford Nuclear Reservation during the mid-1980s. With the help of fellow whistle-blower and nuclear physicist John Brodeur,

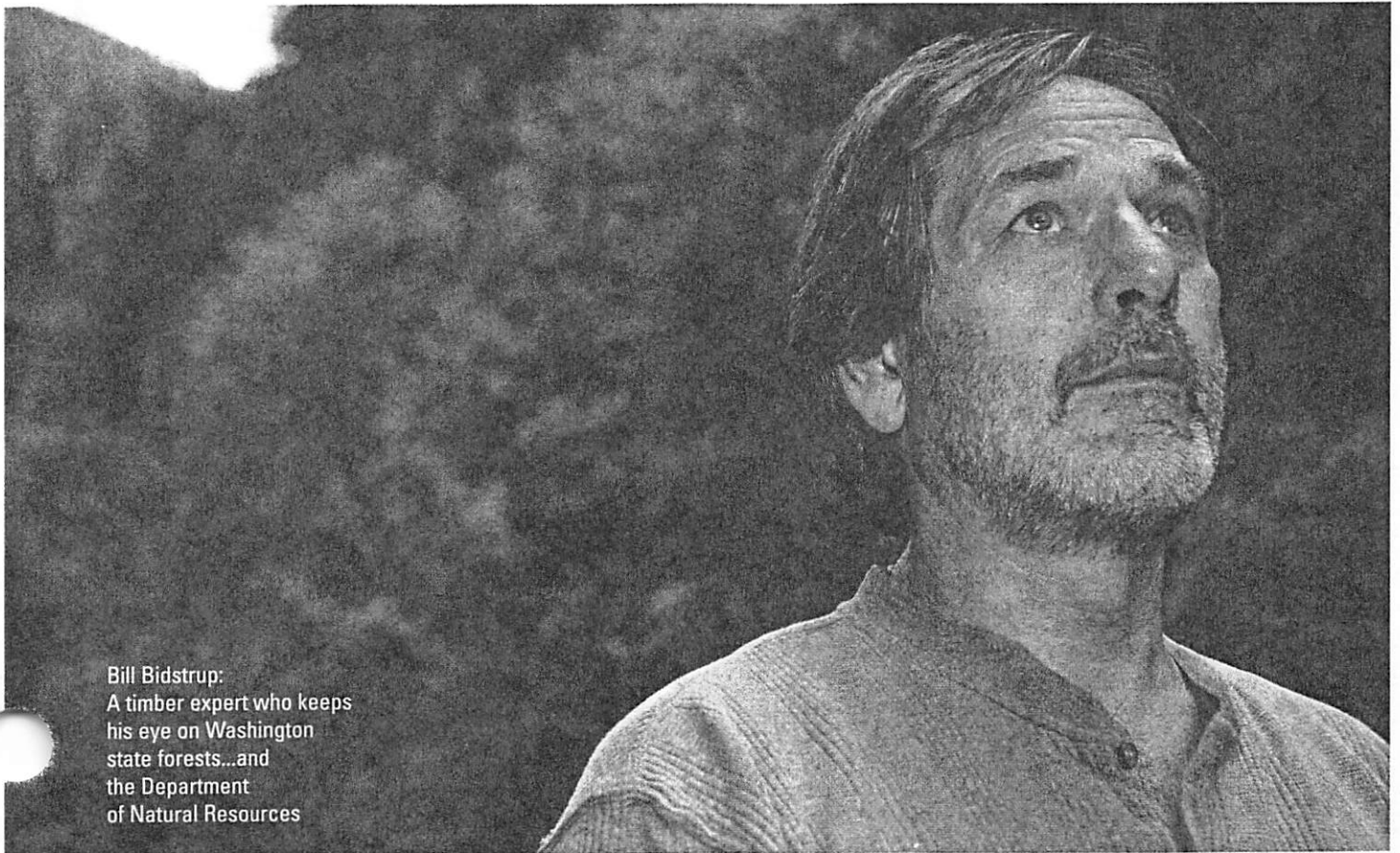
Ruud was able to prove that contamination at Hanford had reached the area's groundwater. His story was documented in 1993 in the book *Atomic Harvest*. "I have been chased and harassed so many times, I cannot remember," says Ruud. "My greatest fear was that someone would harm my kids. I was told that if I testified before Congress ... my children's lives were at risk."

Despite threats, whistle-blowers are successful about 30 percent of the time. During fiscal year 1999, 205 assertions of improper governmental action were received by the Washington State Auditor's Office, which tracks these statistics via the Whistle-blower Act, passed by the Washington State Legislature in 1982. Of that total, the office found reasonable cause in 62 cases. The Whistle-blower Act provides an avenue for state employees to report suspected improper governmental activity, including anything an employee does on the job that results in mismanagement or gross waste of public funds or resources, is in major violation of federal or state law or rule, or is of substantial and specific danger to public health or safety.

The number of whistle-blowers in private industry is less identifiable, as many whistle-blowers wish to remain anonymous and many cases are settled privately or out

of court. Still, in February 2000, the U.S. Department of Justice (DOJ) announced that more than \$3 billion was recovered in civil fraud cases brought under the whistleblower provisions of the False Claims Act since the law was amended in 1986. The False Claims statute allows private persons to file suit on behalf of the United States alleging that false or fraudulent claims have been submitted to the government. The most common claims involve fraudulent billing in the defense and health-care industries. Persons who file suits may recover from 15 to 25 percent of the settlement or judgment if the federal government intervenes in the case, or up to 30 percent if they pursue it on their own. According to DOJ statistics, more than 3,000 suits were filed between 1986 and 1990. The number of suits filed rose from 33 per year in 1987 to 483 in 1999. And the DOJ reported in February 2000 that it paid whistle-blowers more than \$550 million as their statutory shares, with additional awards pending.

Washington Law & Politics tracked down some whistle-blowers in the state's most notable industries—commercial fishing, timber and nuclear waste management—in order to learn firsthand what it is like to risk life and limb to right wrongs.



Bill Bidstrup:
A timber expert who keeps
his eye on Washington
state forests...and
the Department
of Natural Resources



Stephen Taufen:
The canary in
the mine shaft

went to the State Executive Ethics Board, asking if the Ethics in Public Services Act addresses conflicts between the regulatory and proprietary functions of the DNR. Last spring, the board ruled that the act does not address conflicts between official duties. Energized by this ruling, Bidstrup is presently urging the Board of Natural Resources and the Forest Practices Board to consider recommending to the Legislature that the administration and enforcement of the Forest Practices Act be delegated to an independent agency.

Bidstrup says he blew the whistle for personal and environmental reasons. "I was getting toward the end of my career," he explains, "and I didn't want to feel guilty. I wanted to be proud. A lot of it was protection of the environment. But I was also feeling guilty for being in bed with the timber industry over the years."

Bidstrup is currently employed in the wetlands section of the DNR's North-eastern Regional office, where he is a specialist administering the State Environmental Policy Act (SEPA). He recently served as an expert witness in a case brought by the Washington Forest Law Center involving SEPA-exempt forest practices applications in a watershed near

Mount Rainier National Park.

Last year Bidstrup was honored as one of five Environmental Heroes by the Washington Environmental Council (WEC). When he received his award, WEC representatives noted, "Bill's honesty and forthrightness set an example for a superb public servant—one who is willing to speak the truth in the face of considerable adversity." Bidstrup has received no monetary compensation for his whistle-blowing. The WEC recognition came with a \$250 award, which he politely declined. Instead, he considers his reward the fact that the three-mile road impacting fisheries was permanently abandoned last fall. Moreover, the DNR is nearing completion of a watershed analysis of the forest road identified by Bidstrup that is expected to show significant adverse cumulative impact.

"I am hoping to go to law school when I retire and try to do some volunteering," says Bidstrup. "I have three years left before I retire. Hopefully I will make it there."

STEPHEN TAUFEN: "HIRED, CONSPIRED AND FIRED ... "

"The whistle-blower is the canary in the mine shaft," says accountant Stephen

Taufen. "The whistle-blower is saying, 'We are running out of oxygen down here. We are running out of good values ... law ... order.' The whistle-blower is the ultimate litmus test. If you can't get it by a whistle-blower, then there must be something wrong with it."

When Taufen began his career as an accountant nearly 20 years ago, his collegiate interests in finance and geography led him to the commercial fishing industry. He spent 15 years balancing the books for a number of commercial fishing companies before Seattle-based UniSea Inc. hired him in June 1992.

Three years later, the accountant was fired. Taufen claims his employment was terminated because he refused to hide taxable inventory from the Internal Revenue Service (IRS). As such, Taufen became a whistle-blower for the IRS.

"I needed to clear my name," Taufen says flatly. "It was a matter of ethics. I couldn't have my name on the fraud. It was the right thing to do. They churned me and burned me. They hired me, conspired me and fired me. I basically said that I would fight back."

He directed the IRS to a \$1.3 million claim against UniSea. Court documents

Filling in the GAPS with Tom Carpenter

by Todd Matthews

Each year, thousands of American employees witness wrongdoing on the job and report it to authorities. Many of these whistle-blowers, rather than receiving praise for their work, are often targeted for harassment, intimidation, demotion and dismissal. Enter the Government Accountability Project (GAP). Formed in 1977, GAP protects the public interest and promotes government and corporate accountability by advancing occupational free speech, defending whistle-blowers and empowering citizen activists. Tom Carpenter is the director of GAP's West Coast office, and has worked closely with countless whistle-blowers over the years. *Washington Law & Politics* met with Carpenter to discuss the basics of whistle-blowing in Washington state.

LAW & POLITICS: What are some common misconceptions about whistle-blowers?

TOM CARPENTER: The number-one misconception is that these are poor-performing employees who are just trying to cover up their own bad performance by saying they are whistle-blowers. Obviously, there are always those kinds of folks. We have found them to be very much in the minority. The whistle-blowers that we see don't even like that label. They just identify themselves as a concerned employee who is ethical and professional. They are expected to raise concerns. We have found that most whistle-blowers are more experienced, more highly qualified professionals and, in some cases, cream-of-the-crop employees. They are team players—but they are not willing to overlook foul play or something that would endanger their health and safety or anybody else's. They think that if a crime is being committed, they have a duty to challenge that and stop it. They don't want to work in a place like that. I think the number-one misconception is that these people have some other issue going on. Our experience is that they don't. They don't choose to become whistle-blowers. All they did was take a stand on something. Suddenly this label is applied to them. They don't like it very much. They would rather shake off that label and just go back to work.

L&P: Do you think most people believe whistle-blowers are going after money?

CARPENTER: Yes, of course. And that is the more laughable misconception. The remedies available out there for whistle-blowers are fairly pathetic. There are not many rich whistle-blowers running around. There are a few cases that fall under the False Claims Act, which allows an employee who exposes fraud by a government contractor to share

in proceeds from recovery of that money from the fraudulent behavior. It doesn't happen very often. What we find is that most whistle-blowers are lucky to get their jobs back with back pay. One whistle-blower told me, after many years fighting his case, "If you have the perfect case with a great set of lawyers and unlimited money to spend on your case, you still only have a 50-50 chance of making it." I don't even know if it's that high a percentage.

It depends upon the forum you are fighting in. In many states, you are not defined as a whistle-blower unless, for instance, you refuse to commit an illegal act. Washington state has a definition of a whistle-blower as a public policy exception to the at-will doctrine, which means employers or employees can terminate their job without cause or prior notice. Employees in the state of Washington are considered at-will employees. The courts in Washington state have said that people who blow the whistle on an issue that impacts public policy fall under the exception to the at-will doctrine. Whistle-blowers are generally covered in the state of Washington, just as a matter of law.

L&P: What are some of the individual repercussions you have seen?

CARPENTER: If you get a reputation at work as a whistle-blower, that often follows you home. Your neighbors suddenly don't want to talk to you. They won't carpool with you. Your kids may be confronted at school. Your spouse might be confronted at the grocery store. It really does become a total life experience, at least for a place like the Hanford site. Families break up sometimes because one of the family members becomes a whistle-blower. That's one sad thing I've seen happen several times. People often lose their careers. They can't get rehired in an area. They lose their house. They lose their car. They become homeless. That's an extreme case, but I've seen it happen. Lots of stress. Psychological counseling. Psychologists say that the loss of your job can be as psychologically traumatic as a divorce or a death in the family. It is one of the top stresses that a person goes through. Think about it: You spend eight hours or more per day, five days per week; you've gone through years of schooling to get there. Suddenly, after 20 years, it's all gone because you did something *right*. It can have profound effects on a person's life to blow the whistle: the rage and depression that come with that, the feeling of hopelessness. The most extreme cases I have seen involve actual surveillance on people, death threats, attempts to run people off the road. You are



Tom Carpenter

facing powerful entities sometimes. Big corporations with lots of money. There are not always nice people at the helms of those corporations.

L&P: Historically, what have been the legal, political and professional climates for whistle-blowers in Washington state?

CARPENTER: I think it depends upon the industry that you are talking about. Our focus has been on the Hanford Nuclear Reservation and, to a lesser extent, workers from, for instance, the Washington State Department of Ecology and a few other state agencies like that. And a few city offices. Generally, I think there is a high level of intolerance for whistle-blowing or whistle-blowers.

L&P: Are there any instances where someone said, 'Blowing the whistle was the best decision I made'?

CARPENTER: Absolutely. One person I am thinking of is Casey Ruud. In the world of nuclear whistle-blowers, he is one of the most famous. Casey is just an extraordinary person with a positive attitude. He went through a lot of stress and strain over the years, and kept bouncing back. He was fired from Hanford in 1986 and 1988. We got him back out there. He kept coming back and he was always positive and feeling real good about what he was doing. Really, he singlehandedly changed a lot of the culture out there. He forced the site to undertake some tremendous improvements—not only in how they treated employees, but in things that were good for the public health and safety of the environment. Casey is a good example of the kind of person who has had a good experience, had fun doing it, had terrible pain, but learned a lot about the whole experience.

Whistle-Blowers

MATT TAYLOR: GOLDEN SPOON AWARD WINNER

When former Teamsters truck driver Matt Taylor was dispatched to the Hanford site located near Richland, Washington, in spring 1998, he had no idea that he was about to blow the whistle on nuclear contamination. Taylor arrived at the site's 300 Area, ready to haul drums to another part of the Hanford site for disposal. According to Taylor, what he found was horrific: Several hundred drums excavated 100 yards from the shore of the Columbia River were leaking a mysterious substance.

Taylor began asking retired workers

designed to look at and mediate whistle-blower matters in the early stages to try to head off litigation. Taylor also received an undisclosed financial settlement.

In Taylor's case, standing up cost him much peace of mind and, ultimately, a career at Hanford. With the help of attorney Tom Carpenter (see sidebar interview) at the Government Accountability Project (GAP)—a national organization devoted to protecting the public interest and promoting government and corporate accountability—Taylor filed two suits against contractors who allegedly refused to hire him or created excuses to terminate him. In a suit filed by Taylor and Carpenter in February

that is through the legal system." When Bidstrup was hired by the Northeastern Regional Office of the Department of Natural Resources (DNR) more than 20 years ago, he viewed himself as a conservationist with a passion for working in the natural resources industry. Instead, says Bidstrup, he found himself working amid a conflict of interest. DNR is charged with both enforcing state laws regulating logging and managing state forestland. Bidstrup says he grew increasingly frustrated over the years at the alleged "look the other way" practices of employees when writing or approving management plans for timber harvests or dealing with permit violations.

"They intimidated me and made my life miserable. I hated to go to work."

—Bill Bidstrup

about the area and learned that the drums contained uranium shavings and depleted uranium, which had been covered in mineral oil to prevent the uranium from burning. Uranium can spontaneously ignite upon contact with oxygen. According to Taylor, many of the drums had leaked some or all of their oil. When an industrial hygienist told Taylor that carcinogenic polychlorinated biphenyls (PCBs) had been found in the oil, Taylor raised concerns at a safety meeting.

"I was the company boy at the time," Taylor recalls. "There was nothing that I could do wrong. I thought that I would settle it all by bringing up the issue at the morning safety meeting. I was supposed to be able to bring up *anything* without fear of reprisal."

Taylor filed his first complaint to the state Department of Labor and Industry a few months later. In that suit, Taylor charged that Roy F. Weston Co., Taylor's contractor, retaliated against him for raising safety concerns with "screaming fits" and derogatory graffiti ("Matt takes it in the ass for his check" was one of the slurs scribbled on his locker, says Taylor). Taylor claims that he received the "Golden Spoon Award" from a retiring safety officer and a note that read, "To Matt Taylor. For his awesome ability to stir shit."

Taylor settled with Weston in fall 1999. According to that settlement, Taylor agreed to remove Weston, while Weston agreed to get rid of negative references in his personnel files. Weston also agreed to join the Hanford Joint Council, a coalition of Hanford parties

2000, Taylor alleged that he was harassed, his house and car were vandalized and witnesses who were supportive of him were threatened (the brake lines of one were cut) when he refused to drop his complaints. "I live in a park with retired people all around me," says Taylor. "Yet my house was vandalized. There was no reason for vandalism, except that the bar where everyone [at Hanford] goes and stews on what happened for the day is two blocks away."

According to Taylor, settlements similar to the one with Weston were reached in each case.

Taylor no longer works at the Hanford site. "I received two dispatches for Hanford, but refused them," Taylor says. "It was too much stress. I had a mental breakdown. I broke down in tears. I was trembling. I finally went to see a psychologist, and found out I had post-traumatic stress disorder." Instead, he found a job as a fuel truck driver.

"People think you become a whistle-blower for the money. You don't *choose* to be a whistle-blower," says Taylor. "Everybody at one time in their life eventually stands up for something. The circumstances come together to stand up for an issue."

BILL BIDSTRUP: PASSIONATE, PERSISTENT AND GUILT FREE

"I have made it my cross to bear to change the culture within the Department of Natural Resources," says timber industry veteran Bill Bidstrup. "The best way to do

In 1998 he filed a complaint with DNR headquarters over the illegal use of a three-mile road in the Loomis State Forest in north-central Washington state. The road paralleled a large fish-bearing stream, and sediment from the road was impacting the fisheries. After the road was washed out during heavy rains, work was initiated to rebuild the road without a permit. Bidstrup went to then-Commissioner of Public Lands for Washington state Jennifer Belcher and received the attention of Belcher's assistant, Lanny Quackenbush. After Quackenbush toured the road, a \$15,500 fine was levied against the DNR regional office.

Bidstrup says he started to feel pressure from DNR management. "They intimidated me and made my life miserable," says Bidstrup. "I hated to go to work." Bidstrup took a two-week vacation and spoke with a personal attorney. During that time, the controversial three-mile road was rebuilt in preparation for a timber sale. Bidstrup blew the whistle again. He made headlines in January 2000 when he became the first DNR employee in Washington state history to file a legal appeal on a timber-sale application.

The veteran DNR employee pursued his whistle-blowing endeavors and filed a complaint with the Washington State Auditor's Office, alleging that the structure of the DNR discourages the enforcement of laws on state lands since it is both a land management and regulatory agency. "As soon as I went to the State Auditor's Office," says Bidstrup, "I realized I had given up any chance of being promoted."

The Auditor's Office told Bidstrup that the issue was out of its jurisdiction. Bidstrup

related to the IRS claim show that Taufen was directed to put on the company's books an inventory of stray parts collected in a UniSea warehouse. Employees who worked under Taufen testified that they valued the inventory to be between \$10 million and \$15 million, but that senior staff told Taufen they didn't want millions in taxable assets recorded on their books. Taufen stated that he was told to enter a one-penny value for many parts. Accountants refer to the practice as "abusive transfer pricing," and it occurs when income and expenses are improperly allocated for reducing taxable income.

When Taufen later led IRS investigators to UniSea, the agency forced UniSea to revalue the parts. The IRS also found that UniSea had tried to write off \$6 million in income for ship repairs it wasn't actually liable for. UniSea settled the dispute financially with the IRS in 1995. Taufen reached a private settlement with UniSea.

Unisea would not comment on Taufen's performance or his reasons for leaving the company, citing company policy. However, spokesperson Chris Plaisance said, "Mr.

Taufen did sue Unisea after he left the company. Any differences between him and the company related to his departure from the company were resolved."

"[I was] threatened at times," says Taufen, recalling his experience. "Businesses I dealt with were harassed. I went through the full gamut. But it caused me to stay in the fight. It didn't cause me to run away. Why do we have an attitude toward whistle-blowers in society? Why don't we concentrate on what's going on? Instead, we throw the whistle-blower 'virgin' into the volcano. Why aren't we focusing on [the issue] instead of the whistle-blower?"

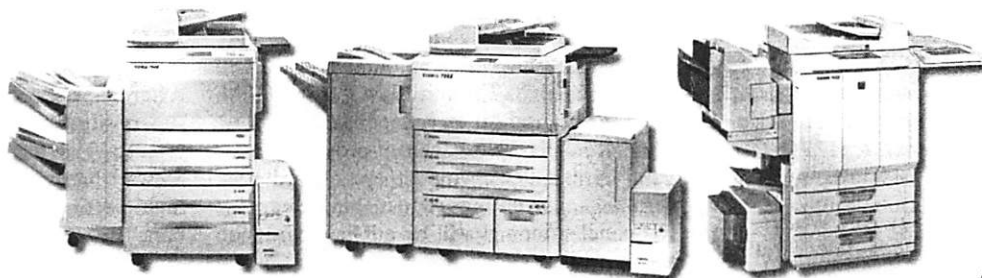
Today Taufen is the head of the Groundswell Fisheries Movement in Seattle. He shares his experience and knowledge about abusive transfer pricing with individuals in the commercial fishing industry. He frequently writes about the topic for trade newspapers such as *The Fisherman's News*. "Abusive transfer pricing is the largest tax topic of the 21st century," says Taufen. He believes that it is harming the entire industry, commercial fishermen, in particular. "It

is the mechanism. If you can falsify the books and convince people that you aren't making any money, you can convince fishermen to drop their prices. This transfer pricing fraud becomes a fraud that ends up in everything."

Taufen has no regrets. "I feel good that I blew the whistle," he says. "My conscience is clear. I was emotionally affected in the middle of my lawsuit. I had too many unanswered questions. I wasn't very capable of going out and getting a job. I used to be a top interviewer at jobs. But being a whistle-blower becomes part of your talk. 'Why did you leave an industry?' People see that you are outspoken. Whistle-blowers earn their stripes. But those stripes are permanent tattoos on their forearms. You become the proud bearer of your actions, because you knew that you were right." **L&P**

—Todd Matthews is a Seattle freelancer and regular contributor to L&P. So far, he hasn't blown the whistle on any of our shenanigans. He profiled Prison Legal News publisher Paul Wright in our December/January 2001 issue.

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C-1
Stephen
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Former Enron CFO charged



By David J. Phillip, AP

Going to court: Andrew Fastow is escorted by FBI agents into the federal courthouse in Houston on Wednesday. He surrendered. The former Enron CFO was charged with fraud, money laundering and conspiracy.

Andrew Fastow faces conspiracy, fraud counts in Enron fiasco

By Greg Farrell
USA TODAY

HOUSTON — In a long-awaited legal action, the Justice Department and Securities and Exchange Commission on Wednesday charged former Enron chief financial officer Andrew Fastow with securities and wire fraud and money laundering in last year's meltdown of energy-trading behemoth Enron.

If indicted and convicted on all those counts, along with a conspiracy charge of aiding and abetting his schemes, he could face 140 years in prison and the forfeiture of everything he owns.

Fastow allegedly received tens of millions of dollars from transactions now being challenged.

After a hearing before U.S. Magistrate Judge Marcia Crone in federal district court here, Fastow's attorney, John Kecker, said his client "welcomes the opportunity to prove the truth about Enron."

Kecker said Fastow was hired specifically to arrange the off-balance-sheet financing that led to Enron's collapse into bankruptcy court last year. "Enron's board of directors, its CEO and its chairman directed and praised his work," he said. "Accountants and lawyers reviewed and approved his work."

► Spitzer, Pitt expected to join forces to ride herd on Wall Street, 3B

According to the criminal complaint — an affidavit by special agent Omer Meisel of the FBI — Fastow is alleged to have:

► **Defrauded Enron.** Through two special partnerships named after his wife and children, LJM1 and LJM2, Fastow bought some of Enron's worst assets, dubbed "nuclear waste" by colleagues, and sold them back to Enron months later at prices far greater than their actual worth.

The complaint alleges that Fastow had a secret, unwritten agreement with Richard Causey, Enron's former chief accounting officer, guaranteeing that the LJM partnerships would never lose money on the transactions. Causey's lawyer, Reid Weingarten, could not be reached for comment.

The complaint says Fastow protégé Michael Kopper, who pleaded guilty to fraud and money laundering in August, sent checks to Fastow, Fastow's wife and even Fastow's children as part of a kickback scheme to ensure that Fastow profited from the deals struck between the partnerships and Enron.

► **Manipulated Enron's books.** As part of a complex scheme to protect Enron's investments in volatile Internet stocks, Fastow's partnerships struck a deal to hedge Enron's investment in Avici Systems. Although the agreement for Enron to sell its interest in Avici was reached in September 2000, the complaint alleges that Fastow backdated the agreement to Aug. 3, when Avici stock was at its peak of \$163.50 a share.

As a result, Enron could claim the maximum value for its Avici holdings by selling them to a puppet entity like Fastow's partnerships.

Fastow posted \$3 million bail, backed by the deeds to five homes — one belonging to his parents — that are estimated to be worth \$5 million. He agreed that an additional \$11 million would be frozen until after his trial. That's on top of the \$23 million that was frozen in August after Kopper's plea.

Unless Fastow enters into negotiations for a plea deal, the Justice Department has 30 days to follow up Wednesday's complaint with an indictment.

Prosecutors are far from finished

Scope of case could widen, climb up chain of command

By Greg Farrell, Edward Iwata and Thor Valdmanis
USA TODAY

HOUSTON — The endgame may be near for former Enron executives and others who played a role in the energy-trading giant's spectacular flameout late last year.

Cover story

The charges filed Wednesday against former Enron chief financial officer Andrew Fastow by the Justice Department and the Securities and Exchange Commission clearly show that the government means to nail as many players as possible in the nearly yearlong investigation into the Enron scandal.

"They're throwing the net of enforcement very broadly," says Seth Taube, a former SEC attorney at law firm McCarter & English. "They're picking off people up and down the chain of command."

Fastow is the highest-ranking former

Enron executive so far to be charged by prosecutors and SEC officials, who have been investigating Enron since its financial scandal erupted last October.

The charges come amid much public outrage over corporate crime and a nationwide federal crackdown against white-collar crooks. With a zeal reserved for drug and mob investigations, prosecutors and FBI agents are targeting former executives at Enron, Tyco International, WorldCom, Adelphia Communications, Global Crossing and other companies that have lost billions of dollars in shareholder equity from alleged financial fraud.

The Justice Department and SEC filings Wednesday accused Fastow and others of fraud, money laundering and conspiracy in a vast scheme to defraud investors, enrich themselves and mislead Wall Street analysts and credit-rating agencies. In a 35-page criminal complaint, FBI agent Omer Meisel alleges that Fastow defrauded Enron and its shareholders of millions of dollars. The complaint alleges that Fastow set up a series of partnerships that would buy Enron's weakest assets — thus strengthening the appearance of Enron's financials — while "secretly and unlawfully



Reuters

Skilling: Former Enron CEO.



Reuters

Lay: Served as CEO before Skilling.



AP

Causey: Former accounting chief.

Please see COVER STORY next page ►

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Prosecutors could be aiming high f

Continued from 1B

generating millions of dollars" in profits for himself and others from those deals.

"The complaints transform this from a case about exotic accounting to a case about theft and fraud," says former prosecutor Steve Ryan, an attorney at the Manatt Phelps & Phillips law firm. "If true, Fastow is a thief. He's painted in a horrid light."

Adds Ken Johnson, spokesman for the House Committee on Energy and Commerce, which investigated Enron earlier this year: "The pieces to the puzzle are finally coming together. The only question now is, 'Where do (former CEO) Jeff Skilling and (former chairman and CEO) Ken Lay fit in?'"

Since the Enron scandal burst forth last fall, prosecutors have been steadily climbing the corporate ladder and aiming for Fastow and other top Enron executives, including Skilling and Lay.

In the 1990s, the trio turned Enron from an old-style, gas-and-electricity company into a Wall Street darling, a sleek \$150 billion energy firm that traded power contracts in the investment market. Fastow has been characterized as the brains behind a vast web of partnerships and accounting vehicles that hid \$1 billion in Enron losses and led to the firm's collapse and filing for bankruptcy protection in December.

Beyond highlighting the charges Fastow will face, the complaint serves as a road map to where Justice Department prosecutors may strike next.

Other Enron executives

Prosecutors appear to be zeroing in on Richard Causey, Enron's former chief accounting officer, and Lay.

According to the complaint, Michael Kopper and another Fastow lieutenant say that Causey had an "undisclosed agreement" with Fastow, known around Enron as the "global galactic" agreement, that guaranteed Fastow's partnerships would never lose money on deals with Enron.

The complaint also says that Causey, Lay, former treasurer Jeff McMahon and others made "false representations" to Enron's board of directors in 1999 to secure the board's approval of Fastow's dual role as Enron CFO and manager of the partnerships.

Noticeably absent from the criminal complaint: any direct reference to Skilling, who was Enron's chief operating officer from 1997 through 2000, when he was named CEO. Nevertheless, Skilling's role as the man who championed Fastow's rise at the company and supported Fastow's efforts to keep Enron's stock price high are likely to come under government scrutiny. He has denied wrongdoing.

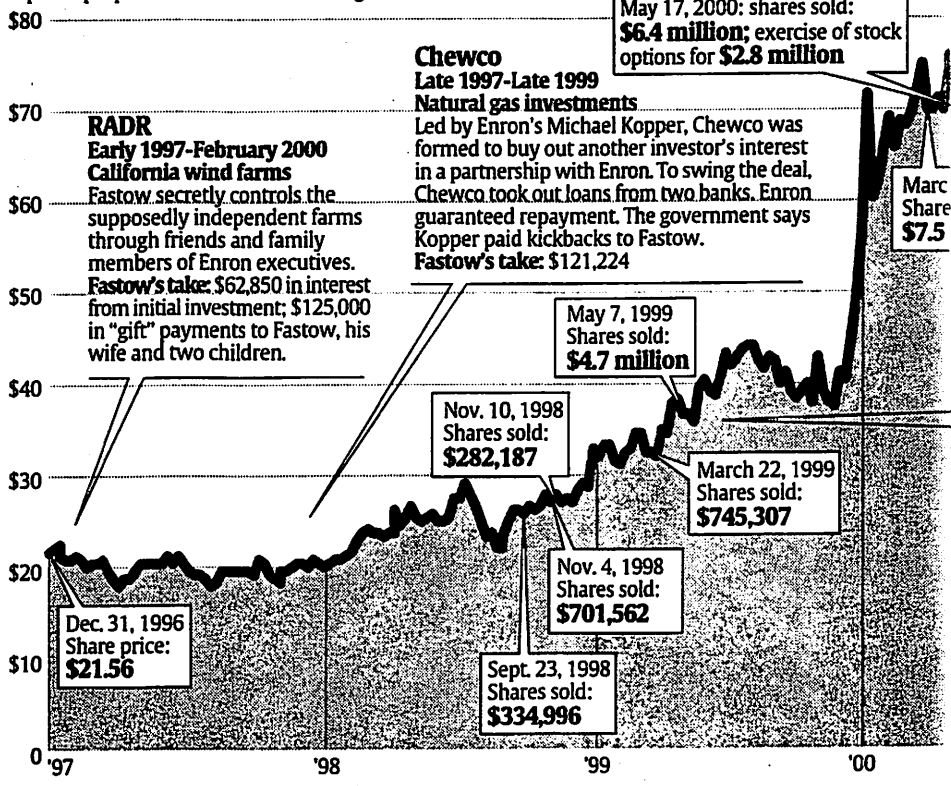
He also has consistently denied any knowledge of wrongdoing. Michael Ramsey, Lay's defense attorney in Houston, said Wednesday that the government's legal filings do not show that Lay misled the Enron board about Fastow's questionable partnerships.

"Nothing in it troubles me as far as Ken Lay is concerned," Ramsey says. "There were no surprises."

It's unclear which former Enron employees may be cooperating with the government. About a dozen witnesses were confidential sources for the FBI: one current and one former Merrill Lynch staffer; eight former Enron employees; and one source who never

Enron's bookkeeping, Fastow's profits

Since at least the early 1990s, Enron designed transactions with partnerships to improve its balance sheet, but the government says some of those partnerships did not comply with accounting rules and some transactions defrauded Enron and its shareholders. Andrew Fastow profited from those entities in two ways, a federal complaint issued Wednesday says. Enron's stock value, the amount of profit Fastow took from stock sales, and a chronology of Fastow's special purpose entities used for hiding Enron losses:



Sources: CSI, www.insiderscores.com, Thomson Financial, Justice Department and Securities and Exchange Commission documents

name, it describes in detail how Enron executives induced the brokerage and investment-banking firm to participate in a sham transaction designed to boost Enron's quarterly earnings.

The FBI complaint signals that Merrill Lynch remains in the sights of government prosecutors over its role in the 1999 sale of a trio of electricity-generating Nigerian barges by Enron. Prosecutors claim senior Merrill executives not only knew about the deal, but some also argued against it. In a statement Wednesday, Merrill continued to protest its innocence.

"If I was in Merrill's shoes, I'd be worried," says Henry Hu, a securities-law professor at the University of Texas Law School. "You have the Justice Department alleging a pattern of behavior and understanding that is starkly different from the Merrill party line."

Nevertheless, the complaint says that Merrill was "pressured" into doing the deal for a client that paid it \$40 million in fees in 1999, adding that Fastow referred to the pressure as "bear-hugging."

"You would not want to portray someone who you planned to indict as a victim of pressure," says Jack Coffee, a securities-law professor at Columbia University. "It suggests the government is not inclined to go after Merrill. But that doesn't mean the SEC won't bring a civil case."

to only as "the Financial Institution" in the allegedly bought the barges for \$28 million of which was financed by Enron.

Prosecutors say Merrill was given an "oral agreement" from Fastow that Merrill bought out in six months with a guaranteed return of 15%. The energy-generating barge to LJM, a private partnership controlled by June 29, 2000. Merrill earned a \$525,000

The complaint said a senior Merrill executive conference call with senior Enron managers confirm Enron's "commitment to guarantee out with six months" and that the deal close by December 31, 1999," the affidavit

The affidavit also says Merrill entered in transaction "in spite of some internal discluding a document expressing concern to be viewed as 'aiding and abetting' Enron manipulation of its income statement."

Merrill Lynch says it is cooperating with prosecutors. "As we've previously stated, Merrill investment was fully at risk in this transaction," the company said. "Merrill Lynch never known Enron in falsifying its financial results known in 1999 what is known today about any, we would not have done business with Enron."

Enron would be aiming high for former CEOs

Enron's bookkeeping, Fastow's profits

At the start of the early 1990s, Enron designed transactions with partnerships to improve its net, but the government says some of those partnerships did not comply with rules and some transactions defrauded Enron and its shareholders. Andrew Fastow hid those entities in two ways, a federal complaint issued Wednesday says. Enron's profit, the amount of profit Fastow took from stock sales, and a chronology of Fastow's possible entities used for hiding Enron losses:

DR
July 1997-February 2000
California wind farms
 Enron secretly controls the supposedly independent farms through friends and family members of Enron executives. **Fastow's take:** \$62,850 in interest on initial investment; \$125,000 "gift" payments to Fastow, his wife and two children.

Chewco
 Late 1997-Late 1999
 Natural gas investments

Led by Enron's Michael Kopper, Chewco was formed to buy out another investor's interest in a partnership with Enron. To swing the deal, Chewco took out loans from two banks. Enron guaranteed repayment. The government says Kopper paid kickbacks to Fastow. **Fastow's take:** \$121,224

May 7, 1999
 Shares sold:
\$4.7 million

Nov. 10, 1998
 Shares sold:
\$282,187

Nov. 4, 1998
 Shares sold:
\$701,562

Sept. 23, 1998
 Shares sold:
\$334,996

March 22, 1999
 Shares sold:
\$745,307

May 17, 2000: shares sold:
\$6.4 million; exercise of stock options for **\$2.8 million**

Nov. 6, 2000
 Shares sold:
\$2 million

Southampton
 March 2000

Enron had a stock investment in a company called Rhythms NetConnections. Fearing the stock would go down, it bought financial instruments as a hedge to protect its investment. But when the stock went up, Fastow and other investors in Southampton profited instead of Enron. **Fastow's take:** \$19 million split among himself and other Enron employees.

March 27, 2000
 Shares sold:
\$7.5 million

Nov. 21, 2000
 Shares sold:
\$2.2 million

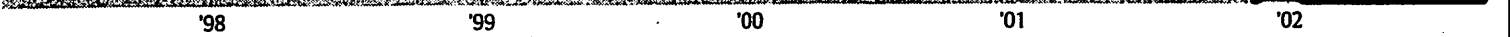
Raptor I
 April 2000

Enron was an investor in small start-up companies that later did initial public offerings of their shares. Fastow set up a side deal so that Enron did not have to show stock declines on its books. Raptor profited if stocks went up, but Enron covered losses if stocks declined. **LJM's take:** \$11 million in profit and return of \$30 million in capital.

LJM
 July 1999 to October 2001
 Fastow was general partner. LJM purchased underperforming assets from Enron at below-value prices. It concealed losses on electricity-generating barges in Nigeria. Enron recorded a fictitious profit of \$12 million in a fraudulent sale. **Fastow's take:** Government says he received more than \$20 million from LJM deals.

Sept. 30
 Share price:
11 cents

Jan. 1, 1996
 price:
6



insiderscores.com, Thomson Financial, Justice Department and Securities and Exchange Commission documents

By Karl Gelles, USA TODAY

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to only as "the Financial Institution" in the complaint, allegedly bought the barges for \$28 million, \$21 million of which was financed by Enron.

Prosecutors say Merrill was given an "undisclosed oral agreement" from Fastow that Merrill would be bought out in six months with a guaranteed rate of return of 15%. The energy-generating barges were sold to LJM, a private partnership controlled by Fastow, on June 29, 2000. Merrill earned a \$525,000 profit.

The complaint said a senior Merrill executive held a conference call with senior Enron management "to confirm Enron's commitment to guarantee the take-out with six months" and that the deal needed to close by December 31, 1999," the affidavit says.

The affidavit also says Merrill entered into the barge transaction "in spite of some internal dissension, including a document expressing concern that it would be viewed as 'aiding and abetting' Enron's fraudulent manipulation of its income statement."

Merrill Lynch says it is cooperating with prosecutors. "As we've previously stated, Merrill Lynch's investment was fully at risk in this transaction," the company said. "Merrill Lynch never knowingly assisted Enron in falsifying its financial results. Had we known in 1999 what is known today about the com-

workers in a civil lawsuit against the company's executives. "Workers are heartened that some of those responsible are being held accountable."

Diana Peters, a former Enron employee who showed up at the hearing to watch Fastow in his moment of peril, lumped the former CFO in with ex-CEO Skilling. "They stole," she says. "Most people who steal go to jail."

Asked about Lay, Peters wasn't so sure. "I don't feel as strongly about Lay," she says. "I think he was duped."

The complaint against Fastow comes a month-and-a-half after prosecutors filed charges against former Enron finance executive Kopper, who helped Fastow run the partnership schemes. Kopper pleaded guilty to fraud and money laundering and was forced to give up \$12 million while agreeing to help prosecutors in Enron-related cases against Fastow and others.

Fastow, once hailed as one of the USA's most talented CFOs, completed his fall from grace at 7 a.m. Wednesday when he turned himself into the FBI's Houston office.

He emerged 30 minutes later, bound in handcuffs, and was escorted downtown to federal district court where the charges were read.

supported Fastow's efforts to keep Enron's stock price high as likely under government scrutiny. He has denied anything. Lay also has consistently denied any knowledge of wrongdoing. Michael Ramsey, Lay's defense attorney in Houston, said Wednesday that the government's legal filings do not show that Lay misled the Enron board about Fastow's questionable partnerships. "Nothing in it troubles me as far as Ken Lay is concerned," Ramsey says. "There were no surprises." It's unclear which former Enron employees may be cooperating with the government. About a dozen witnesses were confidential sources for the FBI; one Coffee, a securities-law professor at Columbia University. "It suggests the government is not inclined to go after Merrill. But that doesn't mean the SEC won't bring a civil case."

Repeating many of the accusations from congressional hearings in July, the complaint describes the large transaction as a "sham" that allowed Enron to improperly record \$12 million in earnings and meet its earnings goals at the end of 1999. Merrill, referred

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 Sun. 8am.-6pm (CST)

*Based on a comparison of rates at certain ages for comparable products from several life insurance companies comprising a 15% term life market share (2000, A.M. Best). **Non-tobacco means no tobacco use of any kind within the last 36 months. Policy form Z-5001 is term life insurance to age 95, underwritten by Zurich Life Insurance Company of America, Schaumburg, IL. Rates are guaranteed for 10 years. Rates shown include a \$50 policy fee. Suicide limitations apply. Not all policies or durations available in all states. Monthly payment plans include a billing fee. For Florida residents, the soliciting agent is Michael Goodyear, Zurich

confirm Enron's commitment to guarantee the take-off by December 31, 1999," the affidavit says. The affidavit also says Merrill entered into the large transaction "in spite of some internal dissenting, including a document expressing concern that it would be viewed as aiding and abetting Enron's fraudulent manipulation of its income statement."

Merrill Lynch says it is cooperating with prosecutors. "As we've previously stated, Merrill Lynch's involvement was fully at risk in this transaction," the company said. "Merrill Lynch never knowingly assisted Enron in falsifying its financial results. Had we known in 1999 what is known today about the company, we would not have done business with them."

Former Enron workers and their attorneys were pleased with the charges against Fastow, blaming him for Enron's downfall.

"Mt. Fastow is at the center of the conspiracy," says Lynn Sarko, a former prosecutor and Seattle attorney who represents Enron-related employees and retired Enron employees.

Greg Farrell reported from Houston, Edward Iwata from San Francisco and Thor Valdimaris from New York.

The complaint against Fastow, once hailed as one of the USA's most talented CFOs, completed his fall from grace at 7 a.m. Wednesday when he turned himself into the FBI's Enron-related cases against Fastow and others. Fastow, once hailed as one of the USA's most talented CFOs, completed his fall from grace at 7 a.m. Wednesday when he turned himself into the FBI's Enron-related cases against Fastow and others. Fastow, once hailed as one of the USA's most talented CFOs, completed his fall from grace at 7 a.m. Wednesday when he turned himself into the FBI's Enron-related cases against Fastow and others.

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Office of the Mayor and Council
710 Mill Bay Road, Room 220, Kodiak, Alaska 99615

October 2, 2002

David Benton, Chair
North Pacific Fishery Management Council
c/o Double Tree Hotel, SeaTac Airport
via fax (206) 431-8687

Dear Mr. Benton:

It has recently come to the attention of the Kodiak City Council that the North Pacific Fishery Management Council (Council) may consider the establishment of a committee to explore community protection strategies as part of the Council's Bering Sea Aleutian Islands (BSAI) crab rationalization plan. As you are aware, the City of Kodiak is very concerned about the impact the BSAI crab rationalization plan will have on our community.

It is the City of Kodiak's belief that all of the BSAI crab that is processed in the Kodiak region is processed within the City of Kodiak. Many, if not all, of the workers associated with the processing of BSAI crab are residents of the City of Kodiak. The largest portion of the Alaska fleet that harvests BSAI crab is home ported in the harbors owned and operated by the City of Kodiak.

If the Council chooses to establish a committee to address community protection strategies, in the context of the BSAI crab rationalization plan, the City of Kodiak requests that a City representative (selected by the City Council) be appointed as a full member of the committee. As a community that will be significantly impacted by the decisions of the Council, the City of Kodiak urges you to provide us with an opportunity to fully participate in any community protection committee established by the Council.

Respectfully,

CITY OF KODIAK

Carolyn L. Floyd
Mayor

- c. Chris Oliver, Executive Director, NPFMC
Stosh Anderson, Member, NPFMC
Pat Carlson, Manager, Kodiak Island Borough