



NORTH PACIFIC FISHERY MANAGEMENT COUNCIL

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Action Memo

File Number:Crab 14-014

Agenda Date6/2/2014

Agenda Number:C6

Eric Olson, Chairman
Chris Oliver, Executive Director

SUBJECT:
Crab ROFR Contract Terms - Initial Review

ESTIMATED TIME:
2 hours

ACTION REQUIRED:
Provide initial review of an addendum to RIR/IRFA of Modifications to Community Provisions

BACKGROUND:

To protect community interests, the Bering Sea/Aleutian Islands Crab Rationalization Program required holders of most processor shares to enter into agreements granting community-designated entities a right of first refusal (ROFR) on certain transfers of those shares. In February 2013, the Council recommended a package of changes to the ROFR provisions in the FMP and in Federal regulations. These changes were intended to improve the ability of community entities to exercise ROFR and maintain crab processing activity in their community. Among these changes the Council considered revising the application of ROFR to apply only to the processor quota shares (PQS) (Alternative 2), or to PQS and assets based in the community (Alternative 3). At the time, the Council chose to maintain the status quo for these two alternatives, in which current ROFR provisions in the BSAI Crab FMP require a community entity exercising the ROFR to accept all terms and conditions of a proposed sale of PQS to a non-ROFR buyer.

In June 2013, the Council received public testimony from ROFR community representatives indicating that some PQS and ROFR holders were considering the use of private contractual agreements to address remaining community protection issues, including contractual provisions that would limit the assets to which the ROFR would apply. The community representatives asked the Council to clarify whether current ROFR provisions authorize private contractual agreements with provisions that differ from the required ROFR contract terms. In response to this testimony, the Council requested that staff prepare a discussion paper examining this question.

In December 2013, the Council reviewed the discussion paper, which concluded that the current ROFR contract provisions do not provide for a re-negotiation of the terms and conditions of the proposed sale transaction. The paper noted that the ROFR contract provisions could be revised in the FMP to allow for such flexibility. After reviewing the discussion paper and receiving public testimony in support of modifying ROFR contract provisions, the Council initiated this analysis as an addendum for initial review to consider allowing for negotiated contracts that apply ROFR.

The action alternative in the current addendum for initial review proposes that in ROFR contracts, the right of first refusal applies to all the assets of a company included in a proposed sale (the "underlying agreement"), or to any subset of those assets, as otherwise agreed to by the PQS holder and the community entity. If the Council chooses the action alternative, changes could be incorporated into the Council's preferred alternative

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for additional revisions to ROFR provisions, as selected at its February 2013 meeting. The Council will consider the alternatives analyzed in this document, and any measure selected would become part of the proposed rule to be developed from the existing preferred alternative.