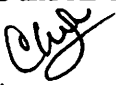


MEMORANDUM

TO: Council, SSC and AP Members
FROM: Chris Oliver 
Executive Director
DATE: October 1, 2005
SUBJECT: C. Bairdi Stock Split

ESTIMATED TIME 1 HOUR

ACTION REQUIRED

Final Action.

BACKGROUND

In January 2004, the U.S. Congress amended the Section 313(j) of Magnuson-Stevens Act to mandate the Secretary of Commerce implement the Crab Rationalization Program for the Bering Sea and Aleutian Islands crab fisheries developed by the North Pacific Fishery Management Council (the Council), in motions from June 2002 to April 2003, plus any program amendments adopted by the Council. On March 2, 2005, the Secretary issued regulations to establish the Crab Rationalization Program (70 FR 10174). Crab fishing began under this Program on August 15, 2005.

The Bering Sea and Aleutian Islands Crab FMP establishes criteria for the management of certain aspects of the BSAI crab fisheries by the State of Alaska (the State). Under this authority, the State has determined that Bering Sea *C. bairdi* should be managed as two separate stocks; one east of 166° W longitude, the other west of 166° W longitude. Under the Crab Rationalization Program, QS, PQS, IFQ, and IPQ will be issued for one *C. bairdi* fishery. The proposed action under this agenda item would amend the Crab Rationalization Program, establishing allocations of harvesting and processing shares for these separate stocks.

Staff has prepared a draft RIR/EA/IRFA, initially reviewed by the Council at its June 2005 meeting. The Council is scheduled to take final action at this meeting. The executive summary of the analysis is attached

EXECUTIVE SUMMARY

In January 2004, the U.S. Congress amended the Section 313(j) of Magnuson-Stevens Act to mandate the Secretary of Commerce implement the Crab Rationalization Program for the Bering Sea and Aleutian Islands crab fisheries developed by the North Pacific Fishery Management Council (the Council), in motions from June 2002 to April 2003, plus any program amendments adopted by the Council. On March 2, 2005, the Secretary issued regulations to establish the Crab Rationalization Program (70 FR 10174). Crab fishing will begin under this Program on August 15, 2005.

The Bering Sea and Aleutian Islands Crab FMP establishes criteria for the management of certain aspects of the BSAI crab fisheries by the State of Alaska (the State). Under this authority, the State has determined that Bering Sea *C. bairdi* should be managed as two separate stocks; one east of 166° W longitude, the other west of 166° W longitude. Under the Crab Rationalization Program, QS, PQS, IFQ, and IPQ will be issued for one *C. bairdi* fishery. The proposed action under this agenda item would amend the Crab Rationalization Program, establishing allocations of harvesting and processing shares for these separate stocks.

Alternatives

Two alternatives for allocating shares are under consideration for each pool of shares (QS/IFQ and PQS/IPQ).

For harvest shares (including captains shares), separate allocations would be made for each *C. bairdi* management area based either on:

- 1) all qualifying catch, with each eligible person receiving an allocation in each area based on all *C. bairdi* history (regardless of where the harvests were made); or
- 2) based on historic catch in an area, with each eligible person receiving an allocation in each area based only on qualifying catch in the area.

For processing shares, allocations would be made based equally on qualifying history in the *C. opilio* fishery and the Bristol Bay red king crab fishery. Either:

- 1) each eligible person would receive equal allocations for both fisheries (i.e., separate PQS and IPQ allocations for each fishery); or
- 2) each eligible person would receive a single allocation of *C. bairdi* PQS that is not fishery specific, which would yield *C. bairdi* IPQ that could be used to receive landings from either fishery.

Effects on administration, management, and enforcement

Managing the allocation process under either harvest allocation option would not be difficult and can be accomplished soon after the regulations are effective. Basing harvest on area of catch under the second option would require some additional review of records. Processor allocations under either option would be based on qualified landings from the Bristol Bay red king crab fishery and the Bering Sea *C. opilio* fishery and could be accomplished based on the existing application and allocation process, with no additional administrative cost.

Management of IFQ allocations would be the same under either option. Each QS allocation would yield IFQ based on its portion of the pool and the TAC. Catch accounting would be accomplished by requiring catcher processors to weigh all catch at sea and all landings at shore plants. Catch monitoring plans, subject to the approval of NOAA Fisheries, would be developed by processors to facilitate monitoring and weighing of catch.

VMS, approved by NOAA Fisheries, will be required on all vessels participating in the rationalized crab fisheries. Using a satellite global positioning system, transmitters would automatically determine a vessel's location several times each hour and transmit that information to NOAA Fisheries. VMS is critical to monitoring catch from the two fisheries, as it will allow geographic tracking of vessel activities. Enforcement under the rationalization program will be complicated by the extended season and the individual allocations to

harvesters and processors. As noted in the crab rationalization EIS, additional enforcement agents will be required to monitor the activities of participants in the fisheries. The state regulations that prohibit participation in both the east and west fisheries in a single trip should adequately facilitate management and enforcement of the two fisheries.

Management of IPQ allocations under the two processor options are similar and would be generally undertaken as described in the Crab EIS. The only difference between the two options arises from the allocation of different shares for the two fisheries under one option. Under option 1, the independent allocations of IPQ in the two fisheries would be required to be matched to Class A IFQ from the corresponding fishery. Under option 2, a single type of *C. bairdi* IPQ would be issued that may be matched with Class A IFQ from either fishery. The task of managing these allocations, however, is very similar and, therefore should have few or no management implications.

Effects on harvester allocations (including captains allocations)

The difference in effects of the harvester options on the human environment is primarily distributional. Under the option 1, an eligible participant will receive an allocation in both fisheries based on all qualifying catch regardless of where that catch occurred. Under the second option, a harvester will receive an allocation in each fishery based on historic catch from the area of the fishery. Under the second option, a person's allocation will be skewed toward the area in which the person had greater catch relative to other participants. The distributional effects of the different allocations, however, depend not only on the size of the allocation to a person in a fishery, but also on whether the fishery opens and the TAC. Neither of the fisheries will open in 2005 or 2006, as the stocks are below the harvest strategy threshold that would permit opening. In addition, future openings are uncertain and unpredictable. As a result, the distributional effects are not fully predictable. Since shares in both fisheries are tradable, no differences in efficiency are expected.

Effects of the processor options

The choice of processor options will have operational and efficiency effects. Under the first option, PQS and IPQ pools are created for the two fisheries. Share holders will be able to trade shares in the fisheries independently to establish long term relationships in each fishery independently. Under the second option, PQS are allocated that generate annual allocations of IPQ that can be used in either fishery (so the IPQ pool is equal to the sum of the Class A IFQ pool in the two fisheries combined). Since TACs in the fisheries may fluctuate independently, harvesters that do not hold equal percentages of the pools in both fisheries will be unable to establish fixed long-term relationships with a processor for all of their shares. Instead these participants will need to modify their relationships if TACs change independently in the different fisheries. This restructuring of relationships could reduce efficiency in the fisheries by adding to transaction costs of participants.

Effects on the biological and physical environment

The options under consideration in this action differ only in the calculation of initial allocations of long term shares (QS and PQS) and the nature of the processing privileges (PQS and IPQ) in the rationalized *C. bairdi* fisheries. The choice of options has no effect on the physical or biological environment.

Final Review Draft

ENVIRONMENTAL ASSESSMENT REGULATORY IMPACT REVIEW INITIAL REGULATORY FLEXIBILITY ANALYSIS

for proposed

Amendment 20

to the Fishery Management Plan for

Bering Sea and Aleutian Islands King and Tanner Crabs

Prepared by staff of the:

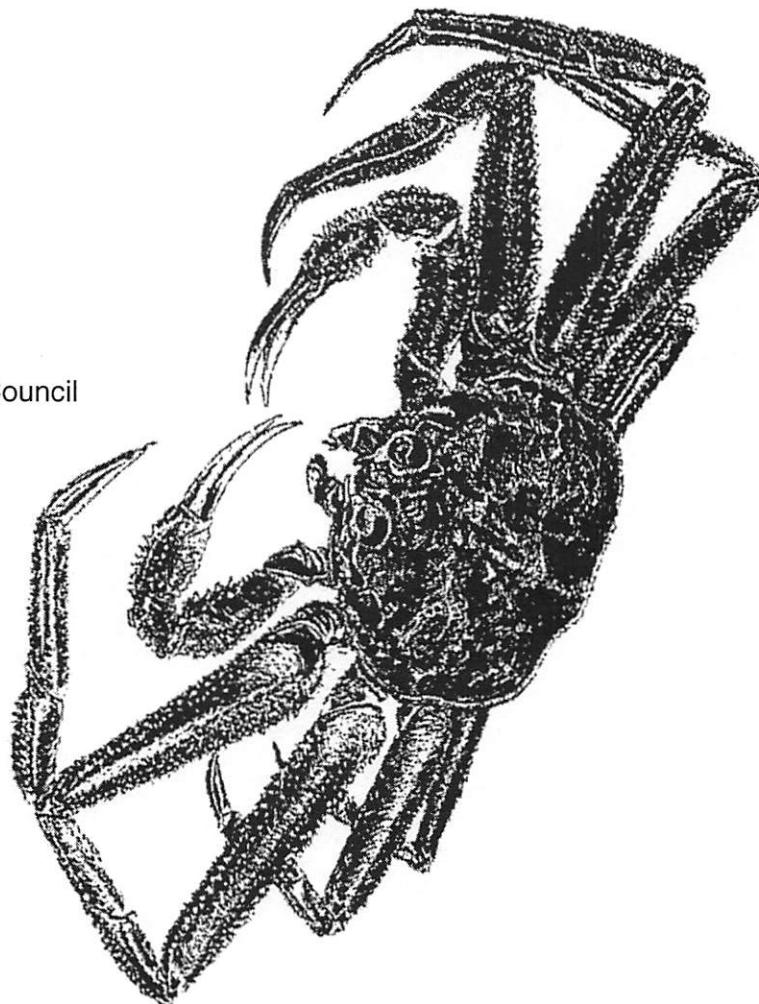
North Pacific Fishery Management Council
605 West 4th Avenue, #306
Anchorage, Alaska 99501-2252
(907) 271-2809

and

National Marine Fisheries Service
Alaska Region
P.O. Box 21688
Juneau, Alaska 99802-1168
(907) 586-7465

and

Alaska Department of Fish & Game
P.O. Box 25526
Juneau, Alaska 99802-5526
(907) 465-4100



(this page intentionally left blank)

EXECUTIVE SUMMARY

In January 2004, the U.S. Congress amended the Section 313(j) of Magnuson-Stevens Act to mandate the Secretary of Commerce implement the Crab Rationalization Program for the Bering Sea and Aleutian Islands (BSAI) crab fisheries developed by the North Pacific Fishery Management Council (the Council), in motions from June 2002 to April 2003. On March 2, 2005, the Secretary issued regulations to establish the Crab Rationalization Program (70 FR 10174). Crab fishing will begin under this Program on August 15, 2005.

The Fishery Management Plan for BSAI King and Tanner Crabs (FMP) establishes criteria for the management of certain aspects of the BSAI crab fisheries by the State of Alaska (State). Under this authority, the State has determined that Bering Sea *C. bairdi* should be managed as two separate stocks; one east of 166° W longitude, the other west of 166° W longitude. The Bering Sea *C. bairdi* fisheries have been closed since 1997 due to low stock abundance.

Under the Crab Rationalization Program, quota share (QS), processor quota share (PQS), individual fishing quota (IFQ), and individual processing quota (IPQ) will be issued for one *C. bairdi* fishery. The proposed action would amend the Crab Rationalization Program, establishing allocations of harvesting and processing shares for these separate stocks.

Alternatives

Three alternatives for allocating shares are under consideration for each pool of shares (QS and PQS).

For harvest shares (including captains shares), separate allocations would be made for each *C. bairdi* management area based either on:

- 1) No action, under which IFQ allocations for the *C. bairdi* fishery do not match the two stock management of the fishery;
- 2) All qualifying catch, with each eligible person receiving an allocation in each area based on all *C. bairdi* history (regardless of where the harvests were made); or
- 3) Historic catch in an area, with each eligible person receiving an allocation in each area based only on qualifying catch in the area.

For processing shares, allocations would be made based equally on qualifying history in the *C. opilio* fishery and the Bristol Bay red king crab fishery. Either:

- 1) No action, under which IPQ allocations for the *C. bairdi* fishery do not match the two stock management of the fishery;
- 2) Each eligible person would receive equal allocations for both fisheries (i.e., separate PQS and IPQ allocations for each fishery); or
- 3) Each eligible person would receive a single allocation of *C. bairdi* PQS that is not fishery specific, which would yield *C. bairdi* IPQ that could be used to receive landings from either fishery.

Effects on administration, management, and enforcement

Under the status quo alternative, management of the *C. bairdi* fishery is not coordinated between the State and Federal regulations. This action is necessary to correct this lack of coordination to allow for orderly prosecution of the fishery by participants and certainty in rules governing the fishery.

Managing the allocation process under either revised harvest allocation alternative would not be difficult and can be accomplished soon after the regulations are effective. Basing harvest on area of catch under the second alternative would require some additional review of records. Processor allocations under either revised allocation alternative would be based on qualified landings from the Bristol Bay red king crab fishery and the Bering Sea *C. opilio* fishery. Both of the revised harvester and processor share allocations could be accomplished based on the existing application and allocation process, with no additional administrative cost.

Management of IFQ allocations would be the same under either revised allocation alternative and would be generally undertaken as described in the BSAI Crab Fisheries EIS (Crab EIS, NMFS/NPFMC 2004). Each QS allocation would yield IFQ based on its portion of the pool and the TAC. Catch accounting would be accomplished by requiring catcher/processors to weigh all catch at sea and all landings at shore plants. Catch monitoring plans, subject to the approval of NOAA Fisheries, would be developed by processors to facilitate monitoring and weighing of catch.

VMS, approved by NOAA Fisheries, will be required on all vessels participating in the rationalized crab fisheries. Using a satellite global positioning system, transmitters would automatically determine a vessel's location several times each hour and transmit that information to NOAA Fisheries. VMS is critical to monitoring catch from the two fisheries, as it will allow geographic tracking of vessel activities. Enforcement under the rationalization program will be complicated by the extended season and the individual allocations to harvesters and processors. As noted in the Crab EIS, additional enforcement agents will be required to monitor the activities of participants in the fisheries. The state regulations that prohibit participation in both the east and west fisheries in a single trip should adequately facilitate management and enforcement of the two fisheries.

Management of IPQ allocations under the two revised processor allocation alternatives are similar and would be generally undertaken as described in the Crab EIS. The only difference between those two alternatives arises from the allocation of different shares for the two fisheries under one alternative. Under alternative 2, the independent allocations of IPQ in the two fisheries would be required to be matched to Class A IFQ from the corresponding fishery. Under alternative 3, a single type of *C. bairdi* IPQ would be issued that may be matched with Class A IFQ from either fishery. The task of managing these allocations is very similar and, therefore should have few or no management implications.

Effects on harvester allocations (including captains allocations)

The effects of the status quo are uncertain because State and Federal management are not coordinated. This confusion between State and Federal managers leaves participants uncertain concerning the prosecution of *C. bairdi*. Yet, since the stock levels are not adequate to support a fishery, this confusion has no implications currently.

The difference in effects of the revised harvester allocation alternatives is primarily distributional. Under alternative 2, an eligible participant will receive an allocation in both fisheries based on all qualifying catch regardless of where that catch occurred. Under the alternative 3, a harvester will receive an allocation in each fishery based on historic catch from the area of the fishery. Under alternative 3, a person's allocation will be skewed toward the area in which the person had greater catch relative to other participants. The distributional effects of the different allocations, however, depend not only on the size of the initial allocation to a person in a fishery, but also on whether the fishery opens and the TAC. Neither of the fisheries will open in 2005 or 2006, as the stocks are below the harvest strategy threshold that would permit opening. In addition, future openings are uncertain and unpredictable. As a result, the distributional effects are not fully predictable. Since shares in both fisheries are tradable, no differences in efficiency are expected.

Effects of the processor alternatives

The status quo has inconsistencies in State and Federal management of the *C. bairdi* fishery that make the Federal share allocations inconsistent with the State management of the fishery as two stocks. Since the fishery is currently closed and will remain closed for at least two years, this inconsistency is currently inconsequential. Revision of the Federal share allocations will resolve the confusion of State and Federal managers.

The choice of processor alternatives will have operational and efficiency effects. Under alternative 2, PQS and IPQ pools are created for the two fisheries. Share holders will be able to trade shares in the fisheries independently to establish long term relationships in each fishery independently. Under alternative 2, PQS are allocated that generate annual allocations of IPQ that can be used in either fishery (so the IPQ pool is equal to the sum of the Class A IFQ pool in the two fisheries combined). Since TACs in the fisheries may fluctuate independently, harvesters that do not hold equal percentages of the pools in both fisheries will be unable to establish fixed long-term relationships with a processor for all of their shares. Instead these participants will need to modify their relationships if TACs change independently in the different fisheries. This restructuring of relationships could reduce efficiency in the fisheries by adding to transaction costs of participants.

Effects on the biological and physical environment

The alternatives concern only the distribution of initial allocations of QS and PQS and the nature of the processing privileges (PQS and IPQ) in the rationalized *C. bairdi* fisheries. None of the alternatives under consideration effect the *C. bairdi* stock or any other components of physical or biological environment.

Table of Contents

1.	Introduction.....	1
2.	Environmental Assessment.....	1
2.1.	Purpose and Need.....	2
2.2.	The alternatives	2
2.3.	Affected environment.....	4
2.3.1.	History of the fishery	4
2.3.2.	Stock Status.....	5
2.3.3.	Management of the fisheries	5
2.4.	Analysis of the alternatives.....	9
2.4.1.	Effects on administration, management, and enforcement	9
2.4.2.	Effects on the physical and biological environment	11
2.4.3.	Effects on <i>C. bairdi</i>	11
2.4.4.	Effects on the social and economic environment.....	11
2.4.5.	Cumulative Effects.....	12
3.	Regulatory Impact Review.....	13
3.1.	Problem Statement.....	13
3.2.	Background.....	14
3.3.	Description of the Alternatives.....	14
3.4.	Existing conditions in the fishery	16
3.4.1.	Management of the fisheries	16
3.4.2.	The harvest sector	16
3.4.3.	The processing sector.....	18
3.4.4.	Ex vessel pricing and harvester/processor relationships	19
3.4.5.	Product markets and first wholesale prices	20
3.4.6.	Community and social conditions	21
3.5.	Effects of the alternatives	22
3.5.1.	Effects of the harvest sector alternatives on participants	22
3.5.2.	Effects of processing sector alternatives on participants.....	28
3.5.3.	Effects on communities.....	29
3.6.	Summary of net benefits to the Nation.....	30
4.	Regulatory Flexibility Analysis	30
4.1.1.	Definition of a Small Entity	31
4.2.	A description of the reasons why action by the agency is being considered.....	33
4.3.	The objectives of, and the legal basis for, the proposed rule.....	33
4.4.	A description of, and where feasible, an estimate of the number of small entities to which the proposed rule will apply	33
4.5.	A description of the projected reporting, recordkeeping, and other compliance requirements.	34
4.6.	An identification, to the extent practicable, of all relevant Federal rules that may duplicate, overlap, or conflict with the proposed rule	34
4.7.	A description of any significant alternatives to the proposed rule that accomplish the stated objectives of the Magnuson-Stevens Act and any other applicable statutes, and that would minimize any significant adverse economic impact of the proposed rule on small entities.....	34
5.	National Standards and Fishery Impact Statement	35
5.1.	National Standards.....	35
5.2.	Section 303(a)(9) - Fisheries impact statement	37
6.	References.....	37
7.	List of Preparers and Persons Consulted.....	38

List of Tables

Table 1. Ex vessel prices for Bering Sea <i>C. bairdi</i> , Bristol Bay red king crab, and Bering Sea <i>C. opilio</i>	20
Table 2. First wholesale prices of red king crab, <i>C. bairdi</i> , and <i>C. opilio</i> products (dollars per pound) 1991-2000.....	21
Table 3. Production of red king crab, <i>C. bairdi</i> , and <i>C. opilio</i> products (in 1,000s of pounds) 1991-2000.....	21
Table 4. Allocations to vessels by community.....	22
Table 5. Simple statistics for estimated allocations to LLP holders.....	23
Table 6. Allocations to LLP holders exceeding 1 percent and 2.5 percent thresholds.....	24
Table 7. Estimated percent of quota share pool purchased in the buyback.....	25
Table 8. Estimated allocations to catcher/processors.....	25
Table 9. Simple statistics for estimated allocations to captains.....	27
Table 10. Allocations to captains exceeding 2.5 and 5 percent thresholds.....	27
Table 11. Allocations by community.....	30

List of Figures

Figure 1. Estimated allocations to LLP holders and captains in the Bering Sea <i>C. bairdi</i> fishery.....	18
Figure 2. Estimated allocations to processors in the Bristol Bay red king crab, Bering Sea <i>C. opilio</i> , and Bering Sea <i>C. bairdi</i>	19
Figure 3. Estimated allocations to LLP license holders.....	23
Figure 4. Estimated allocations to captains.....	27

(this page intentionally left blank)

1. Introduction

Under the authority granted to the State of Alaska by the Fishery Management Plan for Bering Sea and Aleutian Islands king and Tanner crabs (FMP), the State of Alaska has determined that the Bering Sea District Tanner crab (*Chionoecetes bairdi*) are in two geographically separate stocks, which should be managed as two separate fisheries. This proposed action would determine the allocations of quota share (QS), processor quota share (PQS), individual fishing quota (IFQ), and individual processing quota (IPQ) under the Crab Rationalization Program for these two fisheries.

Management actions for these crab fisheries must comply with applicable Federal laws and regulations. Although several laws and regulations guide this action, the principal laws and regulations that govern this action are the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the National Environmental Policy Act (NEPA), the Regulatory Flexibility Act (RFA), and Executive Order 12866.

This document contains an Environmental Assessment (EA), a Regulatory Impact Review (RIR), and an Initial Regulatory Flexibility Analysis (IRFA) of the alternatives for the allocation of QS, PQS, IFQ, and IPQ in the Bering Sea *C. bairdi* fisheries. Section 2 contains the EA; Section 3 contains the Regulatory Impact Analysis; Section 4 contains IRFA; and Section 5 contains a brief discussion of the Magnuson-Stevens Act National Standards and a fishery impact statement.

This document relies heavily on the information and analysis contained in the Bering Sea Aleutian Islands Crab Fisheries Final Environmental Impact Statement/Regulatory Impact Review/Initial Regulatory Flexibility Analysis/Social Impact Assessment (NMFS/NPFMC, 2004). Throughout this analysis, that document is referred to as the "Crab EIS". Additional information concerning the *C. bairdi* fishery, its management under the Crab Rationalization Program, and its impacts on the human environment are contained in that document.

2. Environmental Assessment

This EA tiers off of the Crab EIS to focus the analysis on the issues ripe for decision and eliminate repetitive discussions. The Crab EIS provides the status of the environment and analyzes the Crab Rationalization Program and its impacts on the human environment. The proposed action, allocating QS and PQS for two separate *C. bairdi* stocks, modifies a specific provision of the Crab Rationalization Program. This EA focuses on the specific impacts of the proposed action and provides details concerning the proposed action and its impacts.

The Council on Environmental Quality (CEQ) regulations encourages agencies preparing NEPA documents to "tier their environmental impact statements to eliminate repetitive discussions of the same issues and to focus on the actual issues ripe for decision at each level of environmental review":

Whenever a broad environmental impact statement has been prepared (such as a program or policy statement) and a subsequent statement or environmental assessment is then prepared on an action included within the entire program or policy (such as a site specific action) the subsequent statement or environmental assessment need only summarize the issues discussed in the broader statement and incorporate discussions from the broader statement by reference and shall concentrate on the issues specific to the subsequent action. (40 CFR 1502.20)

In 40 CFR 1508.28, the CEQ regulations further define tiering as "the coverage of general matter in broader environmental impact statements ... with subsequent narrower statements of environmental

analyses....incorporating by reference the general discussion and concentrating solely on the issues specific to the statement subsequently prepared.”

This section of the CEQ regulations further notes that “tiering is appropriate when the sequence of statements or analysis is from a program, plan, or policy environmental impact statement to a program, plan, or policy statement or analysis of lesser scope or to a site-specific statement or analysis....” (40 CFR 1508.28).

2.1. Purpose and Need

The purpose and need for the proposed action is explained in the Council’s problem statement:

Under the FMP, the State of Alaska, ADF&G has management authority for certain aspects of the Bering Sea/Aleutian Islands crab fisheries. Under the FMP, the State of Alaska is authorized to make changes in management subject to criteria defined in the FMP (category II measures), including adjustment of district and subdistrict boundaries for the purposes of managing reasonably distinct stocks of crab. As a part of their management of Bering Sea District *C. bairdi*, ADF&G has determined that two geographically separate *C. bairdi* stocks inhabit the Bering Sea grounds that have historically supported the Bering Sea *C. bairdi* fishery. ADF&G has determined that these two stocks, one east of 166° W longitude and the other west of 166° W longitude should be managed separately. The Alaska Board of Fisheries has approved a management plan that directs ADF&G to manage the Bering Sea District *C. bairdi* as two separate stocks, east and west. The Council action to rationalize *C. bairdi* in the Bering Sea did not distinguish the management of these separate stocks. This action is to consider alternatives for the allocation of QS, PQS, IFQ, and IPQ for these separate fisheries. The Council intends to develop an allocation that is fair and equitable.

2.2. The alternatives

Harvest Sector Alternatives

The Council has adopted the following three alternatives for making allocations of QS and IFQ to the harvest sector (including LLP license holders and captains):

1. No action, under which IFQ allocations for the *C. bairdi* fishery do not match the two stock management of the fishery.

The status quo alternative reflects an inconsistency in the allocations of IFQ and IPQ and the two stock management of Bering Sea C. bairdi. Since the fishery will not open in the next two years because of stock conditions, this status quo has no current impact.

2. Make two equivalent allocations of QS (one for each fishery) based on all of a person’s *C. bairdi* history during the qualifying years (regardless of where those harvests occurred). This structure would have two QS pools, one for each of the fisheries.

For example, if a person has 1% of the historic harvests in Bering Sea C. bairdi in total he would receive 1% of the west QS and 1% of the east QS. These QS would each yield IFQ in their respective fisheries.

3. Make two allocations of QS (one for each fishery) with the allocations based on where harvests occurred. Harvests east of 166° W longitude would yield an allocation of QS in the fishery east of 166° W longitude. Harvests west of 166° W longitude would yield an allocation of QS in the

fishery west of 166° W longitude. This structure would have two QS pools, one for each of the fisheries.

For example, if a person had 1% of the historic harvests in the west and 2% of the historic harvests in the east, he would get 1% of the west QS and 2% of the east QS. These QS would yield IFQ in their respective fisheries.

Processor Sector Alternatives

The Council also adopted the following three alternatives for allocating PQS and IPQ to processors:

1. No action, under which IPQ allocations for the *C. bairdi* fishery do not match the two stock management of the fishery.

The status quo alternative reflects an inconsistency in the allocations of IFQ and IPQ and the two stock management of Bering Sea C. bairdi.. Since the fishery will not open in the next two years because of stock conditions, this status quo has no current impact.

2. Make two equivalent allocations of PQS (one for each fishery) based equally on a company's qualified Bering Sea *C. opilio* processing history and qualified Bristol Bay red king crab processing history (regardless of where harvests that led to those landings occurred). This alternative would result in two PQS pools, one for each fishery.

For example, if a company processed 3% of the qualified landings of Bering Sea C. opilio and 1% of the qualified landings of Bristol Bay red king crab, it would receive 2% of the west C. bairdi PQS and 2% of the east PQS. These PQS would each yield IPQ in their respective fisheries.

3. Make one allocation of PQS for the Bering Sea *C. bairdi* fishery based equally on a company's qualified Bering Sea *C. opilio* processing history and qualified Bristol Bay red king crab processing history (regardless of where harvests that led to those landings occurred). This single type of PQS would yield IPQ that can be used for landings from either fishery (i.e., IFQ west of 166° W longitude or IFQ east of 166° W longitude). This alternative would result in one PSQ pool that would yield IPQ that could be used in either *C. bairdi* fishery.

For example, if a company processed 8% of the qualified landings of Bering Sea C. opilio and 12% of the qualified landings of Bristol Bay red king crab, it would receive 10% of the C. bairdi PQS. This PQS would yield IPQ that could be used to process C. bairdi crab from either the west or the east district. So, if the general fishery subject to the 90/10 split in the east district opened with a TAC of 12,000,000 pounds and the general fishery subject to the 90/10 split in the west district opened with a TAC of 8,000,000 pounds, this company would receive 10% of the 18,000,000 pound C. bairdi IPQ allocation (1,800,000 pounds of IPQ). These IPQ could be used for landings of Class A IFQ from either the east or the west fishery. If only one of the two fisheries were opened, IPQ would be issued for that fishery in the amount determined by applying the 90/10 split.

Alternatives considered and eliminated from detailed study

No other reasonable alternatives have been suggested for this proposed action. The proposed action is necessary to coordinate Federal allocations with State management of Bering Sea *C. bairdi* as two stocks.

2.3. Affected environment

Chapter 3 of the Crab EIS contains a complete description of the human environment, including the physical environment, habitat, crab life history, marine mammals, seabirds, crab fisheries, a management history, the harvesting sector, the processing sector, and community and social conditions. These descriptions are incorporated by reference. In addition to the factors discussed in the Crab EIS, this action specifically concerns the management of Bering Sea *C. bairdi* as two stocks. A description of the history of Bering Sea *C. bairdi* fishery and stock status, along with a description of current management of the species as two stocks, is included here.

2.3.1. History of the fishery

The Bering Sea District of Tanner crab Registration Area J includes all waters of the Bering Sea north of Cape Sarichef at 54°36' N. latitude and east of the U.S.-Russia Convention Line of 1867. This district is divided into the Eastern and Western Subdistricts by a line at 173° W. longitude. The *C. bairdi* fishery considered in this proposed action is conducted in the Eastern Subdistrict. In 1999, the State divided the Eastern Subdistrict at 168° W. longitude to distinguish the Pribilof Islands area from the Bristol Bay area. In 2005, the State modified the boundary to divide the Eastern Subdistrict at 166°W. longitude.

The first reported catches of *C. bairdi* occurred in 1968, incidental to the harvest of red king crabs in Bristol Bay. In 1974, a directed *C. bairdi* crab fishery began. Harvest peaked at 66.6 million pounds during the 1977/78 season. In the fall of 1978, NMFS predicted sharp declines in *C. bairdi* crab abundance. By 1984, the commercial harvest had fallen to 1.2 million pounds. Further stock declines led to a fishery closure during the 1986 and 1987 seasons.

In 1992, in order to slow the harvest rate to improve in-season management, regulations were adopted that limited vessels fishing for *C. bairdi* to no more than 250 pots. As happened with king crabs, these regulations were in conflict with federal law regarding nondiscriminatory application of pot limits. In 1993, the regulations were changed. Vessels 125 feet or under in overall length were limited to a maximum of 200 pots, while vessels longer than 125 feet in overall length were limited to a maximum of 250 pots.

In 1993 the BOF also adopted regulations that opened and closed part of the Eastern Subdistrict east of 168° W longitude to *C. bairdi* fishing concurrently with the Bristol Bay red king crab season. The Eastern Subdistrict between 163° and 173° W. longitude for the directed *C. bairdi* fishery was mandated to reopen 10 days after the closure of the Bristol Bay red king crab fishery or, if the Bristol Bay red king crab failed to open, on November 1. These actions were intended to avoid excessive female king crab bycatch, and were based on observer data indicating that most female king crab bycatch in the Bristol Bay red king crab and Bering Sea *C. bairdi* fisheries came from waters east of 163° W. longitude.

The Bristol Bay red king crab fishery did not open in 1994 and 1995 due to low stock abundance. As a result, the *C. bairdi* fishery opened on November 1 in the Eastern Subdistrict, west of 163°W. longitude. The commercial *C. bairdi* harvest in 1994 was 7.8 million pounds; in 1995 the harvest declined to 4.2 million pounds. The decline intensified the following year: the GHL for the 1996 *C. bairdi* fishery was 8.4 million pounds, but the fishery was closed before that level was reached due to poor performance; a total of 1.8 million pounds was harvested. Based on the 1997 NMFS surveys, which showed significant declines for both years in most segments of the *C. bairdi* population, ADF&G closed the Bering Sea *C. bairdi* fishery for the 1997 season, and it has remained closed due to continuing low abundance levels.

2.3.2. Stock Status

Based on the 2004 estimate of total mature biomass, the eastern Bering Sea *C. bairdi* remains in "overfished" status for the sixth year since NMFS declared the stock overfished in 1999 (64 FR 15308, March 31, 1999). The total mature biomass estimate for 2004 is below the minimum stock size threshold (MSST) and down from the estimate for 2003 (100.8-million pounds), but it is the second highest estimate since 1997. In 1997, ADF&G closed the *C. bairdi* fishery due to low stock abundance. Overall, estimates of total mature biomass have shown an increasing trend since the 1999 overfished declaration and the 2004 estimate is more than twice the estimate for 1998 (37.6-million pounds). However, the rate of increase in estimated total mature biomass since 1998 has been extremely slow relative to that seen when total mature biomass increased from 48-million pounds in 1985 to 249-million pounds in 1988.

ADF&G's area-swept estimate for Eastern Subdistrict mature female biomass declined from being just below the 21.0-million pound threshold in 2003 (20.8-million pounds) to only 13.2-million pounds in 2004. Size frequency modes for females at 77.5-mm CW and 57.5-mm CW in 2003, which tracked well from 2001, disappeared or were greatly diminished by 2004. Abundance estimates of mature-sized females have shown only minor fluctuations about depressed levels in Eastern Subdistrict since 1997. The prolonged depressed level of mature-sized female abundance during the last eight years is in contrast with the rapid recovery from similarly depressed levels that was seen from the mid-1980s through the late-1980s. Abundance of juvenile-sized females (i.e., <80-mm CW) in 2004 was lower than the previous three surveys, except for in the <40-mm CW size class. Hence there should be no expectations for any appreciable increase in mature female abundance or biomass in the next two years.

The area-swept abundance estimates for mature-sized males in the Eastern Subdistrict have shown a slight increasing trend from 1997 through 2004. The size frequency distribution for the Eastern Subdistrict in 2004 suggests the possibility for some increase in mature-sized male abundance next year. However, the estimated abundance of legal males has remained low since 1997, perhaps indicating that sublegal males are not molting into legal size. ADF&G estimated abundance of legal-sized males in Bristol Bay in 2004 at 5.2-million by the area-swept method and at 3.2-million by the LBA method (the NMFS area-swept estimate was 5.0-million). Because of a preponderance of old-shell crabs among the legal males, ADF&G estimates the abundance of "exploitable legal males" (i.e., 100% of new-shell legal males plus 32% of old-shell legal males) in Bristol Bay area to be only 2.1-million by the area-swept method and 1.68-million by the LBA-method. Both ADF&G and NMFS estimate the abundance of legal males in the Eastern Subdistrict west of Bristol Bay to be only 0.3 million.

2.3.3. Management of the fisheries

The FMP establishes a structure that categorizes management measures by management authority. Management is shared with the State of Alaska, to draw on State expertise concerning certain measures. Category 1 measures are those that are inherent Federal responsibilities under the Magnuson-Stevens Act and can only be amended through FMP amendments. The Crab Rationalization Program is a category 1 measure, and therefore, an FMP amendment is required for this proposed action to change the allocation of QS/IFQ and PQS/IPQ.

Category 2 measures are those measures deferred to the State. Changes to management measures by the State are through the Board of Fisheries (BOF) process. The FMP establishes a framework (or criteria) for Category 2 measures that guide State decision making on those measures. Category 2 measures may be developed by the BOF to the extent permitted by the framework. Category 3 measures are under the discretion of the State without FMP framework. Under the FMP Category 2 measures, the State of Alaska is authorized to make adjustment of district and subdistrict boundaries for the purposes of managing reasonably distinct stocks of crab.

AGENDA C-7
Supplemental
OCTOBER 2005LAW OFFICES
MORISSET, SCHLOSSER, JOZWIAK & MCGAW
A PROFESSIONAL SERVICE CORPORATIONSHARON I. HAENSLY (WA)
FRANK R. JOZWIAK (WA)
KYME A.M. MCGAW (WA, OK)
MASON D. MORISSET (WA)
THOMAS P. SCHLOSSER (WA)
ROB ROY SMITH (WA, OR, ID)
THANE D. SOMERVILLE (WA)

COMPTROLLER
M. ANN BERNHISEL1115 NORTON BUILDING
801 SECOND AVENUE
SEATTLE, WA 98104-1509TELEPHONE: (206) 386-5200
FACSIMILE: (206) 386-7322

Via Facsimile
907-271-2817

WWW.MSAJ.COM

September 28, 2005

Stephanie Madsen, Chair
North Pacific Fishery Management Council
605 West Fourth Avenue, Suite 306
Anchorage, AK 99501-2252Re: Comments Regarding Agenda Item C-7 *Bairdi* Crab Split

Dear Ms. Madsen:

On behalf of Tanadgusix Corporation, the Alaska Native Village Corporation for St. Paul Island, I write to comment on issues of great importance to the Aleut community.

First, the Council is considering implementing a basis for determining the way in which PQS and IPQ shares are to be calculated for *bairdi* crab under a new regime. We urge the Council to allocate PQS and IPQ using qualified years based on actual historical processing, and not based on processing *opilio* or other species. TDX's Anderson Plant processing facility on St. Paul Island processed *bairdi* crab during a reasonable qualifying period. It would be unfair to adopt an artificial basis (i.e., *opilio* processing) for PQS and IPQ simply because some parties did not process *bairdi* during the relevant productive time for the resource. The fact that the resource has not been productive in recent years is no reason to deny actual processing history.

TDX previously petitioned the Council concerning the qualifying years basis used for allocating PQS and IPQ for *opilio* crab and king crab. The Council has not responded to the facts set forth by TDX regarding those species. Briefly, TDX converted its Anderson Plant from seal harvesting to crab processing based on a change in the Federal government's policy toward the Pribilof Aleuts, as set forth in the Fur Seal Act Amendments of 1983. The Federal government required Pribilof Aleuts to turn from sealing to other fisheries and that mandate should have been recognized in the selection of the qualifying period for *opilio* and king crab processing. Instead, the Council adopted qualifying years after TDX stopped processing, denying TDX its historic right to approximately 8% of the processing of those species. The current proposal would allocate *bairdi* crab processing to the same entities that unfairly benefited from the decision concerning *opilio* and king crab processing, thus compounding that injustice.

Stephanie Madsen, Chair
September 28, 2005
Page 2

The Environmental Assessment for proposed Amendment 20 to BSAI Crab FMP (July 2005) notes that processor allocations were based upon Bristol Bay red king crab and Bering Sea *opilio* "because of changes in processing activity since 1996 when the *C. bairdi* fishery was last open. The rationale for this decision is that the allocation of processor shares should support more current processing activities." *Id.* at 18. However, the fact that changes have occurred in processing activity does not imply that those changes are for the best or that the historic processing activities of rural communities such as ours should be disregarded. The Council should be consistent and look to historic use of *bairdi* crab as the basis of allocation, and not some other species.

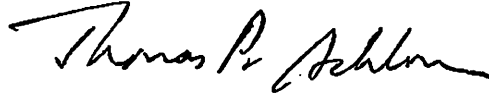
As noted in the Environmental Assessment, two geographically separate stocks of *bairdi* exist. This should be recognized. In addition, because the fishery is likely to remain closed for some time, the Council has an adequate opportunity to examine processing histories and develop a fair method of allocating PQS and IPQ based on processing of *bairdi* crab.

On another matter, we also urge the Council to avoid establishing IFQs for bycatch. This concept, together with the ambitious proposal for rationalization of groundfish, lacks adequate scientific basis. Bycatch quotas may exacerbate the situation with respect to depleted Steller sea lion and northern fur seal populations.

Thank you for your consideration of our comments.

Sincerely yours,

MORISSET, SCHLOSSER, JOZWIAK & McGAW




Thomas P. Schlosser
Attorneys for Tanadgusix Corporation

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

DATE: September 28, 2005

TO: Stephanie Madsen, Chair
North Pacific Fishery Management Council
Anchorage, Alaska

FROM: Arni Thomson
Executive Director 

RE: Agenda Item C-7, C. Bairdi Stock Split
Comments in Support of Adoption of Amendment 20
To the BSAI King and Tanner Crab FMP

RECEIVED
SEP 28 2005
N.P.F.M.C.

The ACC office has reviewed the EARIR for the C. Bairdi stock split to establish separate East and West TACs in the rationalized fisheries, in order to make allocations of QS and PQS consistent with ADFG's two stock management program.

ACC's preferred option for allocation of harvester QS is Option #2: Make two equivalent allocations (one for each fishery) based on all of a person's C. bairdi history during the qualifying years, (regardless of where those harvests occurred). This structure would have two QS pools, one for each of the fisheries.

Given the uncertainties and the variability surrounding the rebuilding of C. bairdi in the eastern and western districts and the effects on stock distribution patterns and allocations, and to encourage flexibility and simplicity for establishing allocations and in the management of the fishery, the ACC is supporting the harvester Option #2.

A good example of the variability in the rebuilding of the C. bairdi stocks is noted in the rapid rebuilding of the western district C. bairdi stock which is very likely going to reopen this fall for the first time since 1996. The eastern district stock is more robust, but due to a stringent minimum TAC threshold of four million pounds, the eastern district will not open this year, but the western district likely will. An equal QS share in both districts will balance out the harvests for all the QS holders.

The C. bairdi Council action memo dated May 24th, 2005, also indicated the need for adoption of Option #2, as noted on page 3 (Effects of the Processor Options): "TACs in the fisheries may fluctuate independently, harvesters that do not hold equal percentages of the pools in both fisheries will be unable to establish fixed long-term relationships if TACs change independently in the different fisheries. Thus restructuring of relationships could reduce efficiency in the fisheries by adding to transaction costs of participants."