

MEMORANDUM

TO: Council, SSC, and AP Members

FROM: Chris Oliver *Chris*
Executive Director

ESTIMATED TIME
12 HOURS

DATE: January 26 , 2004

SUBJECT: Crab Rationalization

ACTION REQUIRED

Initial review of crab preliminary draft EIS

In June 2002, in response to concern from participants and a Congressional directive, the Council completed an analysis of rationalization alternatives for the BSAI crab fisheries. At that meeting, the Council adopted for analysis in an Environmental Impact Statement a suite of alternatives, including a preliminary preferred alternative, to rationalize the Bering Sea and Aleutian Islands (BSAI) crab fisheries. At its meetings in October 2002, December 2002, February 2003, April 2003, and June 2003, the Council developed a series of trailing amendments for incorporation into that preliminary preferred alternative and refined and revised the other alternatives for EIS analysis. Council and NOAA Fisheries staff have completed a preliminary draft of the EIS, which is scheduled for Council initial review at this meeting. A copy of the executive summary to the EIS (Item C-5(a)(1)) and the specific provisions from the Council's motions identifying the preferred alternative (Item C-5(a)(2)) are attached. At this meeting the Council needs to decide whether the EIS is ready to be released for publication as a draft EIS, for public comment and subsequent final action.

The EIS examines three rationalization alternatives and the status quo. Because of unique problems in these fisheries, recognized by the Council and implicitly acknowledged in the Congressional directive, the preferred alternative is a management program that includes provisions that were beyond the scope of the Council's general authority under the Magnuson Stevens Act at the time the preliminary preferred alternative was identified. Since that time, the Council provided two reports advising Congress of its preliminary preferred alternative. In response to those reports, Congress included in its Omnibus Appropriations bill for fiscal 2004 (HR 2673) a provision directing the Secretary of Commerce to approve and implement the Council's preliminary preferred alternative. Copies of the language from the bill (Item C-5(a)(3)), the associated conference report (Item C-5(a)(4)), and Senator Stevens floor statement (Item C-5(a)(5)), are attached.

Executive Summary

Introduction

In 1976, Congress passed into law what is currently known as the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). This law authorized the United States (U.S.) to manage its fishery resources from 3 to 200 nautical miles (nm) (4.8 to 320 kilometers [km]) off its coast (the U.S. Exclusive Economic Zone [EEZ]). The management of these marine resources is vested in the Secretary of Commerce (Secretary) and in Regional Fishery Management Councils. In the Alaska region, the North Pacific Fishery Management Council (Council) has the responsibility to prepare Fishery Management Plans (FMP) for marine resources requiring conservation and management, as determined by the Council. The U.S. Department of Commerce, National Oceanic and Atmospheric Administration (NOAA), National Marine Fisheries Service (hereinafter referred to as NOAA Fisheries) is charged with carrying out the federal mandates of the U.S. Department of Commerce with regard to commercial fisheries such as approving and implementing FMPs and FMP amendments recommended by the Council.

Under the Magnuson-Stevens Act, the Council prepared and the Secretary approved the *Fishery Management Plan for the Commercial King and Tanner Crab Fisheries in the Bering Sea/Aleutian Islands* in 1989. A National Environmental Policy Act (NEPA) Environmental Assessment (EA) was prepared for the FMP with a finding of no significant impact (FONSI). Environmental analysis documents were prepared for each subsequent FMP amendment and regulatory action. In 1998, the Council updated this FMP and changed the name to the *FMP for Bering Sea/Aleutian Islands King and Tanner Crabs* (BSAI crab FMP). An EA was prepared for this revised FMP and a FONSI was determined.

The purpose of this Environmental Impact Statement (EIS) is to provide decision-makers and the public with an evaluation of the environmental and economic effects of alternative management programs for the Bering Sea and Aleutian Islands (BSAI) crab fisheries. It is intended that this EIS serve as the central environmental document for management measures developed by NOAA Fisheries and the Council to implement the provisions of the proposed program. This proposed program was determined to be a major federal action with potentially significant impacts on the human environment, therefore, preparation of an EIS level analysis was considered appropriate.

The EIS contains three appendices: a regulatory impact review, the Council's reports to Congress, and a social impact assessment. The regulatory impact review analyzes the economic impacts of the elements and options from which the EIS alternatives were developed. The regulatory impact review includes a net benefit analysis of the preferred alternative. Although specific benefits cannot be quantified, net benefits should arise from implementation of the preferred alternative. These net benefits arise from gains in harvesting and processing efficiency, consumer benefits, and environmental benefits. The social impact assessment provides detailed analyses of the impact of the alternatives on communities and regions.

The Council has identified that the BSAI crab fisheries require a concerted effort to manage capacity. In an effort to alleviate the problems caused by excess capacity and the race for fish, the Council has determined that the institution of some form of rationalization program is needed to improve crab fisheries management in accordance with the Magnuson-Stevens Act. The need for a rationalized crab management regime is explained in the Council's *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 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 Council at the beginning of the comprehensive rationalization process in 1992 still exist for the BSAI crab fisheries. Problems facing the fishery include:

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

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

The Council has designed three alternative rationalization programs that address the issues as laid out in this problem statement.

Alternatives analyzed

Four alternatives are evaluated in this EIS; status quo and three rationalization programs. The rationalization programs were designed to capture the range of management options developed and considered by the Council over the three years in which the rationalization programs have been under development. During the course of developing a preferred alternative for a crab rationalization program, the Council examined a myriad of suboptions under each management component. However, it is not practical to construct an EIS that considers the environmental and economic consequences of every permutation of suboptions considered by the Council during the entire public process of developing a preferred alternative. Instead, the alternatives presented in this EIS are designed to capture the range of key issues and decision points that the Council,

affected industry, and public have identified during scoping as critical from an environmental, economic, and socio-economic perspective. The following is a brief synopsis of each alternative.

Alternative 1 Status Quo (No action). The alternative is the continuation of the current FMP for BSAI king and Tanner crab fisheries, and all activities authorized under the FMP, the current suite of FMP management measures, and the State of Alaska (State) and federal regulations developed to implement those measures. The analysis of Alternative 1 provides an understanding of the effects on the human environment of the existing crab fisheries management regime as well as the expected consequences to the affected environment should the agency undertake no action to modify the current FMP. In addition to a description of status quo, this section contains an FMP-level review to inform decision-makers about possible FMP changes and State management changes to improve crab fisheries management by addressing the problems identified in the Council's problem statement.

Alternative 2 Three-pie Voluntary Cooperative (Preferred Alternative). This alternative would implement the Council's preferred rationalization program. The three-pie voluntary cooperative program is a complex program that includes elements to manage several identifiable groups that depend on these fisheries. Allocations of harvest shares would be made to harvesters, communities, and captains. Processors would be allocated processing shares. Designated regions would be allocated certain percentages of the crab landings and processing activities to preserve their historic interests in the fisheries. Harvesters would be permitted to form cooperatives to realize efficiencies through fleet consolidation. The novelty of the program has compelled the Council to include several safeguards into the program, including a binding arbitration program for the resolution of price disputes, extensive data collection, and a program review to assess the success of the program.

Alternative 3 Individual Fishing Quota (IFQ). This alternative would establish an IFQ program for the BSAI crab fisheries. The primary difference between the IFQ alternative and the preferred alternative is the absence of processor shares in the IFQ alternative. Allocations of harvest shares would be made to harvesters, communities, and captains. Designated regions would be allocated certain percentages of the crab landings to preserve their historic interests in the fisheries. The novelty of this program has compelled the Council to include, as a safeguard, extensive data collection and a review program to assess the success of the program.

Alternative 4 Cooperative. This alternative would establish a cooperative program for harvesters in the BSAI crab fisheries. The primary difference between the cooperative alternative and the preferred alternative is that processors would not receive processor shares but would instead be licensed and receive the benefit of harvest delivery requirements arising out of processor associations with cooperatives. Harvesters would form cooperatives to realize efficiencies through fleet consolidation and coordination. The novelty of this program has compelled the Council to include, as a safeguard, extensive data collection and a review program to assess the success of the program.

The Preferred Alternative

At its June 2002 meeting, the Council, by unanimous vote, selected the three-pie voluntary cooperative as preferred rationalization alternative from the several alternatives analyzed. The preferred alternative is a carefully crafted program that strikes a balance of the interests of several identifiable groups that depend on these fisheries. The Council developed this program to fit the specific dynamics and needs of the BSAI crab fisheries. The program builds on the Council's experiences with the halibut and sablefish IFQ program and the American Fisheries Act cooperative program for Bering Sea pollock. The program is intended to address conservation and management issues associated with the current derby fishery and to reduce bycatch and associated mortalities. Share allocations to harvesters and processors, together with incentives for cooperation, are intended to increase efficiencies, provide economic stability, and facilitate compensated reduction of excess capacities in both harvesting and processing sectors. The binding arbitration program is intended to resolve price disputes between harvesters and processors, which in the past have delayed fishing. Community interests are protected by CDQ group allocations and regional landing and processing requirements, as well as several community protection measures. Captains are allocated a portion of the catch to protect their interests in the fisheries. These "owner on board" shares are intended to provide long term benefits to both captains and crew. The program includes a comprehensive socioeconomic data collection program that would aid the Council in assessing the success of the program and developing amendments necessary to mitigate any unintended consequences. Perhaps most importantly, the program would improve safety of participants in the fishery by ending the race for fish.

The Council believes that the crab fisheries in the BSAI require this innovative, comprehensive management approach to adequately recognize and protect the interests of all participants. It recognizes all components of the fishery as a balanced, inextricably linked system, rather than individual, competing components. It may not be the appropriate model for other fisheries in the Nation, or even for other fisheries in the North Pacific, and is not intended to be a template for other fisheries. The Council believes this program is the appropriate management approach for these fisheries.

What is Rationalization?

Rationalization programs derive their name from their rationalizing effect on investment in the fishery. Technically speaking, a rationalization program is one that results in an allocation of labor and capital between fishing and other industries that maximizes the net value of production. In other words, the program removes individual incentives to overinvest in labor and capital to secure or maintain one's share of the catch. Typically, rationalization programs are management programs that create a market in the fishery through the allotment of shares to participants. Investment decisions of share holders in the fishery are then geared toward receiving maximum returns on their allotted shares. The end result of these incentives is economic investments in the fishery commensurate with the amount of fish that can be harvested and processed. The assignment of harvest shares may not only eliminate the race for fish, but may also create incentives to improve safety, resource conservation, and pursue marketing opportunities. Rationalization involves a total revamping of the way the fishery is run and takes into consideration numerous economic, social, and environmental consequences that flow from the details of the program design.

Summary of the environmental effects of the alternatives

The environmental effects of the alternatives under consideration derive primarily from changes in crab fishing and processing patterns that are expected to result from the structural and organizational changes in the fishery caused by implementing a rationalization program. The most significant structural change resulting from a rationalization program is the allocation of the crab resource. This allocation would eliminate the race for fish and allow for more efficient, safer crab fisheries. These major structural and organizational changes are expected to affect the patterns of crab fishing and processing in the BSAI. Effects examined include:

- **Changes to crab fishing patterns.** How would each of the alternatives affect when and where crab fishermen chose to fish?
- **Changes to fleet composition.** How would each of the alternatives affect the composition of the various crab fishing fleets?
- **Changes to crab processing patterns.** How would each of the alternatives affect crab processing (i.e., processing locations, product forms, and recovery rates)?

The task of describing how a particular fishery is expected to conduct itself under a comprehensive new set of rules involves some degree of conjecture and speculation. This is because the circumstances that lead fishermen and industry to behave in a certain manner are dependent on such a wide variety of unpredictable factors including such things as weather patterns, sea ice conditions, the migratory patterns of the target species, worldwide market conditions, other regulatory changes, as well as a host of other factors that are difficult or impossible to predict. Nevertheless, the reorganization of the BSAI crab fisheries under the rationalization program alternatives would result in certain predictable changes to fishing and processing practices and these changes would have some predictable environmental and economic consequences.

Changes to fleet composition. The composition of fishing fleets evolves in response to many variables including management measures, changing costs, and availability of target species. Under each of the rationalization program alternatives, it is assumed the BSAI crab fleet would experience reductions in fleet size. Allocation of harvest shares under the rationalization alternatives would allow for the use of allocations by the most efficient operators and would encourage the removal of marginal vessels from the fleet.

Changes to fishing patterns: Temporal dispersion. The emergence of harvest share allocations in the BSAI crab fisheries would eliminate the race for fish and result in slower paced fisheries. Under the system of harvest share allocations, each operator is issued a fixed quota which may be fished or leased to other operators. Fishermen are, therefore, guaranteed a fixed harvest and no longer need to race for fish in competition with the rest of the fleet to assure their harvest. Harvesting and processing activities may disperse temporally for logistic or market reasons. For example, participants may choose production times to avoid conflicts with the crab fisheries, so that the same crews and facilities may be more efficiently used in multiple fisheries. And finally, differences in markets may lead different participants to operate at different times of the year to take advantage of market opportunities. The rationalization program alternatives would provide flexibility to participants in the BSAI crab fisheries who previously had to compete for harvests in each crab opening. Removal of the time pressure associated with the race for fish

would permit harvesters to have longer pot soaks, allowing gear to sort harvests with a potential reduction in bycatch. The removal of the time pressure should also allow participants to search longer for pots, thus, reducing lost pots and mortality.

Changes to fishing patterns: Spatial dispersion. Under the rationalization program alternatives, the BSAI crab fisheries may disburse more widely on a spatial basis than has been the case in previous years. The most significant reason for this increased spatial dispersion may be the slower pace of fishing under the each of the alternative rationalization programs. If harvesters share fishing information, however, this could lead to less dispersion in the fishery over time. Under a rationalization program, harvesters would have more time to find optimal fishing grounds containing congregations of legal male crabs.

Changes to processing patterns. The rationalization alternatives would also change processing patterns as temporal pressures on processing are removed allowing more time for improved recovery, quality, and product development. The effects of the alternatives on processor participation could differ. The three-pie voluntary cooperative alternative's regional and community protections could result in the fisheries supporting processing activity in locations where facilities might otherwise be closed (particularly in years of low total harvests). In addition, the processor protections of the three-pie voluntary cooperative and the cooperative alternatives could limit processor consolidation.

Effects of the alternatives on the environment. This EIS examines how the alternatives and projected changes to crab fishing and processing patterns are expected to affect the physical and biological resources of the BSAI. Table ES-1 displays the major conclusions with respect to environmental impacts of the alternatives. In summary, for all of the components of the environment analyzed, the alternatives have been found to have similar effects and those effects are either insignificant or unknown.

Table ES-1 Summary of the predicted environmental effects of the alternatives.

Biological Issues	Alternative 1 Status Quo	Alternative 2 Three-pie voluntary cooperative	Alternative 3 IFQ	Alternative 4 Cooperative	Comments and Summary
<i>Effects on the physical environment</i>					
Benthic species and habitat					Pot gear is used exclusively in the BSAI crab fisheries. The use of pot gear in the BSAI crab fisheries is not expected to have significant impacts on benthic habitat and EFH.
Essential fish habitat					
<i>Effects on marine mammals</i>					
Steller sea lions					These species do not prey on crab and their primary range does not significantly overlap with primary crab fishing areas.
ESA-listed cetaceans					
Bearded Seal					This species prey on snow crab however, their primary range does not significantly overlap with primary snow crab fishing areas due to ice cover.
<i>Effects on crab and other benthic species</i>					
Crab species					None of the alternatives would affect total removals of crab or the harvest level setting process.
Benthic species caught as bycatch in crab fisheries					None of the alternatives would affect total removals of other species caught as bycatch and current levels are very low.
<i>Effects on seabirds</i>					
ESA-listed seabirds					These species do not prey primarily on crab and their primary range does not significantly overlap with primary crab fishing areas.
<i>Ecosystem effects</i>					
Predator-prey relationships	U	U	U	U	Concentrated removals of crab has not been a concern in the status-quo regime. The effects of a more dispersed fishery under Alternatives 2 through 4 on predator-prey relationships are considered unknown.
Energy flow and balance					Combined evidence regarding the level of discards relative to natural sources of detritus and no evidence of changes in scavenger populations that are related to discard trends suggests that all of the alternatives would have insignificant ecosystem impacts through energy removal and redirection.

Table ES-1 (Cont.) Summary of the predicted environmental effects of the alternatives.

Biological Issues	Alternative 1 Status Quo	Alternative 2 Three-pie voluntary cooperative	Alternative 3 IFQ	Alternative 4 Cooperative	Comments and Summary
Biological diversity	I	I	I	I	No fishing-induced extinctions of crab or other marine species have been documented in the last 30 years or so. No fishing-induced changes in trophic diversity have been detected under the current management regime.

Notes:
 BSAI - Bering Sea and Aleutian Islands I
 EFH - essential fish habitat S+
 ESA - Endangered Species Act U
 IFQ - individual fishing quota

Summary of the economic and socio-economic effects of the alternatives

The EIS examines the economic and socio-economic effects of the alternative rationalization programs. Impacts on safety, harvester efficiency, processing efficiency, the distribution of benefits between the harvesting and processing sectors, consumers, captains and crew, and affected coastal communities are examined and summarized below. Table ES-2 displays major conclusions with respect to the economic and socio-economic effects of the alternatives.

Safety. Commercial fishing is a dangerous occupation. From 1990 to 2001, 61 total fatalities occurred and 25 vessels were lost in BSAI crab fisheries. This occupational fatality rate is about 28 times the national average. Under the current management regime, harvesters must compete to obtain a share of the harvest creating an incentive to take risks in the fishery. Moreover, this management may lead to lower profit margins and, indirectly, to less investment in, or attention to, safety. A rationalization program would allow fishermen more flexibility in the timing of their harvests, reducing the incentive to compromise safety. In addition, a rationalization program should increase the profitability of the fishery and may indirectly lead to increased investment in safety. These factors should reduce risks of death, injury, and property loss in BSAI crab fisheries.

Effects on harvester efficiency. The allocation of harvest shares in the fisheries under all of the rationalization alternatives should result in improved efficiencies. Harvesters would be able to make production decisions based on cost and revenue impacts without the need to race to preserve market shares. Regional landing requirements (in the three-pie voluntary cooperative alternative and the IFQ alternative) and the community protections (in the three-pie voluntary cooperative alternative) could reduce efficiency gains. Industry coordination under the cooperative programs could facilitate intra-cooperative efficiencies.

Table ES-2 Summary of predicted economic and socio-economic effects of the alternatives.

	Alternative 1 Status quo	Alternative 2 (Preferred Alternative) Three-pie voluntary cooperative	Alternative 3 IFQ	Alternative 4 Cooperative
Harvester efficiency	Harvester efficiency remains at current level - efficiency is sacrificed by the race for fish.	<ol style="list-style-type: none"> 1) Harvester efficiency improves with allocation of harvest shares and the end of the race for fish. 2) Efficiency may be reduced by regional and processor share landing requirements and community protections (Industry cooperation, both in the harvest sector and between harvesters and processors, could mitigate an efficiency loss). 	<ol style="list-style-type: none"> 1) Harvester efficiency improves with allocation of harvest shares and the end of the race for fish. 2) Efficiency may be reduced by regional landing requirements. 	<ol style="list-style-type: none"> 1) Harvester efficiency improves with allocation of harvest shares and the end of the race for fish. 2) Efficiency may be reduced by cooperative processor landing requirements (Industry cooperation, both in the harvest sector and between harvesters and processors, could mitigate an efficiency loss).

Table ES-2(Cont.)

Summary of predicted economic and socio-economic effects of the alternatives.

	Alternative 1 Status quo	Alternative 2 (Preferred Alternative) Three-pie voluntary cooperative	Alternative 3 IFQ	Alternative 4 Cooperative
Processor efficiency	Processor efficiency remains at current level - efficiency is sacrificed by time pressures on processing resulting from the race for fish.	<ol style="list-style-type: none"> 1) Processor efficiency (revenues and costs) improves with end of the race for fish. 2) Efficiency at the processing entity level may be increased by the ability of processors to coordinate deliveries using leverage of processor shares. 3) Overall efficiency depends, in part, on balancing of harvester and processor efficiency in arbitration. 4) Landing requirements and community protections may reduce efficiency (Industry cooperation, both in the harvest sector and between harvesters and processors, could mitigate an efficiency loss). 	<ol style="list-style-type: none"> 1) Processor efficiency (revenues and costs) improves with the end of the race for fish. 2) Harvesters coordinate deliveries to facilitate processor efficiencies in order to receive highest ex-vessel prices. 3) Efficiency may be reduced by regional landing requirements. 	<ol style="list-style-type: none"> 1) Processor efficiency (revenues and costs) improves with allocation of harvest shares and the end of the race for fish. 2) Efficiency at the processing entity level would be increased by cooperative processor landing requirements. 3) Efficiency across processors could be reduced by share forfeiture rule for changing cooperatives (Industry cooperation, both in the harvest sector and between harvesters and processors, could mitigate an efficiency loss).

Table ES-2(Cont.)

Summary of predicted economic and socio-economic effects of the alternatives.

	Alternative 1 Status quo	Alternative 2 (Preferred Alternative) Three-pie voluntary cooperative	Alternative 3 IFQ	Alternative 4 Cooperative
Distribution of benefits between harvest sector and processing sector	<ol style="list-style-type: none"> 1) Processor competition limited by short season and time constraint on landing live crab. 2) Harvester bargaining strength derived from collective negotiations. 	<ol style="list-style-type: none"> 1) Allocation of harvest shares and extended seasons provide market power to harvesters which is limited by A share landing requirements. 2) With respect to B shares, processors derive some limited market power from operational complexity of entry and reduction of entry and competition from A share landing requirements. 3) With respect to A shares, processing shares limit the market for landings so the arbitration represents the outside opportunity for determining prices. The starting point for distribution of benefits of harvests with A shares is the historic division of revenues standard of arbitration- but benefits could be affected by the arbitrator's division of product revenue or efficiency improvements or if harvesters are able to use competition for B shares to induce higher A share prices. 	<ol style="list-style-type: none"> 1) Allocation of harvest shares and extended seasons provide market power to harvesters. 2) Processors derive some limited market power from operational complexity of entry and reduction of competition of regional landing requirements. 3) In transitions, any processor market power may be reduced by competition. 	<ol style="list-style-type: none"> 1) Allocation of harvest shares and extended seasons provide market power to harvesters which is limited by cooperative landing requirements. 2) Cooperative landing requirements with associated processor reduces harvester market power. 3) Processor competition to establish and maintain cooperative associations and for uncommitted deliveries reduces processor market power.

Table ES-2(Cont.)

Summary of predicted economic and socio-economic effects of the alternatives.

	Alternative 1 Status quo	Alternative 2 (Preferred Alternative) Three-ple voluntary cooperative	Alternative 3 IFQ	Alternative 4 Cooperative
Effects on captains and crew	<ol style="list-style-type: none"> 1) Short seasons limit earning abilities of captains and crew. 2) Crew shares provide participants with a portion of a vessel's revenues. 	<ol style="list-style-type: none"> 1) Extended seasons with fewer vessels provide steady employment to fewer crew. 2) Competition for jobs could reduce compensation or result in change to wage system for some crew. 3) C shares could provide some negotiating leverage to holders. 	<ol style="list-style-type: none"> 1) Extended seasons with fewer vessels provide steady employment to fewer crew. 2) Competition for jobs could reduce compensation or result in change to wage system for some crew. 3) C shares should provide some negotiating leverage to holders. 	<ol style="list-style-type: none"> 1) Extended seasons with fewer vessels provide steady employment to fewer crew. 2) Competition for jobs could reduce compensation or result in change to wage system for some crew. 3) C shares should provide some negotiating leverage to holders.
Effects on consumers	<ol style="list-style-type: none"> 1) Time constraints from short seasons limit ability of industry to improve quality and recovery, add value, and engage in product development. 	<ol style="list-style-type: none"> 1) Removal of time constraints allow industry to improve quality and recovery, add value, and engage in product development. 	<ol style="list-style-type: none"> 1) Removal of time constraints allow industry to improve quality and recovery, add value, and engage in product development. 	<ol style="list-style-type: none"> 1) Removal of time constraints allow industry to improve quality and recovery, add value, and engage in product development.

Effects on processing efficiency. Under all of the rationalization alternatives, processing efficiency should improve with the end of the race for fish, allowing processors to improve product recovery and quality as well as develop high-value products. In the three-pie voluntary cooperative alternative, efficiency gains would depend on the ability of processors to use processing shares to coordinate deliveries and the balancing of harvesting and processing efficiencies by the arbitration program. The regional landing requirements and community protections could reduce efficiencies. Under the IFQ alternative, harvesters would coordinate deliveries in a manner that facilitates processor efficiencies to obtain the highest ex-vessel price. Regional landing requirements could reduce efficiency under this alternative. Processors would use the cooperative landing requirements to coordinate deliveries and realize processing efficiencies. Efficiency across processors could be reduced by the rules related to cooperative transfers.

Distribution of benefits between harvesters and processors. In the current fisheries, processor competition for landings is limited by the short seasons and time constraints on processing live crab. Harvesters, however, have gained bargaining strength by collective negotiations. Under the IFQ alternative, harvesters would have substantial negotiating leverage from the harvest share allocation and the extended harvest seasons. Processors may derive some market power from the operational complexity, which effectively limits entry to the processing sector. Under the three-pie voluntary cooperative alternative, harvesters would gain market power from harvest share allocations. With respect to B shares, processor market power would be gained from the operational complexity of processing and the allocation of processing shares, both of which effectively limit entry to the processing sector. With respect to A shares, processing shares limit the market for landings. Binding arbitration is the outside opportunity for determining prices and would therefore have a great impact on prices. The starting point for determining prices is the historic division of revenues standard. The outcome of arbitration, however, would also be influenced by the arbitrator's decisions concerning the division of revenues arising from increases in revenues and efficiency gains. Harvesters may gain leverage, if B share deliveries can be used to influence A share landings prices. Under the cooperative alternative, harvesters would gain market power from harvest share allocations. Cooperative landing requirements reduce market power of harvesters. Processors would compete to establish and maintain cooperative associations and uncommitted deliveries.

Effects on captains and crew. Under current management, short harvest seasons limit the earning ability of captains and crew. The rationalization alternatives remove vessels from the fisheries, reducing the number of captains and crew employed. Competition for positions could affect compensation or result in a wage system for some captains and crew. All three rationalization program alternatives allocate 3 percent of the total allowable catch (TAC) to captains as C shares and establish a crew loan program. C shares, however, should provide some negotiating leverage to holders of those shares.

Effects on consumers. The current management leads to a race for fish that limits the ability of the industry to devote efforts to improving recovery and quality, and limits the development of new products. Under the rationalization alternatives, the removal of the race for fish should lead to product developments and improved recovery and quality that would benefit consumers.

Impacts to communities. A range of Alaska communities from the northern Bering Sea to the western Aleutians to the Southeast panhandle are engaged in the crab fisheries through different combinations of harvesting, processing, and/or fishery support activities. A number of these communities may be considered substantially dependent upon the BSAI crab fishery. Additionally, a number of communities in the Pacific Northwest are home ports to a significant portion of the crab fleet, and Seattle features the greatest

concentration of sectors of any community. Under status quo, these communities experience the adverse impacts associated with overcapitalization and the race for fish. The rationalization program alternatives would alleviate these adverse impacts, however, the benefits would not be distributed evenly among the affected communities due to the specific components of each alternative. Impacts on these communities would be linked with beneficial effects that would result in the establishment of a stable long-term supply of crab to local shore-based processing plants and adverse effects of processors and harvesters exiting a community. Under the three-pie voluntary cooperative program, generally, the communities with substantial recent history of participation in the crab fisheries would receive the majority of the benefits, whereas communities with less substantial recent history would receive less benefits and may even lose some of their harvesting and processing abilities as the industry consolidates. This is mainly due to the community protection measures developed for that alternative. Under the IFQ alternative, it is predicted that there would be considerable distributional shifts among communities as harvesters and processors consolidate and as the changes in the prosecution of the fisheries facilitate changes in landing and processing locations (Table ES-3). The cooperative program, because it establishes a closed class of processors, provides some degree of protection for processors, however, consolidation would still occur similar to the IFQ program.

Impacts to Community Development Quota groups. The Western Alaska Community Development Quota (CDQ) program allocated 7.5 percent of the BSAI crab harvests to 65 western Alaska communities. The purpose of the program is to support fisheries-related economic development. Six managing organizations of CDQ groups represent the communities. No negative impacts would be realized by these groups as a result of any of the rationalization program alternatives. Under each alternative to status quo, the overall allocation to the CDQ program would increase from 7.5 percent to 10 percent of the BSAI crab harvest for each fishery, except Norton Sound red king crab. The change amounts to a 33 percent increase in the overall CDQ crab allocation. Also, the rationalization program alternatives would add a 10 percent allocation for Aleutian Islands golden king crab and western Aleutian Islands red king crab, fisheries that are not currently in the CDQ program. Increasing the allocation would increase the royalties earned by CDQ groups and enable them to invest more in projects intended to benefit the 65 communities that belong to CDQ groups.

Table ES-3 Summary of community impacts - harvesters.

	Alternative 1 Status quo	Alternative 2 (Preferred Alternative) Three-ple voluntary cooperative	Alternative 3 IFQ	Alternative 4 Cooperative
Regionally based harvesters	<ol style="list-style-type: none"> 1) Areas of residence suffer from continued inefficiencies and overcapitalization resulting from the race for fish. 2) Support services are geared toward meeting more temporary peak demands. 	<ol style="list-style-type: none"> 1) Communities of harvesters receiving allocations benefit from stability in fisheries but total number of vessels and crew employment may decline. 2) Transfers of shares will benefit communities of purchasers and will harm communities of sellers. 3) Provision of support services stabilizes with longer season with possible reduction in number of providers and employment. 4) Impacts vary across communities with importance of crab fleet to local economy. 5) Cooperatives may facilitate consolidation. 6) Regionalization and community protections may slow and limit extent of consolidation. 7) CDQ communities and Adak benefit from share allocations. 	<ol style="list-style-type: none"> 1) Communities of harvesters receiving allocations benefit from stability in fisheries but total number of vessels and crew employment may decline. 2) Transfers of shares will benefit communities of purchasers and will harm communities of sellers. 3) Provision of support services stabilizes with longer season with possible reduction in number of providers and employment. 4) Impacts vary across communities with importance of crab fleet to local economy. 5) Consolidation of open market share trading may be slower but more permanent. 6) Regionalization limits consolidation across regions. 7) CDQ communities and Adak benefit from share allocations. 	<ol style="list-style-type: none"> 1) Communities of harvesters receiving allocations benefit from stability in fisheries but total number of vessels and crew employment may decline. 2) Transfers of shares will benefit communities of purchasers and will harm communities of sellers. 3) Provision of support services stabilizes with longer season with possible reduction in number of providers and employment. 4) Impacts vary across communities with importance of crab fleet to local economy. 5) Cooperatives may facilitate consolidation. 6) CDQ communities and Adak benefit from share allocations.

Table ES-3 (Cont.) Summary of community impacts - processors.

	Alternative 1 Status quo	Alternative 2 (Preferred Alternative) Three-ple voluntary cooperative	Alternative 3 IFQ	Alternative 4 Cooperative
Regionally based processors	<ol style="list-style-type: none"> 1) Communities with processors suffer from continued inefficiencies and overcapitalization resulting from the race for fish but distribution of landings may benefit some communities. 2) Support services are geared toward meeting more temporary peak demands. 	<ol style="list-style-type: none"> 1) Communities of processors receiving allocations benefit from stability in fisheries. 2) Transfers of shares will benefit communities of purchasers and will harm communities of sellers. 3) Provision of support services stabilizes with longer season with possible reduction in number of providers and employment. 4) Impacts vary across communities with importance of crab processing to local economy. 5) Regionalization and community protections may slow and limit extent of consolidation. 6) Specific areas (Pribilofs and Western Aleutians) benefit from regionalization. 	<ol style="list-style-type: none"> 1) Communities able to retain or attract processing benefit from stability in fisheries. 2) Transitions (on implementation and stock declines) harm communities unable to retain historic processing. 3) Provision of support services in communities able to retain or attract processing stabilizes with longer season with possible reduction in number of providers and employment. 4) Impacts vary across communities with importance of crab processing to local economy. 5) Regionalization may slow and limit extent of consolidation. 	<ol style="list-style-type: none"> 1) Communities of processors with cooperative associations benefit from stability in fisheries. 2) Changes in cooperative associations benefit communities that attract associations and harm communities that lose associations. 3) Provision of support services in communities able to retain or attract processing stabilizes with longer season with possible reduction in number of providers and employment. 4) Impacts vary across communities with importance of crab processing to local economy. 5) Cooperative associations may slow or reduce extent of consolidation.

Areas of controversy and issues yet to be resolved

Any rationalization program, including this one, is controversial. By its nature, a program that dramatically changes management and allocates interests in a fishery will be controversial. The preferred alternative is a novel and innovative management program that represents the Council's effort to balance the interests of all those that participate in the fisheries, including harvesters, processors, communities, and captains. The recognition of these varied and competing interests differs from past rationalization programs, mitigating objections from some groups, while increasing objections from others. Novel program components include processor quota shares, binding arbitration, regionalization and community protection measures, and economic data collection. Since these program components have never been implemented before, the perceived and potential effects of these components, and of the program as a whole, are controversial and raise issues yet to be resolved.

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DRAFT Council Motion for BSAI Crab Rationalization
June 10, 2002 as updated through the April 5, 2003

The following incorporates the preferred Bering Sea Crab Rationalization Program Alternatives – established at the Council's June 2002, October 2002, December 2003, January/February 2003, and April 2003 meetings. Unless otherwise noted, the provisions were adopted at the June 2003 meeting. 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.

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.

Additional Sunken Vessel Provision (from December 2002 motion)

The following provision would apply to persons whose eligibility to replace their vessel was initially denied under PL 106-554. The sunken vessel must have been replaced with a newly constructed vessel and have been under construction by June 10, 2002, and participated in a Bering Sea crab fishery by October 31, 2002 for a person to receive a benefit under this provision.

For each of the fisheries for which such a vessel holds a 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 the IRS, if applicable) allocate QS according to 50 percent of the vessel's average history for the qualifying years unaffected by the sinking. Construction means the keel has been laid.

(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 GHL 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.

Harvest Share Ownership Caps for CDQ Groups (from the February 2003)

The following ownership caps shall apply to CDQ ownership of crab QS

Bristol Bay red king crab	5%
Bering Sea opilio crab	5%
Bering Sea bairdi crab	5%
Pribilof red and blue king crab	10%
St. Matthew blue king crab	10%
EAI brown king crab	20%
WAI red king crab	20%
WAI brown king crab	20%

In addition, the Council shall apply the individual and collective rule for calculation of the CDQ ownership caps, under which the holder of an interest in an entity will be credited with holdings in proportion to its interest in the entity.

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.

Processor Holdings of Harvest Shares (A/B Share Issue) (from the April 2003 motion)

Crab harvester QS held by IPQ processors and persons affiliated with IPQ processors will only generate class A annual IFQ, so long as such QS is held by the IPQ processor or processor affiliate.

IPQ processors and affiliates will receive class A IFQ at the full poundage appropriate to their harvesters QS percentage.

Independent (non-affiliated) harvesters will receive class B IFQ pro rata, such that the full class B QS percentage is allocated to them in the aggregate.

“Affiliation” will be determined based on an annual affidavit submitted by each QS holder. A person will be considered affiliated, if an IPQ processor controls delivery of a QS holder’s IFQ.

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 (from December 2002 motion):

1.8.1.2 Percentage to Captain:

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

a. Allocation from QS pool

1.8.1.3 Species specific:

1. As with vessels.

1.8.1.4 Eligibility:

Option 1

1. A qualified captain is determined on a fishery by fishery basis by

- 1) having at least one landing in 3 of the qualifying years used by the vessels and
- 2) having recent participation in the fishery as defined by at least one landing per season in the fishery in two of the last three seasons prior to June 10, 2002.

Suboption: For recency in the Adak red king, Pribilof, St. Matthew, and bairdi fisheries a qualified captain must have at least one landing per season in the opilio, BBRKC, or AI brown crab fisheries in two of the last three seasons prior to June 10, 2002 (operators of vessels under 60 feet are exempt from this requirement for the Pribilof red and blue king crab fishery).

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

For captains who died from fishing related incidents, recency requirements shall be waived and the allocation shall be made to the estate of that captain. All ownership, use, and transfer requirements would apply to C shares awarded to the estate.

1.8.1.5 Qualification period:

1. As with vessels.

1.8.1.6 Distribution per captain:

1. C QS based on landings (personal catch history based on ADF&G fish tickets) using harvest share calculation rule.

Regionalization and Class A/B Designation

- Option 2: C shares shall be a separate class of shares not subject to the Class A share delivery requirements during the first three years. But, at the end of three years, C shares shall be subject to A/B designations with regionalization unless the Council determines (after review) not to impose these designation.

Initial Allocation Regionalization

If C shares are regionalized, at the initial allocation regional designations shall be made based on the captain's history, with an adjustment to the allocation to match the PQS regional ratio made based on the same scheme used for regional adjustment of harvest shares.

1.8.1.7 Transferability criteria:

1. Purchase of C QS.
 - a. C QS may be purchased only by persons who are
 - Option 1. US citizens who have had at least 150 days of sea time in any of the US commercial fisheries in a harvesting capacity and
 - Option 2. active participants

An "active participant" is defined by participation as captain or crew in at least one delivery in a crab fishery included in the rationalization program in the last 365 days as evidenced by ADF&G fish ticket, affidavit from the vessel owner, or evidence from other verifiable sources.

2. C share leasing

- a. C QS are leasable for the first three seasons a fishery is prosecuted after program implementation.
- b. In cases of hardship (injury, medical incapacity, loss of vessel, etc.) a holder of C shares may lease C QS, upon documentation and approval, (similar to CFEC medical transfers) for the term of the hardship/disability for a maximum of 2 years over a 10 year period.

1.8.1.8 Loan program for crab QS

A low-interest rate loan program consistent with MSA provisions, for skipper and crew purchases of QS, shall be established for QS purchases by captains and crew members using 25% of the Crab IFQ fee program funds collected. These funds can be used to purchase A, B, or C shares.

Loan funds shall be accessible by active participants only.

Any A or B shares purchased under the loan program shall be subject to any use and leasing restrictions applicable to C shares (during the period of the loan).

National Marine Fisheries Service (NOAA Fisheries) is directed to explore options for obtaining seed money for the program in the amount of \$250,000 to be available at commencement of the program to leverage additional loan funds.

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) C QS ownership caps for each species are
Option 2. the same as the vessel use caps for each species

C share ownership caps are calculated based on the C QS pool (i.e. section 1.7.4). Initial allocations shall be grandfathered.

- 3) Use caps on IFQs harvested on any given vessel shall not include C shares in the calculation.

1.8.1.10 C/P Captains

Captains with C/P history shall receive C/P C QS at initial issuance. C/P C shares shall carry a harvest and processing privilege.

Option 3. C/P C shares may be harvested and processed on C/Ps or harvested on catcher vessels and delivered to shore based processors.

1.8.1.11 Cooperatives

C share holders shall be eligible to join cooperatives.

C shares shall be included in the IFQ fee program.

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 (from December 2002 motion).

Option 1 (a): Non-AFA vessels that qualify for QS in the rationalized opilio crab fisheries would be limited to their GOA groundfish catch history excluding sablefish. The sideboards would be based on the history of vessels subject to the caps, applied in aggregate, on an area specific basis, and apply jointly to both the vessel and the license.

Combine options 2 and 3: Vessels with less than 100,000lbs total opilio history during the qualifying years and more than 500MT of total cod history during the qualifying years would be exempt from the sideboard cap.

Option 4: Vessels with less than 50MT total groundfish landings in the qualifying period would be prohibited from participating in the GOA cod fishery.

Require that crab co-ops limit their members to their aggregate cod catch in both federal and state waters to the sideboarded amount (provided such a limitation is within the Council's authority). Staff is requested to examine how this integrates with the existing coop structure in the preferred alternative and identification of enforcement options available to the coop which will ensure compliance with parallel fishery limitations.

Sideboards will expire on rationalization of the Gulf of Alaska.

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 GHIL or TAC for which IPQs are distributed:

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

Option 3. 90% of GHIL (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.
- 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.

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.

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

Binding Arbitration System (from February 2003 motion)

The Council adopts the following elements for a system of binding arbitration to resolve failed price negotiations.

1. The Standard for Arbitration

The primary role of the arbitrator shall be to establish a price that preserves the historical division of revenues in the fisheries while considering relevant factors including the following:

- a. Current ex vessel prices (including prices for Class A, Class B, and Class C shares recognizing the different nature of the different share classes)
- b. Consumer and wholesale product prices for the processing sector and the participants in the arbitration (recognizing the impact of sales to affiliates on wholesale pricing)
- c. Innovations and developments of the different sectors and the participants in the arbitration (including new product forms)
- d. Efficiency and productivity of the different sectors (recognizing the limitations on efficiency and productivity arising out of the management program structure)
- e. Quality (including quality standards of markets served by the fishery and recognizing the influence of harvest strategies on the quality of landings)
- f. The interest of maintaining financially healthy and stable harvesting and processing sectors
- g. Safety
- h. Timing and location of deliveries
- i. Reasonable underages to avoid penalties for overharvesting quota and reasonable deadloss

2. Market Report

An independent market analyst selected by the mutual agreement of the sectors will present to both sectors and all designated arbitrators an analysis of the market for products of that fishery.

3. Selection of the Arbitrator(s) and Market Analyst

The market analyst and arbitrator(s) will be selected by mutual agreement of the PQS holders and the QS holders. PQS holders collectively must agree and QS holders collectively must agree. Processors may participate collectively in the selection process. The details of the selection will be decided at a later time.

4. Shares subject to binding arbitration

This binding arbitration system shall address price disputes between holders of delivery restricted IFQ (including Class A IFQ and Class C IFQ when subject to delivery restrictions) and holders of IPQ. Binding arbitration does not apply to the negotiation of price for deliveries under the class B IFQ and

Class C IFQ when not subject to delivery restrictions. C share holders, however, may elect to participate in the arbitration process prior to delivery restrictions taking effect.

5. Shares of processor affiliates

Participation of processor affiliates in binding arbitration as IFQ holders will be determined by any applicable rules governing anti-trust. Any parties eligible for collective bargaining under the Fishermen's Marketing Act of 1934 will be eligible to participate in binding arbitration. No antitrust exemption should be made to enable processor affiliated IFQ holders to participate in arbitration.

6. Payment of the arbitration and market analysis

The payment for the market analysis and the arbitrators will be shared by the two sectors. Cost shall be shared by all participants in all fisheries.

For shared costs, the payment of those costs shall be advanced by IPQ holders. The IPQ holders will collect the IFQ holders' portion of the shared costs by adding a pro rated surcharge to all deliveries of Class A crab.

7. Quality dispute resolution

In cases where the fisherman and the processor cannot come to agreement on quality and thus price for crab, two mechanisms are suggested for resolving the price dispute-after the processor has processed the crab (to avoid waste from dumping the load at sea): (1) In cases where fishermen and processors have agreed to a formula based price, the two parties would take their normal shares of the price, after the disputed load is sold. (2) This type of dispute would most likely apply in cases where fishermen desire to stay with fixed dockside prices and there is disagreement on quality and therefore price. These cases could be referred to an independent quality specialist firm. The two parties in dispute would decide which firm to hire.

8. Data used in arbitration

Under any arbitration structure, the arbitrator must have access to comprehensive product information from the fishery (including first wholesale prices and any information necessary to verify those prices).

Processors may participate in common discussions concerning historical prices in the fisheries. Subject to limitations of antitrust laws and the need for proprietary confidentiality, all parties to an arbitration proceeding shall have access to all information provided to the arbitrator(s) in that proceeding.

Data collected in the data collection program may be used to verify the accuracy of data provided to the arbitrator(s) in an arbitration proceeding. Any data verification will be undertaken only if the confidentiality protections of the data collection program will not be compromised.

9. Enforcement of the Arbitration Decision

The decision of the arbitrator will be enforced by civil damages

10. Oversight and administration of the Binding Arbitration system.

Oversight and administration of the binding arbitration should be conducted in a manner similar to the AFA cooperative administration and oversight. System reporting requirements and administrative rules should be developed in conjunction with the Council and NOAA Fisheries after selection of the preferred program.

The structure for the system of Binding Arbitration system shall be as described below:

LAST BEST OFFER BINDING ARBITRATION

GENERAL

The Last Best Offer Model provides a mechanism to resolve failed price and delivery negotiations efficiently in a short period before the opening of the season. The Model includes the following specific characteristics:

1. Processor-by-processor. Processors will participate individually and not collectively, except in the choice of the market analyst and the arbitrator/arbitration panel.
2. Processor-affiliated shares. Participation of processor-affiliated shares will be limited by the current rules governing antitrust matters.
3. Arbitration standard. The standard for the arbitrator is the historic division of revenues between harvesters and processors in the aggregate (across the entire sectors), based on arm's-length first wholesale prices and ex-vessel prices (Option 4 under "Standard for Arbitration" in the staff analysis). The arbitrator shall consider several factors including those specified in the staff analysis, such as current ex vessel prices for both A, B and C Shares, innovations, efficiency, safety, delivery location and timing, etc.
4. Opt-in. An IFQ holder may opt in to any contract resulting from a completed arbitration for an IPQ holder with available IPQ by giving notice to the IPQ holder of the intent to opt in, specifying the amount of IFQ shares involved, and acceptance of all terms of the contract. Once exercised, an Opt-in is binding on both the IPQ holder and the IFQ holder.
5. Performance Disputes. Performance and enforcement disputes (e.g. quality, delivery time, etc.) initially will be settled through normal commercial contract dispute remedies. If those procedures are unsuccessful, the dispute will be submitted for arbitration before the arbitrator(s). If those procedures are unsuccessful and in cases where time is of the essence, the dispute will be submitted for arbitration before the arbitrator(s). The costs of arbitration shall be paid from the fees collected, although the arbitrator(s) will have the right to assign fees to any party for frivolous or strategic complaints.
6. Lengthy Season Approach. For a lengthy season, an IPQ holder and an IFQ holder (or group of IFQ holders) may agree to revise the entire time schedule below and could agree to arbitration(s) during the season. That approach may also be arbitrated pre-season if the holders cannot agree.

PROCESS

1. Negotiations and Voluntary Share Matching.

At any time prior to the season opening date, any IFQ holders may negotiate with any IPQ holder on price and delivery terms for that season (price/price formula; time of delivery; place of delivery, etc.). If agreement is reached, a binding contract will result for those IFQ and IPQ shares. IPQ holders will always act individually and never collectively, except in the choice of the market analyst (which may occur at any time pre-season) and the arbitrator/arbitration panel for which all IFQ and IPQ holders will consult and agree.

2. Required Share-Matching and Arbitration.

Beginning at the 25-day pre-season point, IFQ holders may match up IFQ shares not already subject to contracts with any IPQ shares not under contract, either as collective groups of IFQ holders or as individual IFQ holders (the offered IFQ Shares must be a substantial amount of the IFQ Holder(s)' uncontracted shares). The IPQ holder must accept all proposed matches up to its non-contracted IPQ share amount. All IFQ holders "matched" with an IPQ holder will jointly choose an arbitrator with that IPQ holder. The matched share holders are committed to the arbitration once the arbitrator is chosen (if the parties wish, the arbitrator may initially act as a mediator to reach an agreement quickly). Arbitration must begin no later than 15 days before the season opening date.

3. Data.

The Arbitrator will gather relevant data independently and from the parties to determine the historical distribution of first wholesale crab product revenues (at FOB point of production in Alaska) between harvesters and processors in the aggregate (across the entire sectors). For a vertically integrated IPQ

holder (and in other situations in which a back-calculation is needed), the arbitrator will work with that IPQ holder and the IFQ holders to determine a method for back-calculating an accurate first wholesale price for that processor. The Arbitrator will receive a pre-season market report from the market analyst, and may gather additional data on the market and on completed arbitrations. The Arbitrator will also receive and consider all data submitted by the IFQ holders and the IPQ holder. The Arbitrator will not have subpoena power.

4. Arbitration Decisions.

Arbitration will be based on a "last best offer" system, with the Arbitrator choosing one of the last best offers made by the parties. The Arbitrator will work with the IPQ and IFQ holders to determine the matters that must be included in the offer (e.g. price, delivery time & place, etc.) and will set the date on which "last best offers" must be submitted. The last best offers may also include a price over a specified time period, a method for smoothing prices over a season, and an advance price paid at the time of delivery.

If several groups or individual IFQ Holders have "matched" with that IPQ Holder, each of them may make a last best offer. Prior to submission of the last-best offers, the Arbitrator may meet with parties, schedule joint meetings, or take any actions aimed at reaching agreement. The Arbitrator will notify the IPQ holder and the IFQ holders of the Arbitration Decision no later than 10 days before the season opening date. The Arbitration Decision may be on a formula or ex-vessel price basis. The Arbitration Decision will result in a contract for the IPQ holder and the IFQ holders who participated in arbitration with that IPQ holder.

5. Post-Arbitration Opt-In.

Any IFQ holder with shares not under contract may opt in to any contract resulting from an Arbitration Decision for an IPQ holder with IPQ that is not under contract, on all of the same contract conditions (price, time of delivery, etc.). If there is a dispute regarding whether the "opt in" offer is consistent with the contract, that dispute may be decided by the arbitrator who will decide only whether the Opt-in is consistent with the contract.

6. Formula and Prices.

Throughout the year, the market analyst will survey the crab product market and publish periodically a composite price. That price will be a single price per species, based on the weighted average of the arm's length transactions in products from that species.

7. Non-Binding Price Arbitration (from the April 2003 motion)

There will be a single annual fleet-wide arbitration to establish a non-binding formula under which a fraction of the weighted average first wholesale prices for the crab products from each fishery may be used to set an ex-vessel price. The formula is to be based on the historical distribution of first wholesale revenues between fishermen and processors, taking into consideration the size of the harvest in each year. The formula shall also include identification of various factors such as product form, delivery time and delivery location. The non-binding arbitration shall be based upon the Standard for Arbitration set out in the February 2003 Council motion, Item 1 including a. through i. As a part of this process, the arbitrator will review all of the arbitration decisions for the previous season and select the highest arbitrated prices for a minimum of at least 7% of the market share of the PQS. This provision allows for the aggregation of up to 3 arbitration findings that collectively equal a minimum of 7 percent of the PQS, to be considered for the highest price for purposes of this provision. If arbitration findings are aggregated with two or more entities, then the lesser of the arbitrated prices of the aggregated entities included to attain the 7 percent minimum market share of PQS shall be considered for purposes of developing the benchmark price. The arbitrator in the non-binding arbitration shall not be an arbitrator in the last best offer binding arbitration(s). This formula shall inform price negotiations between the parties, as well as the Last Best Offer arbitration in the event of failed price negotiations.

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

IPQ Caps (from the February 2003 meeting)

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

For opilio, IPQ percentage times a TAC (after CDQ allocations) of 175 million pounds.

For Bristol Bay red king crab, IPQ percentage times a TAC (after CDQ allocations) of 20 million pounds.

IFQ (that would have been A shares but for the cap) issued in excess of IPQ limit shall be subject to regional landing requirements.

Cool Down Period (from the December 2002 motion and February 2003 motion)

A cooling off period of 2 years shall be established during which processing quota earned in a community may not be used outside that community. (from December 2002 motion)

During the Cool Down Period the following elements will apply (from the February 2003 motion):

1. The method to determine the shares associated with a community will be the same method used for allocating processing quota as established by the Council.
2. Community shall be defined as the boundaries of the Borough or, if no Borough exists, the first class or second class city, as defined by applicable state statute. A community must have at least 3 percent of the initial PQS allocation in any fishery based on history in the community to require continued use of the IPQs in the community during the cool down period.
3. 10% of the IPQs, on a fishery by fishery basis, may leave a community on annual basis, or up to 500,000 pounds, whichever is less. The amount that can leave will be implemented on a pro rata basis to all PQS holders in a community.
4. Exempt the Bairdi, Adak red crab and Western Aleutian Islands brown crab fishery from the cool down provision.
5. There should be an exemption from the requirement to process in the community if an act of God prevents crab processing in the community. This provision will not exempt a processor from any regional processing requirements, if there is processing capacity in the region.

Regionalization of the Bairdi Fishery (from the February 2003 motion)

If biological information indicates that the bairdi fishery is likely to become a directed fishery, the Council would consider the following management, along with other alternatives for management of that fishery:

If the bairdi fishery becomes a directed fishery, it shall be allocated according to the original distribution of the BBRKC and shall not be subject to the regionalization provisions of the Council Crab Rationalization program.

Community Purchase and Right of First Refusal Options (from April 2003 motion)

1. General Right of First Refusal

For communities with at least three percent of the initial PQS allocation in any BSAI crab fishery based on history in the community except for those communities that receive a direct allocation of any crab species (currently only Adak), allow CDQ groups or community groups representing qualified communities a first right of refusal to purchase processing shares that are based on history from the community which are being proposed to be sold for processing outside the boundaries of the community of original processing history in accordance with the provisions below.

Entity Granted the Right of First Refusal

The right of refusal shall be established by a contract entered into prior to the initial allocation of PQS which will contain all of the terms specified in paragraphs A through I below. The contract will be between the recipient of the initial allocation of the PQS and:

- 1) the CDQ group in CDQ communities
- 2) the entity identified by the community in non-CDQ communities.

In non-CDQ communities, the community must designate the entity that will represent the community at least 90 days prior to the deadline for submission of applications for initial allocations of PQS.

Contract Terms

- A. The right of first refusal will apply to sales of the following processing shares:
 1. PQS and
 2. IPQs, if more than 20 percent of a PQS holder's community based IPQs (on a fishery by fishery basis) has been processed outside the community of origin by another company in 3 of the preceding 5 years.
- B. Any right of first refusal must be on the same terms and conditions of the underlying agreement and will include all processing shares and other goods included in that agreement.
- C. Intra-company transfers within a region are exempt from this provision. To be exempt from the first right of refusal, IPQs must be used by the same company. In the event that a company uses IPQs outside of the community of origin for a period of 3 consecutive years the right of first refusal on those processing shares (the IPQs and the underlying PQS) shall lapse. With respect to those processing shares, the right of first refusal will not exist in any community thereafter.
- D. Any sale of PQS for continued use in the community of origin will be exempt from the right of first refusal. A sale will be considered to be for use in the community of origin if the purchaser contracts with the community to:
 1. use at least 80 percent of the annual IPQ allocation in the community for 2 of the following 5 years (on a fishery by fishery basis), and
 2. grant the community a right of first refusal on the PQS subject to the same terms and conditions required of the processor receiving the initial allocation of the PQS.
- E. All terms of any right of first refusal and contract entered into related to the right of first refusal will be enforced through civil contract law.
- F. A community group or CDQ group can waive any right of first refusal.
- G. The right of first refusal will be exercised by the CDQ group or community group by providing the seller within 60 days of receipt of a copy of the contract for sale of the processing shares:
 1. notice of the intent to exercise and
 2. earnest money in the amount of 10 percent of the contract amount or \$500,000 whichever is less.

The CDQ group or community group must perform all of the terms of the contract of sale within the longer of:

1. 120 days of receipt of the contract or
2. in the time specified in the contract.

H. The right of first refusal applies only to the community within which the processing history was earned. If the community of origin chooses not to exercise the right of first refusal on the sale of PQS that is not exempt under paragraph D, that PQS will no longer be subject to a right of first refusal.

I. Any due diligence review conducted related to the exercise of a right of first refusal will be undertaken by a third party bound by a confidentiality agreement that protects any proprietary information from being released or made public.

2. GOA First Right of Refusal

For communities with at least three percent of the initial PQS allocation of any BSAI crab fishery based on history in the community that are in the area on the Gulf of Alaska north of 56°20'N latitude, groups representing qualified communities will have a first right of refusal to purchase processing quota shares which are being proposed to be transferred from unqualified communities in the identified Gulf of Alaska area.

The entity granted the right of first refusal and terms and method of establishing the right of first refusal will be the same as specified in the general right of first refusal.

3. Community Purchase Option

Allow for a community organization in those communities that have at least 3 percent of the initial PQS allocation of any BSAI crab fishery based on history in the community to be exempted from the restriction for the 150 days of sea time requirement under 1.6 Transferability and Restrictions on Ownership of QS.

4. Identification of Community Groups and Oversight

For CDQ communities, CDQ groups would be the entity eligible to exercise any right of first refusal or purchase shares on behalf of the community. Ownership and management of harvest and processing shares by CDQ groups will be subject to CDQ regulations.

For non-CDQ communities, the entity eligible to exercise the right of first refusal or purchase shares on behalf of a community will be identified by the qualified city or borough, except if a qualified city is in a borough, in which case the qualified city and borough must agree on the entity. Ownership and management of harvest and processing shares by community entities in non-CDQ communities will be subject to rules established by the halibut and sablefish community purchase program.

5. Right of First Refusal is Non-assignable.

The community right of first refusal is not assignable by the community group granted the right.

6. Fisheries Exempt from the Community Right of First Refusal.

The bairdi, Western Aleutian brown king crab and Adak red king crab fisheries are exempt from the right of first refusal.

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 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%.

Additional Provisions Concerning the Adak Allocation (from December 2002 motion)

Criteria for Selection of Community Entity to Receive Shares: A non-profit entity representing the community of Adak, with a board of directors elected by the community (residents of Adak) in a manner similar to the CDQ program. As a suboption, the shares given to this entity may be held in trust in the interim by the Aleut Enterprise Corporation and administered by it.

A set of use procedures, investment policies and procedures, auditing procedures, and a city or state oversight mechanism will be developed. Funds collected under the allocation will be placed in a separate trust until the above procedures and a plan for utilizing the funds for fisheries related purposes are fully developed. Funds will be held in trust for a maximum of 2 years, after which the Council will reassess the allocation for further action.

Performance standards for management of the allocation to facilitate oversight of the allocation and assess whether it achieves the goals. Use CDQ type management and oversight to provide assurance that the Council's goals are met. Continued receipt of the allocation will be contingent upon an implementation review conducted by the State of Alaska to ensure that the benefits derived from the allocation accrue to the community and achieve the goals of the fisheries development plan.

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.

The mandatory data collection program shall have the following elements (from the February 2003 motion):

- A. Purpose. The purpose of the data program is as set out in the June 2002 motion. The Council will require the production of data needed to assess the efficacy of the crab rationalization program and to determine its relative impact on fishery participants and communities.
- B. Type of data to be collected. The data collected shall be that needed to achieve the Council's purpose, with the following general guidelines:
1. The information will be specific to the crab fisheries included in the crab rationalization plan.
 2. The data shall include information on costs of fishing and processing, revenues for harvesters and processors, and employment data
 3. The general guide for information requirements will be as set out in the draft surveys prepared by National Marine Fisheries Service dated 9/18/02, except
 - a) Non-variable costs shall be collected only as needed to explain and analyze variable cost data.
 - b) Collect a unique identifier for harvesting and processing crew members to explain changes in participation patterns as requested by the AP
 4. Historical information will be required as recommended by the Data Collection Committee.
- C. Method of Collection. Data shall be submitted to an independent third party agent such as the Pacific States Marine Fisheries Commission.
- D. Use of data. Data will be used following these general guidelines:
1. Data shall be supplied to Agency users in a blind and unaggregated form.
 2. The agencies will develop a protocol for the use of data, including controls on access to the data, rules for aggregation of data for release to the public, penalties for release of confidential data, and penalties for unauthorized use.
 3. The agencies will revise the current Memorandum of Understanding governing the sharing of data between the State of Alaska and National Marine Fisheries Service, and will address in this MOU the role of the third party data collection agent.
 4. The Agency and Council will promote development of additional legislative and regulatory protection for these data as needed.
- E. Verification of Data. The third party collection agent shall verify the data in a manner that assures accuracy of the information supplied by private parties.
- F. Enforcement of the data requirements. The Council endorses the approach to enforcing the data requirements developed by the staff and the Data Collection Committee, as set out on page 3.17-20 in the February, 2003 document entitled "BSAI Crab Rationalization Program, Trailing Amendments", which provides:

Anticipated Enforcement of the Data Collection Program The analysts anticipate that enforcement of the data collection program will be different from enforcement programs used to ensure that accurate landings are reported. It is critical that landings data are reported in an accurate and timely manner, especially under an IFQ system, to properly monitor catch and remaining quota. However, because it is unlikely that the economic data will be used for in-season management, it is anticipated that persons submitting the data will have an opportunity to correct omissions and errors³⁷ before any enforcement action would be taken. Giving the person submitting data a chance to correct problems is considered important because of the complexities associated with generating these data. Only if the agency and the person submitting the data cannot reach a solution would the

³⁷The intent of the program is to have enforcement actions triggered by the willful and intentional submission of incorrect data or noncompliance with the requirements to submit data.

enforcement agency³⁸ be contacted. The intent of this program is to ensure that accurate data are collected without being overly burdensome on industry for unintended errors.

A discussion of four scenarios will be presented to reflect the analysts understanding of how the enforcement program would function. The four scenarios are 1) a case where no information is provided on a survey; 2) a case where partial information is provided; 3) a case where the agency has questions regarding the accuracy of the data that has been submitted; and 4) a case where a random "audit" to verify the data does not agree with data submitted in the survey.

In the first case, the person required to fill out the survey does not do so. In the second case, the person fills out some of the requested information, but the survey is incomplete. Under either case that person would be contacted by the agency collecting the data and asked to fulfill their obligation to provide the required information. If the problem is resolved and the requested data are provided, no other action would be taken. If that person does not comply with the request, the collecting agency would notify enforcement that the person is not complying with the requirement to provide the data. Enforcement would then use their discretion regarding the best method to achieve compliance. Those methods would likely include fines or loss of quota and could include criminal prosecution.

In the third case the person fills out all of the requested information, but the agency collecting the data, or the analysts using the data, have questions regarding some of the information provided. For example, this may occur when information provided by one company is much different than that provided by similar companies. These data would only be called into question when obvious differences are encountered. Should these cases arise, the agency collecting the data would request that the person providing the data double check the information. Any reporting errors could be corrected at that time. If the person submitting the data indicates that the data are accurate and the agency still has questions regarding the data, that firm's data could be "audited". It is anticipated that the review of data would be conducted by an accounting firm selected jointly by the agency and members of industry. Only when that firm refuses to comply with the collecting agencies attempts to verify the accuracy of the data would enforcement be contacted. Once contacted, enforcement would once again use their discretion on how to achieve compliance.

The fourth case would result when the "audit"³⁹ reports different information than the survey. The "audit" procedure being contemplated is a verification protocol similar to that which was envisioned for use in the pollock data collection program developed by NMFS and PSMFC. During the design of this process, input from certified public accountants was solicited in order to develop a verification process that is less costly and cumbersome than a typical "audit" procedure. That protocol involves using an accounting firm, agreed upon by the agency and industry, to conduct a random review of certain elements of the data provided⁴⁰.

Since some of the information requested in the surveys may not be maintained by companies and must be calculated, it is possible that differences between the "audited" data from financial statements and survey data may arise. In that case the person filling out the survey would be asked to show how their numbers were derived⁴¹. If their explanation resolves the problem, there would be no further action needed. If questions remained, the agency would continue to work with the providers of the data. Only when an impasse is reached would enforcement be called upon to resolve the issue. It is hoped that this system would help to prevent abuse of the verification and enforcement authority.

³⁸The term enforcement agency in this case may or may not include the RAM Division and the Office of Administrative Appeals (in addition to NMFS Enforcement). Those details are still under discussion within NOAA.

³⁹This "audit" could be the result of either the random review process that is contemplated or an "audit" triggered under scenario three.

⁴⁰However, in cases of non-compliance in which enforcement has to be notified, the data verification process is likely be more comprehensive.

⁴¹Any time a number must be derived, the survey will provide direction on how to calculate the information requested. This direction should help minimize differences. However, when discrepancies do arise, the firm will be given an opportunity to show how they derived their figures, and correct the information if necessary.

In summary, members of the crab industry will be contacted and given the opportunity to explain and/or correct any problems with the data, that are not willful and intentional attempts to mislead, before enforcement actions are taken. Agency staff does not view enforcement of this program as they would a quota monitoring program. Because these data are not being collected in "real" time, there is the opportunity to resolve occasional problems as part of the data collection system. Development of a program that collects the best information possible to conduct analyses of the crab rationalization program, minimizes the burden on industry, and minimizes the need for enforcement actions are the goals of the data collection initiative.

Clarifications and Expressions of Council Intent

At its October 2002 meeting the Council clarified several issues in the June 10, 2002 motion identifying a preferred alternative for rationalizing the Bering Sea/Aleutian Islands crab fisheries. Since the Council motion of June was not a final action, the Chairman suspended the rule which would require a super majority to alter the motion. Decisions were by a simple majority of the Council. In addition, Hazel Nelson, who joined the Council since the June meeting, was permitted to participate in all votes. The following clarifications of the June motion were made:

1. A cutoff date of June 10, 2002 was established for the processor shares ownership cap grandfather provision - The ownership cap on processing shares to prevent persons from acquiring shares in excess of specific caps would be applied as of June 10, 2002. This cutoff date would prevent persons from acquiring interests in processing history in excess of the specified cap after the cutoff date.
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

The Council confirmed that the 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 is 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. This broad interpretation has two primary effects. First, this interpretation prevents 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, under the broad interpretation the caps operate as a individual use cap since IFQ and IPQ holdings determine use. The IPQ use cap in the North region *C. opilio* fishery also operates as both a cap on ownership of PQS and IPQs in that region and as a use cap on IPQs in that region. The vessel use caps would limit the use of shares on a vessel but would not impose any limit on share ownership.

Although custom processing is permitted by the Council motion, the Council established that limits on ownership and use would count any crab custom processed by a plant toward the cap of the plant owner. The application of the cap to custom processing is intended to prevent consolidation, which could occur if custom processing is not considered.

3. Norton Sound red king crab fishery CDQ allocation - The Council clarified that the increase of CDQ allocations does not apply to the Norton Sound red king crab fishery. The Norton Sound fishery was excluded from the CDQ allocation increase because its currently regulated under a super exclusive

permit program that prohibits its participants from participating in any of the other BSAI crab fisheries. The Norton Sound permit rules are for the benefit local, small vessel participants in that fishery.

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 asked for additional information for determining the entity to receive this allocation (see Additional Issues, below).
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 clarified that individual processing share allocations would be made with the 50 percent west shares to participants with processing facilities in the west. If the allocations of processors with facilities in the west does not equal 50 percent, the remaining west allocation could be allocated on a pro rated basis to participants without facilities in the west. These remaining west shares could be pro rated so that each shareholder with west facilities would get the same portion of its initial allocation as west shares.

For harvesters, individual harvesters share allocations would made with each harvester with west history allocated west shares. If the allocations of vessels with west history exceed 50 percent of the fishery, share allocations would be pro rated so that each shareholder with west history receives the same portion of its allocation as west shares.

6. Catcher/processor definition for purposes of processing crab harvested with Class B harvest shares² - 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. The Council clarified that for purposes of implementing this provision, a vessel that takes deliveries of crab harvested with Class B shares would be considered a floating processor for the duration of the season and would be prohibited from operating as a catcher/processor during that season. Likewise, a vessel that operates as a catcher/processor during a season would be prohibited from taking delivery of crab harvested with Class B shares during that season.
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). The Council clarified the following effects of these provisions:
 - A) The catcher/processor sector-wide cap applies only to catcher/processor shares and not to the use or ownership of processing shares by catcher/processors.
 - B) Catcher/processor shares cannot be created by combining the processing privilege of PQS or IPQs with the harvest privilege of Class A QS or IFQs.
 - C) The catcher/processor sector-wide cap applies only to catcher/processor shares and not to the use or ownership of catcher vessel harvest shares by catcher/processors.
8. Regionalization of PQS allocations to catcher/processors - Processing shares allocated to catcher/processors would be regionally designated based on the historic area of processing. State records of processing activity should be adequate for determining the location of processing activity.
9. Definition of a lease - the word "not" was inadvertently omitted from the definition of a lease. The definition was revised to read:

² This clarification pertains only to processing of crab harvested with Class B harvest shares and does not pertain to processing of crab harvested with Class A IFQs or the harvesting of crab.

Leasing is defined as the use of IFQs on a vessel that the QS owner holds less than 10% ownership of vessel or on a vessel on which the owner of the underlying QS is not present (Section 1.6.2).

10. Grandfathering vessel use allocations in excess of the cap - The Council clarified that a vessel the activity of which is 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 clarified that cost recovery funds would be collected in accordance with the current cost recovery program, which allows for the collection of actual costs up to 3 percent of ex vessel gross revenues. The Council provided that costs would be paid in equal shares by the harvesting and processing sectors (on all landings including landings of crab harvested with Class B IFQs). Catcher/processors would pay the entire 3 percent since catcher/processors participate in both sectors. A loan program for share purchases would be established with 25 percent of the fees collected. The motion authorized the collection of 133 percent of actual costs of management under the new program, which would provide for 100 percent of management costs after allocation of 25 percent of the cost recovery to the loan program.
12. Regionalization of the WAI (Adak) red king crab fishery - 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. The South designation will be made despite the landing of a portion of the harvests in the Adak red king crab fishery in the North region during the qualifying years for vessels.
13. Rules governing cooperatives - The Council clarified the following rules for governing cooperatives:
 - 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 allowed for the first 5 years of the program.
 - 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 would require four unique entities to form a cooperative. Independent entities must be less than 10 percent common ownership without common control (similar to the AFA common ownership standard used to implement ownership caps).

- G) Monitoring and enforcement at the cooperative level - The monitoring and enforcement of harvest allocations would be at the cooperative level (rather than the individual level). Cooperative members would be jointly and severally liable for the actions of the cooperative.

Vertical Integration Caps (from the February 2003 motion)

The Council clarified that the 5 percent cap on QS holdings by processors shall exempt only the primary corporate processing entity from more restrictive generally applicable caps on QS holdings. All individuals and subsidiaries will be subject to the general caps on QS holdings.

A/B Share Linkage (from the April 2003 meeting)

At its April 2003 meeting:

The Council clarified that the A/B share component of QS will be linked for purposes of transfers.

H.R.2673

1. Consolidated Appropriations Act, 2004 (Enrolled as Agreed to or Passed by Both House and Senate)

DEPARTMENT OF COMMERCE AND RELATED AGENCIES

DEPARTMENT OF COMMERCE

International Trade Administration

OPERATIONS AND ADMINISTRATION

(RESCISSION)

Of the appropriations made available for travel and tourism by section 210 of Public Law 108-7, \$40,000,000 are rescinded.

National Oceanic and Atmospheric Administration

COASTAL AND OCEAN ACTIVITIES

(RESCISSION)

Of the appropriations made available for coastal and ocean activities by Public Law 106-553, \$2,500,000 are rescinded.

TITLE VIII--ALASKAN FISHERIES

SEC. 801. BERING SEA AND ALEUTIAN ISLANDS CRAB RATIONALIZATION. Section 313 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.), as amended, is further amended by adding at the end thereof the following:

(j) BERING SEA AND ALEUTIAN ISLANDS CRAB RATIONALIZATION-

(1) By not later than January 1, 2005, the Secretary shall approve and hereafter implement by regulation the Voluntary Three-Pie Cooperative Program for crab fisheries of the Bering Sea and Aleutian Islands approved by the North Pacific Fishery Management Council between June 2002 and April 2003, and all trailing amendments including those reported to Congress on May 6, 2003. This section shall not preclude the Secretary from approving by January 1, 2005, and implementing any subsequent program amendments approved by the Council.

(2) Notwithstanding any other provision of this Act, in carrying out paragraph (1) the Secretary shall approve all parts of the Program referred to in such paragraph. Further, no part of such Program may be implemented if, as approved by the North Pacific Fishery Management Council, individual fishing quotas, processing quotas, community development quota allocation, voluntary cooperatives, binding arbitration, regional landing and processing requirements, community protections, economic data collection, or the loan program for crab fishing vessel captains and crew members, is invalidated subject to a judicial determination not subject to judicial appeal. If the Secretary determines that a processor has leveraged its

Individual Processor Quota shares to acquire a harvesters open-delivery 'B shares', the processor's Individual Processor Quota shares shall be forfeited.

`(3) Subsequent to implementation pursuant to paragraph (1), the Council may submit and the Secretary may implement changes to or repeal of conservation and management measures, including measures authorized in this section, for crab fisheries of the Bering Sea and Aleutian Islands in accordance with applicable law, including this Act as amended by this subsection, to achieve on a continuing basis the purposes identified by the Council.

`(4) The loan program referred to in paragraph (2) shall be carried out pursuant to the authority of sections 1111 and 1112 of title XI of the Merchant Marine Act, 1936 (46 U.S.C. App. 1279f, 1279g).

`(5) For purposes of implementing this section \$1,000,000 shall be made available each year until fully implemented from funds otherwise made available to the National Marine Fisheries Service for Alaska fisheries activities.

`(6) Nothing in this Act shall constitute a waiver, either express or implied, of the antitrust laws of the United States. The Secretary, in consultation with the Department of Justice and the Federal Trade Commission, shall develop and implement a mandatory information collection and review process to provide any and all information necessary for the Department of Justice and the Federal Trade Commission to determine whether any illegal acts of anti-competition, anti-trust, or price collusion have occurred among persons receiving individual processing quotas under the Program. The Secretary may revoke any individual processing quota held by any person found to have violated a provision of the antitrust laws of the United States.

`(7) An individual processing quota issued under the Program shall be considered a permit for the purposes of sections 307, 308, and 309, and may be revoked or limited at any time in accordance with this Act. Issuance of an individual processing quota under the program shall not confer any right of compensation to the holder of such individual processing quota if it is revoked or limited and shall not create, or be construed to create, any right, title, or interest in or to any fish before the fish is purchased from an individual fishing quota holder.

`(8) The restriction on the collection of economic data in section 303 shall not apply with respect to any fish processor who is eligible for, or who has received, individual processing quota under the Program. The restriction on the disclosure of information in section 402(b)(1) shall not apply when the information is used to determine eligibility for or compliance with an individual processing quota program.

`(9) The provisions of sections 308, 310, and 311 shall apply to the processing facilities and fish products of any person holding individual processing quota, and the provisions of subparagraphs (D), (E), and (L) of section 307(l) shall apply to any facility owned or controlled by a person holding individual processing quota.'

PASSAGE OF THE FY2004 CONSOLIDATED APPROPRIATIONS CONFERENCE REPORT
REGARDING PROVISIONS RELATED TO ALASKAN FISHERIES

Mr. STEVENS. Mr. President, three years ago Congress directed the North Pacific Fishery Management Council to analyze the management of the Bering Sea Crab fisheries and determine whether rationalization was necessary. The North Pacific Council completed its study and recommended a rationalization program that recognized the historical participation in the fishery of remote Alaska fishing communities, harvesters, and processors. The "Three-pie Voluntary Cooperative Program" developed by the North Pacific Council protects the resource and ends the dangerous race for fish. Section 801 of Title VIII-Alaskan Fisheries of the FY2004 Consolidated Appropriations conference report directs the Secretary to implement the North Pacific Council's crab rationalization program in its entirety.

Section 801 amends section 313 of the Magnuson-Stevens Fishery Conservation and Management Act by adding a new subsection 313(j). Paragraph 313(j)(1) directs the Secretary to approve and implement the North Pacific Council's rationalization program for the Bering Sea/Aleutian Islands crab fisheries, including all trailing amendments. It also clarifies that the Secretary may approve and implement additional trailing amendments approved by the North Pacific Council. The Secretary must implement all parts of the crab rationalization program that were reported to Congress between June 2002 and April 2003, and all trailing amendments including those reported on May 6, 2003, no later than January 1, 2005. Any further amendments approved by the Council should be corrective in nature or address unforeseen problems with the overall functionality of the crab rationalization program. Primary elements of the Voluntary Three-pie Cooperative crab program that made three separate allocations, one to the harvest sector, one to the processing sector, and one to defined regions, should not change as this was the basis of understanding of how the crab fisheries would be rationalized in the Bering Sea and Aleutian Islands. It is imperative that the deadly and inefficient race for crab in the harsh winters months in the Bering Sea ends. Congress expects the Secretary to meet the statutory deadline of implementation of the rationalization program in time for the 2005 crab fisheries. Congress does not expect the Council to revisit particulars of the crab rationalization program that were part of the initial report to Congress in June of 2002, such as individual harvest shares, processing shares, the 90/10 split of "Class A" and "Class B" shares, regional share designations, voluntary harvester cooperatives, and community development quota allocations, to name a few.

Paragraph 313(j)(2) directs the Secretary to approve all parts of the North Pacific Council's crab program, including harvester quota, processor quota, and community protections. It also includes a non-severability clause that prevents a court from overruling only certain parts of the program. If any part of the program is found to violate the law, the entire program fails and the Bering Sea/Aleutian Islands crab

fisheries will operate under their current open-access management scheme. It also prevents processors from improperly seeking crab deliveries harvested under a harvester's open-delivery quota.

Paragraph 313(j)(3) authorizes the North Pacific Council to recommend to the Secretary any necessary changes after implementation of the crab program to continue to meet conservation and management goals set out in the program for the Bering Sea/Aleutian Islands crab fisheries.

Paragraph 313(j)(4) specifies that the loan program defined under the crab rationalization program for captains and crew be authorized pursuant to relevant sections of Title XI of the Merchant Marine Act as amended for fisheries financing and capacity reduction and for direct loan obligations for fisheries financing and capacity reduction. The loan program for crab fishing vessel captains and crew members is to be a low interest loan program similar to the loan program under the halibut and sablefish IFQ program.

Paragraph 313(j)(5) authorizes \$1,000,000 each year from funds available in the National Marine Fisheries Service account for Alaska fisheries activities to implement the program.

Paragraph 313(j)(6) specifies that the antitrust laws of the United States apply to the crab program. It requires the Secretary of Commerce to work with Department of Justice and the Federal Trade Commission to develop and implement a mandatory information collection and review process to monitor the crab program and ensure no anticompetitive acts occur among persons receiving individual processing quota. If any person receiving individual processor quota is found to have violated a provision of the antitrust laws the Secretary may revoke their processor quota share.

Paragraph 313(j)(7) requires individual processor quota share under the crab program to be considered a permit and subject to sections 307 (Prohibited Acts) and 308 and 309 (penalties and criminal offenses) of the Magnuson-Stevens Fishery Conservation and Management Act. It specifies that, like individual fishing quota, issuance of individual processor quota share does not confer any compensation right if it is revoked or limited, and does not create title or other interest in or to any fish before purchase from a harvester.

Paragraph 313(j)(8) specifies that the restriction on the collection of economic data in section 303(d)(7) of the Magnuson-Stevens Act will not apply for any processor that receives individual processing quota under the crab program. In addition, the restriction on the confidentiality of information in section 402(b)(1) will not apply when the information is used to determine eligibility or verify history for individual processing quota. This is consistent with the exception to the confidentiality of information requirement under the Magnuson-Stevens Act for verifying catch under an individual fishing quota program.

Paragraph 313(j)(9) specifies that sections 308 (civil penalties and permit sanctions), 310 (civil forfeitures), and 311 (enforcement) of the Magnuson-Stevens Act will apply to the processing facilities and

fish products of any person holding individual processing quota. In addition, to ensure compliance with the crab program it may be necessary for the Secretary to inspect a processor's facilities, therefore facilities owned or controlled by a person holding individual processing quota will be subject to the prohibited acts of section 307(1) subparagraphs (D), (E) and (L) of the Magnuson-Stevens Act.

The North Pacific Council is recognized for developing novel and innovative approaches to conservation and management of the abundant fisheries in the North Pacific. The "Three-pie Voluntary Cooperative Program" for rationalizing the Bering Sea and Aleutian Islands crab fisheries is another example of that creativity. It is the product of three years of public meetings and discussion by industry sectors, citizens and affected communities, two years of discussion and development by the North Pacific Council and its Advisory Panel, and nearly two years of extensive and thorough analysis by Council staff, with technical assistance from the National Marine Fisheries Service, Alaska Department of Fish and Game, and independent economists and fisheries consultants.

The Council meticulously constructed the crab rationalization program to achieve bold conservation and management goals for the resource; but also considered the very unique reality of a high value, capital intensive, high risk fishery that is prosecuted entirely in the distant waters of the Bering Sea and Aleutian Islands. The Council has done a great job crafting the Three-pie Voluntary Cooperative crab rationalization program and it is expected to implement the program in its entirety, including all trailing amendments, as reported to Congress in June of 2002. The Council should not revisit the particulars of the crab program, but should continue to work with the Commerce Department to ensure that the crab program is implemented in its entirety in time for the 2005 winter crab fisheries.

The Magnuson-Stevens Act requires fishery management plans and amendments to provide for the sustained participation of communities in the fisheries it has historically depended on for employment and economic opportunity. Small, isolated communities like St. Paul and St. George located on the Pribilof Islands, and Adak on the Aleutian chain have become dependent on the crab resource crossing their docks. This plan slows down the pace of the fishery, achieves efficiencies in harvesting the resource, manages and conserves the resource better, and helps decapitalize the fishery.

While there will inevitably be a degree of economic dislocation in the communities dependent on the revenues. The crab rationalization program addresses these concerns by tying the crab resource to the communities that historically processed the crab. Processor quota share is a form of community protection which maintains historical processing capacity in the communities. Processor quota share should remain in those unique, isolated communities like St. Paul, St. George, King Cove and Adak; communities completely dependent on the crab fishery, that do not benefit from multi-species processing and other economic

opportunities. The North Pacific Council determined that for the crab fisheries, processor quota share was a necessary safeguard to protect the investments made by the processing sector and more importantly, to maintain the economic benefits in the communities that have historically depended on the resource.

Section 802 of Title VIII-Alaskan Fisheries directs the Secretary in consultation with the North Pacific Fishery Management Council to establish a pilot fisheries management program that recognizes the historic participation of fishing vessels and fish processors in the central Gulf of Alaska rockfish fishery. The provision delineates the years and types of rockfish that should be considered for a pilot rationalization program to allow for increased use and value in the fishery. The pilot rockfish program will expire when the North Pacific Council authorizes a comprehensive rationalization program for Gulf of Alaska Groundfish and implemented by the Secretary, or two years from the date of implementation, whichever is earlier. The pilot program contemplates new entrants into this fishery and provides a set-aside of up to five percent of the total allowable catch of such fishery for catcher vessels not eligible to participate in the program. In addition, the five percent that is available for new entrants must come into Kodiak, Alaska for processing and can be processed by processors that have not historically participated in the fishery. The North Pacific Council will establish catch limits for nonrockfish species and non-target rockfish species currently harvested along with pacific ocean perch, northern rockfish, and pelagic shelf rockfish, which should be based on historical harvesting of such bycatch species. The Gulf of Alaska rockfish pilot program should also recognize the historic fishing and processing participation of catcher-processors that have historically participated in this fishery, and should utilize the same years and species of fish considered under the provision.

The intent of the pilot program is to consider the historic participation of all of those that have been involved in the fishery. The Gulf of Alaska rockfish pilot program does not authorize individual processing quota share for processors in this fishery. The "historic participation of fish processors" under this pilot program should be considered pursuant to the cooperative model under the American Fisheries Act, or any other manner the North Pacific Council determines is appropriate. This provision in no way authorizes individual processor quota share for the comprehensive Gulf of Alaska groundfish rationalization program that the North Pacific Council is currently developing. This pilot program is intended to allow for better conservation and management of the central Gulf of Alaska rockfish and extend the work year for processing jobs in Kodiak.

Section 803 of Title VIII-Alaskan Fisheries directs the Aleutian Islands pollock allocation to the Aleut Corporation for economic development in Adak, Alaska. If the North Pacific Council opens the Aleutian pollock fishery, the allocation of pollock for economic development in Adak will be restricted by

the prohibited acts contemplated under section 307 of the Magnuson-Stevens Fishery Conservation and Management Act and subject to the penalties and sanctions under section 308 of the Act, including the forfeiture of any fish harvested or processed. Two classes of vessels may harvest this pollock allocation: vessels that are 60 feet or less in length overall and have a valid fishery endorsement can harvest the Aleutian pollock allocation and deliver it to Adak for processing; and vessels eligible to harvest pollock under section 208 of Title II of Division C of Public Law 105-277 are permitted to form partnerships with the Aleut Corporation to harvest the Aleutian Islands pollock allocation for economic development in Adak. Section 803 does not waive the requirements of the Magnuson-Stevens Act, Endangered Species Act, National Environmental Policy Act or any other federal laws. The North Pacific Council and NMFS should be cautious in implementing section 803(a) to ensure that any reopening of a directed Aleutian Islands pollock fishery is accomplished in full compliance with all applicable law, and without disrupting 2004 groundfish fisheries which have already commenced.

In an effort to gradually establish a small boat fleet in Adak, subsection (b) of section 803 provides that during the years 2004 through 2008, up to 25 percent of the Aleutian allocation may be harvested by vessels 60 feet or less in length overall. During the years 2009 through 2013, up to 50 percent of such allocation may be harvested by vessels 60 feet or less in length overall. After the year 2012, 50 percent of such allocation shall be harvested by vessels 60 feet or less in length overall, and 50 percent shall be harvested by vessels eligible under section 208 of Title II of Division C of Public Law 105-277. Establishing a small boat fleet will be critical for the economic diversification of Adak and the revenues generated from the use of the Aleutian Islands pollock allocation will allow for greater investment opportunities in this community. For purposes of implementing this section, section 206 of the American Fisheries Act (AFA) is redefined so that the allocations in section 206(b) of the AFA should only apply to the Bering Sea portion of the directed pollock fishery.

Subsection (c) of section 803 codifies one of the longest standing conservation and management measures of the North Pacific Fishery Management Council, the 2 million metric ton cap for groundfish in the Bering Sea. The optimum yield for groundfish in the Bering Sea and Aleutians Islands Management Area shall not exceed 2 million metric tons. Upon the recommendation of the North Pacific Council and approval of the Secretary of Commerce, and only if consistent with the conservation and management goals and requirements of the Magnuson-Stevens Fishery Conservation and Management Act, the allocation of Aleutian pollock for economic development in Adak, may be in addition to the 2 million metric ton optimum yield. This treatment of the Aleutian Islands pollock allocation would only be during the 2004 through the 2008 fishing years, but only if harvests in excess of the cap do not result in overfishing and then only to the

extent necessary to accommodate a directed pollock fishery in the Aleutian Islands and should not adversely affect the current participants in the Bering Sea pollock fishery in the near term. Eventually this pollock allocation will come under the combined optimum yield for all groundfish in the Bering Sea and Aleutian Islands 2 million metric ton cap by taking proportional reductions in the total allowable catches for each of the existing groundfish fisheries as necessary to accommodate the establishment of the Aleutian Island pollock fishery.

Subsection (d) of section 803 allows the North Pacific Fishery Management Council to recommend and the Secretary to approve an allocation of Aleutian Islands pollock to the Aleut Corporation for the purposes of economic development in Adak pursuant to the requirements of the Magnuson-Stevens Fishery Conservation and Management Act. The North Pacific Council should consider pollock allocations given to the various groups that participate in the Community Development Quota program to recommend a reasonable amount of the Aleutian Islands pollock to the Aleut Corporation for purposes of economic development in Adak and in no case should this amount exceed 40,000 metric tons.

Nothing in this section requires the North Pacific Council to open the Aleutian Islands pollock fishery. The Council should not take any action in regards to this fishery which would require a new consultation under the current biological opinion or Endangered Species Act covering Steller sea lions.

Section 804 of Title VIII-Alaskan Fisheries prohibits any Regional Fishery Management Council or the Secretary from approving any fishery management plan or plan amendments to allocate or issue individual processing quota or processor share in any fishery of the United States other than the crab fisheries of the Bering Sea and Aleutian Islands.

SENATOR STEVENS
BERING SEA/ALEUTIAN ISLANDS CRAB RATIONALIZATION
STATEMENT

_____ THE BERING SEA/ALEUTIAN ISLANDS CRAB RATIONALIZATION PLAN ACCOMPLISHES TWO PRIMARY OBJECTIVES OF IMMEDIATE CONCERN: (1) CONSERVATION AND MANAGEMENT OF THE CRAB RESOURCE AND (2) ENDING THE DEADLY AND INEFFICIENT RACE FOR FISH. ALL THE PRESS ATTENTION AND MISINFORMATION ON PROCESSOR QUOTA SHARE HAS EFFECTIVELY TWISTED A FISHERY MANAGEMENT PLAN FOR ONE FISHERY IN THE BERING SEA INTO A NATIONAL DEBATE ON THE REGIONAL COUNCIL PROCESS AND U.S. FISHERY POLICY.

I FEEL AS THOUGH I MUST REMIND MY COLLEAGUES THAT THE RATIONALE BEHIND THE MAGNUSON-STEVENSON ACT WAS TO ALLOW THE VARIOUS REGIONS TO CRAFT THEIR OWN UNIQUE FISHERY MANAGEMENT PLANS TO ANSWER THE CONSERVATION AND MANAGEMENT GOALS OF THEIR LOCALITIES. THE CRAB RATIONALIZATION PLAN IS NO DIFFERENT IN THIS REGARD. THE NORTH PACIFIC COUNCIL RECOGNIZED ALL COMPONENTS OF THE CRAB FISHERY AS A BALANCED, CONNECTED SYSTEM, RATHER THAN COMPETING PARTS. THE ONLY DIFFERENCE WITH THE CRAB PLAN IS A PROCEDURAL ONE: CONGRESS SPECIFICALLY DIRECTED THE NORTH PACIFIC COUNCIL TO DEVELOP A PLAN THAT BALANCED HARVESTERS, PROCESSORS AND COMMUNITIES, AND NOW CONGRESS MUST IMPLEMENT THE COUNCIL'S PROPOSAL.

THE NORTH PACIFIC COUNCIL VOTED UNANIMOUSLY (11-0) TO RECOMMEND THIS VOLUNTARY THREE-PIE COOPERATIVE THAT RECOGNIZES INVESTMENTS MADE BY HARVESTERS, PROCESSORS AND COMMUNITIES. IT IS A PRODUCT OF EXTENSIVE ANALYSIS WITH NUMEROUS OPPORTUNITIES FOR PUBLIC COMMENT, HUNDREDS OF HOURS OF PUBLIC TESTIMONY AND AN OPEN AND TRANSPARENT PUBLIC DEBATE BY THE COUNCIL. THE ALASKA COMMUNITIES THAT ARE DEPENDENT ON THE CRAB RESOURCE BEING PROCESSED IN THEIR PLANTS ALL SUPPORT THE PLAN. THE VAST MAJORITY OF OPPOSITION HAS COME FROM A VOCAL MINORITY THAT WANT TO RECEIVE A BETTER DEAL AND ENVIRONMENTAL GROUPS THAT DO NOT WANT ANY FORM OF RATIONALIZATION AND WOULD LIKE TO LOCK UP MARINE RESOURCES. THE STATE OF

THE BERING SEA CRAB FISHERIES ARE POOR AND THE CRAB PLAN DEVELOPED THROUGH THE REGIONAL COUNCIL PROCESS NEEDS TO BE IMPLEMENTED NOW.

OPPONENTS OF THE CRAB RATIONALIZATION PLAN RAISE CONCERNS ABOUT ANTI-COMPETITIVE EFFECTS AND POTENTIAL ANTITRUST VIOLATIONS. THE CRAB PLAN IS NOT EXEMPT FROM ANTITRUST LAWS. IN FACT THE PROVISION SPECIFICALLY STATES THE SECRETARY MAY REVOKE ANY PROCESSOR QUOTA SHARE HELD BY A PERSON FOUND TO HAVE VIOLATED ANTITRUST LAWS. THE PLAN CONTEMPLATES NO PRIVATE, ANTI-COMPETITIVE ACTION AND WILL BE "ACTIVELY SUPERVISED" BY THE COUNCIL AND THE STATE OF ALASKA.

DESPITE THE FACT THE CRAB PLAN IS NOT EXEMPT FROM ANTITRUST LAWS AND WILL BE REVIEWED BY THE COUNCIL, WHICH CAN MAKE CHANGES AS NEEDED, AND THERE WILL BE A MANDATORY INFORMATION COLLECTION AND REVIEW PROCESS DEVELOPED BY THE SECRETARY OF COMMERCE AND THE DEPARTMENT OF JUSTICE TO DETERMINE WHETHER ANY ILLEGAL OR ANTI-COMPETITIVE ACTS HAVE OCCURRED, OPPONENTS STILL POINT TO AN OPINION LETTER BY THE DEPARTMENT OF JUSTICE THAT THEORIZES ABOUT "POTENTIAL" ANTI-COMPETITIVE ABUSES. NO WHERE IN THE DOJ'S OPINION LETTER DOES IT STATE THAT INDIVIDUAL PROCESSOR QUOTA SHARES VIOLATE ANTITRUST LAWS. THE DOJ OPINION LETTER RECOMMENDS THAT IPQS NOT BE USED BECAUSE THEY ARE ECONOMICALLY INEFFICIENT. HOWEVER, THE DOJ ADMITS IT "DID NOT CONSIDER FACTORS OUTSIDE THE PURVIEW OF ANTITRUST LAWS SUCH AS THE SOCIAL GOAL OF PROTECTING JOBS IN HISTORIC FISHING VILLAGES OR BALANCING THE REGULATORY EFFECTS EVENLY AMONG HARVESTERS AND PROCESSORS."

THIS IS WHERE THE DOJ LETTER AND MOST OPPONENTS TO THE CRAB PLAN MISS THE POINT ENTIRELY. THE MAGNUSON-STEVEN'S ACT REQUIRES THE REGIONAL COUNCILS TO CONSIDER JUST THAT: "PROTECTING JOBS IN HISTORIC FISHING VILLAGES". THIS CONSIDERATION REQUIRED BY LAW WILL ALWAYS BE ECONOMICALLY INEFFICIENT. PURSUANT TO NATIONAL STANDARD 8 UNDER THE MAGNUSON-STEVEN'S ACT, "CONSERVATION AND MANAGEMENT MEASURES SHALL TAKE INTO ACCOUNT THE IMPORTANCE OF FISHERY

RESOURCES TO FISHING COMMUNITIES IN ORDER TO (A) PROVIDE FOR THE SUSTAINED PARTICIPATION OF SUCH COMMUNITIES, AND (B) TO THE EXTENT PRACTICABLE, MINIMIZE ADVERSE ECONOMIC IMPACTS ON SUCH COMMUNITIES.” (SECTION 301(A)(8) OF THE MAGNUSON-STEVENSON ACT) THE NORTH PACIFIC COUNCIL’S CRAB PLAN IS COMPLETELY CONSISTENT WITH THE GOALS OF THE MAGNUSON-STEVENSON ACT TO PROVIDE FOR THE SUSTAINED PARTICIPATION OF REMOTE COASTAL COMMUNITIES IN THE BERING SEA IN THE CRAB FISHERY AND MINIMIZE ADVERSE ECONOMIC IMPACTS ON THESE COMMUNITIES.

NEXT OPPONENTS ARGUE THAT THE CRAB PLAN IS PRECEDENT SETTING AND WILL SPREAD TO OTHER REGIONAL COUNCILS. IT IS A FISHERY MANAGEMENT PLAN FOR ONLY ONE FISHERY IN THE BERING SEA. IN FACT THE PROVISION SPECIFICALLY PROVIDES THAT “A COUNCIL OR THE SECRETARY MAY NOT CONSIDER OR ESTABLISH ANY PROGRAM TO ALLOCATE OR ISSUE AN INDIVIDUAL PROCESSING QUOTA OR PROCESSOR SHARE IN ANY FISHERY OF THE UNITED STATES OTHER THAN THE CRAB FISHERIES OF THE BERING SEA AND ALEUTIAN ISLANDS.”

THE CRAB PLAN IS NOT PRECEDENT SETTING, IT IS AN EXTENSION OF THE EFFICIENCIES AND SUCCESSES ACHIEVED UNDER THE AMERICAN FISHERIES ACT (AFA). HOWEVER, WHERE THE AFA HAS A CLOSED CLASS OF PROCESSORS THAT CAN PARTICIPATE IN THE BERING SEA POLLOCK FISHERY, THE CRAB PLAN PROVIDES AN OPEN CLASS OF PROCESSORS AND ALLOWS FOR NEW ENTRANTS IN THE PROCESSING SECTOR.

OPPONENTS OF THE CRAB PLAN HAVE ARGUED THAT PROCESSOR QUOTA SHARE IS NOT NEEDED TO MAKE THE FISHERY SAFER OR TO PROVIDE FOR PROTECTIONS OF THE COMMUNITIES. I SUGGEST THESE INDIVIDUALS VISIT THE PRIBILOF ISLANDS THAT ARE 800 MILES WEST OF ANCHORAGE, LOCATED IN THE MIDDLE OF THE BERING SEA, OR DUTCH HARBOR, IN THE MIDDLE OF JANUARY WHEN THE CRAB FISHERY IS IN FULL SWING. THESE COMMUNITIES ARE DEPENDENT ON THE CRAB RESOURCE AND HAVE MADE SUBSTANTIAL INVESTMENTS TO PROCESS RAPIDLY THE PRODUCT DURING THE MAD RACE FOR FISH IN THE CURRENT DERBY-STYLE FISHERY. THEY HAVE BECOME DEPENDENT ON THE CRAB RESOURCE CROSSING THEIR

DOCKS.

THE CRAB FISHERY IS A UNIQUE ONE IN THAT THERE IS A VERY HIGH DOLLAR VALUE FOR A SMALL AMOUNT OF RESOURCE THAT CAN BE PROCESSED QUICKLY. IF THE CRAB PLAN ONLY PROVIDED FOR HARVESTER-ONLY QUOTA SHARE IT WOULD ULTIMATELY RESULT IN DE FACTO PROCESSING QUOTA FOR THE EXCLUSIVE GROUP OF BOAT OWNERS THAT CONTROL THE HARVESTING RIGHTS TO THE RESOURCE. CURRENTLY IN THE BERING SEA CRAB FISHERY, THERE IS A SURPLUS OF CATCHER-PROCESSOR VESSELS AND FLOATING CRAB PROCESSORS THAT CAN BE LEASED OR BOUGHT CHEAPLY. THIS MOBILE PROCESSING CAPACITY IN COMBINATION WITH A HARVESTER-ONLY QUOTA SHARE WOULD ENABLE FISHERMEN TO FORM COOPERATIVES AND VERTICALLY INTEGRATE SUCH THAT NONE OF THE CRAB RESOURCE WOULD EVER HAVE TO COME SHORE-SIDE. SUBSTANTIAL INVESTMENTS MADE BY SHORE BASED PROCESSORS WOULD BE LOST AND COMMUNITIES SUCH AS UNALASKA, ADAK, SAINT PAUL, SAINT GEORGE, AKUTAN AND KING COVE WOULD LOSE OUT ON PROCESSING JOBS, TAXES AND ASSOCIATED REVENUES. THE NORTH PACIFIC COUNCIL UNDERSTOOD THIS AND DEVELOPED A PLAN THAT RECOGNIZED THE COMMITMENTS MADE BY ALL SECTORS OF THIS FISHERY AND TIED THE RESOURCE TO THE COMMUNITIES THAT HAVE HISTORICALLY PROCESSED THE CRAB.

SAFETY WILL ALSO BE ACHIEVED BY THIS CRAB PLAN AND THIS POINT IS IRREFUTABLE. THE REALITY IS IF WE DO NOT PASS THE CRAB PLAN IN ITS ENTIRETY NOW IT WILL BE MANY MORE YEARS, POSSIBLY EVEN 10 YEARS, BEFORE THE COUNCIL COULD DEVELOP ANOTHER RATIONALIZATION PROGRAM AND FULLY IMPLEMENT IT. THE NORTH PACIFIC COUNCIL IS DEVELOPING OTHER COMPREHENSIVE RATIONALIZATION PROGRAMS FOR THE GULF OF ALASKA GROUND FISH FISHERIES AND LIKELY WILL TURN TO BERING SEA NONPOLLOCK GROUND FISH FISHERIES AFTER THAT. THE COUNCIL CANNOT SIMPLY STOP WORK ON THESE OTHER PROGRAMS AND ADDRESS CRAB RATIONALIZATION AGAIN. IT WOULD BE EXTREMELY UNFAIR TO THOSE OTHER FISHERIES AND WOULD RESULT IN THOSE PROGRAMS HAVING TO BE COMPLETELY REDONE BECAUSE DATA AND FACTORS WILL INEVITABLY CHANGE CAUSING COUNCIL RECOMMENDATIONS AND CONSIDERATIONS TO BE VASTLY DIFFERENT. IF THE CRAB

PLAN DOES NOT MOVE FORWARD IN ITS ENTIRETY THE DEADLY RACE FOR FISH WILL CONTINUE.

IN CLOSING I BELIEVE SOME HARSH REALITIES ABOUT THE BERING SEA CRAB FISHERY WILL ILLUSTRATE WHY WE MUST IMPLEMENT THIS PROVISION IMMEDIATELY. THE BERING SEA/ALEUTIAN ISLANDS CRAB FISHERY IS RATED THE MOST DANGEROUS OCCUPATION IN THE U.S. FROM 1990 TO 2001, THERE WERE 61 FATALITIES AND 25 VESSELS WERE LOST; AND IN THE RECENT OCTOBER 2003 RED KING CRAB FISHERY, BOATS WERE LOST AND A PERSON KILLED. THIS PAST OCTOBER CRAB FISHERY WAS ONE OF THE WORST WEATHER-WISE EVER, WITH NEARLY CONSTANT GALE FORCE WINDS AND HUGE OCEAN SWELLS. UNDER THE CRAB PLAN FISHERMEN COULD HAVE CHOSEN TO WAIT UNTIL THE WEATHER CLEARED.

CONDITIONS ARE EVEN MORE EXTREME DURING THE WINTER CRAB FISHERY IN THE BERING SEA WHEN IT IS ALMOST ALWAYS DARK, EXTREMELY COLD AND THE SEAS SEND FREEZING OCEAN SPRAY THAT ICE DOWN THE CRAB VESSELS. THE DERBY-STYLE FISHERY REQUIRES DECKHANDS TO WORK ALL DAY AND ALL NIGHT, OUTSIDE ON ICY DECKS, IN ROLLING 10 TO 20 FOOT SEAS, RETRIEVING 700-POUND STEEL POTS, SORTING CRAB AND THEN DROPPING THE POTS IN NEW PLACES.

OBVIOUSLY, THIS IS VERY DANGEROUS, BUT IT IS ALSO VERY INEFFICIENT AND DAMAGING TO THE RESOURCE. THE BOATS ARE RACING TO HARVEST THE CRAB BEFORE THE GUIDELINE HARVEST LEVELS ARE REACHED WHICH REQUIRES THEM TO PULL THEIR POTS EARLY NOT ALLOWING THEM TO "SOAK" LONGER PERMITTING YOUNGER CRABS TO ESCAPE. THE RESULT IS THE YOUNGER CRABS ARE UNNECESSARILY KILLED CAUSING THE STOCKS TO SUFFER.

IF WE DO NOT IMPLEMENT THIS PROVISION LIVES WILL CONTINUE TO BE LOST AND THE RESOURCE AND THE ENVIRONMENT WILL SUFFER. THE OPPOSITION OF A VOCAL FEW THAT BELIEVE THEY DESERVE A BETTER DEAL AND ENVIRONMENTAL GROUPS THAT WANT TO TURN THE WATERS IN THE NORTH PACIFIC INTO VAST MARINE RESERVES OR "NO TAKE ZONES" ARE BEHIND THE OPPOSITION TO CRAB RATIONALIZATION. THEIR ATTACKS ARE SHAMEFUL, SELF RIGHTEOUS AND DISINGENUOUS. WE HAVE AN OBLIGATION TO PROTECT THE CRAB RESOURCE

IN THE BERING SEA AND PREVENT ANY FURTHER LOSS OF LIFE IN THIS FISHERY. THIS IS EXACTLY WHAT CRAB RATIONALIZATION WILL ACHIEVE AND TO ARGUE ANYTHING ELSE IS JUST NOT TRUE.

North Pacific Fisheries Management Council
Re: GOA Groundfish: Skipper and Crew Fund Program
BUY BACK MY BACK

First of all, I would like to thank you, the North Pacific Fisheries Management council, for waking me up. I had been asleep, and the cold bucket of water that was your crab rationalization plan left me blinking, sputtering, and drenched in outrage.

Because, to me, the rationalization behind rationalization isn't rational. As a guy who first crabbed in 1984, who has banged and shoveled many tons of salt water ice, hooked and pulled through thousands of buoy setups, pushed, tied and clambered over hundreds of stacks of pots, and dealt on a personal basis with processors, skippers and boat owners, I felt I might be in a position to point out certain errors in the plan's most basic logical underpinnings. To wit:

1. The awarding of permanent buying privileges to a limited number of processors is not justified. If the vessel buyback program is sufficient compensation for the overcapitalization of boat owners, then a similar one time buyback program should suffice for the overcapitalization of processors. To step into the arena of the giving and taking away of freedoms, rights and privileges in a free society should not be the job of the Council, only the *management of fisheries*. To award buyer's privileges to these entities is, I think, best understood in terms of the stripping the right of *everyone else* to buy fish. To extend this thinking logically everyone in the industry should be frozen in place, from cannery workers to deckhands, skippers and owners. Is it the intent of the Council to create a permanent caste system? I don't think it is, so the Council must reconsider this awarding of the market to an anointed few. Since the days of the daring Dutchmen in what was then New Amsterdam, free trade has been the engine that powers America. To create Lords of Commerce in the fishing industry is to apply a medieval solution to a modern problem. The Justice Department has numerous reservations about Processor Shares and has predicted a sticky goo of lawsuits. I must concur.
2. The elimination of compensation for crew, and the minimal compensation offered to skippers is not justified. Every argument offered to support the awarding of shares to processors applies to skippers and crew, who pay, on average, 45% of a boat's daily operating expenses plus the cost of their own equipment, and the investment of many hours of labor, for what is only a *chance* to make money. If they were wage earners, with the owners taking all the risk, making all the investment, and therefore taking all the profit, there would be no claim. But they aren't. Fishing is a venture, undertaken by contractually linked businessmen, three quarters of which are skippers and crew. The Justice Department hasn't studied this aspect of rationalization, but surely a similar sticky goo of lawsuits is lurking in the wings for this, too.

I'm an old man, nearly 43, and I thought the sight of me, bent over my cane as I shuffle painfully up the long stairways to attend the meetings might engender a sympathetic ear on the part of the Council. What I have come to learn is that the North

Pacific Fisheries Management Council is not so much a forum of the minds as an advocacy platform. In its well meaning desire to defer to the wishes and concerns of the industry, the Council has formed policy based on the interests of those groups most forcefully represented in the hallways, at the breakfast tables, and in the seats of the Council itself.

I expected to find fire breathing dragons and evil wizards at work when I first began attending Council meetings. To my surprise I spoke to a continuous stream of pleasant, intelligent, engaging people who were doing nothing more or less than their jobs, which were to represent their own interests and those of their employers. Processors, well-informed, well-funded, and well represented on the Council, mounted an impressive campaign, and are now a driving force in the process. Fledgling Skipper/Crew groups like the Gulf Groundfish Fisherman's Association, the Crewman's Association and the swelling Deep Sea Fisherman's Union will probably grow up too late to join the big boys on the field before the game is over.

Still, the potential for backlash is enormous. Every lawsuit, every protest, every disparate group with an axe to grind at the Council's table has the potential to further slow a process that can be tracked by counting the rings in its trunk. I therefore suggest these two changes:

1. **That the number of processors allowed to buy fish in Alaska not be limited. Alternative 2C, which would allocate a portion of the harvest share to qualified processors, (in an amount less than 30%) would be far preferable to a permanent award of the market itself. A simple buyback program, in which excess processors would be bought out by those remaining, would be better still.**
2. **That a "Buy Back My Back" program be implemented to compensate long term participants in the industry:**

A long term participant is defined as a skipper or crewman who fulfills his/her full seasonal contractual obligations.

The fund would have two tiers: one for Skipper/Crew participants during the qualifying IFQ years, and one for ongoing participants in the rationalized fishery.

- I. **Qualifying participants in the first tier would be assigned one point for each of the IFQ qualifying years in which he fulfills his contractual obligation. Acknowledging that Skipper/Crew often move from boat to boat while requiring contractual fulfillment for qualification recognizes the fluid nature of Skipper/Crew employment dynamic, while also recognizing the importance of dependable professionals. Qualified participants would receive a one time payment, amount depending on number of points, funded in a way similar to the vessel buyback program. This purpose of this payment would be to enable excess Skipper/Crew to leave the industry, or for those wishing to remain to buy into the industry.**

II.

The second tier would be comprised of present day contracted skipper/crew. Upon fulfilling his seasonal contract, he would be signed off by the boat owner and would receive a yearly dividend. The creation of a subsidized health insurance program as an alternate to a dividend could best bring permanent long term benefits to the community of fishers.

Such a program would address issues of equitable distribution of the resource to all stakeholders in the industry as well as fostering a stable, professional pool of contractors for the industry. I strongly urge that these changes be seriously considered as you refine the alternatives for GOA Groundfish and implement the BSAI crab rationalization plan.

I'm sorry I won't be able to join you for this meeting. I know you'll miss me. Right now I smell so strongly of squid juice that the automatic doors at Safeway open 25 feet before I arrive. I therefore officially support the efforts of Mr. Kwatchka of the GGFA, Mr. Soma of the DSFU, and the testimony supplied by Mr. Branson of the Crewman's Association.

Thank You, Terry Haines
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907-486-4759
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**PUBLIC TESTIMONY SIGN-UP SHEET FOR
AGENDA ITEM C-5 CRABEIS**

	NAME (PLEASE PRINT)	AFFILIATION
1	Linda Kozak	Kozak + ASSOC.
2	JOHN GARNER	N. PAC CRAB ASSN
3	Joe Sullivan	Mundt Mac Kodiak
4	MATEO PAZ-SOLDAN	City of St Paul
5	Frank Kelly	CITY OF UNALASKA
6	Arnie Thompson	ACC
7	Lenny Herzog	Homev Fishermen
8	TERRY LEITZEL	ICICLE SEAFOODS
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NOTE to persons providing oral or written testimony to the Council: Section 307(1)(I) of the Magnuson-Stevens Fishery Conservation and Management Act prohibits any person "to knowingly and willfully submit to a Council, the Secretary, or the Governor of a State false information (including, but not limited to, false information regarding the capacity and extent to which a United State fish processor, on an annual basis, will process a portion of the optimum yield of a fishery that will be harvested by fishing vessels of the United States) regarding any matter that the Council, Secretary, or Governor is considering in the course of carrying out this Act.

It is my understanding that Sec. 801 Crab Rationalization legislation allows modifications and refinements of the elements of the program consistent with the MS-FCMA:

- 1- if such trailing amendments are approved by Jan. 1, 2005 - or -
- 2- a trailing amendment is approved subsequent to full implementation.

There are a couple key items in the AP recommendations relative to the EIS that may lead the Council to wish to refine the A/B split.

The EIS should provide additional clarity on:

- 1- Whether the Mandatory Data Collection program can be fully implemented. Sec. 801 dealt with prior MS-FCMA constraints in (j)(1), but as noted in the Council's Aug. 5, 2002 letter to Congress, there are "other statutes" that may constrain the recommended program.
- 2- Whether the issues raised in the DOJ letter of Aug. 27, 2003 will impact the intended function of Binding Arbitration as a surrogate for competition in price formation.

Additionally, it is critical to the functioning of Binding Arbitration that the arbitrator has access to good verifiable data. However, it is not clear that there is an interface between the Binding Arbitration program and the Mandatory Data Collection program under (j)(1) or with the Federal Trade Commission data collection and review program under (j)(6).

As the SSC minutes note, it is the threat of Binding Arbitration that is really important. However, a threat is only meaningful if it is credible.

The Council should endorse the AP recommendation to initiate a trailing amendment to modify the A/B share split, including the recommendation that all A shares redesignated as B shares retain their regional designations.

The analysis of this trailing amendment should tie off the EIS and the RIR/IRFA/SIA appendices. The original RIR pointed out that quantitative analysis of the impact of different A/B share splits was impossible. As a result there were only a handful of pages of qualitative discussion in RIR that allowed the 2002 Council to evaluate the impact of different splits.

Ultimately the original RIR, EIS, and any new analysis of A/B share ratios all boil down to this:

- A ratio of 0%:100% A/B split is best for fishers.
- A ratio of 100%:0% A/B split is best for processors.
- At each incremental increase of A shares between 0% and 100% in the A/B split, the benefits are being increased for processors and decreased for harvesters.

Please initiate the trailing amendment recommended by the AP, so that the Council will be poised to respond in a timely way to the issues raised concerning Binding Arbitration.

dave fraser

C-5
Linda Kozak

C . R . A . B . G R O U P

Crab Rationalization and Buyback Group

907-747-7967 · P. O. Box 1064 · Sitka, Alaska 99835

Agenda Item C-5

February 8, 2004

Ms. Stephanie Madsen
Chair
North Pacific Fishery Management Council
605 West 4th Avenue
Anchorage, Alaska 99501-2252

Dear Ms. Madsen:

The CRAB Group remains opposed to individual processing quotas and processor shares for all of the reasons we have previously set forth in testimony to the Council and Congress. However, now that Congress has enacted new section 313(j) of the Magnuson-Stevens Fishery Conservation and Management Act, the CRAB Group is committed to making the crab rationalization program authorized by that section work. The crab rationalization program adopted by Congress needs to be implemented as quickly as possible for the safety of crab fishermen and the benefit of the fishermen, communities, and processors concerned.

To that end the CRAB Group supports the Advisory Panel's recommendations regarding revisions to the draft Environmental Impact Statement (DEIS). Like the AP, the CRAB Group supports incorporating changes that can be made to make the document clearer and more accurate, to the extent such changes can be made without delaying final action by the Council at its June meeting. In particular, the CRAB Group supports inclusion of a brief discussion of the August 27, 2003 letter from the Department of Justice concerning processing shares and binding arbitration, because the public should be made aware of the significant concerns raised by the Department.

In addition, the CRAB Group is pleased that Senator Stevens agreed to a number of changes to the final wording of new section 313(j) of the Magnuson-Stevens Act, and the DEIS should contain a brief discussion of the new legislation under which the crab program will operate. Among the important changes made by Congress in the final legislation were modifications to allow the Council the flexibility to make changes to the crab rationalization program as the Council sees fit; an explicit prohibition on the use by processors of A shares to leverage B shares, backed by loss of a processor's individual processing quota if the Secretary determines that leverage has occurred; clarification that individual processing quotas are a revocable privilege and not a right; and removal of the confidentiality requirements for data used to determine eligibility for individual processing quotas.

Ms. Stephanie Madsen
February 7, 2004
Page 2 of 2

The CRAB Group also would like to specifically support the request of the Scientific and Statistical Committee and the unanimous recommendation of the Advisory Panel that NMFS should prepare a separate document for public release prior to the June meeting that identifies by individual processors and communities the allocation of individual processing quotas that will occur under the preferred alternative. This document can be prepared using data that is submitted to NMFS under Federal requirements to avoid any conflict with State of Alaska confidentiality law and is clearly permitted under the plain language of new section 313(j)(8). Disclosure of this information will help the Council and the public assess whether the community protection provisions and excessive share caps in the preferred alternative will work as the Council intends.

The legislation adopted by Congress does not waive NEPA or other applicable laws, so it is important for the Council to continue forward with the development and adoption of an Environmental Impact Statement for the crab rationalization program. The clarifications to the draft EIS recommended by the SSC and the Advisory Panel will improve the document and should be included to the extent that those changes can be made without delaying final action.

Finally, on a related matter, the CRAB Group notes that the buyback program is finally about to be implemented, and respectfully requests that the Council ask that the National Marine Fisheries Service include in the information sent to the crab fleet as part of the buyback referendum process an analysis of how amount of crab removed if the buyback is approved will affect the individual fishing quota pool for each year selected by the Council under the preferred alternative. This information will be useful to the fleet and to the Council, and should significantly improve the ability of the fleet to assess whether to go forward with the proposed buyback or not.

Respectfully,

Earl W. Comstock
Counsel for the CRAB Group

**North Pacific Crab Association
Comments on the
November 21, 2003
Preliminary Draft of the Environmental Impact Statement
For Bering Sea and Aleutian Islands Crab Fisheries**

The North Pacific Crab Association represents the following companies that purchase in excess of 85% of the Bering Sea crab sold by harvesters:

Alyeska Seafoods	Trident Seafoods
Icicle Seafoods	UniSea Inc
NorQuest Seafoods	Westward Seafoods
Peter Pan Seafoods	Yardarm Knot
Snopac Products	

Our association offers the following comments on the Preliminary Draft EIS for the BSAI crab fisheries:

General Comments:

We support the release of the EIS for public review. Our association supports the release of the Preliminary Draft EIS for the BSAI crab fisheries in its current form for public comment and review by appropriate agencies. We believe the draft is in adequate form and content to allow for a meaningful review by the public and relevant agencies. Our understanding is that the EIS schedule is to consider the draft for release at the February Council meeting, and take final action in June.

The Council and the National Marine Fisheries Service should also give careful consideration to the intent of Congress that the crab rationalization program be implemented by January 1, 2005. It may be appropriate at the February meeting for the Council and the Agency to discuss a schedule for the EIS, regulation drafting, finalization and quota issuance in time for this deadline.

There is much in the EIS that we concur with. For the sake of brevity, rather than recite those provisions, our comments will focus on areas of concern, where specific comments from us might be helpful to the draft, or in cases where we disagree with the draft, we will provide an explanation for that disagreement. For these reasons, these comments might be perceived to be overly critical of the Preliminary Draft EIS. They are not intended to be.

The EIS should distinguish, and address, both the short term and the long term effects of the alternatives. The Council action recommending the three-pie voluntary cooperative was a result of considering the impacts that rationalization will have on current crab fishery participants. Important aspects of the program that were hotly debated, including who gets fishing quota, community protections and processor shares, were decided in

substantial part considering the immediate impact to those participants if they were not included in the program, as well achieving longer term goals of stability and economic improvements.

Both the harvesting and processing privileges in the alternatives are transferable, and over the long run presumably the more efficient will displace the less efficient as much as possible given other program elements. Between the status quo of today, and that long term equilibrium when the most efficient operators remain (that may be years away), is the transition that all current participants worry about. In our comments, we will refer to that transition as the "short term", although it may in fact be a considerable period before a new equilibrium is achieved.

The preferred alternative selected by the Council was in many ways intended to address these transitional economic and socio-economic concerns along with achieving the longer term benefits of rationalization. For that reason, when analyzing the effects of the alternatives, it is our recommendation that, where appropriate (and in particular when analyzing the economic and socio-economic effects of the alternatives), the EIS distinguish between the short term effects and the longer term effects of the alternatives. This distinction will assist the agencies and the public in understanding the effects of each of the alternatives.

The concept of "efficiency" needs to be clearly defined and consistently applied. An important element in the analysis of the economic effects of the alternatives is the concept of "efficiency". As noted in greater detail in our specific comments, the draft would benefit from a clear definition of "efficiency" including its component terms. Areas of the draft EIS appear in places to use or define the term differently depending on the sector under analysis.

Perhaps because of a certain imprecision in the use of the term "efficiency", and a failure to consider both short term and long term economic effects of the alternatives, the preliminary draft EIS comes to conclusions that do not seem to be supportable by the best available science. For example, the draft concludes that processors will likely be more "efficient" under the IFQ and cooperative alternatives compared to the status quo. In our opinion, the draft fails to consider the higher prices for crab that will likely occur, as evidenced by the halibut and sablefish example, and the conclusion therefore is incorrect. Processors, particularly in the short term before they can re-capitalize to comport with the new management system, will be less efficient under systems like the IFQ model where their raw product costs increase without an offsetting decrease in other variable costs or increased revenues. As a second example, the draft argues that the preferred alternative may not result in overall efficiency gains depending on the outcome from binding arbitration. We disagree and argue that the preferred alternative will result in a more efficient commercial sector compared to that in the status quo. The benefits from the rationalization system may flow to one sector or another, depending on arbitration or other factors, but that does not by itself change the conclusion that overall efficiency is improved.

Organization:

The preliminary draft EIS is organized in a logical manner to facilitate consideration of the rationalization alternatives. The authors have provided helpful tables summarizing the findings of the text. We appreciate the incorporation by reference of the documents used by the Council in its deliberations and the public testimony it received. All those materials and testimony are helpful to understand the alternatives under consideration in this EIS.

Specific Comments:

Our specific comments are organized by Chapter, beginning with the Executive Summary and, to the extent possible, referencing the text at specific pages in the order presented in the Preliminary Draft EIS.

Executive Summary: Many of our comments on the executive summary will be duplicated when we comment on the body of the preliminary draft EIS. In general, the executive summary is an excellent summary of the EIS. It provides the reader with a sufficient description of the alternatives, the conclusions about the effects of the alternatives, and the context within which the Council selected the preferred alternative (the “three pie voluntary cooperative alternative”), for the reader to assess the conclusions of the document as a whole.

The description of the cooperative alternative (at page ES-3) to rationalize the fishery could be clearer if it was explicit that the cooperatives contemplated are “multi-species”, with 90% of the history of the harvester, all species considered, assigned to the cooperative that harvester is eligible to join. It should also be made clear that the harvester would join a cooperative and associate with a processor based upon where a majority of its crab was delivered in the year prior to implementation, not based upon historical delivery patterns. Finally, the text does not mention the basis upon which a harvester may change cooperatives, an important point to understand the balance of power between the harvester and the processor. These points are important for the reader to understand the implications for harvesters and processors that may wish to engage in cooperative activities.

The executive summary, and the text that follows, uses many highly technical terms. Two critical terms to the document are “rationalization” and “efficiency”. The two terms are clearly not the same, but they are closely linked – rationalization being intended to, in part, achieve a more efficient fishery. It is therefore very important to provide a clear definition of each term to facilitate review of the predicted effects of the alternatives.

“Rationalization” receives a very clear definition in the discussion at page ES-4, and it is one that our association agrees with. The definition of the term “efficiency” is less clear to us, particularly as it is used in the sector-by-sector discussion. For example, the executive summary (and the detailed text that follows) seems to define processor efficiency as “revenues and costs” (see Table ES-2 at page ES-10); it is less clear that is

the definition used for efficiency in the harvesting sector (see Table ES-2, at page ES-9). The terms "revenues and costs" are not defined, and could at least to the layman have significantly different meanings. "Costs" for a processor could mean variable costs, operating costs, raw fish costs, fixed costs, sunk costs, capital costs or a mix of these terms of art. "Revenues" likewise should be specifically defined. Additionally, the effect of the alternatives on the "efficiency" of the fishery from a national perspective may be different than the effect on specific sectors. Table ES-2 states that, under the preferred alternative "overall efficiency depends, in part, on balancing of harvester and processor efficiency in arbitration". In our detailed comments on Chapter Four, we question why this statement applies only to the processing sector and not to the harvesting sector. We also question whether arbitration functionality is critical to an overall net efficiency benefit from rationalization. This portion of the EIS might benefit from a clearer definition of the term "economic efficiency", including definitions of the component terms.

The executive summary and the detailed text of the EIS should also address the economic and socio-economic effects of the alternatives on the sectors from a short term and a long term perspective. Many economic conclusions in the EIS seem based upon a "long term" perspective when a new equilibrium has been achieved. Yet, much of the public discussion and Council consideration has been formed over transition effects of the action. A clear distinction between short term effects and long term effects will help the decision maker and the public in its review of the document.

The executive summary states that harvester and processor efficiency might be negatively impacted by regional landing requirements and potentially by other community protection measures (see text at page ES-8). While that may be the effect of those provisions, it could be argued that requiring processing in the northern region, the western region (for Western Aleutians brown crab) or even specific communities (as required in the cool down period) will enhance harvester efficiency by providing landing opportunities more proximate to the fishing grounds. Alternatives without those requirements may result in harvesters incurring higher operating costs. Alternatives without the regional landing requirement (the status quo and the cooperative alternative) may not provide a mechanism to reward the harvester with higher revenues to compensate for the higher costs incurred (since there is no binding arbitration to resolve ex-vessel prices in those alternatives). The harvesters could react to the higher costs of running long distances by electing to concentrate fishing effort in areas near processing locations, with the potential effect of localized depletion and higher handling mortalities. The EIS would benefit from a discussion of this possibility.

The executive summary states that processor efficiency should improve under any of the rationalization alternatives compared to the status quo (see Table ES-2 at page ES-10), including under the IFQ alternative. That may be true in the long term; we would in fact argue that any system of distributing quota, including giving it all to the vessel owners, giving it all to the processors or auctioning it all to the highest bidder will, in the long run, improve efficiency compared to the status quo. However, in the transition period, our association disagrees with that conclusion. In the transition period, processor costs

may well increase under rationalization compared to the status quo. This could happen for several reasons. First, the elongated season may increase sunk costs that are time dependent. Second, the start up and shut down costs that are incurred each time you start up or shut down processing will increase as start and stops occur more frequently under rationalization, compared to the status quo. Third, requiring operations in particular regions and communities may result in a return to operation of some facilities that are not currently operated.

The processors hope, of course, that cost savings in other areas and/or increased revenues from the raw product will offset these potential higher costs. Whether the processor will retain sufficient amounts of those increased revenues to compensate for the higher costs depends on the distribution of revenues between processors and harvesters. The preferred alternative provides for a system of resolving ex-vessel prices based upon consideration of historical division of revenues and increased costs and product values achieved with rationalization. That provides an opportunity for the costs and revenues for both sectors to be recognized.

Neither of the other alternatives has any such price resolution mechanism. Under the IFQ alternative, the cost of raw product will increase (to the processor) with certainty. Evidence of that likelihood exists in both the halibut and sablefish fisheries. That is a very likely result under the cooperative alternative as well. It is therefore unlikely that existing processors will be more "efficient" (at least as we believe the term to be used in the EIS) in the short term under either the IFQ or the cooperative alternatives, since their costs are likely to be higher and it is unlikely that increased revenues will be retained to offset those costs. It is also unclear whether, in the long term, processors that are properly capitalized can control operating costs (which may require control over scheduling deliveries) and ex-vessel payments sufficiently in the IFQ alternative to be judged more "efficient". Harvesters should, in any case be more efficient in both the short term and the long term under the IFQ and cooperative alternatives.

Chapter One: Purpose and Need.

In the section describing processing capacity (page 1-19), the following statement is made: "The current crab processing capacity is designed to process crab quickly at the end of seasons when the entire fleet offloads its catch." That statement is not entirely accurate, although we agree the capacity has that result as well. In fact, the current capacity is designed to engage in the race for crab, developed over time when larger quotas justified high capacities. Some of the capacity developed in response to the high quotas is not in current use, but what is used is deployed to increase the share of the processor. Deadloss is a factor, but certainly not the only factor, that helps describe the current capacity of the processing sector.

At page 1-19, it states that most of the crab is currently processed into "frozen crab legs". It should state, "frozen crab sections". Frozen crab sections are reprocessed into frozen crab legs after the primary processing season and typically in a different geographic location.

At page 1-20, the document describes its intended analysis of the “spillover” effects on harvesters in other fisheries if the crab fisheries are rationalized. The document here (and later when describing the effects of the intended action) speaks only to the issue of crab harvest capacity used in other fisheries. It does not consider the effect on other fishermen if processing capacity is lost due to the alternative selected. For example, halibut fishermen from St. Paul and St. George depend upon a crab processing plant to process their halibut. That plant may be idled under certain alternatives (e.g., the IFQ or cooperative alternatives). Similarly, some salmon and herring fishermen depend upon plants with crab as part of their operation (floating processors specifically). The preferred alternative may be the only alternative that will encourage the continued operation of those facilities. If they do not continue to operate, these other fishermen (and communities) might suffer for it.

Page 1-21: although not well documented, a rationalized fishery should provide a safer work environment for processor workers. In the status quo, processing occurs on a round the clock basis, with virtually no days off for the workers until the season ends. Typically extensive overtime is required of the workers. This may contribute to work related injuries. Rationalization, particularly if processors have some influence over delivery timing, should provide for a more reasonable work schedule. Additionally, as the document notes elsewhere, the processor workforce will likely become a more professional group under rationalization, better trained and skilled. The combination of a better work group and reasonable work hours should reduce work related injuries. The EIS should include a discussion of this potential benefit.

Chapter 2: Description of the alternatives.

Page 2-46: The EIS states that PQ is transferable subject only to ownership and use caps. There are also potential limitations from existing anti-trust laws (that would limit the degree of consolidation that would be allowed) and transfer is also subject to a community right of first refusal option.

Page 2-84: Table 2.5-2 states that there are no controls on excessive share for processors under the status quo. The text describing the status quo (page 2-3 to page 2-39) does not discuss this. It may be worth noting in the text that under the status quo AFA qualified processors are capped at their historical share of crab, and that existing anti-trust laws will prevent the formation of a “monopoly” (i.e., that is the excessive share cap that exists in current law).

Chapter 3: Description of the affected environment.

The description of crab waste discharge at pages 3-112 to 3-117 is generally correct, however in King Cove (described at page 3-116) all waste is converted to fish meal, not ground and discharged as stated. Additionally, the document fails to note the processing activities of Icicle Seafoods in Dutch Harbor. The following language can be inserted to describe that activity:

“Icicle Seafoods owns two floating processors which process crab in the area. The BERING STAR processes opilio in season with a daily processing capacity of 125,000 pounds live weight. The ARCTIC STAR processes red king crab in season and has a daily processing capacity of 250,000 pounds live weight. The two floaters operate under the general NPDES permit. The waste is ground and discharged at an approved site. The most recent survey showed an accumulation of waste covering 0.23 acre to a maximum depth of 2-3 inches.”

In this section, data is presented that is premised upon the residence of the owners of vessels. See, for example, table 3.4-24 at page 3-200. The text needs to explain the basis upon which residence was determined. Partnerships and corporations own many crab vessels, and the residence of those that own a partnership interest or shares in a corporation is not known. The exact share of each partner or shareholder of each vessel is also information that, historically, was not very accurate.

The data also gives annual average data compiled for a lengthy period of time (1991 – 2001 or 2000 depending on the data set). In some cases, the average is of a percentage. This is true for both harvesting data (see for example table 3.4-25 at page 3-201) and processing data (see for example table 3.4-30 at page 3-207). The text should point out the method used to calculate average percentage – is it with or without “weighting” the yearly data.

Chapter 4: Environmental and economic consequences of the alternatives.

At page 4-23, the description of the current harvesting fleet does not mention the buyback program. Although this is mentioned elsewhere, we will presumably know the results of buyback during the course of considering the EIS. Consequently, a placeholder to update the description of the fleet after the buyback results are known might be appropriate.

Page 4-35: The document describes the potential complexity of matching A share crab to IPQ, but notes that cooperatives might facilitate solving the problem. It should also be noted that transferability (both the lease or sale) of both IFQ and IPQ is a mechanism to address mismatch problems as well.

In the discussion about the effect of the IFQ alternative on processors (page 4-56), it should be noted that there will be a substantial incentive for processors to purchase fishing quota under that system, with implications for the nature of the fleet and communities where fishing quota owners reside. Similar incentives may exist under the Cooperative alternative.

In Table 4.1-9 at page 4-57, there appears to be a typo. In the category “Processor participation level”, under the IFQ and Cooperative alternatives, there is this statement: “Temporal dispersion of fishing will facilitate removal of vessels from the fishery. (underlining added)” It probably was intended to read the same as under the three-pie

category: “Temporal dispersion of fishing will facilitate removal of processing capacity from the fishery. (underlining added)”

Page 4-140: There is a table here (“Significance Conclusions”) that seems to be draft and incomplete. There is no table number, there are no values for some of the rows, and it uses an “O” value (in the ‘spillover effect on other fisheries’ row) that is not used elsewhere or defined in the text.

Pages 4-141 to 4-144, economic efficiency in the harvesting sector: As noted before, it would be helpful to provide a clear definition of “efficiency” in this discussion about the effect of the alternatives on harvesters. Additionally, the text should distinguish short term from long term effects of the alternatives. Contrary to the conclusion in the text, it can be argued that regional or community landing requirements may result in processing in locations closer to the fishing grounds, thus enhancing harvester efficiency rather than detracting from it. The transferability of quota (both fishing and processing) should further reduce the inefficiencies that are built into the preferred alternative. In the discussion about the IFQ alternative and its effects on harvester efficiency, there is an unstated assumption that there will be a buyer/processor for all of the IFQ in each region. However, there is no provision to ensure that is the case. Consequently, one potential effect on harvester efficiency (revenues) is a lack of a buyer, particularly in the northern region. Under the preferred alternative, by contrast, holders of IPQ are contractually bound to buy crab at least at the time and place determined by an arbitrator.

Pages 4-145 to 4-148, economic efficiency in the processing sector: As noted before, it would be helpful to provide a clear definition of “efficiency” in this discussion about the effect of the alternatives on processor efficiency. Additionally, as noted before, the text should distinguish short term from long term effects of the alternatives.

At page 4-145 the text states that the preferred alternative may not result in the best possible overall gain in efficiency, that it is dependent on, in part “the ability of the parties and the arbitration system to balance the different efficiencies across the two sectors in setting prices” (page 4-145). We believe that arbitration will effect who gets the benefits from the fishery (including new margin afforded by changed costs and revenues), but not particularly the overall net benefit that derives from rationalization. If the EIS statement were true, then presumably one should ask the same question in the context of an IFQ only system: “will there be an overall gain in efficiency” under such a system? If one could argue there may not be an overall gain (under the preferred alternative) because the arbitration system must function properly to achieve it, then why would not one ask the same question in the absence of price setting mechanisms in the other alternatives including the IFQ only model? The discussion about overall efficiency, and in particular the comment about the role of a particular program component in achieving an overall net gain in efficiency, should in any case be treated in the same way for each of the rationalization alternatives.

At page 4-146 the text states that harvesters should be more efficient (in the form of receiving a higher ex-vessel price) when using B share crab and crab harvested over the

IPQ cap (in large quota years) under the preferred alternative. The text then states that obtaining “the highest (ex-vessel) price” should be “a reflection of processor efficiency” for crab sold under these circumstances. Processors should be more efficient under the preferred alternative compared to the status quo, but not because of the B share and IPQ elements. In fact, those elements will likely introduce inefficiencies for processors in the form of higher costs to purchase raw product. The text seems to imply just the opposite will happen, an event that is most unlikely.

The EIS draft states that processors will be more efficient under the IFQ program than under the status quo if they “are able to coordinate deliveries, schedule crews and allot facilities” (page 4-146). The tool available to achieve these cost efficiencies is by paying the harvester more to deliver within the processor’s schedule. However, paying more raises the operating costs to the processor, and it is likely that extra payment will be more than the cost savings achieved. In the halibut and sablefish fisheries, we know from official state records that raw fish prices to fishermen have increased dramatically, and that the margin for processors (the difference between sales revenues and ex-vessel prices, adjusted for recovery) has decreased. Consequently, we disagree with the conclusion set out in table 4.6-2, page 4-148 that “processor efficiency...improves with the end of the race for fish” under the IFQ alternative. This discussion would benefit, as we have commented elsewhere, by distinguishing the effects in the short term from those of the long term, when a new equilibrium has been achieved.

Page 4-147: there is no text for footnote 3.

Page 4-147-148 discusses the effect of the cooperative alternative on processor efficiency. The discussion fails to note the impacts on processor revenues and costs as a result of specific elements of this alternative. A processor will be eligible to buy a harvester’s crab only if it bought the plurality (or majority, as stated in the text) of the harvester’s crab in the year prior to implementation of the cooperative. Unlike the preferred alternative, where historical landings determine share, this system will result in a one-year “bidding war” under which processors will necessarily forfeit margin to obtain market share in the following year. This will raise processor costs without a change in revenues – and is therefore inefficient for the processing sector. It will of course raise harvesting revenues without increasing costs, an efficiency gain for the harvesting sector (assuming efficiency for the harvesting sector is defined the same way as for processors). This rule also results in some processors losing any access to crab it may have purchased in the year prior to implementation – every processor that bought less than a plurality (majority) of the crab from a harvester. This will probably have a negative effect for smaller processors or those remote from the fishing grounds (particularly if the majority of the crab comes from multiple trip fisheries). The system also allows a harvester to leave for another cooperative if 10% of its crab is forfeited to the remaining harvesters in the cooperative. This “cost” to the harvester is a benefit primarily for other fishermen, not the processor associated with the cooperative.

The text at Page 147 also asserts that the 10% of a harvester’s share not linked to a processor will increase processor efficiency. This is similar to the argument elsewhere in

the draft EIS that an IFQ only system improves processor efficiency, and elsewhere also that B share crab will increase processor efficiency. We disagree with this conclusion. The 10% that may be delivered to any processor will increase processor costs (in the form of higher ex-vessel prices) without a corresponding decrease in non-crab purchase operating costs.

Page 4-151 to 4-153 discusses the effect of the alternatives on the capitalization of the processing sector. Under the status quo, the EIS states that some of the facilities that become excess (due to low quotas), including components of them such as cold storage, floor space and housing, can be used for other processing activities. On the assumption that this is a true statement for the processing sector (but an assumption subject to debate, in our opinion, as reflected by the crab processing facilities currently idled by low quotas rather than engaging in alternative activities), the EIS needs to be balanced and provide a similar statement for the harvesting sector, that vessels and gear can be used for alternative fishery or even non-fishery activities. In fact it is known that many Bering Sea crab vessels are used not only in alternative activities in the U.S., many are used for fishing or other activities in other parts of the world. It could also be noted that the federally funded vessel buy-back program will help address the surplus crab harvesting capacity under the status quo (though it will not address the race for crab inherent in the status quo), while there is no parallel buy-back program for surplus processing capacity.

The EIS predicts that processing capital will reduce slightly in the near term under the preferred alternative. In fact, it might increase slightly in the near term during the two-year community-processing requirement. That is because operations currently abandoned may need to be restarted to comply with the cool-down requirements, particularly in St. Paul and St. George.

In the discussion (at page 4-153) about the effect of the cooperative alternative on processor capital, the EIS should point out the differential effect that alternative will have among processors by requiring that 90% of all of a harvesters quota be delivered to the processor that bought the plurality of its crab (potentially 51% or less), all species combined, in the year prior to the program. This means that processors that tend to buy less than a majority of the crab from a harvester will have no crab from that harvester when the program is implemented (recognizing that 10% of the crab is up for grabs). This might have a significant negative effect on some smaller processors, processors more remote from the fishing grounds, or processors that specialize in one particular fishery. It may also impact some communities more than others, especially those communities that are farther from the fishing grounds or whose processors tend to purchase less than a plurality of an individual fisherman's crab.

Pages 4-154 to 4-160 discuss the effects of the alternatives on the distribution of revenues between the harvesting and processing sectors.

Under the status quo, the EIS states that strikes are not as effective as they could be because "harvesters have limited opportunities to use their vessels for other purposes." (page 4-155). In fact this is basically true for the hardware used by both crab processors

and crab harvesters. One could argue that in fact the cost pressures on processors (to settle a strike) is greater than for harvesters because of the need to house, feed and maintain processor workers (including paying them while they are idle). The crew share structure allows the vessel owner to escape these costs during a strike; a processor cannot avoid them.

A footnote on page 4-155 suggests that Kodiak processors pay more for crab than those in Dutch Harbor to “compensate harvesters for the additional distance to that port from the fishing grounds”. It would be more accurate to state that a higher price is paid for that reason, including the higher deadloss that will be expected, and the Kodiak processor has cost savings that it can pass along to the harvester (for example, the cost of transportation and labor).

At page 4-156, the EIS states that processors will be able to capture normal profits and even some of the intrinsic value of crab under the IFQ alternative “except during the transition from a derby fishery to a rationalized fishery”. If the intent is that “transition” means the short term period of change to a new equilibrium and “rationalized fishery” means that point in time in the long term when the new equilibrium is achieved, then this statement may be true. The EIS should make it clear that will be the case only after the processors re-capitalize to the level needed post rationalization and if the processors are then able to “coordinate deliveries, schedule crews and allot facilities” properly (see Page 4-146 and comment above). In the short term, processors that are forced to operate existing capital designed for the derby fishery will be at a cost disadvantage to those who can re-capitalize operations based upon the new management program. It is unlikely that these existing processors, in the context of the IFQ program, will be able to capture normal profits, let alone capture some of the intrinsic value of crab.

If this statement remains in the EIS, then the inverse statement would also seem to be true: i.e., give processors quota only; in the long-term, the harvesters would re-capitalize and they may then be able to capture normal profits and even a share of the intrinsic value of the crab. Although this is not an alternative (all the quota to the processors), failure to include this from a harvester perspective makes it appear that only the processing sector can re-capitalize - an implication that is clearly not true.

It should be noted that under an IFQ alternative the ability to bargain collectively by fishermen is retained, while processors will not have a similar legal exemption from the anti-trust laws. It should also be noted that strikes under an IFQ fishery are more effective than under the status quo, since no one can take an individual’s quota away while that individual strikes. Additionally, striking is effective in the status quo only by collective action, while under the IFQ alternative, individuals may choose to withhold their product.

At page 4-157, the EIS states that under the preferred alternative “the distribution of benefits of landings of crab harvested with A shares will depend greatly on the arbitration program”. This discussion would benefit by re-iterating that harvesters will continue to have the option of collective bargaining (and the anti-trust exemption that goes with it)

and the ability to withhold product (strike) on an individual or collective basis as an alternative to seeking binding arbitration. It would also be fair to point out that under the status quo, an individual or even a small group of individual fishermen cannot effectively strike since they do not have individual shares.

In table 4.6-5, page 4-158, there seems to be a typo in item 3) of the three-pie alternative. The table states that "benefits could be affected by the arbitrator's division of product". It should state something like "division of revenue"; when corrected in this manner, we re-iterate our comments above regarding the alternatives harvesters will have to achieve price objectives under the preferred alternative.

At page 4-159, the effect of the cooperative model on the division of benefits between harvesters and processors is discussed. As with the preferred and IFQ alternative, the text should note that harvesters retain the right to engage in collective bargaining and will enjoy an effective right to individually or collectively withhold product (strike).

Table 4.6-7, page 4-164, includes an assertion that, under the preferred alternative, entry into the processing sector "requires the purchase of a facility and operational expertise". Under the two other rationalization alternatives, it states that entry requires a "facility and operational expertise". Several comments are offered on this. First, a query, why is the word "purchase" used under the three-pie alternative? Why is it not used under the other two rationalization alternatives? Second, the most likely scenario under which a facility is required is the status quo. Leasing or purchase of quota (including processing quota) will not require a facility, and there will be substantial surplus capacity available for custom processing for any holder of IPQ.

It is agreed that the operational difficulties under the status quo is a barrier to entry – that is in fact why there are so few processors now. However, after rationalization, new entrants will have substantially fewer operation barriers. They will have time to learn the trade, marketing and develop the organizational skills required to run an efficient processing operation. In the status quo, there is little time to "learn from your mistakes". The financial costs, in particular the credit facility required to purchase, process and hold inventory, under the status quo are substantial. Crab is very high cost inventory, and seldom if ever is sold faster than the bills are due. The carrying costs under a rationalized fishery will be significantly reduced, to the benefit of new entrants that otherwise would not be able to secure the credit facility to engage in the status quo fishery. To enter in the status quo probably does require the purchase of a facility, and it must be of a capacity to compete with other high daily outputs of competing processors. A significantly lower capacity will be required in the rationalized fishery, with resultant lower capital costs.

At page 4-164, the document states that existing processors will have a "clear advantage over newcomers" under the IFQ alternative. For reasons stated above, the operational advantages are diminished once the IFQ program is implemented. Additionally, many existing processors will have the disadvantage of capacity and capital investments sized for the needs of a derby fishery, carrying with it the operating costs of a larger facility, while a new entrant can start and stay "properly sized" since capacity is no longer the

primary service given the fisherman. Additionally, if live crab markets become significant, the location of buying may be more important than having plants at all (i.e., the hardware needed to buy and ship live crab is insubstantial compared to the hardware required to process and hold frozen product). Plants developed in remote locations may be useless for live shipments, including major ports such as King Cove, Akutan, St. Paul and St. George (ports with little access to reliable air service). Even the options for Dutch Harbor are minimal with the volatile weather and the announced suspension of jet service to that city. The EIS should at least be toned down to state that “some existing processors may have an advantage over newcomers”, and note the disadvantages that some existing processors might have under the IFQ alternative.

At page 4-166, the EIS has the following statement: “Processors, therefore, are less dependent on share holdings for continued participation than harvesters.” This statement, and the text supporting it, should be removed from the EIS. The statement is logically flawed in that it compares different circumstances for the sectors. It concludes processors are less dependent on PQ than harvesters because processors have the option of buying B share crab without a PQ requirement. Harvesters, it argues, on the other hand must have IFQ to harvest crab, and they are therefore more dependent on the quota than processors. This “dependency” arises, if at all, merely because the alternative allocates 100% of the fishing privileges in quota but only 90% of the processing privileges in quota. Give the processors 100% of their history and the argument they are “less dependent” goes away.

The conclusion seems also to be based on the perspective of processors that have no PQ still being able to process (B share crab) compared to harvesters with no IFQ who cannot still fish. Discount the fishing history, like processors are discounted, and the disparity goes away. In fact, each group is “dependent” for each scrap of quota it is issued, even if it is not all that the receiver would like to have received.

At page 4-170 to 4-171, the EIS discusses the effects of the alternatives on other fisheries. The italicized title to the discussion of the effect of the IFQ alternative and the cooperative alternative (each found on page 4-171) has a common typo. The title reads “Effects of the (IFQ or Cooperative) alternative on the acquisition of excessive shares in the fisheries.” The title should read: “Effects of the (IFQ or Cooperative) alternative on other fisheries.” As noted in our discussion about this topic in the Executive Summary, the EIS would benefit by including a discussion about how processors might behave differently in other non-crab fisheries depending on the alternative chosen, and the potential effect that would have on non-crab fishermen or other communities.

At pages 4-174 to 4-177, the EIS discusses the effect of the alternatives on the environment. It should be noted in this discussion that the rationalization alternatives all result in individual allocations, and that those individual allocations should eliminate the potential for over-harvesting crab. It would be helpful to the discussion to provide specific historical harvest data showing the GHL and the actual harvest, so the reader will understand the magnitude of over-harvest that has occurred under the status quo.

Table 4.6-14 (page 4-180) gives the number of vessels per community, and table 4.6-15 (page 4-182), the harvest allocations (in percentages) that would go to those vessels, by community. The text does not describe the basis upon which a vessel is assigned to a community. If it is nothing more than port of registration, for example, the tie to a community by the owners of the vessel (who might live in any number of different places) could be quite tenuous, and therefore the allocations by "community" could be very misleading. If the assumption is that the owners reside in that community, the basis for that linkage needs to be described. The text needs to explain how the vessels are assigned, and it should clearly note the potential deficiencies in the data.

At page 4-234, the EIS recounts that some assert that under the preferred alternative excessive consolidation of processor shares "may result in a situation where vessel owners or captains have less autonomy" to take weather into account when deciding to fish. Those that assert this then say the preferred alternative will not result in a safety benefit. The EIS responds that the B share system, provisions that prevent excessive processing shares, and regional landing requirements "could all work to partially or completely prevent this problem from materializing." This discussion, and the characterization of this issue as a "problem" (implying it is real) gives too much credence to the assertion that a nameless someone has made. First, delivery timing and conditions are a subject of price negotiations and, if negotiations do not succeed, strike or arbitration may be used to resolve the issue. If fishermen are genuinely concerned over this issue, there is no doubt it will be addressed in the typical way such issues are dealt with. Second, there is no evidence that processors have exercised this type of control even over vessels that they currently own, let alone those they do not. Third, under all of the alternatives (including the status quo) vessel owners do not necessarily fish on the vessel or even (unlike the processor) are located where fishing occurs (and where the weather can be observed). If the EIS is going to discuss the potential "problem" that processors might control fishing operations, then it should at the least also discuss the potential "problem" that the owner of the vessel and quota might control fishing operations.

The EIS should if anything simply say that there is some concern that vessel captains may have less autonomy in making such decisions under each of the three rationalization alternatives because of the privileges granted to those that do not fish. It should then state (as it does in the draft text) that evidence from the halibut and sablefish fishery suggests the concern is unfounded, and the preferred alternative, at least, has a system to resolve such "problems" (through arbitration of the terms of delivery).

Table 4.9-3 at page 4-298 states that the effect of various fisheries on the reproductive success of BBRKC is "unknown". This seems inconsistent with the text at page 4-281, where it says that "the incremental effects of the alternatives (on reproductive success of BBRKC) is considered insignificant." Either the text or the table should be modified to make this clearer and/or consistent.

Beginning on page 4-361, the EIS discusses the cumulative effects of the alternatives on the economic and socio-economic condition of the fishery and its participants. It states at the beginning (on page 4-361) that for crab only harvesters and processors the cumulative

impacts are generally the same as the direct or indirect impacts of the alternatives. The text does not define what is a “crab only” harvester or processor, and maybe it does not need to do that because it is likely there is no such thing. However, if the EIS is to make this statement, it may be important to attempt to describe what a “crab only” harvester or processor is, and what percentage of the sector it represents.

The discussion about the cumulative effects on harvester and processor efficiency would benefit from a clear definition of “efficiency” and distinguishing short term from longer term cumulative effects of the action.

At pages 4-368 to 4-369, the EIS states that it expects that effects on communities from changes in the processing sector may “vary widely by alternative”. The basis for this statement is the different degree of consolidation it expects to see under each alternative, and that multi-species plants are more flexible to respond to some alternatives than are crab specific plants. The text does not seem to justify the “vary widely” language that is used. The analysis needs to be either strengthened or the conclusion modified.

At page 4-390, table 4.10-2 is the same table as table 4.10-1 found on page 4-388. One needs to be eliminated and the rest renumbered accordingly.

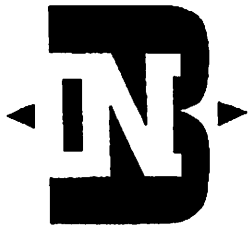
In the summary table about predicted economic and socio-economic effects of the alternatives (at page 4-391), processor efficiency is described as “(revenues and costs)” while harvester efficiency is not. Is this intended and if so why? As noted elsewhere in our comments, it would be helpful to define efficiency in the context of both sectors, and explain if any difference between the two is required or intended.

Conclusion:

The Preliminary Draft EIS for the Bering Sea Aleutian Islands Crab Fisheries should be released to the public for comment and review. The draft will benefit by distinguishing short term or transition effects of the alternatives from the effects predicted in the long term. The draft needs to provide a clear and consistent definition of “efficiency” as that term is used in the document, including any component terms used in the definition.

DID NOT TESTIFY

C-5



BLUE NORTH FISHERIES

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January 30, 2004

RECEIVED
FACSIMILE
JAN 30 2004

North Pacific Fishery Management Council
605 West Fourth Avenue, Suite 306
Anchorage, AK 995501-2252

N.P.F.M.C.

Re: Comments For The Record Concerning Crab Rationalization

Ladies and gentlemen:

We take this opportunity to provide the North Pacific Fishery Management Council (Council) with our comments in the wake of the recently passed Crab Rationalization legislation. We are pleased with much of the new legislation and look forward to a safer and more efficient crab fishery. Nonetheless, there remain some areas of concern. We do note, however, that the legislation seeks guidance from the Council on some of those areas of concern and we wish to present our position on those issues.

Specifically, we are concerned with the glaring lack of bargaining power between harvesters and processors. These concerns were repeatedly at the heart of Senator McCain's criticisms. The fact that the legislation passed does not guaranty immunity from scrutiny under applicable antitrust laws. It would be unfortunate to see a great deal of hard work be undone by a successful antitrust challenge. The mechanisms built into the legislation to safeguard against such challenges, i.e., binding arbitration, are quite simply inadequate. It is our desire that the council meaningfully consider options that maintain competitive markets and fair resources prices.

Perhaps the vehicle to accomplish this goal is a more reasonable A/B share split. The results of the large business lobbying efforts are well known. This is not to say that the results of those efforts are either reasonable or in the best interest of the fishery. An alternative approach from the Council that more readily mirrors the reality of the harvester/processor bargaining positions would go a long way to address this troubling issue. Similarly, the 90/10 split is at best troubling and at worst doomed to failure under legal scrutiny. In short, we urge the Council to realistically take stock of the strong sentiments aroused by this legislation and take the appropriate corrective action that is within the Council's discretion.

North Pacific Fishery Management Council
January 30, 2004
Page 2

Finally, we wish to point out that not only are we harvesters, but also processors, as well as partners with twenty Alaskan communities that are some of the prime beneficiary groups under this legislation. We respectfully thank the Council for the opportunity to present these comments.

Yours very truly,

BLUE NORTH FISHERIES, INC.

A handwritten signature in black ink, appearing to read "Michael F. Burns", written over the printed name of the company.

Michael F. Burns
President

DID NOT TESTIFY

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RECEIVED

FEB - 9 2004

N.P.F.M.C.

January 30, 2004

North Pacific Fisheries Management Council
605 West Fourth Avenue, Suite 306
Anchorage, AK 99501-2252

Fax: (907) 271-2817

Dear Sirs,

We are writing regarding your upcoming meeting next week, particularly in regards to the crab rationalization program. First of all, we are in favor of rationalization but feel that some items in the current plan need to be adjusted. We understand that the legislation allows the council to amend and improve the program for fishermen.

First of all, the processor quotas are a concern and we want to make sure that the council recognizes that the legislation does not exempt the program from antitrust law. The Department of Justice strongly advised against processor quotas and in particular they were concerned with the binding arbitration clause. The council is charged with finding a method of product pricing that maintains competitive, free and fair markets.

Furthermore, the current A/B share split is not adequate to protect fishermen. An alternative must be developed.

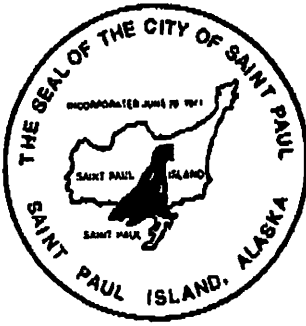
Lastly, the 90/10 split is simply not right. A 10% open market would not be sufficient to guarantee fair pricing for the other 90%. We strongly urge the council to reconsider this point and make a more equitable deal.

Best Regards,



Leiv Lea
Veasel Manager
Neptune LLC

C-5
Mako Paz-
Sullivan

**CITY OF SAINT PAUL**

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February 5, 2004

Mr. Chris Oliver, Executive Director
North Pacific Fisheries Management Council
605 West 4th Avenue, Suite 306
Anchorage, Alaska 99501

Subj.: Comments Regarding the Draft BSAI Crab FMP EIS

Dear Mr. Oliver:

The City of Saint Paul, Alaska, represents the largely Aleut community of St. Paul Island, Alaska, which is almost entirely dependent on the BSAI crab resource for its local economy as outlined in the NPFMC's social impact analysis ("Appendix 3").

The City of Saint Paul supports the release of the Preliminary Draft EIS for the BSAI Crab Fisheries for public comment and review by appropriate agencies. Given the recent approval of the preferred alternative by the U.S Congress, and the continued economic stress created by low abundance in the crab fisheries, the City of Saint Paul encourages the NPFMC to release the Preliminary Draft without the addition of new alternatives.

We believe that the authorization of the BSAI Three Pie Voluntary Cooperative into law, the severe economic and resource crisis that this program is attempting to address, the 2005 Implementation date set by Congress, and the extraordinary amount of analysis and public debate that has driven the Council process is sufficient, and all attempts to introduce new alternatives or significantly restructure the existing EIS alternatives should be rejected.

In general, we are satisfied with the Preliminary Draft EIS. The City of Saint Paul does have a few concerns about the long-term implications of some of the EIS analysis, and we offer our comments concerning those issues below.

These comments are organized first into a Summary, and second, into a more Detailed Discussion of our concerns.

Respectfully submitted,


John R Mercurief
City Manager

Attachments

Summary Points:

1. The Preliminary Draft makes several references to the NPFMC's "Appendix 3" analysis but does not import that analysis or its conclusions in several important areas; therefore, the Preliminary Draft analyzes community impacts in a rather short-term, transitory nature and misses several long-term policy implications, particularly in the IFQ-related portions of the document.
2. The Preliminary Draft does not draw a clear distinction about the "types" of crab-dependent communities that the NPFMC's preferred alternative has been designed to protect: there are both harvester-dominant crab communities and processor-dominant crab communities; and the impacts of each alternative need to be considered from both perspectives. In particular, this creates significant weakness in the analysis of the IFQ alternative.
3. The BSAI crab industry is currently operating during a long period of relatively low abundance in several major fisheries. Therefore, economic behavior under every alternative is going to be guided by short-term considerations. To the extent these immediate economic conditions will impact the course of de-capitalization and related community impacts under each alternative, there is some important additional analysis that the City of Saint Paul proposes be considered for inclusion in the EIS.

Detailed Discussion

The EIS does an adequate job looking at community issues in the aggregate, but given (a) the low abundance of most major crab stocks and (b) the lack of economic diversity and economic alternatives in the Northern Region; the analysis does not draw the focused conclusions that it should. In other words, the largest "flaw" in the Preliminary Draft is a result of the limited examination of actual economic conditions. We understand that this is at least due in part to data confidentiality rules; nonetheless we believe that the EIS could benefit by including some additional findings in the previous NPFMC analysis. We are not endorsing new analysis, however. The good news is that there is sufficient discussion of community dependency and potential impacts in the NPFMC's SIA Appendix 3 and the Preliminary Draft EIS to improve the quality of the EIS document. Our specific recommendations follow:

The historic perspective as it relates to the program goals.
Reference: 3-261

"The transition of fisheries in the EEZ from foreign to domestic have resulted in the development of Regional/community based fishing fleets, onshore processors, and economic support activities, which generate a significant amount of state and local tax revenue."

This is one of the most important "perspectives" offered up in the analysis, yet it does not appear until over 200 pages into the document and generally directs the reader to Appendix 3 for details. We believe the EIS should have a more thorough analysis, to underscore the point that the NPFMC preferred alternative recognizes not only the positive evolution of the fisheries, but that it also seeks to preserve these important gains by addressing the concerns of all current participants: harvesters, captains/crews, processors and crab-dependent communities. The IFQ alternative, in particular, does not rise to this standard; in fact, we believe a careful reading of the EIS and some additional analysis

will demonstrate that an IFQ system will likely result in an a shift of resource benefits to a single sector (harvesters) and disenfranchises most other sectors to a significant degree.

Northern Region issues given the current low abundance of the resource.
Several references detailed below.

The Northern Region is almost entirely dependent on the BSAI crab resource. Most of the municipal revenues collected in this Region come from the processing of crab and related support services. Therefore, the manner in which de-capitalization is managed is vitally important to our communities.

This is also an extremely important issue for harvesters who deliver in the Northern Region, and the large western Alaska salmon and herring fisheries, whose processing sector is largely dependent on high-valued crab processing revenues for their continued participation in these lesser-valued fisheries.¹

To illustrate this point in Pribilof terms: the largest single source of St. Paul Island household employment and income is our local fleet CDQ and IFQ halibut fisheries. Trident Seafoods keeps its (very large) crab processing plant open for up to four months every year to process less than a million pounds of locally landed halibut – a business decision that makes absolutely no sense in the absence of opilio and Bristol Bay red king crab landings. That is how important the crab fisheries are to our Region.

Therefore the EIS should take into account the following scenario that is likely to occur under both the status quo and IFQ alternatives:

1. The continuing decline of the crab resource (or the implementation of the IFQ alternative) will lead to an immediate consolidation of the processing sector. Under the status quo the Northern Region will likely lose all or almost all of its processors, creating first a final collapse of the Pribilof economy and then bringing additional strain on the western Alaska salmon and herring fisheries. The EIS has all of the elements to draw this conclusion but not the clarity to actually illustrate the problem:

• 4-156

"(Under the IFQ alternative) In times of transition, such as the implementation of the program and at times of large declines in total harvests (emphasis added) processors may not be able to realize even normal profits because of the intense competition to maintain market share."

Both of the conditions referenced in this portion of the EIS will exist at the time of implementation, and therefore, there should be much more extensive discussion of the consequences of this scenario. From our perspective the consequences are clear: under the IFQ alternative there will likely be fewer small to medium sized processors; diminished economic benefits to communities and available markets to harvesters; and ultimately, a threat to other less valuable fisheries in our region. The absence of this discussion weakens the value of the EIS.

¹ BB Salmon Restructuring, page 41, footnote 30: "Floating processors (in Bristol Bay salmon fisheries) are highly dependent on fisheries other than the Bristol Bay salmon fishery. In particular, floating processors depend on the opilio tanner crab fishery during the winter and spring to cover a significant portion of their fixed costs."

• ES-14

"Under the IFQ alternative, it is predicted that there would be considerable distributional shifts among communities as harvesters and processors consolidate and as changes in the prosecution of the fisheries facilitate changes in landing and processing locations..."

The EIS statements made in 4-156 (above) combined with this assessment leads inevitably to the conclusion that the small to medium-sized Northern Region processors – who have already been struggling to survive since the opilio crash in 1999 – are likely to be the entities that depart the market. Additionally, we would point out that the larger Northern Region processors are all AFA-qualified companies, and the smaller processors in general are not; thus adding to the inevitability of the outcome if the IFQ alternative is chosen. This is undesirable for several reasons:

- Under the IFQ alternative there will be processor consolidation in which only a few larger processors are likely to emerge because most of the economic benefit has shifted to the harvesters; it is therefore unlikely that the processing sector could afford to support activities in more than one community.
- The consolidation of the Northern Region processing sector will harm crab harvesters by reducing absolutely the number of markets and potentially the product diversity that the preferred alternative is designed to encourage.
- The consolidation of Northern Region processors – and especially the likely elimination of some non-AFA processors, will have a significant negative impact on the region's halibut, salmon and herring industries, which are currently "subsidized" by those processors' participation in crab.

• 4-151

"The race for fish under the current LLP management ... has created a race among processors to maintain pace with landings. As a consequence, the processing sector also utilizes more capital under the current management than might be required if the race for fish were slowed... most of the largest processors are likely to remain in the fisheries with current capacity levels ... whether some additional processing capital will be removed is unknown ..."

There are approximately nine processing entities that will receive Northern Region IPQ under the NPFMC's preferred alternative. Currently only 3 or 4 are operating because of the low abundance of opilio; but several have stated that they will re-start under the NPFMC's plan because their share of the resource is predictable and they can scale their operations appropriately.

Now consider the IFQ alternative: even with Regional landings requirements, and given the low abundance of major crab species, the EIS analysis underscores the point that the only likely processing sector "survivors" will be the largest companies, and that all of the small to medium sized operators will exit the sector. This conclusion should be drawn much more clearly in the document.

• 4-151

"The three-pie voluntary cooperative will substantially alter the pace of harvests allowing processors to choose capitalization based on efficiency rather than the need to keep pace with the

race for fish ... in addition, seasonality of market demands and crab quality levels may reduce the incentive of crab processors to (re)distribute landings in a manner that minimizes capital."

This is a very significant finding. In our previous comment concerning the IFQ effect on Northern Region processor de-capitalization, this EIS statement underscores the real solution to the problem. To wit, the NPFMC's preferred alternative gives the smaller/marginal Northern Region processors an opportunity to appropriately scale their operations (and remain in business) and it reduces the incentive for excessive de-capitalization by creating opportunities for added-efficiency and added-value. The contrast between these two results should be stated clearly in the document.

The IFQ Alternative strips away important community protection measures

• 4-209

This conclusion should be clearly stated. We refer the reader to 4.6.7.2, page 4-209. A close examination of Alternative 2 (the preferred alternative) and Alternative 3 (the IFQ alternative) shows a wide disparity in community protections. The following community protections are lost under the IFQ alternative:

- Community Right of First Refusal (ROFR) on all IPQ
- Community right to purchase PQ and QS
- The two-year "cooling-off" period to facilitate economic transition/adjustment
- An IPQ cap that allows new entrants after certain thresholds are met (instead of more disruptive, uncontrolled processor de-capitalization)
- Community and Region-specific IPQ tags

The EIS can do a better job drawing a distinction between "harvester-dependent" towns and "processor-dependent" towns.

Tables 3.4-12 through 3.4-15 clearly demonstrate that harvester-dependent towns like Kodiak will receive substantial benefits in accordance with the manner in which they participate in BSAI crab fisheries : primarily through the issuance of IFQ. It is conservatively estimated that the Kodiak-based fleet will receive well in excess of \$100 million in BSAI crab IFQ rights under the preferred alternative, and even more under an IFQ alternative.

However, what is not clearly stated is that there are other crab-dependent communities that have a local economy built on processing activity, not harvesting activity. Previous NPFMC analysis (SIA Appendix 3) underscores this critical difference; but in most cases the EIS simply makes reference to SIA Appendix 3. We believe the EIS could be strengthened by more direct use of the SIA material.