


MEMORANDUM

TO: Council, SSC and AP Members
FROM: Chris Oliver 
Executive Director
DATE: January 30, 2008
SUBJECT: BSAI Crab Issues

ESTIMATED TIME 14 HOURS (All C-1 items)

ACTION REQUIRED

(h) Initial review of extension of 'cooling off' and right of first refusal for St. George

BACKGROUND

Under the crab rationalization program, processors were allocated processor quota shares (PQS) based on their respective processing histories. To protect community interests, most processing shares were required to be used in the community in which the processing history occurred during the first two years of the program (the 'cooling off period'). In addition, holders of most processor shares were required to enter agreements granting community designated entities a right of first refusal on certain transfers of those shares. The agreements also specify that the right of first refusal will lapse, if the holder of the PQS processes those shares outside of the community for a period of 3 consecutive years. Due in part to intervening circumstances, and notwithstanding these protections, no shares designated for processing in the City of St. George were processed in that community during the first two years of the rationalization program. This action considers extending the 'cooling off period' for the City of St. George and revising the conditions under which the right of first refusal will lapse with respect to those shares.

Since initiating this action, Aleutian Pribilof Island Community Development Association has challenged the decision of NOAA Fisheries to waive the cooling off requirement during the second season of the program (2006-2007). As noted in the analysis, Aleutian Pribilof Island Community Development Association (the holder of the right of first refusal on behalf of St. George) has reached a settlement with one of the two PQS holders subject to the St. George-based right of first refusal, settling any issue concerning the 'cooling off' period and right of first refusal with respect to that PQS holder. The dispute remains outstanding with the second PQS holder. The hearing administrator in the case has issued a decision concerning potential remedies. That decision states that the administrator has authority to prevent the lapse of the right of first refusal (by restarting the timeline for lapsing of the right of first refusal); however, the decision also states that the administrator has no authority to require processing in St. George.

At this meeting, the Council scheduled an initial of review that analysis. The executive summary of that analysis is attached (Item C-1(h)(1)).

RIR/IRFA of a Provision to Extend the Cooling Off and Right Refusal Protections for the Community of Saint George

Executive Summary

In August of 2005, fishing in the Bering Sea and Aleutian Island crab fisheries began under a new share-based management program (the "rationalization program"). The program is unique in several ways, including the allocation of processing shares corresponding to a portion of the harvest share pool. Processor shares were allocated to processors based on their respective processing histories. To protect community interests, most processing shares were required to be used in the community in which the processing history occurred during the first two years of the program (the 'cooling off period'). In addition, holders of most processor shares were required to enter agreements granting community designated entities a right of first refusal on certain transfers of those shares. The agreements also specify that under certain conditions, the right of first refusal will lapse. Due in part to intervening circumstances, and notwithstanding these protections, no shares designated for processing in the City of St. George were processed in that community during the first two years of the rationalization program. This action considers extending the 'cooling off period' for the City of St. George and revising the conditions under which the right of first refusal will lapse with respect to those shares.

Purpose and Need Statement

The intent of community protection measures in the crab rationalization program may not have been met in St. George due to unavoidable circumstances including a federal declared disaster. While processing history was generated from St. George, no crab has been processed in St. George under the crab rationalization program. As a result, the two year "cooling off" period will expire June 30, 2007 and the three year right of first refusal (ROFR) will expire June 30, 2008, if IPQ designated for St. George is not used in the community in the 2007/2008 season.

In order to fulfill the original intent of the community protection measures, the Council will initiate an analysis for an FMP amendment to the community protection provisions. The amendment will restart and/or extend the time period for community protection measures (ROFR and "cooling off" period) for St. George. NFMS has indicated that such an amendment will likely not be in place for the 2007/2008 season. However, the intent of the community protection measures may be met by extending the measures into the future.

Alternatives

Alternative 1: Status quo

Alternatives 2: Extension of community protection provisions. Begin a new two-year cooling off period and a new ROFR three-year period with a starting date of October 1, 2008 (unless the ROFR can be renewed prior to expiration).

Alternative 3: Extension of community protection provisions. Begin a new one-year cooling off period and a new ROFR three-year period with a starting date of October 1, 2008 (unless the ROFR can be renewed prior to expiration).

Effects of the alternatives

Alternative 1: Status quo

Under the status quo, the cooling off provision expired at the end of the 2006-2007 season, allowing IPQ holders to move their shares out of the community of origin. Although the 'cooling off' protection lapsed, the protection of the rights of first refusal remains in effect during the term of that contract. Yet, the protection lapses, if the PQS holder uses its IPQ outside the community of origin for a period of 3 consecutive years. Given that no processing has occurred in St. George during the first two years of the program, if PQS holders choose to move their IPQ processing out of that community for the third year of the program, all rights of first refusal to Aleutian Pribilof Island Community Development Association

would lapse under the terms provided for in regulation. On the lapsing of those interests, no regulatory or contractual connection between any PQS and the community of St. George would exist.

Although the rights of first refusal would lapse under the terms required by the crab program, Aleutian Pribilof Island Community Development Association has reached agreement with one PQS holder, who holds approximately 4 percent of the Bering Sea *C. opilio* PQS, concerning their movement of processing from St. George in the second year of the program. Since the terms of that agreement subject to a confidentiality agreement between the parties, it is not known whether processing will be required to occur in St. George or some other benefits will be conveyed to the community in lieu of movement of processing activity to the community. Likewise, the agreement may also include some rights of first refusal on transfers of PQS and IPQ. Aleutian Pribilof Island Community Development Association has not reached agreement with the second PQS holder, who holds slightly less than 6 percent of the Bering Sea *C. opilio* PQS, concerning its shares. Shares held by that PQS holder are subject to the right of first refusal required by the rationalization program, which would lapse, if those PQS are used outside of St. George for three consecutive years. Given that no processing occurred in St. George in the first two years of the program, it is possible that the right could lapse this year, if the shares are processed outside of the community this year.

Under the status quo, PQS holders subject to a St. George association are likely to have the ability to realize any processing efficiencies that might be available by processing their shares in the North region outside of St. George. Efficiencies may be realized by saving any added costs of movement of a floating processor and crews to St. George and any associated permitting with operating in St. George. The effects of the action on harvesters are likely to be limited. Concentration of processing that could occur under the status quo could result in slight operating costs savings to harvesters who might otherwise have needed to make partial deliveries to multiple locations in the North (e.g., St. George and St. Paul). These additional costs are likely to vary depending on share matching and coordination of harvest and are likely to be less prevalent in years of high TACs, when more crab are required to be delivered into St. George (limiting the number of partial deliveries).

Under the status quo, the cooling off period would not be extending, limiting the burden on managers to monitor compliance with that provision. Removal of this burden with respect to St. George associated shares has a very minor effect on management costs. Similarly, the choice not to extend the time period for the removal of rights of first refusal through use of the shares outside the community will have a relatively minor effect on management costs.

Alternatives 2 and 3: Extension of community protection provisions.

Under the second and third alternative, the cooling off period would be extended and rights of first refusal would be renewed. The two alternatives vary only in the length of the cooling off period extension. Alternative 2 would extend the cooling off period two years, while alternative 3 would extend it only one year.

Extension of the cooling off period would ensure that processing occurs in the St. George for the period of the extension. Processing in St. George under the cooling off provision would be slightly less than 10 percent of all IPQ in the Bering Sea *C. opilio* fishery, or approximately 4.4 million pounds under the current TAC. Tax revenues would be gained by the community under both the local fish tax and shared state fish tax, as are gained for any processing within community boundaries. Other effects are likely to be limited since the processing is very likely to occur on a floating processor. Floating processors are largely self-supporting, relying primarily on provisions carried to the processing location on the vessel, particularly for short term processing ventures like that which would be undertaken in St. George.

The effects of the extension could be increased, if St. George were able to attract additional processing, which might occur given that the cooling off provision would not apply in St. Paul. To the extent that

costs might be saved by using a floating processor in St. George only, a potential efficiency could exist for relocating processing to St. George from St. Paul during the extended cooling off period. To the extent that processing moves out of St. Paul (either through the direct requirement of the cooling off period extension or through the attraction of additional processing beyond the cooling off requirement), St. Paul would suffer a loss of benefits. These losses to St. Paul would likely include taxes revenues and community economic impacts, arising from the processing in St. Paul. If the provision results in the transfer of processing from the shore plant in St. Paul to a floating processor off St. George, it is possible that the result could be a minor loss of economic impacts to communities in the North region. In considering the importance of any potential loss of local impacts, the effects of those impacts should be balanced against the distributional considerations. Given that St. Paul currently attracts a substantially greater share of crab processing in the North region, it is possible that the minor loss of local impacts in the North are outweighed by the need ensure that the smaller economy of St. George benefits from the transfer of economic impacts of the processing activity of the extended cooling off period.

Once the extended cooling off period expired, it is uncertain whether St. George would continue to attract processing. The potential to attract processing would largely depend on whether processors perceive an opportunity to improve operations in St. George. These processor benefits could arise, if St. George is perceived to provide improved services, which is uncertain. Alternatively, if the holder of the right of first refusal is able to leverage its improved position derived from the extended cooling off period to gain concessions from the affected PQS holders, it is possible that arrangements could be made for extending processing in the community after the cooling off period extension lapses. The added leverage of the right holder and its potential to succeed in any such efforts is uncertain and depends on several factors, including the relative financial position of the PQS holders and the right holder. The settlement of terms between the right holder and one of the PQS holders suggests that the potential for the right holder to use this leverage is not wholly hypothetical.

Net benefits to the Nation

A minor decline in net benefits to the Nation is likely to arise from this action. The action is likely to decrease production efficiency for some processors, reducing efficiency that might arise from locating processing outside of St. George.