MEMORANDUM

TO: Council, SSC, and AP Members

FROM: Chris Oliver
Executive Director

ESTIMATED TIME
12 HOURS
(for all C-2 items)

DATE: January 17, 2003

SUBJECT: Crab Management

ACTION REQUIRED

(a) Receive Committee reports, select preferred alternatives for completed trailing amendments, and provide clarification on previous actions.
(b) Discuss EIS progress and alternatives

BACKGROUND

(a) The following items contained in trailing amendments will be presented to the Council at this meeting:

1) Arbitration System. The Council will be presented the report of the arbitration committee and the analysis of options for an arbitration program to settle price disputes between IFQ holders and IPQ holders. The primary objective of the Council will be to select an arbitration standard, an arbitration structure, and provide general guidance on future oversight and management of the arbitration program by the Council and NOAA Fisheries.

At its October meeting, the Council requested NOAA General Counsel to examine any antitrust issues under arbitration program of the rationalization program. NOAA GC will update the Council on the status of its response to this request.

2) Alternative protections for communities. The Council will be presented the report of the community protection committee and the analysis of alternative protections for communities. The analysis will examine options for the cooling off period, restrictions on the movement of processing shares from the community of origin, rights of first refusal on the sale of processing shares for movement from communities, caps on the amount of IPQs, and a right of first refusal for crab dependent communities in the Northern Gulf of Alaska.

3) Data collection. The Council will be presented the report of the data collection committee and the analysis of options to establish a system to collect economic data for evaluating the success of the rationalization program. The analysis examines the types of data for collection, the system for collecting those data, and protecting confidentiality.

4) CDQ ownership caps. The Council will be presented with an analysis of options for increased harvest share ownership and use caps for CDQ groups. At its December meeting, the Council elected to defer decision on this issue to this meeting.

5) Clarification of Vertical Integration Caps. Staff requests that Council clarify its intention with respect to caps on vertical integration from the June 10, 2002 motion. The limit on vertical integration specifically provides:

> 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.

Since the vertical integration cap is in addition to the general caps on IFQ holdings, caps on IFQ holdings of processors (and persons with more than 10 percent common ownership with processors) would have the following two dimensions:

A) Each individual IFQ holder would be subject to the general IFQ caps, which apply to all IFQ holders (e.g., 1 percent for Bristol Bay red king crab).

B) Each processor (identified as the processor and any persons with 10 percent common ownership with the processor) is subject to the 5 percent vertical integration cap on IFQ holdings.

Under these restrictions, an individual that is subject to a processor's collective vertical integration cap (because of common ownership with the processor) could be prohibited from holding any IFQs in a fishery, if the processor and other persons associated with the processor under the vertical integration cap own 5 percent or more of the IFQs in the fishery. The Council, however, should clarify whether or not the 5 percent processor cap would exempt the processing entity (a corporation only) from the generally applicable individual IFQ cap. If interpreted as an exemption, all individuals would remain subject to the generally applicable IFQ cap (e.g., 1 percent in Bristol Bay red king crab). Only the primary processing corporation (and no individual) might be exempt from that individual generally applicable cap.

(b) The Council will be updated on the development of an alternatives framework and the schedule for the Environmental Impact Statement (EIS). The alternatives framework provides Fishery Management Plan review and analysis of the Council's rationalization program alternatives, with full discussion of FMP changes and potential changes to State crab management. In addition, the Council will be updated on the EIS schedule, specifically the scheduling of Council initial review of the draft EIS, the submission of the EIS for public comment, the public comment period, the summary of public comment, and Council final action. A letter from Jim Balsiger on these issues is included as Item C-2(b)(1). Council concurrence with the alternatives framework and schedule will be requested.

UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
National Marine Fisheries Service
P.O. Box 21668
Juneau, Alaska 99802-1668

AGENDA C-2(b)(1)
JANUARY 2003

January17, 2003

David Benton, Chairman
North Pacific Fishery Management Council
605 West 4th Suite 306
Anchorage, Alaska 99501

Dear Mr. Benton:

The purpose of this letter is to inform you of the progress made by NMFS staff, NOAA General Counsel, and Council staff in developing an alternatives framework for the Environmental Impact Statement (EIS) being prepared for the Bering Sea/Aleutian Islands (BSAI) king and Tanner crab fisheries (Crab EIS). A brief summary of the proposed alternatives framework is described below, with a more detailed description of the alternatives framework presented in Attachment 1. Members of the crab EIS steering committee also have reviewed this framework. We request Council concurrence on this framework for the EIS alternatives in order to move forward with the preparation of the Crab EIS.

As the Council is aware, the original intent was to prepare a programmatic, or Fishery Management Plan (FMP)-level, EIS for the BSAI crab fisheries because the rationalization alternatives under consideration by the Council will likely impact numerous aspects of the BSAI Crab FMP. At the Council's December 2002 meeting, NMFS provided the Council with a letter explaining that the scope of the EIS appeared to have narrowed since the notice of intent to prepare the EIS had been published, that one of the alternatives in the EIS (the no fishing alternative) no longer appeared to meet the objectives of the action, and that an explanation of why other rationalization approaches did not meet the stated objectives was necessary in order to determine whether the EIS contained an adequate range of reasonable alternatives. The Council removed the no fishing alternative and added two rationalization alternatives to the EIS.

After the December 2002 Council meeting, NMFS staff, NOAA General Counsel, and Council staff discussed the new suite of alternatives and the scope of the EIS. During these discussions, it was determined that the scope of the Crab EIS should be a broad, programmatic review and analysis of the Crab FMP and the rationalization alternatives for several reasons. First, a broad, programmatic review and analysis will provide the Council, NMFS, the State of Alaska, and the public with a greater level of information on which to make the crab rationalization decision as well as inform other subsequent crab management decisions. Second, a programmatic review will serve to address the crab management problems that were identified in the Council's problem statement. Finally, a programmatic review is needed because the Crab FMP was adopted in 1989 without an EIS, and significant changes in the crab fisheries, the methods of crab management, and our scientific

understanding of the fisheries, have occurred since its adoption. A programmatic review will evaluate these changes and provide valuable information about the environmental impacts that will likely occur if the current management regime is replaced with a rationalization-based management regime.

Given the determination that a broader scope for the Crab EIS is necessary, the alternatives framework for the EIS contains a two-step analysis: (1) an FMP-level review and (2) an alternatives analysis. The first step, the FMP-level review, would systematically and qualitatively analyze the overarching management principles set forth in the current FMP, the FMP structure, and the management measures in each FMP category. Included in this first part of the EIS would be a review of each FMP management measure in categories 1, 2, and 3 to determine if the measure is effective, if it is relevant to and/or impacted by rationalization, and if FMP level changes are needed to the management measure's criteria or category. Management measures that may be impacted by the rationalization alternatives under consideration would be examined in the alternatives analysis. Those management measures that will not be impacted by the rationalization alternatives under consideration would not be examined in the alternatives analysis. The FMP level review would define the FMP structure under which the alternative rationalization programs will be crafted and analyzed. The FMP level review would also identify any alternatives considered but not carried forward.

The second step in the programmatic analysis is the analysis of the Council's alternative rationalization programs, which will include the elements laid out in the Council's June 2002 and December 2002 motions and the actions on the trailing amendments scheduled to be taken at this January 2003 meeting. Each alternative in this analysis would have two parts. The first part will consist of an analysis of the specific elements of the rationalization program contained in that alternative. The second part will examine the necessary alterations to the FMP as a result of the rationalization program, as identified in the FMP-level review, and will examine a range of potential Alaska Board of Fisheries (BOF) actions for measures that would remain under State management authority. Discussion of the potential BOF actions will provide the detail needed to analyze the potential environmental impacts of the alternatives.

When the EIS analysis is completed, the Council will make decisions on the following items: (1) whether to continue the combined state and federal overall management regime; (2) whether to continue using the three category management measure structure; (3) whether to revise the FMP-level management measures that are not included in the categories; and (4) the selection of a preferred alternative that will include (a) the preferred rationalization program and (b) on a policy level, whether and to what extent the FMP should be amended as a result of the selected rationalization program. FMP changes could either be implemented as part of the proposed action or implemented through subsequent FMP amendments. This EIS will also inform BOF decisions

on subsequent changes to State crab fisheries management resulting from implementing a rationalization program.

Sincerely,

For James W. Balsiger
Administrator, Alaska Region

Attachment:
Draft Outline of Suggested Alternatives Framework

ATTACHMENT 1:

DRAFT Crab EIS - Outline of Suggested Alternatives Framework

The goal of this alternatives framework is to inform decision-makers as to the environmental and socio-economic effects of both crab management under the Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs (FMP) in general, and, more specifically, the replacement of the current management program with an allocation-based management program. The alternatives framework provides a two step programmatic analysis: an FMP level review and an alternatives analysis.

A. FMP Level Review

The FMP level review qualitatively examines and analyzes the overarching management principles set forth in the current FMP (e.g. the combined State/Federal management structure and the categorized management measures structure) and all of the FMP management measures (including the FMP level management measures and the management measures in categories 1, 2, and 3). This examination will inform decisions about whether the basic structure of the FMP should be changed to improve crab fisheries management by addressing the problems identified in the Council's problem statement. The FMP structure determined by this analysis will be used for the alternatives in the alternatives analysis.

1. Discuss and examine the current State/Federal management structure.
   - Explain rationale for the FMP cooperative management structure, including procedures for FMP implementation, Federal review of State actions, and appeals process.
   - Analyze the current structure and any reasonable alternatives, including, the differences (if any) between environmental and socioeconomic effects of the State/Federal split and purely State or Federal management structures.
   - Determine whether the current State/Federal management structure should continue.
   - Alternatives not further analyzed will be discussed in the 'alternatives considered but not carried forward' section of the EIS.

2. Discuss and examine the three category management measure structure established by the FMP.
   - Explain why the categories were created and their use.
   - Discuss the differences between each type of category in terms of Magnuson-Stevens Act requirements and deferred authority.
   - Examine any reasonable alternatives to the category structure.
   - Determine whether the category structure should continue and explain why.

3. Discuss and examine in a qualitative/ narrative manner and on a general policy level, the FMP-level management measures that are not in category 1, 2, or 3, including any reasonable alternatives. These management measures include:

a. FMP goals and objectives
b. Overfishing definitions
c. Essential Fish Habitat
d. Description of Fishery Management Unit
e. Definition of terms

4. Analyze each management measure in Category 1, 2, and 3. For each management measure the analysis should contain 4 parts: 1) A description of the measure and how its implemented under status quo and its effectiveness at achieving the FMP criteria, 2) The effectiveness of the criteria at meeting the management goals and objectives, 3) An examination of whether rationalization would impact the measure, either directly or indirectly, and, 4) based on 2 and 3, a discussion of alternative ways to change the management authority, FMP category, FMP criteria and/or the management measure itself. Management measures that are not likely to be impacted by the rationalization programs would be identified, explained, and not analyzed further under the alternatives analysis (but would still remain as part of the FMP). If this analysis indicates that any of the measures should be modified independent of rationalization, a policy decision would be made to analyze this measure further in a subsequent FMP amendment. The analytical structure would resemble the following:

a. Category 1: Federal Management Measures Fixed by the FMP
    1. Legal Gear
        1) Description of the measure and how its implemented and its effectiveness at meeting the FMP criteria.
        2) The effectiveness of the criteria at meeting the management goals and objectives.
        3) Would rationalization cause a change in this measure.
        4) Alternative ways to change the management authority, FMP category, and/or FMP criteria.
    2. Permit Requirements
        ~
    3. Federal Observer Program
        ~
    4. Limited Access
        ~
    5. Norton Sound Superexclusive Registration Area
        ~
b. Category 2: Framework Management Measures
    - For each measure, the same 4 part discussion as above for Cat. 1.
c. Category 3: Management Measures Deferred to State
    - For each measure, the same 4 part discussion as above for Cat. 1.

5. Describe alternatives considered but not carried forward. Alternatives a-d are likely to be included in the section.

a. Full State management of all FMP components.
b. Full Federal management of all FMP components.
c. Open fishing under existing State/Federal split.
d. No fishing
e. Any other rationalization alternatives that either fall within the range of those already being considered or are unreasonable.

B. Alternatives Analysis

The alternatives analysis examines and analyzes the rationalization program alternatives. The alternatives are rationalization programs because the Council has already identified that a type of rationalization program is the most effective tool for addressing the problems identified in the crab fishery. Each alternative has 2 parts. The first part is the analysis of the rationalization program alternative, as designed by the Council. The second part examines the necessary alterations to the FMP management measures resulting from the specific rationalization program and examines a range of potential BOF actions under management measure categories 2 and 3. The Council will decide which rationalization program to implement and, on a policy level, whether the FMP should be amended to change existing management measures. Note that FMP measures determined to be exactly the same for each rationalization program alternative will be discussed in the first rationalization alternative and referenced in each subsequent alternative.

1. Status Quo (LLP)

A. Analyze Category 1: limited access
B. Analyze status quo Category 1-3 management measures and how they are implemented by NMFS and the State.

2. Three-Pie Voluntary Cooperative

A. Analyze alternative-specific rationalization elements:
Harvester Shares
Processor Shares
Catcher/processor Shares
Captain Shares
Binding Arbitration
Crew Loans
Regionalization/Community Protection
CDQ Allocation
Sideboards for other fisheries
Data Collection/Program reports

Implementation Plan

B. Describe and analyze (separately and cumulatively):
i. the FMP-level decisions made concerning Category 1 through 3 management measures as they relate to this alternative (i.e. keep status quo or make reasonable changes in response to the needs of this alternative).
ii. the range of potential State decisions under the category 2 and 3 management measures.

3. One-pie voluntary cooperative

A. Analyze alternative-specific rationalization elements.
- Harvester Shares
- Catcher/Processor Shares
- Cooperatives
- Captain Shares
- Binding Arbitration
- Crew Loan Program
- Regionalization / Community protection
- CDQ Allocation
- Sideboards for other fisheries
- Data Collection and program reports
- Program implementation plan (incl FMP changes required)

B. Describe and analyze (separately and cumulatively), as they relate to this alternative but only in so much as the management measures and analysis would differ from that in alternatives 1 and 2:
i. the FMP-level decisions made concerning Category 1 through 3 management measures, and,
ii. the range of potential State decisions under the category 2 and 3,

4. One-pie voluntary cooperative with closed class of processors

A. Analyze alt-specific rationalization elements.
- Harvester Shares (allocation contingent on cooperative membership)
- Catcher/Processor Shares
- Cooperatives
- Crew Loan Program
- Captain Shares
- Processor closed class license for 80% of harvest allocation
- Penalty provision (10% for movement without consent)
- Binding Arbitration
- Regionalization / Community protection

CDQ Allocation
Sideboards for other fisheries
Data Collection and program reports
Program implementation plan (incl FMP changes required)

B. Describe and analyze (separately and cumulatively), as they relate to this alternative but only in so much as the management measures and analysis would differ from that in alternatives 1, 2, and 3,
i. the FMP-level decisions made concerning Category 1 through 3 management measures, and,
ii. the range of potential State decisions under the category 2 and 3.

AGENDA C-1
JANUARY 2003
Supplemental

COMMENTS
from

ARBITRATION COMMITTEE

Comment to the NPFMC on the work of the Binding Arbitration Committee

I. **Caveat.** The Binding Arbitration Committee has met numerous times, and over the course of these meetings, has considered and refined a number of proposals. The following discussion is confined to two proposals which have survived this testing, so far. These proposals are presently undergoing trial in a gaming analysis, under the direction of Professor Plot of CalTech. Neither the structure of this experiment, nor the results, have yet been made available to the Committee, and these must be considered before we can get much further.

The work of the Committee is far from complete. There are many problems, including the very difficult problems of product grading and price differentials, which have not been addressed. It would be precipitous to conclude the work at this point. We are far from having solved the problem posed by the NPFMC 'preferred alternative' which is: How to replace a robust, competitive pricing system, with a non-competitive system which provides the same balance of negotiating power, and the same - or improved- incentives for efficiency and improved product value.

Depending on the results of the experiment by Prof. Plot, the NPFMC may be able to determine that the "**fleet wide**" model should provide the framework for further development. For a number of reasons listed, the "**last best offer**" model has not yet evolved sufficiently to consider as a vehicle for the solution, and it is doubtful that it can. It certainly should not be chosen to stand alone. In any event, the NPFMC should instruct the committee to consider whether the behavior of the binding arbitration model is affected, under the different alternatives which have been adopted for the analysis required for preparation of an Environmental Impact Statement.

II. The model called "**last best offer**" is derived from a Canadian program, which recently broke down when processors withdrew from the system. This model favors those who are least vulnerable to risk, and in consequence, reduces the incentive of those more vulnerable to rely on the system for protection. In other words, the model does not afford protection to those who need it. This encourages a bargaining dynamic that provides leverage for stronger players. In the NPFMC 'preferred option' these players are the processors who are granted relatively large market share allocations and who already have pollock processing rights, granted under the American Fisheries Act. The leverage of these players is enhanced because the model encourages an 'early marriage' which binds harvesters to processors, prior to price determination.

Each processor is allowed an independent arbitration, and a separately determined price. The model also offers an 'opt in' process, which provides that additional harvesters may join with processors, later. This ability to 'opt in' however, does not mean that harvesters will necessarily be able to receive the best price. *The* "**last best offer**" *model fails the first test of a competitive price simulation model, the problem of the 'last man standing.'*

This failure occurs because, in the "**last best offer**" model, it is inevitable that the last harvester remaining to be 'married' to a processor, will be facing the processor with the least appeal, the one offering the lowest price - and will be compelled to accept that price. In a competitive model, the harvester would simply go to the processor offering the highest price - therefore the model produces a result which is contrary to present experience, and is unacceptable.

This results because the process of price determination is independently carried forward on the basis of costs declared by the processor, which creates a perverse incentive for processor inefficiency. There is no

incentive for processors pay the costs necessary to move to new product forms or more efficient methods. Assume, for the moment, that processors will sell their production into a competitive market,

which will determine the price they receive. This means that a larger proportion of the available value of processed product will be dissipated by 'inefficient' processors. Depending upon the nature of costs allowed to be considered in arbitration, this 'dissipated' revenue might, in fact, be retained by the processor. For instance, the overhead costs for large facilities engaged in production of multiple product streams are allocated arbitrarily by the facility owners. *In plain terms, harvesters will pay additional costs for processor 'inefficiency' and 'overhead' in the* "**last best offer**" *model.*

The "**last best offer**"arbitration itself is simple and expedient, because of the very limited options available to the arbitrator, who must pick one of the two prices tendered. This expedience, however, affords no reasonable possibility that the arbitrator will be well enough informed to determine the validity of the presumption that the processor is selling into a competitive market. Neither is the arbitrator likely to have enough information to determine the merit of the processor's cost claims, for that matter. This encourages transfer pricing between processor and marketing affiliates (domestic or not) and allows the downstream affiliate to capture a greater share of the value of the product, which is thereby lost to the harvester. *In the case of the* "**last best offer**" *model, expedient process is a steep slippery slope to hell for the harvester.*

III. The "**fleet wide**" model was developed specifically to pass the first test, at least, of a competitive price simulation model, the problem of the 'last man standing.' This is an important problem in a philosophical sense, because a hypothetical harvester is compelled to accept a particular market at a sub-standard price, when it is not solved. It is also important in a pragmatic sense, because the NPFMC 'preferred alternative' rapidly leads to a system in which any independent player can become the 'last man standing' at any given time. This occurs once the first complete 'marriage' of quota under the new paradigm has occurred. At that point, all harvesters are 'married' to processors. Processors can accept new harvesters, at new terms, but only by dropping a harvester that was formerly 'married' to the processor. *Any harvester could then become the 'last man standing' and be compelled to market at imposed terms.*

The "**fleet wide**" model solves this problem by providing a mechanism for arbitrating a minimum price that is available to all harvesters. This minimum price is currently made available to harvesters due to collective bargaining. The "**last best offer**" model eliminates both the minimum price and collective bargaining, and constitutes a destabilizing departure from the *status quo* of relative bargaining power, to the detriment of harvesters.

In addition, the "**fleet wide**" model provides a closer surrogate to the incentives toward greater processor efficiency which exist under the present competitive system. The minimum fleet wide price rewards more efficient processors with higher potential returns. Not only are the perverse incentives of the "**last best offer**" model reduced, but co-operation between harvesters and processors to increase efficiency and generate more value in the product, and thus, greater shared returns, is increased.

The "**fleet wide**" model requires an arbitration of some complexity. This is not specifically the result of the model, but of the task set by the NPFMC. This results from the necessary data collection, and its assimilation by the arbitrator. There is no reasonable alternative, given the 'preferred alternative' chosen by the NPFMC. The data requirements of the proposed management system are immense, and burdensome.

This is apparent in the remarks of the SSC, which are pointed at program assessment and evaluation, and of the NPFMC itself. This cost is an unfortunate consequence of the 'preferred alternative' which results from ending competitive behavior between processors. The "**fleet wide**" model can only successfully deal with the difficulty, to the extent that the NPFMC solves the problems of data collection, and makes

the results available to the process of arbitration. The **"last best offer"** model does not solve this difficulty, it simply ignores this consequence.

Gordon Blue
president, CRAB group; past-president & convener, Alaska Marketing Association

Comments on Binding Arbitration
Joe Plesha

I prefer the last/best offer system of arbitration to the Fleetwide model. The Fleetwide model forces a single pricing mechanism on all harvesters and all processors when in fact there is a large variation in operations that may require slightly different pricing results. The Fleetwide model also removes some incentive to negotiate seriously because no party risks losing arbitration to the others last/best offer – the arbitrator has the authority to craft a price solution without regard to what the parties have tried to negotiate. The real battle may well be over selecting the arbitrator, since the power to craft a price is then handed to that individual.

The last/best offer system allows harvesters and a processor that elect to work together to craft a contractual arrangement that suits their specific needs, and to receive the benefit of arbitration if they cannot agree completely on the price and terms of delivery. The process will be less burdensome and the result more suitable for the parties in this system.

The Fleetwide model disconnects the arbitration of price from the resolution of delivery terms. The last/best offer system requires they be resolved at one time, by the same arbitrator. Terms can effect price, and visa versa, so it is important to both processors and harvesters that they be addressed as a package.

Although I think a price formula will become the standard system in the crab fishery, there may well be times when the parties would prefer to have a fixed pre-season price. Small processing quota owners for example may not have the ability to hold and sell crab throughout the marketing season, and therefore would like to establish a fixed price for its suppliers. Some harvesters would prefer that they obtain a fixed minimum price rather than take a market risk that a formula implies.

Under the Fleetwide system, the harvester has the right to put his shares to a processor, and has substantial leverage to dictate delivery terms. Only if the harvester agrees to an arbitration of the terms does he ever form a contract with the processor. This means that even after price arbitration, and possibly after the season has begun, delivery terms can be changed from what the processor thought it was agreeing to during price negotiations. This could be especially difficult for northern region operations, where no other activities support the plants during the crab season.

Joe Plesha
Binding Arbitration Committee Member

Comments on Binding Arbitration
Jake Jacobsen, Co-Chair

At this time, I consider both arbitration models as having some favorable characteristics and some flaws. I think it is important to preserve at least one important element of the status quo price formation system: a minimum price, established prior to the season, and paid by all processors. The "fleet-wide" model protects this necessary element, but it includes in-season arbitrations and unwieldy mechanics generated by the desire to include fixes for various "what-if" scenarios. The elegance of the "Last-Best" model is its simplicity, but part of that simplicity is due to the absence of fixes for some of those "what-if" scenarios.

I don't think weak processors can be brought to par (in efficiencies and ability to pay higher prices) with stronger processors under either model. There are fundamental differences in operational efficiencies and/or customers which enable some processors to pay more, but the establishment of a fleet-wide price over the last ten years has not led the weak processors to make improvements in their ability to be competitive. They pay the AMA-established minimum price because they desire to continue processing crab. I have concerns that under a "fleet-wide" model, the arbitrator may adjust the fleet-wide price downward to allow profitability for weak processors. On the other hand, under the "last-best" model, some harvesters may be forced to take a lower price at some docks.

I am not prepared to endorse either model, but recommend continued work to try to resolve some of these important issues.

Jake Jacobsen

Date: January 10, 2003

To: John Garner, Erling Jacobsen Jr. Co- Chairs
NPFMC Binding Arbitration Committee

From: Lance Farr, President
Alaska Crab Coalition

RE: Comments on Binding Arbitration Models

The committee has developed two models that can work to establish a fair price for the industry. I prefer the Last Best Offer Binding Arbitration Model over the Fleet Wide Model for the following reasons.

- **The timeliness of the Last Best Offer:** Last Best Offer starts 25 days before season opening versus Fleet-wide which starts 120 days before season opening. Last Best Offer is more efficient.
- **Completeness of Last Best Offer:** Last Best Offer completes everything with a single arbitration. (price, delivery window & place) Fleet-wide is a two-step process where the arbitrator establishes a price first, and then you arbitrate delivery, quality and other issues.
- **Cost of Last Best Offer:** The cost to the industry of a single arbitration with Last Best Offer where everything is decided will be less than the cost of fleet wide because of the two-step process.
- **Less Risk With Last Best Offer:** With Last Best Offer there is a lower risk of the arbitrator selecting a price that is unfair to either side. In Canada the industry was only .03 apart when it arbitrated the first time. With Last Best Offer there is too much risk to come in with an offer that you can't support with data. You can take a risk and highball or lowball an offer, but the chances of winning are slim because of the data available. In Fleet-Wide you are relying on the arbitrator to be educated and understand the information to come up with a fair price. You are risking a lot on his decision, and this could be very contentious.

I have been involved in the price formation process for the crab fishery for the last twenty-five years and feel the Last Best Offer Binding Arbitration Model is straight forward and the practical businesslike approach to establish a price in the case of failed price negations.

1/13/03

Comments by Gary Painter

We, on the Binding Arbitration Committee have spent substantial time and energy in getting to where we now are. And where we are is essentially two separate arbitration structures, one advanced by the processing sector, and one advanced by the harvesting sector.

Binding arbitration became part of the Council's crab rationalization program to help insure that a competitive price structure would be a part of post-rationalization. The binding arbitration system can help insure a fair price structure for either sector. With the Council's 90/10 choice, I believe that the harvesting sector is the one needing the most protection.

The **Fleet-wide model** is better for the harvesters, because it is straightforward, and involves no brinkmanship. The price is determined by a formula. The formula is based upon current sales. The arbitrator(s) can apply a price smoothing function. The overall process is subject to very little political maneuvering. In addition, it appears that the same mutually agreeable arbitrator(s) that were chosen for price formulation can arbitrate most other disputes that are not part of the price formula. The **Last best offer model** appears to advance the courts for disputes of that type.

Both models could work for the industry. I encourage the members of the Council to have both models analyzed, and to reserve their final decisions until analysis has been completed and public input has been taken.

TOTAL P.01

COPY FOR YOUR INFORMATION

RECEIVED
JAN 13 2003
N.P.F.M.C

DATE: 1/10/03

TO: John Garner & Jake Jacobsen, Co-Chairs
NPMC Binding Arbitration Committee

FROM: Walt Christensen
V.P. Alaska Marketing Association

RE: Binding Arbitration

I prefer the last best offer arbitration model over the fleet wide model. The last best offer model seems to address all the issues involved in the event of failed price negotiations. The last best offer model is practical, efficient, and straight forward that would result in a more easily administered system with less costs.

The last best offer arbitration model is very similar to the Canadian snow crab arbitration system, which has been up and running for several years now, giving it a good proven track record. Putting it simply, it works.

Other issues such as quality and delivery time frames can be addressed at the same time if needed with one arbitration. For these reasons, I believe both the harvesting and processing sectors would work well together under the last best offer arbitration model in the event of failed price negotiations.

Sincerely,

Walt Christensen

Royal Aleutian
SEAFOODS, INC.

Monday, January 13, 2003

To: John Garner & Jake Jacobsen
Binding Arbitration Committee

From: Garry M. Loncon

Re: Comments on Binding Arbitration Structures

This memo is intended to contrast the two alternatives or structures that the committee has put forth; namely the "last-best offer" form of arbitration and the "fleet wide model" of arbitration. This memo is not necessarily intended to highlight the similarities, but rather focus on the differences of the two structures.

Structure: **Last-Best Offer Arbitration**

Benefits:
A system whereby harvesters belong to a single fleet wide bargaining association is reflective of how harvesters are organized today. The Alaska Marketing Association ("AMA") is organized for the sole purpose to bargain on price on behalf of its harvester members. Not all harvesters belong to the AMA, however all harvesters benefit from AMA's negotiated price. The AMA intends to provide harvesters with a price on a pre-season basis in order to avoid a strike. The last-best offer structure follows current practices.

The last-best offer format arbitrates the most important issues that harvesters and processors face, namely; price, delivery timing & location, and quality. This system outlines the complete relations of the parties, on a pre-season basis, and most closely mirrors current practices. This proposal does not dictate the price and terms of the arbitration and keeps the Council out of the awkward position of mandating a specific methodology.

The last-best offer format restricts multiple arbitrations and mandates that a processor can only arbitrate once per specie season.

The last-best offer format, whereby an arbitrator is limited in selecting the "last-best" offer from each the processor and the harvester simplifies bargaining positions and lessens gaming techniques. The Canadian opilio fishery has embraced this simplistic, yet effective format since 1997.

Monday, January 13, 2003

The last-best offer format reduces tension between the parties in selection of the arbitrator, given the arbitrators limited role.

The "opt-in" provision, post arbitration, addresses the last-man standing concerns.

Problems:
A single harvester collective bargaining association is somewhat a "one-size fits all" solution. Selective harvesters may be disenfranchised and desire to form an independent bargaining association.

Opponents to this model argue that the arbitrator should only arbitrate price. Price negotiations should be separated from delivery times to provide clarity between harvesters and processors.

Structure: **Fleet wide Model**

Benefits:
The fleet wide model like the last-best offer format follows current practices of establishing price for all harvesters on a pre-season basis. This model has the added benefit, in that it does not mandate one single collective bargaining association.

The model does restrict price arbitration to a single event, however allows for a put option that would require a second form of arbitration. See put option discussion below.

Problems:
The fleet wide model fails to arbitrate the complete relationship between parties, in that it leaves open delivery timing & location. Delivery terms that define timing and location are at times inseparable from price. In order for a processor to rationalize costs delivery timing is a critical element. This is especially acute for processors operating either floating operations or in the Pribilof islands. The fleet wide model separates delivery timing from price and allows for a second arbitration event.

This allows harvesters to utilize the put option and force a second form of arbitration. The put option while it does have some benefits to harvesters it can be problematic to processors. The put option in order to be workable requires that the put option has an explicit expiration period that should be decided in the original price arbitration event. This would prevent a processor from remaining open for an extended period of time and operate on a non-efficient basis. The QS holder should be required to pledge all the

remaining uncommitted IFQ, otherwise the QS holder could "shop-around" small quantities and game the system. Finally, the put option time frame from the time the put is exercised to arbitration needs to be very short (a matter of days) in order to prevent needless delays during a season.

The fleet wide model is actually a form of binding mediation, whereby the arbitrator is free to select any formula for establishing price. This system of establishing price fosters disingenuous negotiations among parties and promotes gaming. The last-best offer format provides incentive to resolve price differences that this model would discourage.

This method of price formation established solely by the arbitrator is single greatest weakness of the fleet wide model.

The fleet wide model mandates a formula rather than a straight price. Certain harvesters and processors may prefer, given the nature of the particular season, to settle a price rather than a formula.

Selection of the arbitrator under this system where all the authority to set price is in the hands of the arbitrator would lead to a hotly contested selection process.

Comments of John Garner
Binding Arbitration

The Binding Arbitration Committee has forwarded two proposed systems for the NPFMC consideration. They are a system involving "last/best final offer" arbitration, and the other system (called the "Fleetwide" system) that grants the arbitrator substantial leeway to craft a decision.

Each system has its pros and cons, but on balance the last/best offer approach is in my opinion better suited to the crab fishery. It is the system that I think the Council should select as the framework for a system of binding arbitration.

The last/best offer system results in a pre-season minimum price for the benefit of every harvester. Unlike the current price negotiations, it is possible that the last/best offer system might result in different minimum prices among processors. That may be a disadvantage to this system. However, I think that the pricing standard (which requires consideration of the price paid by other firms) will alleviate any significant deviations among firms. This will ensure that there is pressure on all processors to increase market value and revenues for the fleet. An additional potential disadvantage to the last/best offer system is that the arbitrator will not have any flexibility to adopt terms different than what the parties propose. There may be occasions when some degree of flexibility would be preferred, particularly as to delivery terms. Advantages to the last/best offer system though outweigh these shortcomings:

- It provides incentives for a pre-season matching of harvesters and fishermen – which in turn helps the contract negotiations stay focused.
- It gives the parties flexibility to craft a pricing mechanism that makes sense for them (fixed price or formula).
- Delivery terms are addressed at the same time as price – substantively that makes the most sense and it should reduce the number of arbitrations so less cost to the system.
- The last/best offer system will ensure that the final offer is the "best offer" from the party, and that this will help promote consensual agreements before arbitration is needed.

The Fleetwide model also establishes a single pricing mechanism for all participants in one pre-season price arbitration. The minimum price is established on the same basis for everyone in the fleet, for all processors. That is a good system that mirrors in many respects how we currently establish a minimum price for opilio and Bristol Bay red king crab. These benefits though are outweighed by several disadvantages in the Fleetwide model:

- The model does not resolve price and delivery terms in the same arbitration. Delivery terms (place, time, quantity, quality) can have a bearing on price, and these should therefore be considered at one time.

- The system mandates a pricing formula (revenue sharing); although I agree that a formula approach is logical and appropriate in many circumstances, there is no reason to prevent arbitration involving a different pricing mechanism (e.g., a fixed minimum price) if the parties wish to do that. Not everyone will want to take the risk that a formula price might imply.
- Unlike the last/best offer system, the Fleetwide model gives the arbitrator latitude to craft a formula different than any of the parties proposed. Although there are instances when some discretion might be beneficial (particularly as to delivery terms), I don't think the parties will be as forthright in their negotiations with each other in the Fleetwide system as they will in the last/best offer model.
- The Fleetwide system may be overly cumbersome and legalistic compared to the last/best offer system. It requires more time pre-season, requires price arbitration every year, and may result in many individual arbitrations over delivery terms (using the "put" option).
- The Fleetwide system is presented as a package – the Council is being asked to forgo the usual flexibility to pick and choose elements to address specific issues. Curing some of the problems noted here would make this system more acceptable.

One Caveat: Council staff has contracted with Dr. Charles Plott to analyze these two systems. His report is not available and will not be available until shortly before the Council meeting. His analysis may contain information that bears on our assessment of these two systems. Additional comments may be appropriate once his report is received.

Submitted by John Garner

January 17, 2003

RECOMMENDATION OF TERRY LEITZELL

LAST BEST OFFER ALTERNATIVE

ISSUES

Inclusion of a binding arbitration system is necessary to achieve three purposes:

1. Provide an alternative to strikes, which are costly and disruptive to both sectors.
2. Protect against a shift of bargaining leverage between harvesters and processors.
3. Ensure that each harvester has access to an arbitrated price if he or she wants.

OBJECTIVES OF LAST BEST OFFER ALTERNATIVE

1. The binding arbitration process should be straightforward, uncomplicated and efficient.
2. The process should be fair and unbiased.
3. The process should be open and transparent to all parties.

KEY CHARACTERISTICS OF THE LAST BEST OFFER ALTERNATIVE

1. The Last Best Offer process of matching-up shares between harvesters and processors and the arbitration of price and delivery terms occurs in a maximum of twenty-five days before the season opening. Fishing can occur at the best times for both sectors. In comparison, the Fleetwide Alternative requires at least 120 days to complete.
2. In the Last Best Offer Alternative, arbitration is initiated solely by harvesters, not by processors. In the Fleetwide Alternative, all harvesters must participate in arbitration.
3. In the Last Best Offer Alternative, the arbitration decides price and all other necessary elements for delivery and sale, e.g. price, delivery time, delivery place, etc. The entire result is binding on the processor and those harvesters who decided to participate in arbitration, thus protecting both sectors. The Fleetwide Alternative limits pre-season arbitration to price only, with a second arbitration to follow later for delivery terms.
4. In the Last Best Offer Alternative, both harvesters and processors are bound by the result of the arbitration. In the Fleetwide Alternative, only the processors are bound by the arbitration. Harvesters may accept the arbitrated price or reject it as they wish.
5. The arbitration objective is fair by providing harvesters and processors with their historic shares of first wholesale prices.
6. All data submitted by the parties or obtained by the arbitrator is available to all parties, subject only to antitrust constraints.
7. Under the Last Best Offer Alternative, any harvester may "opt-in" to a completed arbitration by accepting the terms of the arbitration result. Therefore, a harvester who decides to wait and not to arbitrate continues to be protected.

CRAB RATIONALIZATION DATA COLLECTION COMMITTEE REPORT

September 30, 2002 (*Revised January 16, 2003*)

CURRENT DATA COLLECTION EFFORTS

The Committee notes that there are extensive data submission requirements in Federal and State law that relate to many of the areas of concern arising out of the Council motion. The agency staff provided a substantial number of examples of current data submissions and information on who receives the data currently, how it is used, and how it might apply to the new data requirements of the crab plan. The Committee respectfully requests that Federal and State agencies finish canvassing the available sources of data for content and utility for meeting the stated Council needs. Further, we would respectfully request that the agencies develop a flow chart showing the data being provided, the agency receiving the data, and with whom the data is shared. We believe a document such as this will be useful to the public in commenting on the various options the Council might consider in its final action. Additionally, we request that after final action is taken establishing the data requirements, the Council update this document so that all data submission requirements are collected in one source. We respectfully request that the agencies involved in the collection effort review this package to determine areas of duplication, inconsistency and to identify opportunities to reduce the reporting requirements of industry.

INTRODUCTION

The Committee met many times since the June Council meeting, with many meetings attended by Council, NMFS, and ADF&G staff members. NOAA/GC was also consulted on several occasions. Several meetings concentrated on draft survey forms prepared by NMFS, with industry representatives giving practical advice related to business records. The minutes prepared by Darrell Brannan provide a record of the discussions; this report presents Committee Member recommendations to the Council and a discussion of several areas of concern. Attached to the September 5, 2002 Minutes are copies of detailed position papers submitted by several groups.

COUNCIL DIRECTION

The Council's problem statement says that, among other objectives, the BSAI crab rationalization program should address the social and economic concerns of communities, maintain healthy harvesting and processing sectors while promoting equity between them, promote efficiency, and provide healthy, stable and competitive markets.

The Council's June 10, 2002 Motion states that a mandatory data collection program shall be developed and implemented to provide cost, revenue, ownership and employment data. The Council Motion states that it intends to study the impacts of the program and analyze the economic and social impacts of possible future amendments and that confidentiality must be assured. The Motion further notes the concern that the industry has with enforcement of the data collection requirements.

Finally, the Council Chairman's letter to Congress states that the program is to include extensive data collection and review programs to assess the success of crab rationalization relative to achieving the stated goals.

COMMITTEE APPROACH

The Committee recognizes the desire of the Council to analyze and review the crab rationalization program after rationalization to fulfill its duty and commitment to be an effective steward of a public resource. The Committee believes that the Council intends to assess the impacts of the rationalization program on the industry and communities mainly by reviewing economic changes from the pre-rationalization status to the post-implementation situation. With that in mind, we submit the following recommendations for a mandatory data collection program, stating, where possible, an industry consensus on the data to be collected, the method of collection, and the verification and enforcement systems to be employed. The committee will also provide commentary on the proprietary nature of the data and the uses for the data that is collected.

GENERAL PRINCIPLES—CONSENSUS VIEWS

1. Ownership Information. The owners of Quota Shares, Catcher-Processor Quota Shares, and Processing Quota Shares shall submit to the National Marine Fisheries Service information similar to that required in the halibut/sablefish and AFA pollock programs for the purposes of analyzing and enforcing caps. For purposes of ownership cap analysis, the data required to establish affiliation of entities in the crab program will be similar to the data required to establish affiliation of entities in the pollock fishery.
2. Historical cost and revenue information. Historical data is needed as a benchmark for comparing pre- and post-rationalization status of the various sectors affected by crab rationalization. Committee Members are concerned that historical data may be difficult and costly to retrieve depending on the years selected and the detail required. For example, requiring simply revenue information for 1996 may very well be possible for most entities, but providing detailed cost information may be very difficult. There have also been sales of assets that may make certain data unavailable. Additionally, some fisheries have been closed for extensive periods of time, making data collection very difficult and problematic. For these reasons, Committee Members, who all support the collection of historical data, do not have a consensus on the specific years for historical data collection. We do however recommend that the Council consider the following options for the base years for data collection:
   - 1996 – 2001 (all years inclusive).
   - Pick three representative years (1996 – 2001).
   - The years used may vary depending on the fishery.

   The Committee also notes that the enforcement standards for submission of historical data must take into consideration the possibility that some data simply may not be available.
3. Crab-Specific Data. All economic data collected should be related only to crab harvesting and processing operations specific to the BSAI crab fisheries under the

program. The Council will review and assess the impacts of the crab program, not the overall performance of entities, sectors, and communities in all fisheries.

4. Revenue Data. ADF&G fish ticket data currently provides information on the ex-vessel price paid for crab. Crab processors have already agreed to provide first wholesale revenue data and ex-vessel payments (including adjustments after delivery) for all crab sales. Wholesale revenue data shall include all revenues received on the first transaction of sale by the processing firm. The pounds sold by a processing firm to affiliated entities will also be provided. These two data sets can be consistent across all entities in the harvesting and processing sectors and thus provide one basis for assessing impacts of the program.
5. Employment Data. The processing sector will provide wage information (wages and units of employment such as hours, number of positions) for direct labor associated with each crab species and the Social Security number for each employee. The harvesting sector will provide aggregate crew share data, Social Security numbers, and addresses as provided by the crew members.
6. Confidentiality. All data provided must be maintained as strictly confidential. Because of the importance of this issue, a separate discussion is laid out below.
7. Data verification. NMFS should be able to review data source documentation to prevent material errors that could affect the utility of analysis. If a third party is used to collect data, then a protocol needs to be developed for data verification through that third party.
8. Enforcement. The Committee generally agrees that the accuracy of data submitted is important and that an enforcement program is warranted.

AREAS OF CONCERN

1. Variable Costs. Committee Members agree that variable cost data(expense amounts and units of measurement), solely related to crab, should be submitted. Some committee Members feel that variable costs should be required only as part of a "full disclosure" of all costs (fixed and variable) and all revenues. They also believe that the "full disclosure" data should be provided to the private party Binding Arbitration system.
2. Fixed Cost Data. Some Committee Members oppose submission of any fixed cost data, while others believe that there should be "full disclosure" of all costs, both variable and fixed. Those supporting "full disclosure" recommend that the data also be submitted to parties in binding arbitration. The processor and catcher/processor committee members recommend submission only of fixed costs that will have a direct effect on variable costs. Those that oppose submission of fixed cost information state two reasons. First, fixed cost data, when coupled with revenue and variable cost data, may allow the analyst to determine profitability of an entity. We do not believe that the Council intended, nor should, analyze or base management decisions on the profitability of individual entities. Second, the analysis of fixed costs requires an allocation of those costs to crab-specific operations, which is difficult and not consistent from company to company. Businesses allocate fixed costs such as overhead and finance costs in any of several different manners, particularly if the

vessel or plant operates in several fisheries. For example, a vessel owner could allocate fixed costs based on days fishing, or per pound of all species, or per ex vessel value of each species. A plant owner could allocate cost based on value (of purchases or sales), pounds (purchased or produced), or production period (using hours or cost of direct labor, or days or other temporal units of time). An owner of multiple vessels or plants may not allocate financing costs at all if he has a single financing package. Although the Council could force each entity to allocate costs on the same basis, that would be burdensome to some owners and could skew a crab-specific analysis.

3. Enforcement. NMFS enforcement personnel should be able to periodically review source documents on a random spot basis or for cause. Since the economic data is not needed for crab conservation and is not time-sensitive, penalties should be related to the magnitude of an infraction. Adequate time must be provided for reporting seasonal or annual data; committee Members recommend a minimum of four months for submission of economic data. Penalties should be limited to the "knowingly and willfully" standard of 16 U.S.C. (1)(I) and to material misinformation that would have a significant impact on the accuracy of the analysis.

CONFIDENTIALITY

Confidentiality of data submitted is the area of most serious concern to the Committee and its Members appreciate the Council's emphasis in its Motion on ensuring strict confidentiality. Business confidential and proprietary data is extremely sensitive for competitive reasons and must be protected by a clear statutory and regulatory mandate. The Committee notes that the future existence of strong confidentiality protection should not be a rationale for requiring extensive proprietary data submission. The Council should determine what data is required and ensure that all of it is protected.

1. Third Party Role. The Committee recommends that proprietary economic data should be submitted to an independent, third party (e.g. the Pacific States Marine Fisheries Commission) that would provide the data to NMFS, state agencies, and the Council on a blind and aggregated basis. The Committee believes that analysis does not require connection to specific entities and that use of a third party could provide another layer of protection from public disclosure.
2. Aggregated Data. The Committee recommends that all economic data should be aggregated before being given to analysts at NMFS, state agencies, or the Council. Aggregation should be at the following number of entities: harvesters at ten to fifteen; catcher/processors at four; and processors at four. Agency analysts may request data using different methods of aggregation depending on the analysis required, e.g. vessel length, horsepower, etc. In advance of the scheduled review of the rationalization program, the Council should decide what it intends to review and whether disaggregated data is required for that purpose.
3. Public Disclosure. The Committee recommends that, for Council analysis presented to the Council and the public, the current ADF&G requirement of the aggregation of four or more entities should be the minimum requirement for all economic data. If the aggregation level is higher for submission of data to the analysts, then the higher level should also be used for public disclosure. The confidentiality protections should

protect against disclosure of economic data under both state and federal FOIA statutes.

4. Cost of Data Production. Committee Members are concerned about the burden and cost of the data collection program and recommend that all costs (including the costs of a third party collection agency) be covered from the specific fees currently authorized in the MSA.
5. Access Limitation. NMFS, state agencies and the Council should each develop an internal protocol requiring that a senior manager (perhaps NMFS AFSC Director, Council Executive Director, ADF&G Deputy Commissioner, etc.) designate individuals that may have access to the data.
6. Individual Responsibility. Each individual that may have access to the data should sign an individual confidentiality agreement containing penalties for breach of the requirements.
7. Agency Sharing. Regulations should be developed by NMFS for implementation of the confidentiality requirements of the crab economic data program with application to NMFS and the Council. Sharing of data with a state agency should require negotiation of an MOU containing the same specific requirements for state employees as those for federal employees (the current NMFS-ADF&G MOU requires review and revision). The committee concurs with the recommendation of NOAA GC that the current MOU is out of date. A review will take some time, and should be undertaken now to arrive at an MOU that will be implemented with the new data program required under the crab rationalization plan.

UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
National Marine Fisheries Service
P.O. Box 21668
Juneau, Alaska 99802-1668

AGENDA C-2
JANUARY 2003
Supplemental

January 15, 2003

David Benton, Chairman
North Pacific Fishery Management Council
605 West 4th Suite 306
Anchorage, Alaska 99501

Dear Mr. Benton:

We've been asked by industry members to assess whether federal regulations implementing the recency participation period (RPP) for the crab license limitation program (LLP) at 50 CFR 679.4 (k)(5)(iii)(A), are inconsistent with the Council's Amendment 10 language. Amendment 10 establishes the RPP qualification period to further the objectives of the LLP by eliminating latent capacity in the crab fisheries. Amendment 10 prevents vessels that did not participate in the crab fisheries between January 1996, and February 7, 1998, from receiving an LLP license.

Specifically, the Amendment 10 language allows vessel owners to combine catch histories to accommodate the recency requirements if these histories were acquired prior to 8:36 a.m. Pacific time on October 10, 1998. However, final regulations implementing Amendment 10 require the vessel that fished in the RPP be the same vessel used to fish in the original LLP qualification periods, with one limited exemption. This effectively prevents vessel owners that combined catch histories from qualifying for an LLP licence under Amendment 10.

As evident in the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis, we believe the Council's intent in recommending Amendment 10 was to allow a vessel owner to qualify for an LLP license if he/she purchased LLP qualifying catch history and then used his/her vessel to fish in the RPP.

NMFS intends, through proposed and final rule making, to correct the federal regulations to conform with the Amendment 10 language. We estimate that few additional licenses will be granted by this regulatory change. We assume the Council would have no objection to revising the regulations to

be consistent with the Amendment 10 language. NMFS staff will be available at the Council's January 2003 meeting to answer any questions on this issue.

Sincerely,

For James W. Balsiger
Administrator, Alaska Region

cc: Ed Hein, OAA
Phil Smith, RAM

Royal Aleutian Seafoods, Inc.
701 Dexter Ave., N., Suite 403
Seattle, WA 98109
(206) 283-6605 / Fax (206) 282-4572

17 January, 2003

Mr. David Benton, Chairman
North Pacific Fishery Management Council
605 West 4th Avenue, Suite 306
Anchorage, AK 99501-2252

Sent Via Facsimile 907.271.2817

Re: C-2, Crab Rationalization
Binding Arbitration

Dear Mr. Chairman and Council Members,

This letter is written as public comment regarding the selection of a preferred alternative structure for Binding Arbitration.

Royal Aleutian Seafoods, Inc. supports the structure variant that the committee developed known as LAST BEST OFFER BINDING ARBITRATION.

As a member of the committee, Royal Aleutian participated in the development of the various structures contained in the *Report Of The Working Group On Binding Arbitration* and supports the Last Best Offer alternative as opposed to the Fleet-Wide model.

Both the Last Best Offer and Fleet-Wide structures call for a single, pre-season arbitration event, which is the preferred methodology. However, there exist sharp contrasts between these two structures that persuade Royal Aleutian to select the Last Best Offer structure as the preferred alternative.

Arbitration Format:

Preferred:

- Last Best Offer employs the "last best offer" format for price selection

vs.

- Fleet-Wide allows the arbitrator to select any price, a form of mediation

The Last Best Offer format, as the name implies calls for the arbitration decision based on a "last best offer" system with the arbitrator choosing one of the last best offers made by the parties (IFQ and IPQ holders). The form of price selection that mandates that the arbitrator select a price within this "last best offer" system is a fundamental and critical

Royal Aleutian Seafoods, Inc.

NPFMC
January 17, 2003

distinction from the Fleet-Wide structure. The Fleet-Wide model allows the arbitrator to select any price, in other words the event is binding mediation. The Last Best Offer format reduces gaming between the parties, fosters honesty, and encourages settlement. Either party is constrained from selecting a price that is "too far" from the market, based on the principle that the arbitrator could select the other party's price.

What is Arbitrated?

Preferred:

- Last Best Offer arbitrates price, and delivery terms and price methodology is open

vs.

- Fleet-Wide arbitrates price only and mandates a formula to establish price

The Last Best Offer structure arbitrates the most important issues that harvesters and processors face, specifically; price, delivery time and location, and quality. This system outlines the complete relations of the parties, on a pre-season basis and most closely mirrors current practices. Further, this structure does not dictate that price be established in the form of a formula, like that proposed in the Fleet-Wide structure. Mandating formula pricing like that in the Fleet-Wide model, places the Council in an unfamiliar and awkward position of dictating price methodology. The Last Best Offer leaves open the possibility of formula based pricing, but does not mandate such a structure.

The Fleet-Wide structure only arbitrates price. Therefore, timing of deliveries is left open and IFQ holders would be allowed to "put" such IFQs to any processor with available individual processing quota (IFQs) for the arbitrated default price. If the processor to whom a harvester puts IFQ does not agree with the delivery terms the matter would expeditious go before the arbitrator. This would result in unwanted second trips to arbitration after the season had begun. The Fleet-Wide structure fails to address all the relevant matters that harvesters and processors face in the context of arbitration, in other words unbundling price from delivery terms could become problematic for both parties, particularly small processors like Royal Aleutian. A primary benefit of crab rationalization to a small processor is the explicit ability to plan operating seasons, and consolidate processing activities in order to minimize costs. This could be jeopardized under the Fleet-Wide model, because operating seasons would not be determined on a pre-season basis.

Very truly yours,

Garry M. Loncon
CEO

January 16, 2003

Dear Senator _____:

I am writing to you concerning a proposed action of the North Pacific Fisheries Management Council ("the Council"). The proposal is based upon a report from the Council to Congress, and advocates that the Congress authorize controversial elements of a rationalization plan for the crab fishery in the Bering Sea and Aleutian Islands. As an industry participant, I am concerned that important factors, which are beyond the purview of usual Council consideration, have been overlooked. These include the impact of the proposal on existing competitive structures, and the changes in antitrust rules that could result from adoption of this program. My concerns have been heightened by the issuance of a report from the General Accounting Office, GAO-03-159, which questions the validity of the study on which the Council proposal was based.

I am concerned that the program does not provide adequate protections for independent harvesters and communities. I urge you to ask for a hearing before the Commerce Committee, to investigate these matters and to seek answers to the questions raised by the GAO report. The Council has correctly determined that an analysis (EIS) needs to be conducted pursuant to the National Environmental Policy Act (NEPA) before a rationalization plan can be implemented. However, the Council has yet to bring the analysis sufficiently forward so as to be informative. A completed EIS would provide information that is critical to support legislative action, and to assure a fully informed hearing by the Committee.

I urge you, Senator, to direct the North Pacific Fisheries Management Council to proceed with conducting a thorough and complete analysis. Please direct the Council to include consideration of those factors mentioned in the GAO report. This should result in submission of an EIS that will help ensure that the best possible decisions are made by both the Council and Congress.

Sincerely, Mike W. Goad

1212 31st St.
Anacortes, WA. 98221

cc: NPFMC
Governor Frank Murkowski, AK

January 15, 2003

~~Dear Senator~~ Chairman David Benton:

I am writing to you concerning a proposed action of the North Pacific Fisheries Management Council ("the Council"). The proposal is based upon a report from the Council to Congress, and advocates that the Congress authorize controversial elements of a rationalization plan for the crab fishery in the Bering Sea and Aleutian Islands. As an industry participant, I am concerned that important factors, which are beyond the purview of usual Council consideration, have been overlooked. These include the impact of the proposal on existing competitive structures, and the changes in antitrust rules that could result from adoption of this program. My concerns have been heightened by the issuance of a report from the General Accounting Office, GAO-03-159, which questions the validity of the study on which the Council proposal was based.

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Sincerely,

cc: NPFMC
Governor Frank Murkowski, AK

January 15, 2003

TO NPFMC; DAVID BENTON:

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Sincerely,

Keiden Tynes

1212 N.W CULBERTSON DR.
SEATTLE, WA 98177

cc: NPFMC
Governor Frank Murkowski, AK

F/V ARCTIC Eagle
F/V American Eagle.

Senator Maria Cantwell
717 Hart Senate Office Building
Washington, D.C. 20510

202 228-0514 fax

January 16, 2003

Dear Senator Cantwell:

I am writing to you concerning a proposed action of the North Pacific Fisheries Management Council ("the Council"). The proposal is based upon a report from the Council to Congress, and advocates that the Congress authorize controversial elements of a rationalization plan for the crab fishery in the Bering Sea and Aleutian Islands. As an industry participant, I am concerned that important factors, which are beyond the purview of usual Council consideration, have been overlooked. These include the impact of the proposal on existing competitive structures, and the changes in antitrust rules that could result from adoption of this program. My concerns have been heightened by the issuance of a report from the General Accounting Office, GAO-03-159, which questions the validity of the study on which the Council proposal was based.

I am concerned that the program does not provide adequate protections for independent harvesters and communities. I urge you to ask for a hearing before the Commerce Committee, to investigate these matters and to seek answers to the questions raised by the GAO report. The Council has correctly determined that an analysis (EIS) needs to be conducted pursuant to the National Environmental Policy Act (NEPA) before a rationalization plan can be implemented. However, the Council has yet to bring the analysis sufficiently forward so as to be informative. A completed EIS would provide information that is critical to support legislative action, and to assure a fully informed hearing by the Committee.

I urge you, Senator, to direct the North Pacific Fisheries Management Council to proceed with conducting a thorough and complete analysis. Please direct the Council to include consideration of those factors mentioned in the GAO report. This should result in submission of an EIS that will help ensure that the best possible decisions are made by both the Council and Congress.

Sincerely,

Elaine Bolack
3598 Constitutiion Road
Lummi Island, WA 98262

cc: NPFMC
Governor Frank Murkowski, AK

Senator Patty Murray
173 Russell Senate Office Building
Washington, D.C. 20510

202 224-0238 fax

January 16, 2003

Dear Senator Murray:

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Sincerely,

Elaine Bolack
3598 Constitutiion Road
Lummi Island, WA 98262

cc: NPFMC
Governor Frank Murkowski, AK

Senator Maria Cantwell
717 Hart Senate Office Building
Washington, D.C. 20510

202 228-0514 fax

January 16, 2003

Dear Senator Cantwell:

I am writing to you concerning a proposed action of the North Pacific Fisheries Management Council ("the Council"). The proposal is based upon a report from the Council to Congress, and advocates that the Congress authorize controversial elements of a rationalization plan for the crab fishery in the Bering Sea and Aleutian Islands. As an industry participant, I am concerned that important factors, which are beyond the purview of usual Council consideration, have been overlooked. These include the impact of the proposal on existing competitive structures, and the changes in antitrust rules that could result from adoption of this program. My concerns have been heightened by the issuance of a report from the General Accounting Office, GAO-03-159, which questions the validity of the study on which the Council proposal was based.

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Sincerely,

Richard Bolack
P. O. Box 112
Lummi Island, WA 98262

cc: NPFMC
Governor Frank Murkowski, AK

Senator Patty Murray
173 Russell Senate Office Building
Washington, D.C. 20510

202 224-0238 fax

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Richard Bolack
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Lummi Island, WA 98262

cc: NPFMC
Governor Frank Murkowski, AK

Experimental Analysis of Arbitration Structures - Preliminary Results

At its June 2002 meeting the North Pacific Fishery Management Council selected a preferred alternative for the rationalization of the Bering Sea/Aleutian Islands crab fisheries. As a part of its decision, the Council formed an industry committee to develop an arbitration program to resolve ex vessel price disputes between harvesters and processors. The committee developed two alternative structures for the arbitration program for consideration by the Council. To help the Council understand of the implications of the different arbitration structures, Council staff contracted Charles Plott, Ph.D. of California Institute of Technology to conduct an experimental analysis of the two arbitration structures preferred by the committee.[1] The analysis is to determine whether differences in the bargaining strength of sectors are inherent in the different arbitration structures.

Experimental economic analysis is the use of a controlled institutional environment with real money incentives to examine economic outcomes. Experimental methods are particularly useful for testing theories that are applied in an uncontrolled environment. Experimental methods are also useful for examining a complex institutional system too rich for comprehensive theoretical analysis. The application of experimental methods to the arbitration system in the crab fishery is intended to isolate the influence of the different arbitration structures to facilitate the analysis of those structures.

Dr. Plott's has applied experimental methods to a variety of complex market problems, including tradable emissions permits in southern California (RECLAIM), pricing the use of natural gas pipelines, the auction use rights of railroad tracks, markets for electric power in California, and auctioning communication licenses by the FCC.

Following is a description of the experiment and its results. This report concludes with a discussion of some caveats concerning the interpretation of the results.

Environment

Three experiments were conducted, two using the fleet wide model and one using the last best offer model. Different players participated in the different experiments, so all participants entered the experiment with no experience.

A three to one ratio of harvesters to processors was maintained in each experiment. The first fleet wide experiment used three processors and nine harvesters, the second fleet wide experiment and the last best offer experiment used two processors and six harvesters.

The first fleet wide experiment consisted of 3 periods. The second fleet wide experiment and the last best offer experiment used 4 periods each.

Each harvester is allocated 20 shares each period. 18 of these shares are A shares (requiring delivery to a processor holding processing shares) and 2 are B shares deliverable to any processor. Each processor is allocated 54 shares.

Harvesters had a per share operating cost of 50 francs in the fleet wide experiments. In the last best offer experiment harvesters had a per share operating cost of 75 francs per unit. Processors have no operating

[1] A copy of Dr. Plott's vita is attached.

costs. This assumption does not affect the results. Operating costs of each sector are unknown to the other sector. Harvesters can convey a slight benefit on processors by timing of deliveries. Making a delivery in a manner that favors a processor increases the processor's return by 10 francs. Harvester's bear a minor cost (5 francs) for making a timely delivery. This factor is within a harvester's control but is outside negotiations. The harvester can use delivery timing to build a reputation with the processor.[2]

Revenues generated for delivery of a share by processors are 200 francs in the fleet wide model. In the last best offer model these revenues were 225 francs per share.[3] The historic division of revenues in the fishery is 0.7 to harvesters and 0.3 to processors.

Prior to commencing negotiations all parties are informed of the historic division of revenues (i.e., 70/30). They also are informed of the arbitrator's decision rule, which differs slightly between the two models. During the experiment, on the completion of any contract all participants were informed of the negotiated price in the contract. Harvesters did not collude in negotiating prices for any deliveries.[4]

Fleet Wide Model

Prior to negotiations, the fleet gathers and adopts a initial proposed price for A share deliveries, which is announced to the processing sector.[5] A negotiation period follows during which contracts can be formed for any deliveries on a voluntary basis between any harvesters and processors that come to terms. At the end of this negotiating period, each processor submits a price proposal, each harvester submits an arbitration price proposal, and an arbitrated price is announced based on the arbitration rule.

The arbitration rule uses four numbers:

1) The average negotiated price in the A share delivery market in the period
2) The historical division of revenues (70/30) fixed in all periods
3) The average harvester arbitration proposal in the period
4) The average of the processor proposals in the period

The two of these that are closest to the average negotiated price and the average negotiated price are retained (i.e., three of the four are retained, always including the average price), then one of those three is selected at random. The arbitration determines that A share delivery price only. Proposals apply only to A share deliveries. B share prices are negotiated independent of the arbitration process.

After the arbitrated price is announced, a second negotiating period begins. At the expiration of the negotiation period, harvesters can put deliveries to processors at the negotiated price. A harvester can elect not to make a put.

This completes a period (or season). The procedure is repeated in each following period.

Last Best Offer Model

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[2] Having timing in as a negotiated term would make the experiment overly complex. Four products would need to be included in the market; deliveries of A shares and deliveries of B shares, both with good and bad timing.

[3] Revenues are akin to first wholesale prices.

[4] In the fisheries, harvesters might work together, using B share deliveries to elicit a higher price from a processor.

[5] Prices here refer to ex vessel prices.

This process begins with a negotiation period (with no harvester price proposal). During this period contracts can be formed for any deliveries on a voluntary basis between any harvesters and processors that come to terms. At the end of this term, an announcement is made of the number of shares held by each processor that are not under contract. Each harvester with available A shares then submits its preferences for processor associations, ranking each processor. Harvesters are then assigned to processors using a "draft choice" procedure, under which harvesters are randomly selected and assigned to processors with available shares in accordance with their preferences. A harvester is constrained to negotiations for A share deliveries with the identified processor for the remainder of the period.

A second negotiation commences, at the end of which any unresolved A share deliveries are subject to arbitration at the election of the harvester. The arbitration is between the processor and the harvesters assigned to the processor. The arbitration is final offer with each processor submitting a single proposal applicable to all of its shares and each harvester submitting a proposal. For each harvester, the arbitrator selects between the harvester offer and the offer of the assigned processor. A harvester may elect not to arbitrate. Proposals to the arbitrator apply only to A share deliveries.

The arbitration rule uses four numbers:

1) The average negotiated price in the A share delivery market in the period
2) The historical division of revenues (70/30) fixed in all periods
3) The harvester proposal in the period
4) The average of the processor proposals in the period

The two of these that are closest to the average price and the average price are retained (i.e., three of the four are retained, always including the average price), then one of those three is selected at random. The proposal that is closest to this number is the arbitrated price. The arbitration determines that A share delivery price only. Harvesters are unconstrained in their B share deliveries (so they may make those deliveries to a different processor than their A share deliveries without added cost.)

This completes a period (or season). The procedure is repeated in each following period.

Results of the Fleet Wide Experiments

The results of the two fleet wide experiments are shown in Figures 1 and 2. The figures show increasing prices from period to period for both A share and B share deliveries. Different prices for A and B share deliveries can be observed. In the experiment, A share delivery prices appear to drift upward with the B share delivery price. Prices for deliveries of both share types appear to tend toward a competitive market outcome in which processors would earn normal profits. This outcome could take several periods to transpire. The cause of this outcome is not readily apparent. Delivery timing may contribute. Whether this outcome is inevitable is not determined.

The initial harvester proposal has no influence on the outcome. That proposal is only remotely connected to the arbitrator's decision. Since the initial harvester proposal is made prior to any contracting, it is disregarded by processors in fashioning their proposals. In this experiment, in most instances deliveries were timed in a manner favorable to the processor.

Results of the Last Best Offer Experiment

The results of the last best offer experiment are shown in Figure 3. Two distinct markets develop for deliveries of the different types of shares. Prices for A share deliveries are relatively stable in this experiment. In this model processors use negotiated A share delivery prices to drive the arbitration result, which keeps that price relatively stable. A separate market develops for B share deliveries with substantially greater competition and higher prices. This price appears to be the competitive price. In this experiment, in many instances deliveries were timed in a manner unfavorable to processors.

Caveats

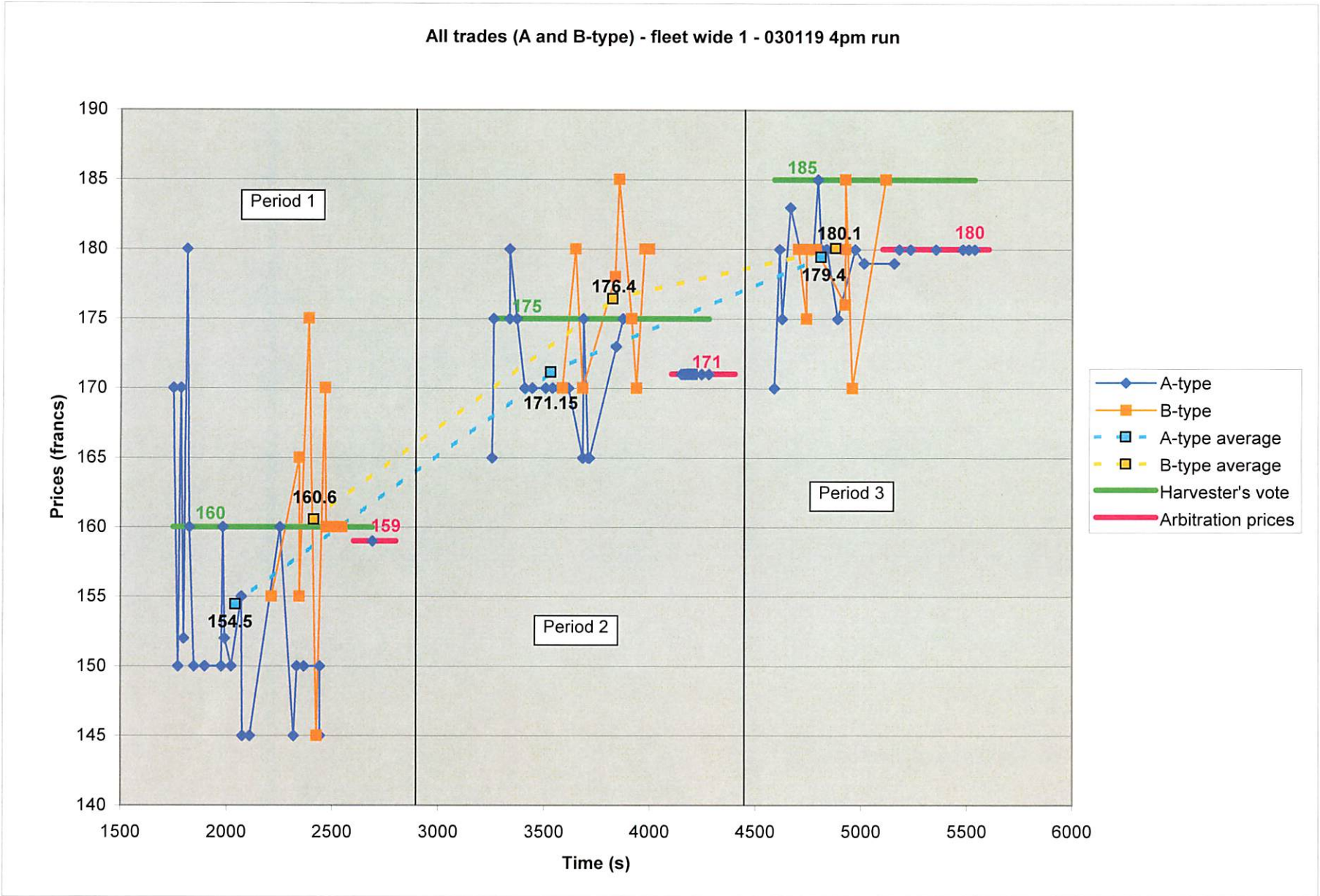
The experiments are designed to elicit the impacts of the different arbitration structures on outcomes of price negotiations. Developing a workable experiment always requires reasonable assumptions with respect to the environment, the institutional setting, and policies. Interpretation of the results requires accommodation of those assumptions. Several factors likely to impact the outcome from the application of the arbitration structures in the fisheries could not be included in the experiment. The influence of these factors on outcomes is lost to the experiment results. For example, the proposed standard to be applied by the arbitrator is a historic division of revenues considering a list of enumerated factors (such as current delivery prices and market developments). Although derived from the arbitration standard, the somewhat mechanical rule applied in the experiments does impact the experiment outcomes. The exact impact cannot be determined without a complete understanding of the arbitrator's application of the standard, which is unknowable.

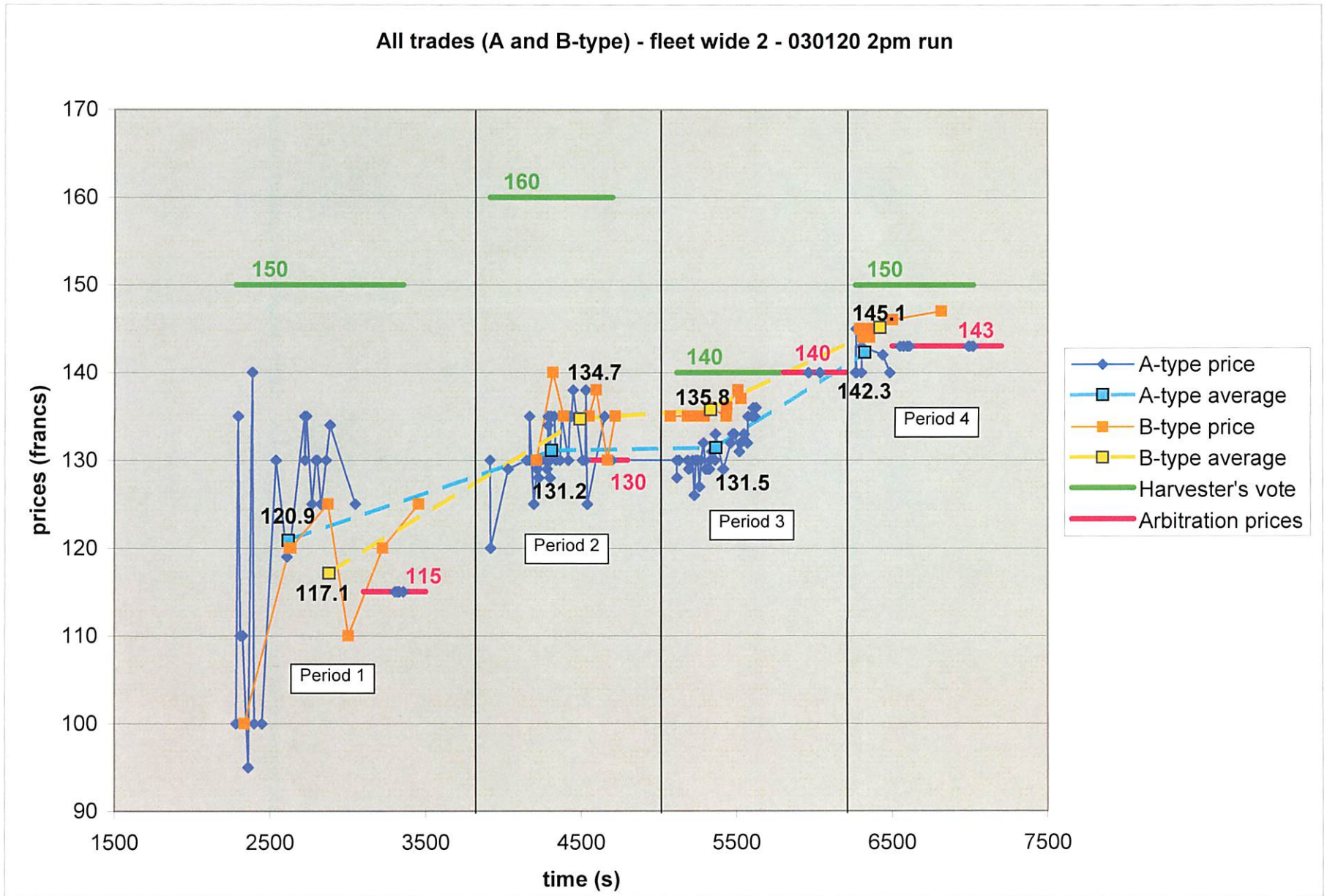
Another factor likely to have an impact on the outcome is share trading. In the experiments 90 percent of each harvester's allocation was A shares and 10 percent was B shares. Altering this ratio of holdings for different harvesters might affect outcome for not only those individuals, but also for all others (through the impact on the arbitrator's decision).

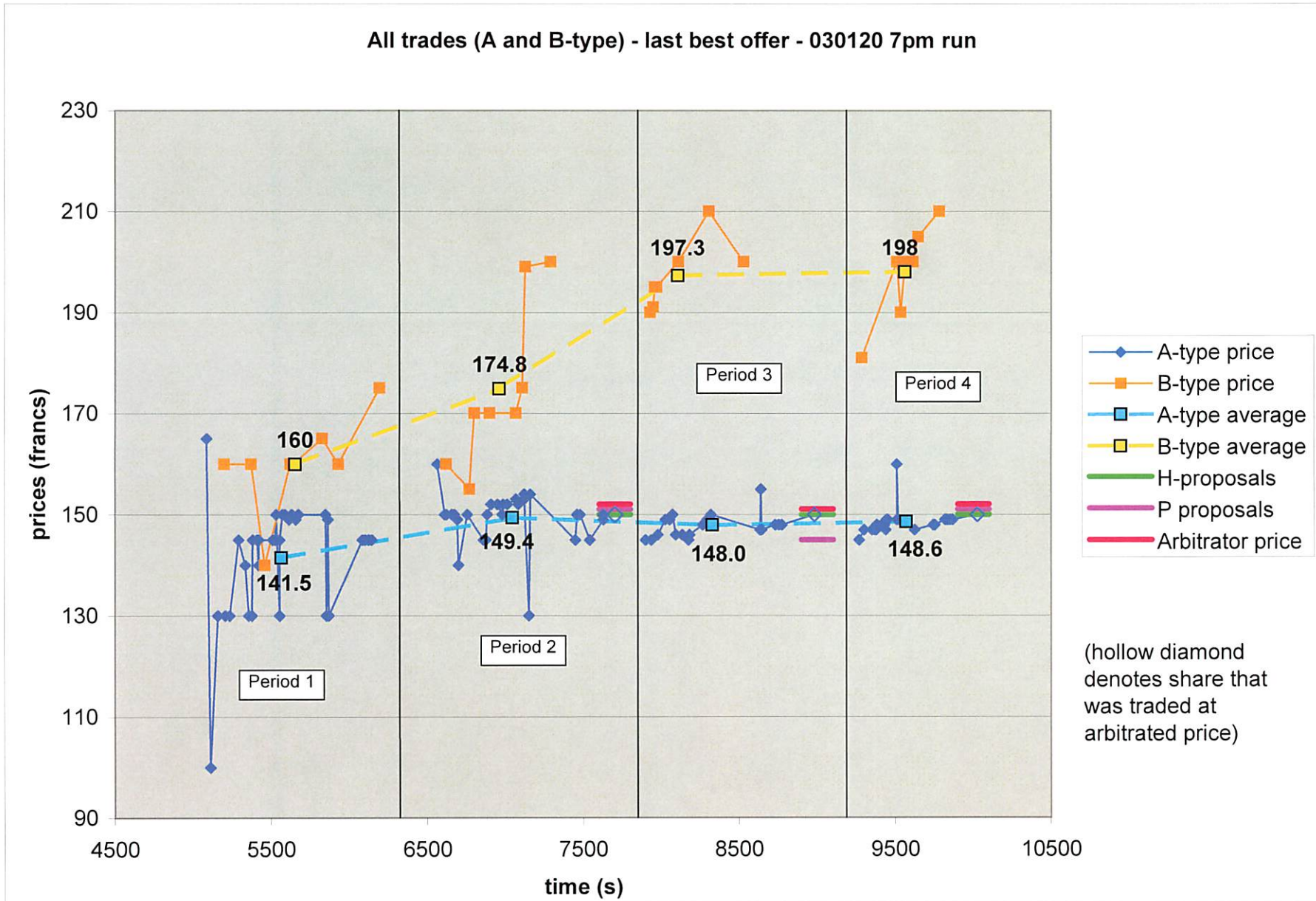
Several other factors are not incorporated into the experiment including:

- annual changes in TACs
- product market changes
- prior experience and knowledge of other participants
- differences in participants (including share holdings, non-crab revenues, cost structures)
- geographic locations of processors and regional landing requirements (including their affect on production costs and transaction costs)
- any influence of or on captain's shares is omitted

These factors all could influence price settlements in the fisheries. In assessing the results of the experiment, the potential influence of these various factors should be borne in mind.


All trades (A and B-type) - fleet wide 1 - 030119 4pm run
Prices (francs)
Time (s)
190
185
180
175
170
165
160
155
150
145
140
1500
2000
2500
3000
3500
4000
4500
5000
5500
6000
Period 1
Period 2
Period 3
160
159
175
171
185
180
154.5
160.6
171.15
176.4
179.4
180.1
A-type
B-type
A-type average
B-type average
Harvester's vote
Arbitration prices


All trades (A and B-type) - fleet wide 2 - 030120 2pm run
prices (francs)
time (s)
170
160
150
140
130
120
110
100
90
1500
2500
3500
4500
5500
6500
7500
150
160
140
140
150
145.1
143
134.7
135.8
142.3
130
131.2
131.5
120.9
117.1
115
Period 1
Period 2
Period 3
Period 4
A-type price
A-type average
B-type price
B-type average
Harvester's vote
Arbitration prices


All trades (A and B-type) - last best offer - 030120 7pm run
prices (francs)
time (s)
230
210
190
170
150
130
110
90
4500
5500
6500
7500
8500
9500
10500
Period 1
Period 2
Period 3
Period 4
160
174.8
197.3
198
141.5
149.4
148.0
148.6
A-type price
B-type price
A-type average
B-type average
H-proposals
P proposals
Arbitrator price
(hollow diamond denotes share that was traded at arbitrated price)

VITA
CHARLES R. PLOTT

PERSONAL

Date of Birth:	July 8, 1938; Frederick, Oklahoma
Marital Status:	Married, two children
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EDUCATION

B.S.: Oklahoma State University, Production Management, 1961
M.S.: Oklahoma State University, Economics, 1964
Ph.D.: University of Virginia, Economics, 1965.

PROFESSIONAL APPOINTMENTS

Edward S. Harkness Professor of Economics and Political Science, California Institute of Technology
California Institute of Technology: Professor, 1971-present
Director, Program for the Study of Enterprise and Public Policy, 1979-present
Director, Laboratory for Experimental Economics and Political Science, 1987-present
University of Chicago: Visiting Professor, January 1980-April 1980
University of Southern California Law Center: Visiting Professor of Law, 1976
Purdue University: Assistant Professor of Economics, 1965-67; Associate Professor of Economics, 1968-1970
Stanford University: Visiting Professor, September 1968-September 1969
Economic Theory: Member, Editorial Board, 1994-present
Consortium of Social Science Associations (COSSA): Board of Directors, 1996-1998
National Research Council's Commission on Behavioral and Social Sciences and Education - Board on Behavioral, Cognitive, and Sensory Sciences, member, 1997-present
Lee Pharmaceuticals: Member, Board of Directors, 1978-1995
Resources for the Future, Summer 1973
Environmental Quality Laboratory (Caltech), Summer 1972.

AWARDS

L'université Pierre Mendès France diplôme Docteur *honoris causa*, 1996
Purdue University Doctor of Letters *honoris causa*, 1995
American Academy of Arts and Sciences, 1985
Econometric Society Fellow, 1985
College of Business Administration Hall of Fame, Oklahoma State University, 1988
Guggenheim Fellow, 1981-1982
Center for Advanced Studies in the Behavioral Sciences Fellow, 1981-1982
Georgescu-Roegen Prize, Southern Economic Association, 1995
National Science Foundation Principal Investigator, 1972-present
Ford Foundation Faculty Research Fellow, 1968
Hooker Distinguished Professor, McMaster University, 1983
Institute for Policy Reform: Senior Research Fellow, 1992-1993.

MEMBERSHIPS

American Economic Association; Royal Economic Society; Econometric Society; American Political Science Association; Public Choice Society, President 1976-1978; Southern Economic Association, Executive Committee 1977-1978, vice president 1985-1987, president 1989-90; The Mont Pélerin Society; Economic Science Association, president 1987-1988; Western Economic Association International, president 1998/9.

BOOKS

The Allocation of Scarce Resources: Experimental Economics and the Problem of Allocating Airport Slots, with D. M. Grether and R. Mark Isaac. Volume in series *Underground Classics in Economics*, K. Arrow, J. Heckman, P. Pechman, T. Sargent, and R. Solow, editors. Boulder, CO: Westview Press, 1989.

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"Generalized Equilibrium Conditions under Alternative Exchange Institutions." Thomas Jefferson Center for Studies in Political Economy Monograph no. 9. University of Virginia, 1964.

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"The Probability of a Cyclical Majority," with F. DeMeyer. *Notices: American Mathematical Society* 14 (January 1967):151.

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"Cooperative Game Models of the Influence of the Closed Rule in Three Person, Majority Rule Committees: Theory and Experiment," with R. Mark Isaac. In *Game Theory and Political Science*, edited by P. C. Ordeshook. New York University Press, 1978.

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July 2002

Bering Sea and Aleutian Islands King and Tanner Crab
Environmental Impact Statement

January 27, 2003

DRAFT Purpose and Need Statement

The proposed action is the review and assessment of the crab fisheries under the current Fishery Management Plan for Bering Sea/ Aleutian Islands King and Tanner Crabs (FMP) and the examination of alternative crab fishery management regimes. The purpose of this proposed action is to implement a management program that improves resource conservation and management, promotes safety of human life at sea, reduces excess capacity, and provides economic stability for harvesters, processors, and communities. These specific objectives further the Magnuson-Stevens Act's national standards for conservation and management. This Environmental Impact Statement (EIS) will provide decision-makers and the public with information on the current management regime and possible changes to it. The purpose of the broad, programmatic review is to provide sufficient analysis to inform subsequent crab management decisions.

The alternatives analyzed will focus on alternative rationalization programs. The North Pacific Fishery Management Council (Council) has determined that a rationalization program is the only reasonable alternative management regime to achieve the purposes listed above. The alternatives analysis will enable NMFS and the Council to identify the parts of the FMP that need to be changed to effectively manage the fisheries under a new management program. Equally important, this analysis will allow decision-makers to predict the effects of crab management as a whole under the preferred rationalization program and its alternatives in order to make informed decision on which alternative to implement.

The FMP was adopted in 1989 with an Environmental Assessment, but without an EIS. Since 1989, significant changes have occurred in the crab fisheries, the methods of crab management, and our scientific understanding of crab and the BSAI ecosystem. An FMP-level review will evaluate these changes and provide valuable information about the environmental impacts of the current crab fisheries and impacts that will likely occur if the current management regime is replaced with a rationalization-based management regime. This FMP-level review thereby serves to supplement the original NEPA environmental review for this fishery.

The BSAI crab fisheries are experiencing the fundamental fisheries management problems of excess capacity and the consequent race for fish and related resource conservation and management difficulties. The management tools in the existing FMP do not provide managers with the ability to effectively solve these problems, thereby making Magnuson-Stevens Act goals difficult to achieve and forcing reevaluation of the existing FMP.

The race for fish exists because harvest capacity greatly exceeds the amount of crab available for harvest. Harvest capacity has increased since 1989 as stocks have decreased due to changing

environmental conditions in the BSAI. Under the current management regime, each fishery is opened on a specific date with a specified harvest limit. Fishermen must compete to harvest as much crab as they can before the harvest limit is reached and the fishery closes. This race for fish causes short, unprofitable seasons, resource and conservation problems, unsafe fishing conditions, and management difficulties. These problems are illustrated by the 2001 Bristol Bay red king crab regular commercial fishery in which 232 vessels caught 7.8 million pounds of crab in 3 days and 8 hours. Due to the management difficulties of determining the harvest rate of so many vessels in such a short amount time, the preseason guideline harvest level of 6.6 million pounds was exceeded by 1.2 million pounds. Also, in an effort to harvest as many crabs as possible prior to the closure of the fishery, some vessels fished during a storm, causing significant damage to 3 vessels and the loss of one human life at sea.

In an effort to alleviate the problems cause 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 NPFMC 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 alternatives that address the issues as laid out in this problem statement. These alternatives meet the objectives set forth in the purpose of the proposed action. Through an examination of these alternative rationalization programs, the analysis will comprehensively address all relevant aspects of crab management.

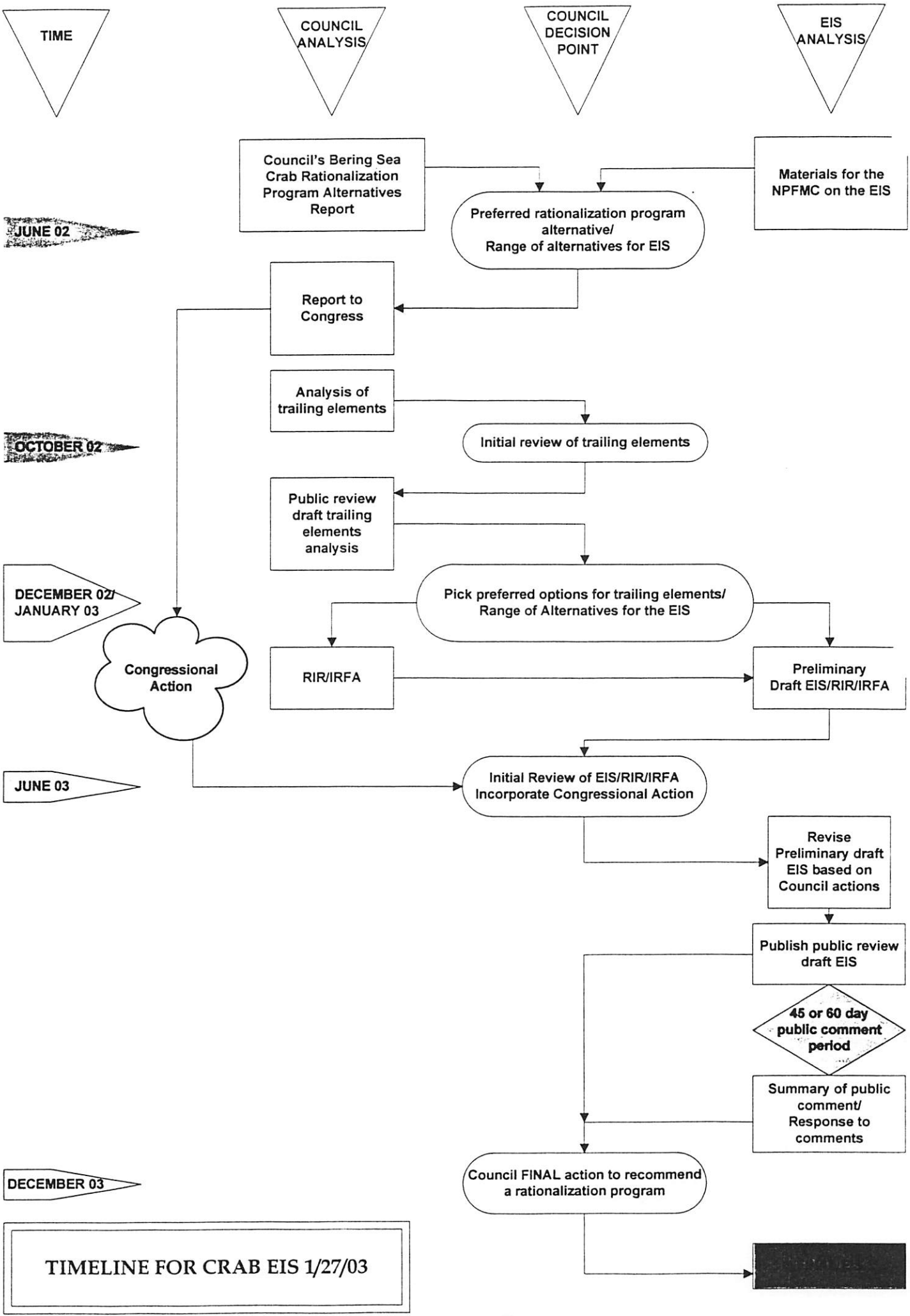
Rationalization programs allocate exploitable resources to fishery participants to allow these participants to manage their operations in a more economically efficient manner since they no longer must compete with other users. The rationalization programs under consideration are a complex set of program elements that are designed to balance the interests of several identifiable groups that depend on these fisheries. These groups include harvesters, processors, and communities. A rationalization program for the crab fisheries may include a combination of program elements. Harvesters, including vessel captains, may receive allocations to harvest portions of the total allowable catch. Rationalization of the harvesting sector eliminates the derby-style race for fish by providing economic incentives to consolidate, thus reducing capacity by decreasing the number of vessels participating in the fishery. Shares are expected to be consolidated on the most efficient vessels, thus removing excess capital from the fishery and allowing remaining vessels to fish for a longer amount of time. With a guaranteed share of the catch, fishermen can choose when to fish depending on weather conditions, market considerations, and other factors. Under a rationalization program, harvesters may also be allowed to form cooperatives. This is intended to facilitate efficiency in the harvest sector by aiding harvesters in coordinating harvest activities among members and deliveries to processors. Processors may receive allocations to process portions of the crab harvested. Conversely, licenses may be issued to create a closed class of processors to protect the historic interests of existing crab processors. Rationalization of the processing sector is intended to reduce processing costs by reducing excess capacity in the processing sector and to provide stability to the processors and the communities where they are located. The processing sector could realize efficiencies through the formation of cooperatives and the resulting improvement in coordinating activities and product flow. Designated regions may be allocated landings and processing activities to preserve their historic interests in the fisheries.

Rationalization programs improve management's ability to address Magunson-Stevens Act conservation and safety goals by providing opportunities to utilize fishing methods that reduce bycatch, gear conflicts, and the incentive to fish during unsafe conditions. Measurable conservation goals of rationalization programs may include improved stock conservation through decreased bycatch and handling mortalities. Bycatch and handling mortalities would be reduced by improvements to fishing practices possible with longer seasons. A rationalization program may also include measures to provide full observer coverage, and prevent highgrading and increases in deadloss. Eliminating the race for fish will likely decrease the potential for harvest limit overruns that can result from the difficulty of monitoring catches during short fishing seasons with many

vessels participating. A reduction in fishing effort may also reduce the impacts of pot gear on benthic habitat. These conservation benefits would decrease the impacts of the crab fisheries on crab stock abundance and improve the effectiveness of the rebuilding plans.

Allocating a fishery resource to users causes fundamental changes in the management and prosecution of the fisheries. These fundamental changes have been documented in every fishery where an allocation-based management program has been implemented. In the North Pacific, fisheries managers have witnessed first hand the fundamental changes caused by the halibut and sablefish individual fishing quota program and the implementation of the American Fisheries Act for the pollock fishery.

Based on this experience with rationalization programs, the Council and NMFS expect implementation of a rationalization program to greatly alter how the existing crab fisheries are managed and prosecuted. Rationalization will require new federal management measures, as well as improvements to existing measures, to implement the program. Rationalization requires new and extensive permitting, data collection, monitoring, and enforcement procedures. Likewise, rationalization will likely cause the State of Alaska to make changes to existing State management measures to allow improvements in crab fishing patterns, such as changes to crab fishing seasons and pot limits. All of these management changes will result in an FMP and management regime that is substantially different than the existing FMP and management regime. It is these changes to fishing patterns, processing patterns, and fleet composition, and how management adapts to these changes, that will affect the human environment.


TIME
COUNCIL ANALYSIS
COUNCIL DECISION POINT
EIS ANALYSIS
Council's Bering Sea Crab Rationalization Program Alternatives Report
Materials for the NPFMC on the EIS
JUNE 02
Preferred rationalization program alternative/ Range of alternatives for EIS
Report to Congress
Analysis of trailing elements
OCTOBER 02
Initial review of trailing elements
Public review draft trailing elements analysis
DECEMBER 02/ JANUARY 03
Pick preferred options for trailing elements/ Range of Alternatives for the EIS
Congressional Action
RIR/IRFA
Preliminary Draft EIS/RIR/IRFA
JUNE 03
Initial Review of EIS/RIR/IRFA Incorporate Congressional Action
Revise Preliminary draft EIS based on Council actions
Publish public review draft EIS
45 or 60 day public comment period
Summary of public comment/ Response to comments
DECEMBER 03
Council FINAL action to recommend a rationalization program
TIMELINE FOR CRAB EIS 1/27/03

CHECKLIST OF ITEMS TO BE CONSIDERED

FOR BINDING ARBITRATION MOTION

All page numbers correspond to the document entitled "Report of the Working Group on Arbitration"

PUBLIC TESTIMONY SIGN-UP SHEET FOR AGENDA ITEM C2 Crab

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

	NAME	AFFILIATION
1.	[illegible]	[illegible]
2.	Larry Cotter	APICDA
3.	Gary Painter	F/V Trailblazer
4.	Tom Casey	AFCG
5.	Kevin Kennedy	TDX Corp
6.	Gerry Loncon	Royal Aleutian Seafoods
7.	MAX MALAVANSICH	City of St. George
8.	[illegible]	[illegible]
9.	Patience Merculief	CBSFC
10.	~~Phillip Lestenkof~~	~~CBSFA~~
11.	Rick Shelford	ALEUTIAN LADY
12.	Bob Storrs	Unalaska Native Fisherman's Assoc.
13.	Terry Leitzell	Icicle Seafoods
14.	~~Gary Johnson~~	Peter Pan Sfds.
15.	Paul Pyatt / Simon Kinneen	Robert Williams BBEDC/NSEDC/CVRF
16.	Agafon Krukoff	ARE/CITY OF AIAK.
17.	Heni Thomson.	ACC
18.	Frank Kelty	City of Unalaska
19.	John Garner	North Pacific Crab Assn
20.	Gordon Blue	CRAB Group.
21.	Joe Sullivan	Munson McGregor
22.	Carolyn Floyd	City of Kodiak
23.	Barbara Stevens	City of Kodiak
24.	LINDA FREED	City of Kodiak.
25.	DAVE WOODRUFF	ALASKA FRESH SEAFOODS

Together

PUBLIC TESTIMONY SIGN-UP SHEET FOR AGENDA ITEM C2 - Crab PAGE 2

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

	NAME	AFFILIATION
√26 1.	Michael MARTIN	E.F. Inc.
√27 2.	Pat Carlson	Kodiak Island Borough
28 3.	Russ Moore	North Pacific
29 4.	Steve Minor / Simeon S.	City of St Paul
30 5.	Dave Fraser	Muir Milach
31 6.	~~Russ Moore~~	~~FH North Pacific~~
32 7.		
33 8.		
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C-2
Larry Cotter

Aleutian Pribilof Island Community Development Association

234 Gold St. • Juneau, Alaska 99801 • (907) 586-0161 • 1-888-9APICDA • Fax (907) 586-0165

Unalaska Office: P.O. Box 208 • Unalaska, Alaska 99685 • (907) 581-5960 • Fax (907) 581-5963

January 24, 2002

Mr. David Benton, Chairman
North Pacific Fishery Management Council
605 W 4th, Suite 306
Anchorage, Alaska 99501-2252

Re: Crab Rationalization

Dave

Dear ~~Chairman~~ Benton:

I would like to take this opportunity to offer our comments regarding the current status of crab rationalization, particularly as it pertains to community protection.

As we have stated in the past, we strongly recognize the need for comprehensive rationalization of the crab fisheries and we support the effort and steps taken by the Council to address that need. The issue of processor quota shares has raised concerns within our member communities that their future participation in the industry could be curtailed as a result. To address these and other community concerns, the Council appointed a committee to address these issues. With respect to the committee's recommendations, we have the following comments:

Cool Down Period: We support the committee's recommendations. A cool down period is essential to ensure that communities have the opportunity to develop the means and methods to retain processor quota share after the period expires. Two years is a reasonable compromise; however, we would be strongly opposed to a shorter time period.

Flexibility to processors to make adjustments, within reason, and to deal with Acts of God is reasonable and appropriate.

Processor Quota Share Cap: We have two community-related concerns in addressing processor quota shares. The first concerns communities that have developed a history of crab processing, and the second concerns communities that have not yet developed such a history but can and intend to participate.

We agree that in times of low GHLs, such as those we are experiencing now, it is inappropriate to allow crab to be processed in communities with no history since the crab they would process would be taken from another community that has already developed a

reliance upon that production. At a certain level of quota, however, there is sufficient crab to satisfy both the needs of the historically participating communities and those of new entrant communities.

If this option is adopted, competition between communities and processors would likely be fierce, but the historically producing communities and the processors receiving quota shares will still have the competitive advantage given the rights that they have to the base quota. Nonetheless, this competition should be healthy overall and provides a potentially reasonable opportunity for non-historically producing communities and non-processor quota share companies to participate in the crab fisheries.

We support Option 1 (IPQ percentage times a TAC of 175 million pounds) for opilio and Option 3 (IPQ percentage times a TAC of 30 million pounds) for Bristol Bay red king crab. In both instances, our choice reflects an internal compromise between our opinion of the quota level at which we would be inclined to consider opening a crab line and the legitimate stability needs of the historic processing communities and their processors.

As you may know, this "internal compromise" reflects our desire for stability in St. George (where we hope to construct a shoreside processing facility in conjunction with Peter Pan and Snopac) and our desire for access to crab in False Pass (where we hope to purchase and process crab in the future at our Bering Pacific Seafoods facility).

Because we also support the committee's recommendation that "IFQ issued in excess of the IPQ limit shall be subject to regional landing requirements" we believe the two options we have identified reflect the best compromise.

Community Purchase and First Right of Refusal: The "first right of refusal" is a critical and essential component of community protection. As the committee notes, more details need to be addressed before this option can be effective. We support the basic structure outlined by the committee and their request that this system be further developed.

Without the first right of refusal, there is nothing to stop a processor from moving processor quota shares out of a community once the "cool down" period is complete. Therefore, this becomes the only mechanism through which communities can be assured that they will have the option to ensure the processor shares remain in the community. We request and urge the Council to adopt a simple, yet strong, policy statement which makes clear that the first right of refusal will be a mandatory feature of the final crab rationalization program when implemented.

Regionalization of the Bairdi Fishery: We believe the Council should regionalize the bairdi fishery prior to that fishery becoming a directed fishery. The absence of a directed fishery for the past several years makes this difficult to accomplish at present. There is no doubt the development of a directed bairdi fishery will generate calls for and calls

against regionalization – just as both perspectives are already voiced. It seems inconsistent to regionalize the other fisheries, and to leave bairdi in an uncertain status. Therefore, we request the Council to adopt a policy statement that a future bairdi directed fishery will be regionalized and commence the work now to identify the types of factors that would be used to determine the respective regionalization percentages.

Other Remaining Committee Recommendations: We support the other committee recommendations.

We appreciate the hard work the Council, the community protection committee, the other committees, and the public have put into this program.

Sincerely,

Larry Cotter, CEO

Cc: APICDA Board of Directors
City of St. George Island
City of False Pass
Governor Frank Murkowski

C-2
Gary Painter

Magnuson-Stevens

SEC. 303. CONTENTS OF FISHERY MANAGEMENT PLANS

(b) DISCRETIONARY PROVISIONS.--Any fishery management plan which is prepared by any Council, or by the Secretary, with respect to any fishery, may--
(7) require **fish processors** who first receive fish that are subject to the plan to submit data **(other than economic data)** which are necessary for the conservation and management of the fishery;

SEC. 402. INFORMATION COLLECTION

(a) COUNCIL REQUESTS.--If a Council determines that additional information **(other than information that would disclose proprietary or confidential commercial or financial information regarding fishing operations or fish processing operations)** would be beneficial for developing, implementing, or revising a fishery management plan or for determining whether a fishery is in need of management, the Council may request that the Secretary implement an information collection program for the fishery which would provide the types of information **(other than information that would disclose proprietary or confidential commercial or financial information regarding fishing operations or fish processing operations)** specified by the Council. The Secretary shall undertake such an information collection program if he determines that the need is justified, and shall promulgate regulations to implement the program within 60 days after such determination is made. ....

C-2
Arni Thomson

Date: January 30, 2003

To: David Benton, Chairman
North Pacific Fishery Management Council
Anchorage, Alaska

From: Arni Thomson, Executive Director
Alaska Crab Coalition

RE: Comments on Crab Rationalization: Binding Arbitration Models, Data Collection And the US GAO Report on Individual Fishing Quotas (December 2002)

ARBITRATION:
The NPFMC arbitration committee has developed two models that can work to establish a fair price for the industry. ACC Board members have been involved in the price formation process for the crab fishery for the last twenty-five years and feel the Last Best Offer Binding Arbitration Model is straight forward and the practical businesslike approach to establish a price in the case of failed price negotiations. The ACC recommends implementation of the modified Last Best Offer/Fleet-wide Binding Arbitration Model **(LBOF)** (see Advisory Panel minority report) over the Fleet-Wide Model for the following reasons.

- **Description of the LBOF:** This proposal modifies the Last Best Offer model so that processor by processor arbitrations can result in a fleetwide arbitrated price. An arbitrator reviews all of the arbitration decisions for a season, and selects the highest arbitrated price which is representative of 7% of the market. That price shall become the price for all arbitrated prices for that season. If the arbitration decisions include both formula and straight price decisions, the arbitrator shall have the discretion to select and apply one of each type.
- **Timely, businesslike procedure:** LBOF starts 25 days before the season opening versus Fleetwide which starts 120 days before season opening. LBOF mirrors the current expedited negotiation process and it is more efficient. The fleet-wide process is complex and legalistic.
- **Flexibility of LBOF:** The LBOF allows the industry to choose to negotiate either a dockside price, or a formula-based price while the fleet-wide model not only mandates an arbitration process for every fishery, but mandates a non-traditional formula-based price for the industry. Industry needs the opportunity to evolve into the formula-based price.
- **Arbitration is optional, not mandatory:** LBOF is only initiated in the case of failed price negotiations, whereas the fleet-wide model mandates arbitration for every fishery.
- **LBOF is binding prior to arbitration, Fleet-wide is not:** LOBF requires parties to an arbitration to sign a contract prior to entering arbitration, in Fleet-wide no contract is signed until the arbitrated price is decided—and then either party can opt out, it is not binding. The opportunity for fishermen to opt out after an arbitrated price is decided, recently caused Newfoundland processors to announce their intent to withdraw from the snow crab arbitration process.
- **Completeness of LBOF:** Last Best Offer completes everything with a single arbitration (price, delivery window & place). Fleet-wide is a two-step process where

the arbitrator establishes a price first, and then you arbitrate delivery, quality and other issues.

- **Less Risk With LBOF:** With Last Best Offer there is a lower risk of the arbitrator selecting a price that is unfair to either side, both sides put their best price forward. In Fleet-wide you are relying on the arbitrator to be educated and understand the information to come up with a fair price. You are risking a lot on his decision, thus the selection process will be very contentious. In Canada the industry was only .03 apart when it arbitrated the first time. With Last Best Offer there is too much risk to come in with an offer that you can't support with data. You can take a risk and highball or lowball an offer, but the chances of winning are slim because of the availability of market information.
- **Cost of LBOF:** The cost to the industry of a single arbitration with Last Best Offer, where everything is decided, will be less than the cost of Fleet-wide because of the elongated two-step process.
- **Comments on the Plott analysis:** The analysis is quite complex, but it is a model that contains numerous assumptions that are unknown. The rationale for the conclusions are not understood by either the Council staff or the industry. Keith Criddle of the SSC noted in his remarks that the models fail to consider the repeated experience of the parties to negotiations in dealing with each other. This is an important factor in determining the outcome of negotiations, but it cannot be measured in the models.

DATA COLLECTION:

- The ACC supports the Data Collection Committee report on consensus views with the exception of the need to include to SSANs for reporting revenues earned by crew members. Given the Congress announced intent to sponsor legislation to protect the confidentiality of SSANs, some other identifying mechanism needs to be used in data collection.
- In the committee report, under the areas of concern, the ACC supports industry submission of only variable cost information for the reasons stated in the report. If fixed costs are included in data collection, this leads to the opportunity to reveal vessel owners' profitability. Further, it is not the Council's intent to base management decisions on the profitability of individual entities.

USGAO REPORT ON INDIVIDUAL FISHING QUOTAS:

ACC notes that the report's comments and concerns with current IFQ programs, in essence are addressed as they apply to the BSAI crab program in two of the three recommendations for Executive Action. These recommendations have been incorporated in the NPFMC June 2002 preferred alternative for BSAI crab rationalization three pie quota share program. (Reference page 30).

- Requirements that IFQ quota share holders be US citizens and a data collection system that will track ownership of QS.
- Develop measures to prevent an individual or entity from acquiring an excessive share of the quota in the future.

AP DRAFT

12:18 PM January 31, 2003
C-2 BSAI CRAB RATIONALIZATION

I. Binding Arbitration: The AP recommends the Council adopt the fleet-wide binding arbitration model as described in the report of the working group on binding arbitration. *Motion passed 13/7.*

Minority Report:

We the undersigned support the Last Best Offer proposal including the following "fleetwide" amendment. Add the following to the Report of the Working Group on Binding Arbitration Committee under the "PROCESS" section, subparagraph #4, page 6, "Arbitration Decisions", the first paragraph.

"The arbitrator who makes the last pre-season arbitration decision will review all of the arbitration decisions for that season and select the highest arbitrated price(s) which is representative of 7% of the market. That price shall become the price for all arbitrated prices for that season, inclusive of the opt-in provision, and, independent of delivery terms at the harvesters option. If the arbitration decisions include both formula and straight price decisions, the arbitrator shall have the descretion to select and apply one of each type."

The arbitrator who makes the fleetwide price decision should have the flexibility to determine the mechanism for selecting the highest price. He could, for example, take a single arbitrated price if it covers at least 7% of the market, or could take a weighted average of three prices to cover 7% of the market, etc. This process will be very similar to the current price negotiations in which harvesters negotiate delivery with their intended market and then obtain a fleetwide price close to the season opening.

The undersigned support the modified Last Best Offer/Fleetwide proposal for the following reasons:

- *Timely, businesslike procedure: Process initiates only 25 days before the season opening date, instead of 125 days prior to season opening date. Fleetwide is a complex and legalistic framework.*
- *Flexibility: Industry can choose to use either traditional dockside price or a formula-based price in arbitration. Fleetwide does not allow for use of dockside price.*
- *Arbitration is optional: Last best offer/fleetwide price is only initiated in the case of failed price negotiations, whereas the fleetwide model mandates arbitration for every fishery.*
- *Contract required between matched parties prior to entering arbitration: Fleetwide does not require a contract until a price is arbitrated and agreed upon by the parties—but either party can still opt out. In the Newfoundland fishery, processors have recently announced their intent to withdraw from the process as a result of fishermen being able to opt out after a price has been arbitrated.*
- *Reduced cost and efficiency: There is a single arbitration for price, delivery window and place in the last best offer/fleetwide. Fleetwide has two step process and two arbitrations, first for price, then delivery time and locations.*

Signed Jeff Steele, Al Burch, Kris Norosz, Dave Benson, Tom Enlow, Dave Boisseau, Mitch Kilborn

II. Community Protection:

The AP recommends the Council select the cool down period provisions of the Community Protection Committee recommendations as a preferred alternative with the following change:

3. 10 % of the IPQs may leave a community on annual basis, or up to 500,000 pounds, whichever is less. *The requested clarification of the "slippage" rules should be that slippage is measured on a fishery-by-fishery basis. Motion passed 20/0.*

The AP recommends the Council select, as a preferred alternative, IPQ caps of:
For opilio: IPQ percentage times a TAC of 125 million pounds.
For Bristol Bay Red King: IPQ percentage times a TAC of 9 million pounds. *Motion passed 12/7/1.*

The AP recommends an option be added under the community protection provisions, that those vessels homeported within the city of Kodiak, as determined by registration with the Kodiak harbormaster, as a current lessee of a Kodiak boat harbor stall, shall have the option to declare their last trip of the season for delivery to Kodiak, and it shall not be subject to

C-2
Frank
Kelty

1995

Area	Species	Dutch Harbor	St. Paul	Kodiak	F/P	C/P	Others*
Aleutian	Brown	5,699,805			759,815	1,152,976	
	Couesi	26,428			30,135	302	
	Multispina	292					
	Red	19,910				11,875	
	Tanner**	1,179,454			15,587		
Bering Sea	Brown	289,463	37,745				CF
	Couesi	15,328	1,968				CF
	Multispina	***	***	NF	***	***	***
	Opilio	15,356,590	10,397,185	573,154	32,247,427	8,314,558	CF
	Tanner**	2,051,149	330,903	1,175,467	270,958	364,210	CF
Bristol Bay	Red	***	***	CL	***	***	***
Pribilofs	Blue	374,258	193,516	40,282	322,228	24,205	CF
	Red	224,028	328,712	63,602	115,502	12,129	CF
							CF
St. Matthew	Blue	768,287	274,927		2,035,082	38,805	CF

* may include Akutan, King Cove and Adak
** includes *Chionoecetes bairdi, angulatus, and tanneri*
CL - closed
CF - confidential
NF - no fishing

1996

Area	Species	Dutch Harbor	St. Paul	Kodiak	F/P	C/P	Others*
Aleutian	Brown	6,762,197				CF	
	Couesi	39,272				CF	
	Multispina	***	***	NF	***	***	***
	Red	CF					
	Tanner**	493,938	CF				
Bering Sea	Brown	160,032	CF	CF			CF
	Couesi	***	***	CF	***	***	***
	Multispina	***	***	CF	***	***	***
	Opilio	13,085,542	10,260,051	213,210	26,406,290	10,751,511	CF
	Tanner**	956,954		326,849	92,133	CF	CF
Bristol Bay	Red	3,286,471		385,174	1,491,311	231,522	CF
Pribilofs	Blue	353,707	302,869	CF	189,968		CF
	Red	88,571	73,492	4,647	30,254	-	CF
St. Matthew	Blue	551,951	599,532	CF	1,653,758	72,287	CF

* may include Akutan, King Cove and Adak
** includes *Chionoecetes bairdi, angulatus, and tanneri*
CL - closed
CF - confidential
NF - no fishing

1997

Area	Species	Dutch Harbor	St. Paul	Kodiak	F/P	C/P	Others*
Aleutian	Brown	4,262,101				1,352,781	CF
	Couesi	5,219				1,831	CF
	Multispina	***	***	NF	***	***	***
	Red	***	***	CL	***	***	***
	Tanner**	***	***	CL/NF	***	***	***
Bering Sea	Brown	155,072	24,105				
	Couesi	***	***	NF	***	***	***
	Multispina	***	***	NF	***	***	***
	Opilio	26,284,937	18,491,950	108,210	49,918,694	13,413,122	CF
	Tanner**	***	***	CL	***	***	***
Bristol Bay	Red	3,950,194	233,929	396,011	1,586,354	295,151	CF
Pribilofs	Blue	65,710	260,045	CF	202,263		CF
	Red	86,892	355,320	CF	219,050	-	CF
St. Matthew	Blue	933,759	482,187		3,046,795	CF	CF

* may include Akutan, King Cove and Adak
** includes *Chionoecetes bairdi, angulatus, and tanneri*
CL - closed
CF - confidential
NF - no fishing

1998

Area	Species	Dutch Harbor	St. Paul	Kodiak	F/P	C/P
Aleutian	Brown	3,652,401			440,607	CF
	Couesi	***	***	CF	***	***
	Multispina	***	***	NF	***	***
	Red	***	***	CL/CF	***	***
	Tanner**	***	***	CL/NF	***	***
Bering Sea	Brown	CF	CF			
	Couesi	***	***	NF	***	***
	Multispina	***	***	NF	***	***
	Opilio	66,059,694	43,748,434	374,533	103,418,356	16,330,088
	Tanner**	***	***	CL	***	***
Bristol Bay	Red	6,419,950	391,011	288,686	2,037,503	1,388,303
Pribilofs	Blue	116,246	185,296		150,816	
	Red	109,237	189,010		106,989	-
St. Matthew	Blue	291,088	229,629		2,009,642	CF

* may include Akutan, King Cove and Adak
** includes *Chionoecetes bairdi, angulatus, and tanneri*
CL - closed
CF - confidential
NF - no fishing

1999

Area	Species	Dutch Harbor	St. Paul	Kodiak	F/P	C/P	Others*
Aleutian	Brown	3,468,175			CF	CF	CF
	Couesi	***	***	CF	***	***	***
	Multispina	***	***	NF	***	***	***
	Red	***	***	CF/CL	***	***	***
	Tanner**	***	***	CL/NF	***	***	***
Bering Sea	Brown	177,108					
	Couesi	***	***	NF	***	***	***
	Multispina	***	***	NF	***	***	***
	Opilio	42,346,327	42,078,111	203,526	77,289,324	9,719,648	CF
	Tanner**	***	***	CL	***	***	***
Bristol Bay	Red	5,145,645	199,716	540,208	1,571,320	565,773	CF
Pribilofs	Blue	***	***	CL	***	***	***
	Red	***	***	CL	***	***	***
St. Matthew	Blue	***	***	CL	***	***	***

* may include Akutan, King Cove and Adak
** includes *Chionoecetes bairdi, angulatus, and tanneri*
CL - closed
CF - confidential
NF - no fishing

Bering Sea Opilio Crab
Harvest Characteristics, and State Shared Fish Tax Revenue

Reported Opilio Processing, 5 Year Average 1995-1999
Bering Sea, North/South Split
(North: St. Paul, St. George, St. Matthew; South: AEB, Akutan, King Cove, Unalaska)

	Pounds	% of Bering Sea Total Pounds	Value	% of Bering Sea Total Value
North	315,847,604	48.57%	$336,826,928	52.34%
South	334,505,408	51.43%	$306,656,131	47.66%
totals	650,353,012	100.00%	$643,483,058.71	100.00%

Opilio-Related State Fish Tax Revenues, 4 year average 1995-1998
By Community

	total 4 yr avg	opilio 4 yr avg	Opilio % of Total
AEB	$1,221,139	$20,707	1.70%
Akutan	$376,438	$116,769	31.02%
King Cove	$293,232	$104,173	35.53%
St. George	$211,825	$98,416	46.46%
St. Paul	$1,158,450	$709,308	61.23%
Unalaska	$4,759,867	$553,512	11.63%

Opilio-Related State Fish Tax Revenues, 4 year average 1995-1998
Bering Sea, North/South Split
(North = St. Paul, St. George; South = AEB, Akutan, King Cove, Unalaska)

	Total Fish Tax Shared 4 yr avg	Opilio-RelatedTax Shared 4 yr avg	Opilio % of Total
North	$1,370,275	$807,725	58.95%
South	$6,650,676	$795,160	11.96%

Source: Alaska Department of Revenue, Income and Excise Audit Division
Shared Taxes and Fees Annual Reports; Fisheries Business Tax Database

Analysis by DCED, Research & Analysis Section, 8/21/00

Opilio Harvest Summary based on 5-year averages 1995 -1999

Statewide

	Pounds	% of statewide	Value	% of statewide
AEB	29,030,997	4.39%	$22,520,994.37	3.44%
Akutan	44,336,564	6.70%	$41,666,460.60	6.36%
Juneau	37,847	0.01%	$89,108.55	0.01%
King Cove	36,035,796	5.45%	$36,723,336.06	5.60%
Kodiak	916,876	0.14%	$1,619,962.10	0.25%
St. George	48,632,428	7.35%	$48,133,533.75	7.34%
St. Matthews	2,492,814	0.38%	$3,545,333.52	0.54%
St. Paul	264,722,362	40.02%	$285,148,060.66	43.51%
Toglak	6,535,277	0.99%	$6,467,668.57	0.99%
Unalaska	225,102,051	34.03%	$205,745,339.75	31.39%
Trans Out	381,600	0.06%	$577,965.20	0.09%
Unknown	3,205,676	0.48%	$3,169,678.38	0.48%
	661,430,288	100.00%	$655,407,441.51	100.00%

Bering Sea Communities

	Pounds	% of Bering Sea Total	Value	% of Bering Sea Total
AEB	29,030,997	4.46%	$22,520,994.37	3.50%
Akutan	44,336,564	6.82%	$41,666,460.60	6.48%
King Cove	36,035,796	5.54%	$36,723,336.06	5.71%
St. George	48,632,428	7.48%	$48,133,533.75	7.48%
St. Matthews	2,492,814	0.38%	$3,545,333.52	0.55%
St. Paul	264,722,362	40.70%	$285,148,060.66	44.31%
Unalaska	225,102,051	34.61%	$205,745,339.75	31.97%
	650,353,012	100.00%	$643,483,058.71	100.00%

to final summary sheet:

Aleutians North/South Split

North = St. Paul, St. George, St. Matthew; South = AEB, Akutan, King Cove, Unalaska)

	Pounds	% of Bering Sea Total Pounds	Value	% of Bering Sea Total Value
North	315,847,604	48.57%	336,826,928	52.34%
South	334,505,408	51.43%	306,656,131	47.66%
	650,353,012	100.00%	$643,483,058.71	100.00%

Opilio Harvest Value based on 4-year averages 1995-1998
Bering Sea Communities

	4-yr Total Value	4-yr Avg Value	% of Bering Sea 4 Year Avg Value
AEB	$22,427,018	$5,606,754.59	4.78%
Akutan	$31,138,306	$7,784,576.47	6.63%
King Cove	$27,779,361	$6,944,840.25	5.92%
St. George	$30,254,163	$7,563,540.70	6.45%
St. Matthews	$3,545,334	$886,333.38	0.76%
St. Paul	$200,556,476	$50,139,119.01	42.72%
Unalaska	$153,719,122	$38,429,780.38	32.75%
totals		$117,354,944.78	100.00%

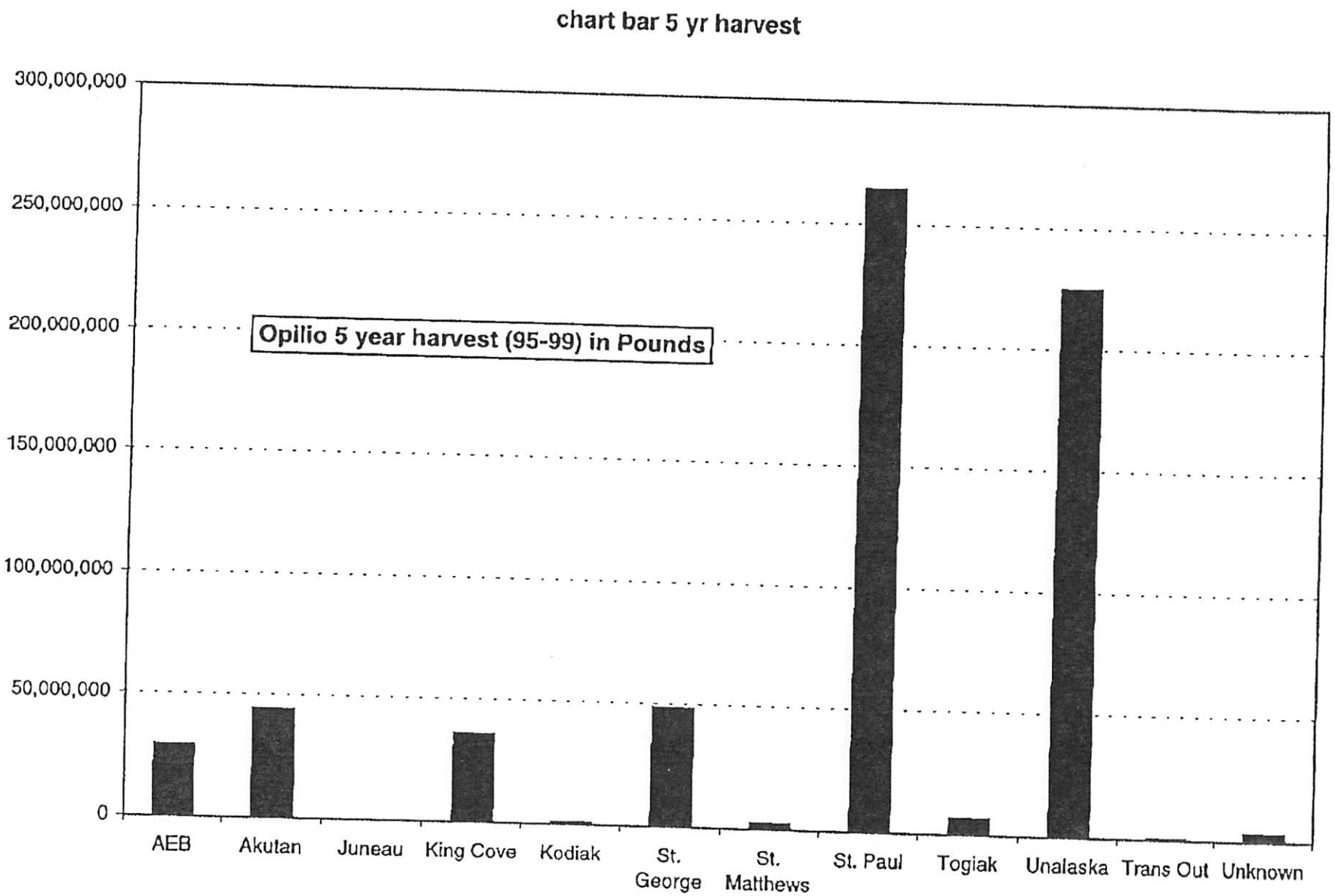
chart bar 5 yr harvest
300,000,000
250,000,000
200,000,000
150,000,000
100,000,000
50,000,000
0
Opilio 5 year harvest (95-99) in Pounds
AEB
Akutan
Juneau
King Cove
Kodiak
St. George
St. Matthews
St. Paul
Togiak
Unalaska
Trans Out
Unknown

O Harvest per Community

				Percentage of Statewide Totals		Five-Year Averages 95-99		Percentage of Statewide 5-Yr Avg		Two-Average
AEB		Pounds	Value	Pounds	Value					
	95	3,024,440	$7,367,169.00	4.53%	4.48%					
	96	0	$0.00	0.00%	0.00%					
	97	2,288,277	$1,839,927.75	2.09%	2.12%					
	98	23,613,862	$13,219,921.62	9.51%	9.31%					
	99	104,418	$93,976.00	0.06%	0.05%					
	totals:	29,030,997	$22,520,994.37	4.39%	3.44%	5,806,199	$4,504,198.87	4.39%	3.44%	11,859,140
Akutan		Pounds	Value							
	95	2,688,292	$6,987,466.55	4.02%	4.25%					
	96	2,546,993	$3,676,907.80	4.46%	4.53%					
	97	9,450,941	$7,524,080.24	8.65%	8.67%					
	98	23,057,632	$12,949,851.27	9.29%	9.12%					
	99	6,592,706	$10,528,154.74	3.66%	5.82%					
	totals:	44,336,564	$41,666,460.60	6.70%	6.36%	8,867,313	$8,333,292.12	6.70%	6.36%	14,825,169
Juneau		Pounds	Value							
	95	0	$0.00	0.00%	0.00%					
	96	0	$0.00	0.00%	0.00%					
	97	1,377	$1,583.55	0.00%	0.00%					
	98	0	$0.00	0.00%	0.00%					
	99	36,470	$87,525.00	0.02%	0.05%					
	totals:	37,847	$89,108.55	0.01%	0.01%	7,569	$17,821.71	0.01%	0.01%	18,235
King Cove		Pounds	Value							
	95	3,272,586	$8,766,085.00	4.90%	5.33%					
	96	2,706,688	$4,294,618.00	4.74%	5.29%					
	97	6,846,092	$5,545,017.00	6.27%	6.39%					
	98	15,097,028	$9,173,641.00	6.08%	6.46%					
	99	8,113,402	$8,943,975.06	4.51%	4.94%					
	totals:	36,035,796	$36,723,336.06	5.45%	5.60%	7,207,159	$7,344,667.21	5.45%	5.60%	11,605,215
Kodiak		Pounds	Value							
	95	337,696	$962,433.60	0.51%	0.58%					
	96	212,480	$311,759.30	0.37%	0.38%					
	97	108,210	$81,157.50	0.10%	0.09%					
	98	54,964	$34,627.32	0.02%	0.02%					
	99	203,526	$229,984.38	0.11%	0.13%					
	total	916,876	$1,619,962.10	0.14%	0.25%	183,375	$323,992.420	0.14%	0.25%	129,245

totals:	916,876	$1,619,962.10	0.14%	0.25%	183,375	$323,992.42	0.14%	0.	129,245
St. George	Pounds	Value							
95	3,466,006	$8,238,663.60	5.19%	5.01%					
96	3,772,917	$6,794,189.00	6.61%	8.37%					
97	11,253,760	$8,777,353.20	10.30%	10.12%					
98	11,803,118	$6,443,957.00	4.75%	4.54%					
99	18,336,627	$17,879,370.95	10.19%	9.88%					
totals:	48,632,428	$48,133,533.75	7.35%	7.34%	9,726,486	$9,626,706.75	7.35%	7.34%	15,069,873
St. Paul	Pounds	Value							
95	38,472,404	$92,457,998.05	57.59%	56.18%					
96	29,965,972	$41,452,330.01	52.49%	51.06%					
97	31,365,178	$24,010,252.41	28.71%	27.67%					
98	77,052,331	$42,635,895.58	31.03%	30.03%					
99	87,866,477	$84,591,584.61	48.82%	46.76%					
totals:	264,722,362	$285,148,060.66	40.02%	43.51%	52,944,472	$57,029,612.13	40.02%	43.51%	82,459,404
Togiak	Pounds	Value							
95	0	$0.00	0.00%	0.00%					
96	0	$0.00	0.00%	0.00%					
97	0	$0.00	0.00%	0.00%					
98	0	$0.00	0.00%	0.00%					
99	6,535,277	$6,467,668.57	3.63%	3.58%					
totals:	6,535,277	$6,467,668.57	0.99%	0.99%	1,307,055	$1,293,533.71	0.99%	0.99%	3,267,639
Trans Out	Pounds	Value							
95	13,699	$45,207.00	0.02%	0.03%					
96	128,555	$253,853.75	0.23%	0.31%					
97	89,646	$101,681.45	0.08%	0.12%					
98	149,700	$177,223.00	0.06%	0.12%					
99	0	$0.00	0.00%	0.00%					
totals:	381,600	$577,965.20	0.06%	0.09%	76,320	$115,593.04	0.06%	0.09%	74,850
Unalaska	Pounds	Value							
95	14,861,919	$38,090,555.88	22.25%	23.15%					
96	15,733,728	$21,683,660.66	27.56%	26.71%					
97	47,622,356	$38,728,940.83	43.59%	44.63%					
98	94,739,989	$55,215,964.13	38.15%	38.88%					
99	52,144,059	$52,026,218.25	28.97%	28.76%					
totals:	225,102,051	$205,745,339.75	34.03%	31.39%	45,020,410	$41,149,067.95	34.03%	31.39%	73,442,024 $

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DUTCH HARBOR-UNALASKA AND NEW BEDFORD LAND TITLES OF NATION'S TOP FISHING PORTS FOR 2001

Commercial fishermen brought 834.5 million pounds of fish to the port of Dutch Harbor-Unalaska, Alaska, in 2001, making it the port with the highest volume of fish landings in the country. New Bedford, Mass., claimed the top spot in the country for landing value at its port with $150.5 million. The Commerce Department's National Oceanic and Atmospheric Administration (NOAA) announced the figures today.

The port of Dutch Harbor-Unalaska netted the top landings slot for the 13th continuous year according to NOAA's National Marine Fisheries Service. The port recorded an increase of 134.7 million pounds over 2000 landings. Reedville, Va., was ranked as the number two port for the quantity of landings in 2001 with 488 million pounds landed.

The value of landings at New Bedford was $150.5 million, an increase of $4.2 million from the 2000 value. Dutch Harbor-Unalaska was second with landings valued at $129.4 million - an increase of $4.5 million. The Kodiak, Alaska, catch value was third at $74.4 million in 2000.

The continuing increase in value of New Bedford landings for the second year was due to sea scallops holding steady ($81.9 million in 2001 compared with $83 million in 2000) and an increase in landings of Atlantic cod, yellowtail and winter flounder due to improving groundfish stocks. New Bedford returned to the top value port last year, after a nine year absence that was in part caused by widespread depletion of the New England groundfish fishery and declining numbers of sea scallops.

The large-landings value increase in 2001 at Dutch Harbor-Unalaska came from increased groundfish catch from the Bearing Sea/Aleutian Islands and the Gulf of Alaska.

The record landings for quantity was 848.2 million pounds in Los Angeles, Calif., in 1960 and the record for value was $224.1 million in Dutch Harbor-Unalaska in 1994.

The top 10 leading U.S. ports in volume and value of fish and shellfish landed in 2000 and 2001 are:

COMMERCIAL FISHERY LANDINGS AT MAJOR US. PORTS, 2000-2001

Figures in Million Pounds

Port	Quantity	
	2000	2001
Dutch Harbor—Unalaska, Alaska	699.8	834.5
Reedville, Va.	366.8	488.0
Empire—Venice, La.	396.2	370.7
Cameron, La.	414.5	324.1

Intercoastal, La.	321.7	303.6
Kodiak, Alaska	289.6	285.5
Los Angeles, Calf.	254.7	219.1
Pascagoula—Moss Point, Miss.	199.9	196.0
New Bedford, Mass.	89.0	106.9
Port Heuneme—Oxnard—Ventura, Calf.	162.2	104.8

COMMERCIAL FISHERY VALUE AT MAJOR US. PORTS, 2000-2001

Figures in Million Dollars

Port	Quantity	
	2000	2001
New Bedford, Mass.	146.3	150.5
Dutch Harbor—Unalaska, Alaska	124.9	129.4
Kodiak, Alaska	94.7	74.4
Dulac—Chauvin, La.	68.1	60.9
Brownsville, Port Isabel, Texas	88.6	59.8
Empire—Venice, La.	61.6	59.1
Hampton Roads Area, Va.	52.8	56.8
Honolulu, Hawaii	56.0	40.0
Key West, Fla.	50.6	40.0
Bayou La Barte, La.	48.9	38.9

Note: To avoid disclosure of private enterprise certain ports have not been included. A complete list of commercial fishery landings and value at 50 major U.S. ports for 2000 - 2001 is available on the internet at http://www.st.nmfs.gov/st1/publications.html.

NOAA Fisheries is dedicated to protecting and preserving our nation's living marine resources through scientific research, management, enforcement, and the conservation of marine mammals and other protected marine species and their habitat.

To learn more about NOAA Fisheries, please visit http://www.nmfs.noaa.gov.

C-2
Joe Sullivan

Crab Rationalization
Agenda Item C-2
Binding Arbitration
Comments Submitted by Joe Sullivan
February 1, 2003

The following comments are submitted in connection with the Council's consideration of the binding arbitration component of the Bering Sea/Aleutian Islands crab rationalization program. They are submitted on behalf of owners and operators of the independent crab vessels ALASKAN BEAUTY, OCEAN OLYMPIC, NORTH PACIFIC and other similarly situated parties.

Binding arbitration is necessary to address the inherently anti-competitive effect of the processor quota component of crab rationalization. If implemented, IPQs would effectively segment and allocate 90% of the market into which crab harvests will be delivered. That action would radically shift negotiating leverage between harvesters and processors relative to status quo. In the absence of specific legislative exemption, that action would constitute a per se violation of antitrust law equivalent to price fixing. It is a "hard-core cartel agreement" that is prosecuted criminally by the Department of Justice.[1]

Binding arbitration is intended to address failed price negotiations, and to reintroduce parity lost through processor market segmentation. Binding arbitration is not intended to be a substitute for consensual price negotiation, and we expect and intend that most if not all crab delivery contracts will be settled through negotiation. However, all negotiations are conducted against the parties' outside option if negotiations fail, which in this case is the price that would be set under arbitration. Therefore, the results of the model chosen will directly condition the results of such negotiations.

It is our position that the fleetwide, conventional arbitration model appropriately addresses the negotiation leverage shift associated with the Council's preferred rationalization alternative, while the segmented, last best offer model, does not.

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[1] By contrast, fishermen have had an exemption from antitrust law that allows them to collectively harvest, process, market and/or sell their catch since the adoption of the Fishermen's Collective Marketing Act in 1934. Through a qualifying fishermen's cooperative, it is legal for fishermen to allocate among themselves harvest shares of a fishery, and to collectively negotiate the prices at which they are willing to sell their catch. It is also legal for Councils to adopt individual fishing quota programs which allocate harvest shares by regulation.

Therefore, we are asking that you adopt the fleetwide model as the binding arbitration preferred alternative.

We believe the fleetwide model works better than the segmented last best offer model in part because it is more closely models the current price formation process, by setting price before a harvester is required to make an irrevocable commitment to deliver. Under the segmented last best offer model, a harvester must irrevocably commit to deliver his or her crab to a processor to trigger a price arbitration. This is a highly unusual (and to our knowledge, unique) departure from standard commercial practice, and we believe it would have adverse economic and psychological effects on harvesters entering the negotiation process.

Further, while last best offer arbitration forces parties to narrow the range of proposals submitted to the arbitrator(s), also disadvantages the more risk averse party, and invites strategic gaming by processors. Crab harvesters, who typically depend heavily on their crab revenues for survival, are highly likely to be much more risk averse in crab price negotiations than crab processors who have other sources of income (such as AFA pollock processors). Harvesters in these circumstances have proportionately more to lose than their processor counterpart. As a consequence, they may well have a strong incentive to buy their way out of arbitration at a discount, rather than enter a process under which an arbitrator is constrained to accepting one or the other of the parties' price porposals, rather than having the latitude to frame an equitable result.

The fleetwide model was deliberately designed to produce an environment in which the parties are encouraged to collaborate to produce additional value. It appears to have done so in Dr. Plott's experiments. On the other hand, the segmented last best offer model fractionalizes parties, and in Dr. Plott's experiments produced a more contentious negotiating environment, with fewer well timed deliveries, and at least one instance of a harvester choosing not to "deliver." This is an important consideration, if we are hoping to obtain additional value from our crab resources through rationalization.

There are a number of discrete issues that I would like to address as well.

1. Information available to the arbitrator(s). It is critical under either model that the arbitrators have access to data concerning historical and current crab transactions. Under the fleetwide model, all arbitrations are conducted by the same arbitrator or arbitration panel. However, under the segmented last best offer, there is no assurance of such information exchange. This is important, as there are unresolved legal and policy issues which may prevent the arbitrators from accessing the data base being established in connection with the program to verify the accuracy of information submitted in the discrete arbitrations.

2. Arbitration timelines. The fleetwide model was designed to prevent the arbitration process from being time constrained. The segmented last best offer system has set what we perceive to be an extremely tight time frame within which all arbitrations would take place. We are concerned that the resulting time constraint may shift negotiating leverage inappropriately, and prevent an effective exchange of data between arbitrations.

3. Arbitration administration. Given the significance of binding arbitration in the context of a segmented and allocated processing market, we think it is far more critical that the system function well than be cheap. In any case, we do not believe that the relative costs of the two systems would be substantially different. The fleetwide model would generally use one arbitrator or a single panel over a longer time, while the segmented last best offer model would use more arbitrators or arbitrator panels over a shorter time frame.

Some parties have expressed concern that the fleetwide model requires pre-season arbitrations be conducted even if they are not necessary. It is the Committee's understanding and intent that arbitration would be managed through a blend of framework regulations and private ordering similar to Bering Sea pollock cooperative management. Under this approach, pre-season arbitrations could be suspended if they were no longer needed.

4. B share acquisition. The analysis points out that retaining a broad distribution of B shares may be essential to maintaining any level of competitive market for delivery under A shares. Per the Advisory Panel's motion, we request the Council consider two restrictions on B share transfers: (i) restrictions on processor acquisition of B shares; and (ii) restrictions on transfers of B shares separate from A shares.

5. Quality issues. Quality affects price, and in the absence of well defined quality standards and a quick, efficient and equitable enforcement system, quality issues could skew negotiating leverage notwithstanding arbitration system design. We request that the Council consider development and adoption of both. This appears to be an issue that it would be appropriate to refer to the Binding Arbitration Committee for further work.

6. Alaska Marketing Association base years. The fleetwide model was based on using the years 1990 – 2000 to establish the historical distribution of first wholesale revenues. We have since been informed that the Alaska Marketing Association ("AMA") was not an effective force in price negotiation before 1994. Since AMA's negotiating leverage was considered in adopting the two pie system, we think it would be appropriate to modify the base years for the historical distribution of revenue to 1994 – 2002.

Antitrust Guidelines for Collaborations Among Competitors

Issued by the
Federal Trade Commission
and the
U.S. Department of Justice

April 2000

relevant agreement.[15]

3.2 Agreements Challenged as Per Se Illegal

Agreements of a type that always or almost always tends to raise price or reduce output are per se illegal.[16] The Agencies challenge such agreements, once identified, as per se illegal. Typically these are agreements not to compete on price or output. Types of agreements that have been held per se illegal include agreements among competitors to fix prices or output, rig bids, or share or divide markets by allocating customers, suppliers, territories or lines of commerce.[17] The courts conclusively presume such agreements, once identified, to be illegal, without inquiring into their claimed business purposes, anticompetitive harms, procompetitive benefits, or overall competitive effects. The Department of Justice prosecutes participants in hard-core cartel agreements criminally.

If, however, participants in an efficiency-enhancing integration of economic activity enter into an agreement that is reasonably related to the integration and reasonably necessary to achieve its procompetitive benefits, the Agencies analyze the agreement under the rule of reason, even if it is of a type that might otherwise be considered per se illegal.[18] *See* Example 4. In an efficiency-enhancing integration, participants collaborate to perform or cause to be performed (by a joint venture entity created by the collaboration or by one or more participants or by a third party acting on behalf of other participants) one or more business functions, such as production, distribution, marketing, purchasing or R&D, and thereby benefit, or potentially benefit, consumers by expanding output, reducing price, or enhancing quality, service, or innovation. Participants in an efficiency-enhancing integration typically combine, by contract or otherwise, significant capital, technology, or other complementary assets to achieve procompetitive benefits that the participants could not achieve separately. The mere coordination of decisions on price, output, customers, territories, and the like is not integration, and cost savings without integration are not a basis for avoiding per se condemnation. The integration must be of a type that plausibly would generate procompetitive benefits cognizable under the efficiencies analysis set forth in Section 3.36 below. Such procompetitive benefits may enhance the participants' ability or incentives to compete and thus may offset an agreement's anticompetitive tendencies. *See* Examples 5 through 7.

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[15] *See California Dental Ass'n*, 119 S. Ct. at 1617-18; *Indiana Fed'n of Dentists*, 476 U.S. at 459-61; *NCAA*, 468 U.S. at 104-13.

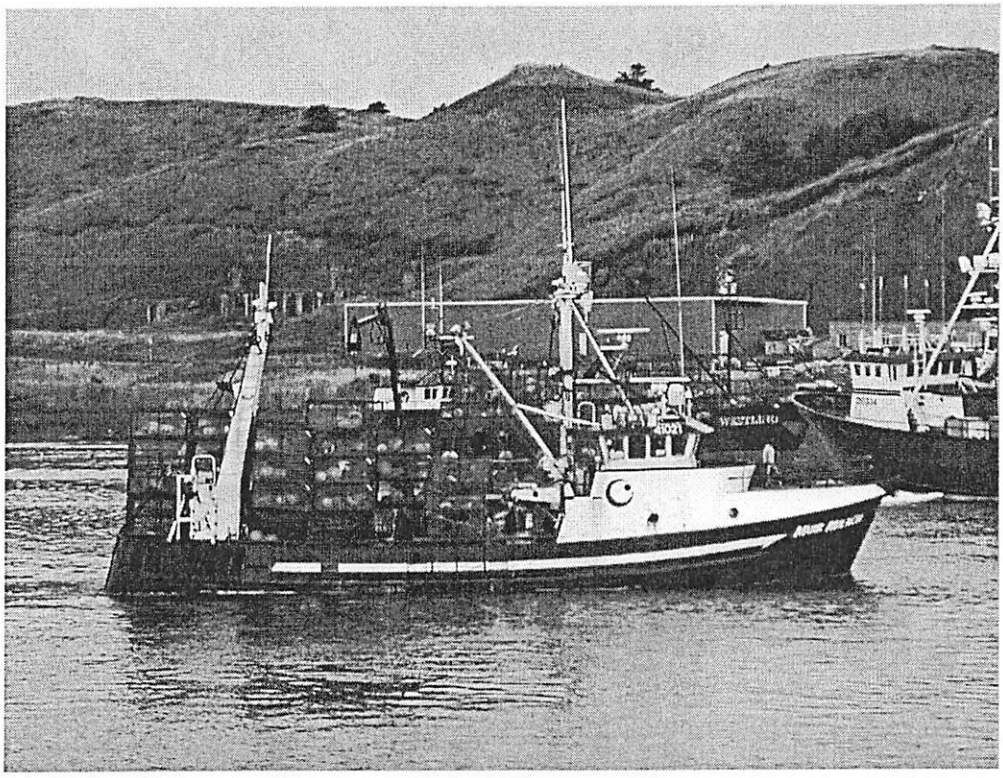
[16] *See* Broadcast Music, Inc. v. Columbia Broadcasting Sys., 441 U.S. 1, 19-20 (1979).

[17] *See, e.g.*, Palmer v. BRG of Georgia, Inc., 498 U.S. 46 (1990) (market allocation); United States v. Trenton Potteries Co., 273 U.S. 392 (1927) (price fixing).

[18] *See* Arizona v. Maricopa County Medical Soc'y, 457 U.S. 332, 339 n.7, 356-57 (1982) (finding no integration).

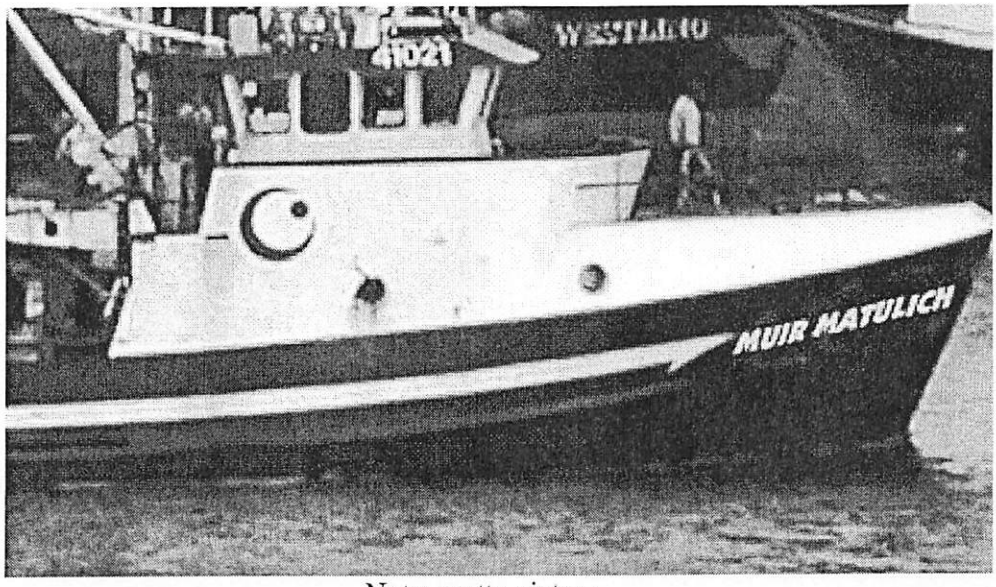
C-2
Dave Fraser

Fleetwide Minimum Price Model



or

"Leveraged Buy Out" Model



Not a pretty picture….

Binding Arbitration

The issues addressed in this testimony include:

- Need for Action
- Contrast of Alternatives
- Data Verification
- Linkage for Congressional Authorization
- B Share Ownership

Need for Action

The basic problem to be addressed by binding arbitration is the anti-competitive effect of market segmentation represented by IPQs. The magnitude of the problem is proportionate to the A/B share split, and at 90/10 the Binding Arbitration process plays a crucial role in substituting for the removal of a competitive market for harvesters.

Contrasting the Alternatives

The names of the two Binding Arbitration models don't capture the range of differences between the two models. These critical differences fall into four areas:

Form of Arbitration

LBO: "Coin Flip" (Last Best Offer)
FW: "Cut the Baby" (Mediation)

Scope of Arbitration on Price

LBO: Segmented Arbitration by IPQ holder
FW: Fleetwide Arbitration

Sequence of Contract formation vs. Price formation

LBO: Agree to sell, then determine price (forfeit "right to strike")
FW: Determine minimum price, then form contract (negotiate with a known "outside option")

Timeline for Arbitration

LBO: Everything for everyone in 15 days
FW: 120 days for Arbitrator to prepare

The LBO model was designed primarily by the processing sector together with some harvesters who had faith that the impacts "2 Pie" would not be that bad. The FW model was developed by harvesters who are concerned about the anti-competitive impact of market segmentation.

Form of Arbitration

"Last Best Offer" favours the least risk adverse participant.

Scope of Arbitration on Price

The Binding Arbitration process is necessary to address the result of market segmentation. The LBO model perpetuates the problem by segmenting the harvesters into separate arbitration events. Given the compressed 15 timeline it is likely to require separate arbitrators as well.

One Arbitrator with access to a broad view of the full market under the Fleetwide model is better situated to determine a fair minimum price.

Sequence of Contract Formation vs. Price Formation

Terry Leitzell testified to the AP that the party who is "prohibited from striking is the weakest player in the game." LBO requires a harvester to surrender the right to strike by signing a binding contract with no price provisions as a condition of access to the Arbitration process.

The Fleetwide model uses the Arbitrator to determine a fair minimum price that becomes the harvester's outside option in the development of a contract. Given that the purpose of Binding Arbitration is to compensate for the creation of a segmented market, providing a reasonable outside option makes more sense than stripping the harvester of the right to strike.

Timeline for Arbitration

It is inconceivable that an Arbitrator would have sufficient time to receive and evaluate the information necessary to measure LBO's against the standards for arbitration in a period of less than 15 days. This problem is exacerbates on the one hand, if one arbitrator is trying to handle each IPQ owner's arbitration separately within the 15 day window. One the other, if each IPQ owner's arbitrations are happening in a vacuum, the arbitrator will have a narrow frame of reference for ground-truthing the IPQ owner's data.

By contrast the Fleetwide model provides a long lead time for the Arbitrator to acquire the necessary understanding of the industry, the historic division of revenues and other factors in preparation for determining a Fleetwide minimum price. The 120 day lead is not amount of time parties will be engaged in negotiations, it is primarily the period in which the Arbitrator, together with the Market Analyst, will become familiar with the context of the negotiations and acquire good data.

Data Verification

The Analysis states on page 3.7-8 that the arbitrator will need to invest substantial time and effort into development of the historic division of revenues standard, and to determine both historic ex vessel prices and first wholesale prices. It notes: **"The magnitude of this problem is not likely to be fully understood until the arbitrator begins the process of calculating the division of revenues."**

The Analysis points to a long list of complicating factors in the arbitrators task. It states that determining the historic first wholesale prices and revenues division will also be:

> *"complicated by the lack of uniformity of processors and the different products those processors sell into different markets."*
> *"complicated by vertical integration of the processing sector."*
> *"complicated by several other factors...*
> *"...sensitive to the production levels of specific products..."*
> *"...sensitive to changes in total harvest..."*
> *"...(and) location of landings"*
> *"complicate(d)... (because) Commercial Operator Annual Reports (COAR)...distinguish species, but not fishery."*

NOAA-GC has not provided any assurance that the Data Collection program will be able to either provide the necessary data or even verify the accuracy of data provided to the Arbitrator by participants. Without the ability of the Arbitrator to access the Data Collection system, it is imperative that they have the ability to 'ground truth' information provide by participant.

Linkage for Congressional Authorization

There are many inter-related elements of Crab Rationalization that require Congressional Authorization. It is essential that Congress approve all of these at one time. Thus, the Council needs to identify the preferred alternative at this meeting.

The Fleetwide model is the one most likely to offset the anti-competitive impacts of market segmentation implicit in IPQs, and should be selected by the Council as the preferred option.

B Share Ownership and Transferability

The staff Analysis states on page 3.7-6:

> *Trading of harvest shares under the program could alter the bargaining power...if a harvest share holder sells A shares independently from B shares...new A share purchasers will have limited ability to use B share deliveries to leverage a better price on A share deliveries. The effect on bargaining power is even more pronounced if processors or their affiliates purchase B shares, since the B share holdings of the different sectors will be offset.*
> *Another problematic aspect of the purchase of B shares by processors and their affiliates is the loss of information from B share transactions and production to the arbitration process... processor ownership of B shares could decrease the arbitrator's information concerning market changes that are reflected in the B share crab prices...*
> *In addition, if IPQ holders also own a substantial portion of the B share pool, the opportunities for sale of B share crab to processors not holding IPQs will be reduced."*

The Plott analysis – page 4 – suggests that:

> *"Altering this ratio of holdings for different harvesters might effect the outcome for not only those individual, but for all others."*

Given the analysis of the role of B shares in relation to the outcomes of arbitration under the alternative programs, the Council should prohibit acquisition of B shares by processors or their affiliated entities.

Concerns With the "Revised" LBO Model

The revised LBO model in the AP minority report may be an improvement over the original segmented market LBO model. However, its success is dependent on the continued survival of a number of processors in the 7% market share range. Under the consolidation rules, these smaller IPQ holders may disappear over time, and with them the potential of the revised LBO to achieve its goal of a quasi-competitive fleetwide price.

Additionally, the revised LBO re-creates one of the problems it purports to solve – e.g. it separates price formation and the determination of delivery conditions into two events, because a price from the 'best' LBO can be substituted for the price in the contract in which delivery terms

Community Protection Committee Recommendations
January 9 and 10, 2003

The Community Protection Committee has developed the following provisions for consideration by the Council:

Cool Down Period

During the Cool Down Period shall the following elements will apply:

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 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.

IPQ Cap

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

For opilio:
Option 1: IPQ percentage times a TAC of 175 million pounds.
Option 2: IPQ percentage times a TAC of 200 million pounds.

For Bristol Bay red king:
Option 1: IPQ percentage times a TAC of 20 million pounds.
Option 2: IPQ percentage times a TAC of 25 million pounds.
Option 3: IPQ percentage times a TAC of 30 million pounds.

IFQ issued in excess of the IPQ limit shall be subject to regional landing requirements.

Community Purchase and Right of First Refusal Options

The committee believes that communities need an effective right of first refusal on any shares sold for use outside of the community. Development of further details of a system for exercising those rights that does not overly decrease efficiencies in the fisheries should continue.

1. First Right of 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, qualified communities, or community groups representing qualified communities a first right of refusal to purchase processing quota 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. Intra-company transfers within a region are exempt from this provision. To be exempt from the first right of refusal, the use of the PQS must be by the same company.

If an owner of IPQ decides to sell the IPQ, a first right of refusal shall go to:

1) in CDQ communities to the CDQ group

2) in non-CDQ communities:

a) In communities with two or more processing facilities the first right of refusal goes (first) to the remaining processor(s) and (second) to the entity identified by the community. Under this paragraph a processor must exercise the right within 30 days of presentation. If not exercised by a processor, the entity identified by the community must exercise the right within 60 days of the presentation to processors.

b) In communities with only one processor, the first right of refusal goes to the entity identified by the community. Under this paragraph the entity must exercise the right within 60 days of presentation.

Any right of first refusal must be on the same terms and conditions of the underlying agreement. If a first right of refusal is exercised by another processor and that processor proposes to transfer the shares from the community in a subsequent sale, the subsequent sale is subject to the first right of refusal.

The right of first refusal applies only to the community within which the processing history was earned. If processing quota is transferred to another community (in a manner authorized by these provisions), it no longer is subject to a right of first refusal.

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, processors in qualified communities or 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. Intra-company transfers within a region are exempt from this provision. To be exempt from the first right of refusal, the use of the PQS must be by the same company.

The first right of refusal goes (first) to the remaining processor(s) and (second) to the entity identified by the community. Under this paragraph a processor must exercise the right within 30 days of presentation. If not exercised by a processor, the community entity must exercise the right within 60 days of the presentation to processors.

Any right of first refusal must be on the same terms and conditions of the underlying agreement. If the first right of refusal is exercised by a processor, further transfers of the shares from the purchasing community are subject to the general first right of refusal of the new community under 1 above.

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 rules similar 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. If no entity is identified and approved by the date of presentation of an offer over which the entity would have a right of first refusal, no community entity will have the right. Ownership and management of harvest and processing shares by community entities in non-CDQ communities will be subject to rules similar to those of the halibut and sablefish community purchase program.

Regionalization of the Bairdi Fishery

The committee requests that the Council consider regionalization of the bairdi fishery prior to that fishery becoming a directed fishery.

Other Provisions in the Council Motions

The committee has examined all other provisions in the Council motions of April, June, October, and December 2002.