

MEMORANDUM

TO: Council, SSC and AP Members  
FROM: Chris Oliver <sup>DC</sup> <sub>for</sub>  
Executive Director  
DATE: September 29, 2009  
SUBJECT: Bering Sea and Aleutian Islands crab issues

ESTIMATED TIME

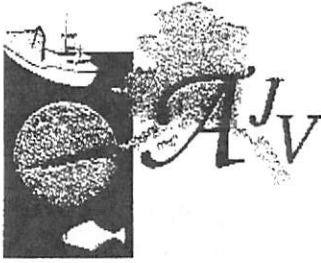
10 HOURS  
(all C-4 items)

**ACTION REQUIRED**

(c) Review proposals to address Western Aleutian Islands golden king crab fishery issues

**BACKGROUND**

At its June 2009 meeting, the Council received a discussion paper concerning unutilized quota in the Western Aleutian Islands golden king crab fishery. In response to the paper and public testimony, the Council requested industry to continue the development of a possible exemption to regional landing requirements that would apply, if processing capacity is unavailable in the West region of that fishery. The Council requested that those proposals be brought forth at this meeting. Industry members will report on their proposals at the meeting.



**APICDA Joint Ventures, Inc.**

234 Gold Street • Juneau, Alaska 99801 • (907) 586-0161 • Fax (907) 586-0165

509 West 3<sup>rd</sup> Avenue, Suite 101 • Anchorage, AK, 99501 • (907) 929-5273 • Fax (907) 929-5275

September 25, 2009

Mr. Eric Olson, Chairman  
North Pacific Fishery Management Council  
605 W. 4<sup>th</sup> Avenue, Suite 306  
Anchorage, Alaska 99501-2252

Re: WAG Emergency Relief Proposal

Dear ~~Chairman~~ Olson:

The attached proposal is supported by all the entities currently involved in the harvest and production of west designated WAG. This includes AJV, the Atxam Corporation, the Golden King Crab Harvesters Association, the Adak Community Development Corp, and the City of Adak.

We look forward to testifying on this proposal before the Council.

Sincerely,

  
Larry Cofter, CEO

## **Emergency Relief Proposal For WAG Landing Requirement**

### **Purpose and Need Statement:**

The purpose of this proposal is to develop a regulation to allow waiver of the requirement that west-designated Western Aleutian Islands gold king crab (WAG) individual fishing quota (IFQ) be delivered west of 174 ° W. longitude, in the event that no shoreside processing facility is open to take delivery and process WAG IFQ. In that circumstance, the regional landing requirement needs to be relaxed to allow the IFQ to be delivered outside the west region, to promote full utilization of the TAC.

### **Alternative 1: Status Quo**

### **Alternative 2: Contractually Defined Exemption**

To receive an exemption from the regional landing requirement in the WAG fishery, specified QS holders, PQS holders, shoreside processors, and municipalities, shall have entered into a contract prior to the date on which the exemption is sought. The contract parties will annually file an affidavit with NMFS affirming that a master contract has been signed. In the affidavit, the parties shall affirm that the contract includes conditions under which an exemption may be granted, any mitigation requirements and the terms of any compensation.

### **Definitions:**

**QS Holders:** Any person or company that holds in excess of 20 percent of the west-designated WAG QS.

**PQS Holders:** Any person or company that holds in excess of a 20 percent of the west-designated WAG PQS.

**Shoreside Processors:** A shoreside processing facility that is located in one of the defined municipalities and that processed in excess of 20 percent of the west-designated WAG IFQ in the preceding fishing year. In the event an exemption is granted in any particular crab fishing year, the eligibility designation for the municipality shall continue in force until at least one crab fishing season has been completed with no exemption from the regional landing requirement having been granted.

**Municipalities:** The municipalities of Adak and/or Atka, provided that at least 20 percent of the west-designated WAG IFQ was processed in the municipality in the crab fishing year immediately preceding the current crab fishing year. In the event an exemption is granted in any particular crab fishing year, the eligibility designation for the municipality shall continue in force until at least one crab fishing season has been completed with no exemption from the regional landing requirement having been granted.

### **Types of Exemptions:**

#### **Option 1) Short Term Exemption**

A short term exemption to the regional landing requirement may be granted in the event there is no shoreside processing facility available to process west-designated WAG in the region during the crab harvesting season. In granting such exemption, each of the parties as defined above, or their authorized representative, must signify their approval of the exemption in writing, which shall not be unreasonably withheld.

**Suboption a)** A short term exemption is available if a shoreside processing plant will not open before December 1 of the WAG season.

**Suboption b)** If a shoreside processing plant opens after December 1, and west-designated IFQ is still available, the exemption from the regional landing requirement shall expire.

**Suboption b-i)** Holders of WAG IFQ shall deliver their undesignated IFQ prior to delivering their west-designated IFQ.

**Suboption b-ii)** No required IFQ delivery sequence.

## **Option 2) Long Term Exemption**

A long term exemption to the regional landing requirement may be granted in the event there is no shoreside processing facility available to process west-designated WAG in the region for a period of one or more years. In granting such exemption, each of the parties as defined above, or their authorized representative, must signify their approval of the exemption in writing, which shall not unreasonably be withheld. A long term exemption may not be longer than two years, although it may be renewed by affirmative action, in writing, of the parties as defined above.

### **Compensation:**

**Option 1)** No compensation.

**Option 2)** In the event an exemption of any type is granted for any reason, the QS holder and PQS holder shall pay an eligible municipalit(ies) a specified percentage of the total ex-vessel value of the west-designated WAG IFQ landed outside the region. The QS holder and PQS holder shall each be liable for paying 50 percent of the compensation. Compensation funds will be distributed to the municipalit(ies) based on each municipality's pro rata share of the west-designated WAG IFQ that was processed in the municipality the preceding crab fishing year.

### **Arbitration:**

A contract party's refusal to approve granting an exemption from the regional landing requirement is subject to binding arbitration. If the arbitrator finds that the contract party unreasonably withheld its approval of an exemption, the arbitrator may order that requirement for the party's approval be waived and the exemption be granted, provided that all other requirements for an exemption are satisfied.

Sent via Facsimile and U.S. Mail

September 24, 2009

Doug Mecum  
Acting Administrator, Alaska Region  
National Marine Fisheries Service  
National Oceanic and Atmospheric Administration  
P.O. Box 21668  
Juneau, Alaska 99802-1668

Eric Olson, Chairman  
North Pacific Fishery Management Council  
605 W. 4<sup>th</sup> Avenue, Suite 306  
Anchorage, Alaska 99501-2252

Re: Western Aleutian Islands Golden King Crab Fishery  
JOINT PETITION FOR EMERGENCY REGULATION

Dear Administrator Mecum, Chairman Olson, and Council Members:

The undersigned parties, representing the holders of quota share and processor quota share for the Western Aleutian Islands golden king crab (WAG) fishery, and affected communities, jointly petition the National Oceanic and Atmospheric Administration (NOAA) and the North Pacific Fisheries Management Council for approval of an emergency regulation under section 305(c) of the Magnuson-Stevens Fisheries Conservation and Management Act (MSA), 16 U.S.C. § 1855(c), that would suspend the regional delivery requirement for west-designated individual fishing quota (IFQ) in the WAG fishery for the balance of the 2009-10 fishing season if the shoreside processing plant on Adak remains closed and is not available to take delivery of this IFQ.

This petition is premised on the fact that the processing plant on Adak is currently closed and may not be open to take delivery of and process golden king crab this season, which runs through May 15, 2010. The company that has leased and operated that plant in past seasons has recently filed for Chapter 11 bankruptcy and has indicated in that proceeding that it does not intend to operate the plant this year. The company is looking to sell its interests to another company that may be able to operate it, but whether such a sale will occur is unknown at this point. A bank that holds a large secured interest in the company (approximately \$ 6.7 million) has appeared in the proceeding, and has moved to convert it from Chapter 11 to Chapter 7. Even if another company takes over the processing plant on Adak, many impediments to a quick reopening of the plant would remain, including having to reach agreement with the plant's owner regarding revised lease terms.

The policy guidelines for using the emergency rule authority of the MSA state that the "only legal prerequisite for use of the Secretary's emergency authority is that an emergency must exist." See 62 Federal Register 44421-22 (August 21, 1997). The guidelines further state that "Congress intended that emergency authority be available to address conservation, biological, *economic*, social, and health emergencies." *Id.* (emphasis added). The guidelines identify situations which might justify emergency action, including "to prevent significant economic loss or to preserve a significant economic opportunity that otherwise might be foregone." *Id.*

The situation on Adak fits well within these guidelines. Since inception of the crab rationalization program, west-designated WAG IFQ has primarily been processed on Adak, most recently under a custom processing agreement between the company that has operated the plant and the holders of most of the west-designated PQS. If the plant on Adak is not open to custom process WAG crab again this season, there will be no place to deliver west-designated IFQ for processing. The holders of QS and PQS for the WAG fishery agree that it is not economically feasible to employ a floating processor to take delivery of west-designated crab this season, even if a floater were available, which is not now the case. So unless emergency action is taken to suspend the regional delivery requirement and allow west-designated IFQ/IPQ to be delivered and processed in Dutch Harbor, the crab will go unharvested. This would result in significant direct economic loss and foregone economic opportunity for both the holders of the IFQ and PQS. Approximately 600,000 pounds of WAG QS/IFQ is west-designated. The value of this crab to harvesters this season would be in the range of \$ 1.2 – 1.8 million (assuming a final ex-vessel price between \$ 2.00 and \$ 3.00 per pound) and the first wholesale value to the PQS holders would be higher than that. Allowing this crab to be delivered in Dutch Harbor this season would preserve this economic opportunity for everyone involved.

At its June meeting, the Council tasked harvesters, processors, and communities to develop proposals for an exemption from regionalization in the event processing capacity is unavailable in the WAG fishery. Proposals are due by the Council's October meeting, and a set of elements and options will be submitted. This petition for emergency action for the 2009-10 WAG season is consistent with this initiative, as we are clearly facing a situation where processing capacity may not be available this year. But even if the Council were to move forward with a regulatory package for an exemption from regionalization, it would not be in place this season. Use of the emergency regulation authority in the MSA is thus the only avenue for avoiding the economic harm that would result if the regional delivery requirement is in effect this year and the plant on Adak remains closed.

The undersigned parties have discussed entering into a side agreement to compensate Adak for the loss of tax revenue that would result if the regional delivery requirement is suspended and west-designated IFQ/IPQ is delivered and processed in Dutch Harbor. These discussions are continuing, but are expected to conclude prior to the October Council meeting. The parties each reserve the right to withdraw their support for this joint petition if an agreement on compensation is not reached.

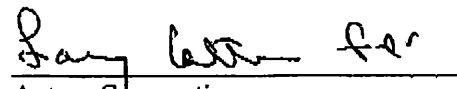
Thank you for considering this petition. We expect that this issue will be discussed at the October meeting and will be prepared to testify about it.

Date: SEPTEMBER 25, 2009

  
Golden King Crab Harvesters Association

  
APICDA Joint Ventures, Inc.

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Adak Community Development Corp.

  
Axtam Corporation  
Mark Snigaroff

Thank you for considering this petition. We expect that this issue will be discussed at the October meeting and will be prepared to testify about it.

Date: 9-24-09

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Golden King Crab Harvesters Association

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Aleutian Pribilof Islands Community  
Development Association

*Michael E. Quetzal Pres.*  
\_\_\_\_\_  
Adak Community Development Corp.

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Axtam Corporation