Public Testimony Sign-Up Sheet
Agenda Item C-4(c-e)

	NAME (PLEASE PRINT)	AFFILIATION
1	KEITH COLBURN.	F/V WIZARD S.E.A.
2	FLORENCE COLBURN	HARVEST SECTOR
3	Paul Gronholdt	AEB
4	Margaret Hall	Rondys, Inc.
5	Mateo Paz-Soldan & Pat Harding	City of Saint Paul / CBSFA / TDX
6	Arni Thomson	A.C.C.
7	Chestin Clark	(may be here 3:30-4pm - at-sea currently)
8	Linda Kozak	Kozak + Associates
9	Julie Bonney	AGDB
10	Steve Minor	NPCA
11	Jim Stone	F/V Retriever
12	Stephen Taufen	Groundswell & Lu Dochtermann F/V Stormbird North Point
13	dave fraser	City of Adak / Adak Fisheries
14	Clem Tillion	Aleut Enterprise Corp.
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NOTE to persons providing oral or written testimony to the Council: Section 307(1)(I) of the Magnuson-Stevens Fishery Conservation and Management Act prohibits any person " to knowingly and willfully submit to a Council, the Secretary, or the Governor of a State false information (including, but not limited to, false information regarding the capacity and extent to which a United State fish processor, on an annual basis, will process a portion of the optimum yield of a fishery that will be harvested by fishing vessels of the United States) regarding any matter that the Council, Secretary, or Governor is considering in the course of carrying out this Act.

AGENDA C-4
JUNE ~~2006~~ 2007

MEMORANDUM

TO:	Council, SSC and AP Members
FROM:	Chris Oliver Chris Executive Director
DATE:	May 28, 2007
SUBJECT:	Crab management

ESTIMATED TIME
8 HOURS
(all C items)

ACTION REQUIRED

(c) Exemption of custom processing from processing share use caps
(d) "Active participation" requirements for C shares
(e) Post-delivery transfers of quota for crab and **rockfish**

BACKGROUND

(c) Exemption of custom processing from processing share use caps.

The recent reauthorization of the Magnuson Stevens Act (MSA) included a provision to exempt custom processing in the North region of the Bering Sea *C. opilio* fishery from processing use caps established under the BSAI crab rationalization program. The exemption is believed to be intended primarily to improve efficiency in processing in that fishery. At its February 2007 meeting, the Council received a staff discussion paper concerning the implementation of this amendment and the potential for the Council extending the exemption to other fisheries included in the crab rationalization program. After receiving the discussion paper, input from the Advisory Panel, and hearing public testimony, the Council elected to consider whether this exemption should be extended to include all of the traditionally small crab fisheries governed by the rationalization program:

- the Western Aleutian Islands golden king crab fishery,
- the Western Aleutian Islands red king crab fishery,
- the Eastern Aleutian Islands golden king crab fishery,
- the St. Matthews blue king crab fishery, and
- the Pribilof red and blue king crab fishery.

The attached discussion paper (**Item C-4(c)(1)**) includes a draft purpose and need statement and elements and options for Council consideration. Provided the Council elects to continue with this action, it is anticipated that the development of regulatory analyses and specific regulatory provisions to implement the exemption for the North region of the *C. opilio* fishery will be combined with the analysis and development of the amendment package used by the Council to consider extending the exemption to these other fisheries.

The paper also includes a brief discussion of an issue related to the use of transferred shares in their community of origin, and the application of the use cap to custom processing of those shares. This issue arises because of the possible divestiture of shares by an entity to comply with the use cap. Under the current rules, on divestiture those shares could not be custom processed at the plant of origin, effectively forcing either a new processor (either shore plant or floater) to be opened in the community or the shares to be moved from the community. The Council may wish to consider whether it is appropriate to develop a provision that would permit continued processing of these shares at the plant of their origin.

(d) "Active participation" requirements for C shares.

Based on public testimony and a recommendation from the Advisory Panel, the Council initiated consideration of an amendment to the criteria used to determine a person's eligibility to acquire captain and crew shares (C shares) in the Bering Sea and Aleutian Islands crab fisheries governed by the rationalization program. Currently, to purchase C shares a person must be an 'active participant' in the fisheries, defined as having participated in a landing during the 365 days preceding the C share purchase. Testimony suggested that this requirement is overly burdensome to some former participants wishing to secure a position in the fisheries, who were unable to participate in the first year of the program because of fleet consolidation. Relaxing participation criteria could facilitate share purchase by persons wishing to re-enter the fisheries. The attached paper (**Item C-4(d)(1)**) discusses potential concepts to incorporate in a purpose and need statement and reviews possible elements and options that could be incorporated into an amendment package, if the Council wishes to amend the current regulations concerning active participation requirements pertaining to C shares.

Under current regulations, C shares will become subject to the 90/10 A share/B share split at the beginning of the 2008-2009 season. At its March/April 2007 meeting, the Council initiated an amendment to maintain the current status as shares unrestricted by processor share and regional landing requirements. The discussion paper concludes with a draft purpose and need statement for that amendment for Council consideration.

(e) Post-delivery transfers of quota for crab and **rockfish.**

At its February 2007 meeting, in response to public testimony, the Council requested staff to prepare a discussion paper concerning a potential amendment to the crab rationalization program that would permit the transfer of IFQ to cover overages after the time of landing. The provision would be intended to reduce the potential for enforcement actions related to unintended overages, in the event the fisherman can acquire shares to cover the overage within a reasonable time. At that time, the Council also directed staff to include discussion of the application of an equivalent provision to the Central Gulf of Alaska rockfish pilot program. The attached paper (**Item C-4(e)(1)**) responds to the Council request. The paper begins with a brief description of the rationale and use for post delivery transfers, including a brief discussion of the use of systems of post-delivery transfers in fisheries outside of the North Pacific. Since the underlying management programs in the Bering Sea and Aleutian Island crab fisheries and Central Gulf rockfish fisheries differ substantially, the discussion of the possible amendments is separated. For each fishery, the paper includes a discussion of pertinent issues, a draft purpose and need statement, and draft elements and options for Council consideration.

Exemption of Custom Processing from Crab Processing Caps
North Pacific Fishery Management Council
June 2006

The recent reauthorization of the Magnuson Stevens Act (MSA) included a provision to exempt custom processing in the North region of the Bering Sea *C. opilio* fishery from processing use caps established under the crab rationalization program. The exemption is believed to be intended primarily to improve efficiency in processing in that fishery. At its February 2007 meeting, the Council received a staff discussion paper concerning the implementation of this amendment and the potential for the Council extending the exemption to other fisheries included in the crab rationalization program. After receiving the discussion paper, input from the Advisory Panel, and hearing public testimony, the Council elected to consider whether this exemption should be extended to include all of the traditionally small crab fisheries governed by the rationalization program:

- the Western Aleutian Islands golden king crab fishery,
- the Western Aleutian Islands red king crab fishery,
- the Eastern Aleutian Islands golden king crab fishery,
- the St. Matthews blue king crab fishery, and
- the Pribilof red and blue king crab fishery.

Specifically, the Council requested staff to develop a draft purpose and need statement for the action for Council consideration, citing possible rationales for the action of enhancement of competition, contingencies in the event of a processor breakdown, processing efficiencies, enabling full harvest of the TAC, and sustaining coastal communities. Provided the Council elects to continue with this action, it is anticipated that the development of regulatory analyses and specific regulatory provisions to implement the exemption for the North region of the *C. opilio* fishery will be combined with the analysis and development of the amendment package used by the Council to consider extending the exemption to these other fisheries.

This paper includes a section describing the background for this action, a draft purpose and need statement for Council consideration, and draft elements and options that could be considered for analysis. The paper also includes a brief discussion of an issue related to the use of transferred shares in their community of origin and the application of the use cap to custom processing of those shares. This issue arises because of the possible divestiture of shares by an entity required to comply with the use cap. Under the current rules, on divestiture those shares could not be custom processed at the plant of origin. This use cap would effectively force either a new processor (either shore plant or floater[1]) to be opened in the community or the shares to be moved from the community. The Council may wish to consider whether it is appropriate to develop a provision that would permit continued processing of these shares at the plant of their origin.

Background

To understand the custom processing use cap exemptions adopted under the MSA reauthorization and those proposed to the Council requires a basic understanding of the current processing share allocations and processing share use caps. Under the program, processor quota shares (PQS) were allocated to eligible processors in each fishery based on qualified processing history. Holders of PQS receive annual allocations of individual processor quota (IPQ), which authorize the holder to accept delivery of a specific number of pounds of crab harvested with Class A individual fishing quota (IFQ). Class A IFQ have one-

[1] Regulations limit processing to shore plants and stationary floating processors. In this document, any reference to a floating processor is a stationary floating processor.

to-one correspondence with IPQ and are issued for 90 percent of the annual total allowable catch (TAC) in each fishery. In the Bering Sea *C. opilio*, fishery Class A IFQ and IPQ are regionalized, with each share designated for landing either North or South of 56°20' N latitude (i.e., North region or South region). Allocations to North are approximately one-half of the total IPQ allocation in the fishery.

Adopted by the Council in June of 2002, the use caps prevent a single processor from using more than 30 percent of the processing shares in a fishery. An additional provision limits any processor from using in excess of 60 percent of the processing shares in the Northern region in the Bering Sea *C. opilio* fishery. No regional processing cap applies in any other fishery. So, a processor in the North would be restricted to processing 60 percent of the North IPQ allocation and to processing no more than 30 percent of the total allocation (including all processing in the North and South). Depending on the amount and North/South distribution of a processor's activity, either or both of these caps could be constraining. In most cases, though, the roughly equal allocation of shares in the North and South implies that if the North processing cap is binding, the overall cap will also bind.

Individual use caps are typically interpreted to prohibit an entity from holding either the long term shares (PQS) or annual allocations yielded by those long-term shares (IPQ) in excess of the cap. At its October 2002 meeting in clarifications to its original motion, the Council adopted the following broader interpretation of its processing share use caps:

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

Under this provision, not only are shares held by an entity counted toward that entity's cap, but also any processing undertaken at the entity's plants is counted toward its cap. Under the regulation, all processing at a plant that a person has a 10 percent or more ownership interest counts against that person's cap. Construed in this manner, the caps require at least two processors to operate in the North region of the Bering Sea *C. opilio* fishery and at least four processors in every fishery. Examining the regional distribution of processing shares provides some perspective on the extent to which current caps prevent consolidation (see Table 1).

Table 1. Regional distribution of processor quota shares by fishery (2006-2007).

pqs/06-07

Fishery	Region	Number of PQS holders	Percent of PQS pool
Bristol Bay red king crab	North	2	2.6
	South	23	97.4
Bering Sea *C. opilio*	North	11	47.0
	South	22	53.0
E. Aleutian Islands golden king crab	South	9	100.0
Pribilof Island red and blue king crab	North	6	67.5
	South	11	32.5
St. Matthews blue king crab	North	9	78.3
	South	9	21.7
W. Aleutian Islands golden king crab	Undesignated	9	50.0
	West	10	50.0
W. Aleutian Islands red king crab	South	10	100.0

Source: NMFS RAM, PQS holdings 2006-2007.

In the Bering Sea *C. opilio* fishery, both the 60 percent cap on North region processing and the general 30 percent cap require two processors to operate in the North region. The custom processing exemption would allow North processing to consolidate in a single plant. In the Eastern Aleutian Islands golden king crab fishery, the exemption could allow all processing to be consolidated into a single plant. In the Pribilof Island fishery, three North plants would be required to operate under the current general cap, since over 60 percent of the processing shares carry a North region designation. Two plants would be required to operate in the South, since over 30 percent of the processor shares are designated for South region use. In the St. Matthews fishery, three plants are required to be operated in the North region, while one plant could process all crab in the South region. In the Western Aleutian Islands golden king crab fisheries, 50 percent of the Class A IFQ and IPQ are regionalized, with landings from those shares required to be made west of 174° W longitude (the West region). These West region shares in this fishery were issued proportionally to history, since qualified history in the West region was less than 50 percent of the total qualified history. The 30 percent share cap effectively requires two plants to operate in the West region for the fishery and at least four plants in the fishery overall. In the Western Aleutian Island red king crab fishery, at least four plants must operate under the current 30 percent cap. In considering these data, it should be borne in mind that, the current cap without the exemption could prevent custom processing from being consolidated into a particular processor's plant. For example a processor that holds 30 percent of the St. Matthews, split equally between the North and South region, could not consolidate any processing through custom processing at its plants, since its holdings and processing activity are constrained by the cap.

Draft Purpose and Need Statement

The MSA exemption of custom processing from use caps in the North region of the Bering Sea *C. opilio* is believed to be intended to enhance processing efficiencies. Under the rationalization program, fishing and processing are extended over a longer period of time. This extension of the season allows for both sectors to achieve production efficiencies by reducing capacity and inputs. Applying use caps to plants limits the ability to achieve production efficiencies by preventing consolidation of operations that would achieve economies of scale. In some small fisheries or in regions that are expensive to operate in, the combination of extended operational time and limits on consolidation in the rationalized fishery could lead to a loss of production efficiency in processing in comparison to the pre-rationalization, limited access, derby fishery. In some cases, these use caps could limit entry by or competition from processing platforms that can operate with greater efficiency only at higher production levels. Depending on the circumstances, not counting processing at a plant toward a share holder's use cap could also allow for processing consolidation in the event of unexpected circumstances (such as a breakdown at a competing facility). Lastly, not counting processing at a plant toward a share holder's use cap could aid in a situation in which availability of processing capacity prevents the TAC from being fully harvested. These potential purposes could be combined into the following purpose and need statement:

> *In remote areas and small TAC fisheries, the extended fishing seasons under rationalization require processing activity to be extended over a longer period of time. This temporal extension of processing activity, together with the lower throughput levels, limits the ability of processors to achieve production efficiencies. Allowing concentration of processing in fewer facilities, by exempting custom processing at a plant from the use cap of the plant owners, could increase processing efficiency. This efficiency increase could improve competition in processing. In some cases, exemption of custom processing at a facility from use caps of the owner could provide for contingencies in the event of a facility breakdown, assist in allowing full harvest of the TAC, and contribute to community sustainability.*

MSA exemption of North custom processing in the Bering Sea C. opilio *fishery from processing use caps*

The suggested revision to the use caps in the small crab fisheries would be based on the exemption developed in the MSA for the Bering Sea *C. opilio* fishery. Generally, that provision would exempt custom processing in the North region from the use caps. Provided processing share holders comply with the custom processing exemption, all North processing could be undertaken at a single facility. The rationale for the provision is that the slow rate of landings under the rationalization program has reduced processing efficiencies, particularly in low TAC years. Allowing all North processing to occur at a single platform would improve efficiencies. Limiting the exemption to custom processing is intended to prevent consolidation of holdings that could occur, if the processing of held or owned shares were included in the exemption. The specific provision in the MSA affecting the *C. opilio* fishery processing caps provides:

> (1) IN GENERAL. – Notwithstanding sections 680.42(b)(ii)(2) and 680.7(a)(ii)(7) of title 50, Code of Federal Regulations, custom processing arrangements shall not count against any use cap for the processing of opilio crab in the Northern Region so long as such crab is processed in the North region by a shore-based crab processor.
>
> (2) SHORE-BASED CRAB PROCESSOR DEFINED. – In this paragraph, the term "shore-based processor" means any person or vessel that receives, purchases, or arranges to purchase unprocessed crab, that is located on shore or moored within the harbor.
>
> MSA §122(e).

The provision references two sections of the crab rationalization program regulations. Section 680.7 defines prohibitions, including the prohibition on on exceeding the processing share use cap, from which custom processing in the North region would be exempt. That section specifically defines a prohibition:

> For an IPQ holder to use more IPQ crab than the maximum amount of IPQ that may be held by that person. ***Use of IPQ includes*** all IPQ held by that person and ***all IPQ crab that are received by any R[egistered] C[rab] R[eceiver] at any shoreside crab processor or stationary floating crab processor in which that IPQ holder has a 10 percent or greater direct or indirect interest.*** (50 CFR 680.7(a)(7)) (emphasis added).

Section 680.42 sets out the specific percent limits of the use caps, which include both a use cap of 30 percent on Bering Sea *C. opilio* processing shares and a use cap of 60 percent on North region Bering Sea *C. opilio* processing shares. The provision is believed to be intended to exempt custom processing arrangements from both of these caps.

Implementation of this provision raises a few questions. First, 'custom processing' must be defined for purposes of applying the exemption. Currently, federal regulations do not contain a definition of custom processing. Generally, custom processing is understood to be an arrangement under which a person processes crab on behalf of another, never taking ownership of the crab. Alaska regulations define a "custom processor" as a person who sells or offers for sale the service of seafood processing but who does not own the seafood being processed (18 AAC 34.990). This provision is implemented by identifying the actual owner of the crab (rather than the person processing the crab under the custom processing arrangement) on the fish ticket. Section 680.5(d)(8) contains a provision requiring a processor of crab to identify the party for which custom processing is being undertaken. This requirement could be used to identify processing that falls within the use cap exemption. Such an approach parallels the State of Alaska's treatment of custom processing arrangements (which is used, in part, for determining liability for fish tax payments).

A simpler approach to developing the exemption could be to apply the cap based solely on share holdings (disregarding physical processing when applying the cap). Under this approach, only a person's share holdings (direct and indirect) would be considered when applying the cap. Defining the cap in this manner would simplify management of the cap, by allowing the agency to consider only share holdings, avoiding the need to collect and assess plant ownership information when applying the cap. Such an approach could be used by processors to use more creative ownership structures and risk sharing in fisheries and areas subject to the cap.[2]

A second issue that arises is the interpretation of "moored within the harbor". The provision is somewhat ambiguous, since no definition of "harbor" is contained in the current regulations. Legislative intent is believed to be lacking concerning this definition. Since the North region contains several harbors – for example, St. Paul, St. George, and Nome are all in the North region and have harbors – the provision will require development of a workable definition of "moored within the harbor". This provision is believed to be intended to protect community interests. The current, interim interpretation of the provision is that processing on a floating processor within the harbors of St. Paul and St. George would be considered moored within the harbor. A different definition could be adopted through the regulatory process, including through the Council as a part of a package extending the exemption to other fisheries as is currently under consideration.

To implement the use cap exemption, NOAA Fisheries will need to adopt conforming regulations. The revision will also require analysis of the interpretation of these specific cap exemptions. The timing of the analysis is not currently scheduled, but is likely to begin in the near future. The analysis and rule making process are likely to proceed in the usual timeline, which will encompass several months prior to finalization in regulation. In the meantime, NOAA General Counsel has issued the guidance letter attached concerning its interpretation of the MSA Bering Sea *C. opilio* custom processing exemption. That guidance will be superseded by future regulations addressing the exemption.

Exemption of custom processing in additional fisheries

The extension of the exemption of custom processing from use caps to other fisheries will require the Council to specify the scope of the exemption consistent with the rationale expressed in the purpose and need statement. Allowing additional concentration of processing activity could provide an opportunity to improve production efficiency, but whether actual improvements are feasible is not known. In fisheries and regions with low amounts of harvests the ability of processors to achieve efficiencies of scale could be limited. Some processors may choose not to use larger, more efficient platforms in those markets, if they believe throughput is too dispersed or is not adequate to achieve reasonable efficiencies. Removing custom processing from the cap calculation could lead some processors to attempt to enter platforms that require larger (or more consistent) throughput, increasing competition in processing.

It is possible that consolidation of processing under the exemption could aid in addressing unanticipated circumstances in areas and fisheries with limited processing capacity. For example, if a processing platform is disabled, it is possible that allowing custom processing beyond the cap could be used to overcome logistical complications. For example, if a platform is disabled or inaccessible, rerouting landings to a different platform could limit disruption to harvester's fishing and landings schedules. Similarly, if a processing platform is disabled near the end of a season or if the cost of delaying fishing is too high for harvesters, it is possible that the exemption of custom processing could enable participants to fully harvest the TAC in cases when a portion of the TAC could be stranded. The cap exemption could also benefit some communities. For example, if the cap is preventing the consolidation of processing in a

[2] Any such coordinated arrangement would need to fully comply with any requirements and limitations of antitrust law, regardless of the rules governing application of the caps.

community or leading an IPQ holder to process its shares outside of a community, it is possible that the exemption could benefit the community.

Whether the exemption is likely to lead to any of these different benefits is likely to depend on the circumstances. In considering the different effects, it will also be important to consider that achievement of one benefit may effectively preclude another benefit from being realized. For example, a custom processing arrangement could be finalized in the preseason that leads to scheduling a single plant to operate in a region during a particular fishery. This arrangement could complicate any efforts to address contingencies that could arise, if that platform is later disabled or inaccessible. These competing effects will need to be explored as a part of the analysis of this action, but also could be considered in developing alternatives for analysis.

The Council should also consider the potential effects of the cap exemption resulting in consolidation of processing in a single processor in a region or fishery. This concentration could improve production efficiencies, particularly for processing in remote regions. On the other hand, this level of consolidation would reduce the market for landings, leaving all harvesters in the region (or fishery) with a single plant at which deliveries must be coordinated.

Elements for consideration

To advance the analysis of a potential action to exempt custom processing from use caps, the Council will need to develop specific elements and options. Several different aspects of the exemption should be considered in defining alternatives for analysis.

Fisheries and Regions

The Council has suggested that it is considering exempting custom processing in several fisheries from the use caps. In considering whether it is appropriate to apply the exemption to a particular fishery, the Council could consider the extent to which the cap in the absence of the exemption is likely to constrain processing consolidation. The size of the fishery, the temporal distribution of deliveries and processing, and the regional distribution of processing shares are all likely to affect the extent to which the exemption could relieve the constraint of the cap. Since all seasons extend over several months and fishing may be concentrated during a portion of the season, season length is not a reliable measure of the temporal dispersion of processing. In several fisheries, the processing cap constrains consolidation, particularly in remote regions of the fisheries (see Table 2).[3]

[3] The discussion in this section is limited to fisheries that the Council has indicated that it is considering for the custom processing cap exemption.

Table 2. Most recent TAC, processing cap at most recent TAC, and remote region percent of IPQ and IPQ in pounds at most recent TAC.

Fishery	Most recent opening			Remote region		
	Year	TAC	Processing cap	Designation	Percent of IPQ	IPQ in pounds*
Bristol Bay red king crab	2006 - 2007	13,974,300	3,480,706	North	2.6	301,661
Pribilof red and blue king crab	1998	1,250,000	324,554	North	67.5	730,246
St. Matthews blue king crab	1998	4,000,000	1,023,406	North	78.3	2,671,090
Western Aleutian Islands red king crab	2003 - 2004	500,000	79,572	None	NA	NA
Eastern Aleutian Islands golden king crab	2006 - 2007	2,700,000	670,618	None	NA	NA
Western Aleutian Islands golden king crab	2006 - 2007	2,430,000	341,059	West	50.0	568,432
Bering Sea *C. opilio*	2006 - 2007	32,909,400	7,807,606	North	47.0	12,231,916
Western Bering Sea *C. bairdi*	2006 - 2007	984,600	239,710	None	NA	NA
Eastern Bering Sea *C. bairdi*	2006 - 2007	1,687,500	410,832	None	NA	NA

Source: Crab SAFE, 2006; NMFS RAM PQS holdings (2006-2007); NMFS RAM QS holdings (2006-2007).
* estimated based on most recent TAC and QS and PQS allocations.

In the Pribilof Island fishery, the cap requires at least three processors to operate, limiting each to less than 325,000 pounds. Similarly, in the St. Matthews fishery three processors would be required to operate in the North, each limited to slightly more than one-million pounds. The extent to which the current cap in the absence of the exemption would constrain consolidation in the South region is unclear. Given the number of plants that process crab in the South, the only suggested benefit of the exemption likely to arise would be to allow for production efficiency gains. Several plants could be available to process the TAC or address unexpected circumstances. Most processing in the South occurs in large plants that serve both groundfish and crab fisheries. Historically, the St. Matthews and Pribilof Island fisheries have been concentrated in the early fall, prior to fishing in the Bristol Bay red king crab fishery. Currently, the season opening in these fisheries coincides with the Bristol Bay red king crab opening. The extent to which consolidation at plants in the South would be compromised by small amounts of crab from these fisheries being either integrated with landings from the Bristol Bay fishery or run through the plant independently is not known. The extent to which allowing custom processing in excess of the cap is likely to relieve any such burden is also not known. The cap does not directly limit consolidation of processing activity in the South in the St Matthews fishery, since less than 30 percent of the IPQ are regionalized requiring South delivery. Particular processors may be limited in their ability to engage in custom processing in the South because their combined North and South PQS holdings approach or exceed the 30 percent cap. These companies would be unable to take on custom processing of additional crab from the fishery without the exemption.

In the Western Aleutian Islands red king crab fishery, the low TAC and relatively large share of the fishery allocated to catcher processors leads to a processing cap of less than 100,000 pounds. The current effect of the cap is likely limited to constraining processing efficiency, since most of the processing in this fishery has occurred in Dutch Harbor. Whether the exemption would lead to redistribution of processing to the west, closer to the fishing grounds, is not known.

In the Western Aleutian Islands golden king crab fishery, the cap limits each processor is limited to less than 350,000 pounds at current TAC levels. The caps require at least four plants to operate in each fishery and two plants to operate in the West region of the Western Aleutian Islands fishery. In the West region, the caps could limit consolidation. Currently, only one shore plant processes crab in that region. Exempting custom processing from the cap in that region could allow that plant (or possibly a floater depending on the specific exemption) to process all crab in the fishery in the region. Since the portion of the fishery that is not West designated is not subject to any regionalization, the custom processing cap exemption could also induce additional processing in remote areas by drawing undesignated IPQ to the

West region. Applying the exemption in the West region could address processing inefficiencies that region, provide benefits to remote communities, or be used contingencies in the fishery. As in the Pribilof and St. Matthews fisheries, the benefit of applying the exemption outside of the West region is likely to be limited to improving processing efficiencies, as substantial processing capacity and activity exists in Dutch Harbor, the primary port outside of the West region. In the Eastern Aleutian Islands golden king crab fishery, each processor is limited to approximately 700,000 pounds. Almost all processing activity is in Dutch Harbor. Consequently, the benefit from a cap exemption is likely to be limited to improved processing efficiency.

Platforms eligible for the exemption

The second aspect of the exemption that the Council could consider in developing options for analysis is whether to limit the exemption to plants operated in certain locations. The MSA provision creating an exemption in the North region of the Bering Sea *C. opilio* fishery applies only processing that occurs on a shore-based plant or on a plant that is moored in a harbor. The Council could choose among three different approaches to the exemption. The Council could exempt custom processing at shore plants only, at shore plants and floaters moored in a harbor, or at any plant.

Exempting only shore plants could be used to benefit those plants that have the strongest locational ties. These plants could provide community benefits through resident processing crews and support facilities. The extent of these benefits will vary across communities and facilities. Applying the exemption to shore plants only would provide owners of existing shore plants with a much stronger position in the market by limiting the ability of floating processors to compete on the same terms (i.e., subject to the same exemption). For a floating processor to compete on equivalent terms with the existing shore plant would require the capital investment to develop a crab processing shore plant in the region. Compelling the development of additional shore facilities to induce competition would seem inappropriate and inconsistent with the some of the stated rationales for the exemption. The magnitude of this effect differs across fisheries and regions with the number of shore plants.

Depending on the exact terms of the exemption, extending the exemption to floating processors "moored in a harbor" could allow additional competition, while deriving or preserving some of the community benefits from the exemption. If the Council could adopt a definition that relies on community boundaries for determining whether processing is occurring on a platform "moored within a harbor," the provision could be used to ensure that communities receive the fish tax from processing activity arising under the exemption. The provision could use either city or borough boundaries for determining the scope of the requirement that a vessel be moored within a harbor. Using borough boundaries may be more consistent with existing aspects of the program, given that the cooling off provision applied at the borough level and the right of first refusal extend to the borough in one instance.[4]

If the Council's primary objective is to allow greater flexibility in consolidation of processing, the exemption could be applied to custom processing in the fishery and region regardless of whether the processing is on a floater or within community boundaries. This provision could provide processors with greater flexibility in locating floating platforms, but may sacrifice some community benefits that could arise under a more restrictive exemption.

[4] In its enforcement guidance letter concerning to the MSA exemption of custom processing from processing use caps in the North region of the Bering Sea *C. opilio* fishery, NOAA GC defined "moored within the harbor" as being within the harbor of St. George or St. Paul shown on navigation charts. The definitions suggested here are believed to better parallel community interests of concern to the Council without detracting from potential benefits.

Possible elements and options

The following elements and options could be considered by the Council for this action:

Fisheries and Regions:

Custom processing will be exempt from use caps in the following regions and fisheries:

The North region of the Bering Sea *C. opilio* fishery (analyzed here for regulation change from MSA reauthorization – not optional)

Option 1) the Western Aleutian Islands golden king crab fishery,
Suboption: West region only

Option 2) the Western Aleutian Islands red king crab fishery,

Option 3) the Eastern Aleutian Islands golden king crab fishery,

Option 4) the St. Matthews blue king crab fishery, and
Suboption: North region only

Option 5) the Pribilof red and blue king crab fishery
Suboption: North region only

Definition of custom processing exemption:

Option 1) Physical processing of crab at a facility owned by an entity does not count toward the cap of the entity (only processor share holdings count toward an entity's cap).

Option 2) Custom processing is the processing of crab received with IPQ that has 50 percent or less common ownership with the processing plant.

Locations qualified for the exemption:

Custom processing will qualify for the exemption provided that processing is undertaken in the applicable fishery and region at:

Option 1) a shore plant

Option 2) a shore plant or a floating processor that is moored in a harbor
A floating processor moored within a harbor, if it is moored within the boundaries of:
Suboption A) a first or second class city or borough
Suboption B) a first or second class city

Option 3) any shore plant or floating processor

Possible interaction with community provisions

Any relaxation of limits on the consolidation of processing activity is indirectly affected by the regionalization component of the rationalization program. Consolidation cannot occur across regions, regardless any absence of direct limits on consolidation. So, a processor with shares in both regions will be compelled to have crab processed at two plants, regardless of any exemption allowing the movement of shares through custom processing arrangements. Unlike regionalization, the right-of-first-refusal, which benefits communities in which crab was historically processed, applies only to the sale of PQS and IPQ. Since IPQ are not transferred under a custom processing arrangement, custom processing would not seem to trigger the right of first refusal. A possible concern is the provision for a right of first refusal to lapse, if a PQS holder uses shares outside of the historic community for a period of three consecutive years. To the extent that processing consolidates away from a community of origin because of the exemption of custom processing from use caps, the exemption could harm communities that have historic dependence on the fisheries. Assessing any potential for consolidation across community boundaries arising from the custom processing exemption from use caps is challenging and may not be possible.

The distribution of rights of first refusal and regionalization provides some perspective on the potential for consolidation under the exemption to lead to lapse of rights of first refusal (see Table 3). It is important to note that the exemption only has an effect, if the share cap would have been binding in the absence of the exemption. Unless the use cap prevents shares from being consolidated (either inside or out of a community), the exemption has no effect; however, in fisheries with relatively small TACs (such as those being considered for the exemption) it is possible that most or all of the processing in a region could be consolidated in a single facility. Whether movement of processing outside of a community would be economical would likely depend on the circumstances. For example, in most instances, it would seem that movement of processing from Dutch Harbor plants to other communities that have less accessible services would add to processing costs.

If the Council believes that this movement of shares should not lapse rights of first refusal, it could clarify that the custom processing of shares does not count toward a processor's use of those shares outside of the community of origin for purposes of the lapse of rights of first refusal. This provision could be implemented by requiring processors with rights of first refusal contracts with communities to modify those contracts to include a provision specifying that custom processing would not count toward a lapse of a right of first refusal. Such an exemption would be significantly broader than necessary to address the particular issue arising under this action, but could be desirable for specifying the interaction between custom processing activity and the right of first refusal provision in the program.

Table 3. Distribution of PQS in each fishery by region and community of right of first refusal.

pqs/06-07

Fishery	Region	Community of Right of First Refusal	Number of PQS holders	Percent of PQS pool
Bristol Bay red king crab	North	St. Paul	2	2.6
	South	Akutan	1	19.9
		False Pass	1	3.7
		King Cove	1	12.8
		Kodiak	3	3.8
		None	3	2.7
		Port Moller	3	3.5
		Unalaska	11	51.1
		Total		97.4
Bering Sea *C. opilio*	North	None	3	1.0
		St. George	2	9.7
		St. Paul	6	36.3
		Total		47.0
	South	Akutan	1	9.7
		King Cove	1	6.3
		Kodiak	4	0.1
		None	4	1.8
		Unalaska	12	35.0
		Total		53.0
E. Aleutian Islands golden king crab	South	Akutan	1	1.0
		None	1	0.9
		Unalaska	7	98.1
Pribilof Island red and blue king crab	North	None	1	0.3
		St. Paul	5	67.3
		Total		67.5
	South	Akutan	1	1.2
		King Cove	1	3.8
		Kodiak	4	2.9
		Unalaska	5	24.6
		Total		32.5
St. Matthews blue king crab	North	None	5	64.6
		St. Paul	4	13.8
		Total	9	78.3
	South	Akutan	1	2.7
		King Cove	1	1.3
		Kodiak	1	0.0
		Unalaska	6	17.6
		Total		21.7
W. Aleutian Islands golden king crab	Undesignated	NA	9	50.0
	West	NA	10	50.0
W. Aleutian Islands red king crab	South	NA	10	100.0

Source: NMFS RAM PQS holdings 2006-2007.

Effects of the limit on custom processing of divested shares

Recent consolidation in the processing sector is likely to lead to a divesture of shares by a processing company that will exceed the use cap in its holdings. Portions of the holdings of the new consolidated entity are subject to rights of first refusal in two communities, including one community that is home to a single shore plant. Under the company's current plan a portion of its holdings in the two communities will be divested to comply with the cap. The shares may be divested to the entity representing the community under the right of first refusal. Under the existing processing caps, the shares divested in the single shore plant community cannot be processed at that shore plant, since that processing activity would count toward the use cap of the consolidated entity. Whether an additional platform could be brought into the community is not known. The Council may wish to consider whether it is appropriate to develop a provision that would permit continued processing of these shares at the plant of their origin. While several options exist for developing such a provision, two of the more straightforward options are:

Option 1) in the event that processing shares are transferred to the community entity holding the right of first refusal for those shares, the processing of those shares in the community of origin will not count toward the cap of the processing plant

Option 2) in the event that processing shares subject to a right of first refusal are transferred from the initial recipient, custom processing of shares in the community of origin will not be counted toward cap of processing plant (the shares would only count toward the cap of the share holder)

If the Council were to advance these options for analysis, an accompanying purpose and need statement would need to be developed. A possible purpose and need statement could be:

Under the rationalization program, community interests in historic processing are protected by granting communities a right of first refusal on the transfer of shares from the community of origin. In some instances, the combination of consolidation of processing share holdings and the counting of processing at a plant against the plant owner's cap on the use of processing shares could complicate the retention of processing in the community of origin. Exempting processing of shares in the plant of origin from the use cap of the plant owner could facilitate retention of historical processing in communities.

Conclusion

In the event the Council wishes to proceed with analysis of an exemption of custom processing from processing share use caps, the Council could adopt a draft statement of purpose and need and consistent elements and options for analysis.

Acquisition and use of C shares
North Pacific Fishery Management Council
June 2006

Based on public testimony and a recommendation from the Advisory Panel, the Council initiated consideration of an amendment to the criteria used to determine a person's eligibility to acquire captain and crew shares (C shares) in the Bering Sea and Aleutian Islands crab fisheries governed by the rationalization program. Currently, a person must be an 'active participant' in the fisheries, defined as having participated in a landing during the 365 days preceding the C share purchase. Testimony suggested that this requirement is overly burdensome to some former participants wishing to secure a position in the fisheries, who were unable to participate in the first year of the program because of fleet consolidation. Relaxing participation criteria could facilitate share purchase by persons wishing to reenter the fisheries. This paper begins with a summary of the current rules pertaining to C shares. The paper goes on to discuss potential concepts to incorporate in a purpose and need statement and then reviews possible elements and options that could be incorporated into an amendment package, if the Council wishes to amend the current regulations.

Under current regulations, C shares will become subject to the 90/10 A share/B share split at the beginning of the 2008-2009 season. At its March/April 2007 meeting, the Council initiated an amendment to maintain the current status as shares unrestricted by processor share and regional landing requirements. This paper concludes with a draft purpose and need statement for that amendment for Council consideration. Since that action is scheduled for initial review at the Council's October 2007 meeting, establishing the purpose and need for the action will assist in guiding the analysis and the Council's consideration of the amendment.

Background

Under the rationalization program, quota shares (QS) are issued to eligible LLP license holders and eligible captains based on qualifying harvest histories. Eligible LLP license holders were issued 97 percent of the QS pool, while eligible captains were issued 3 percent of the QS pool. These QS are classified based on their origin, with allocations to an LLP based on vessel harvests referred to as 'vessel owner QS' and allocations to captains based on catcher vessel activity referred to as 'captain QS' (or 'C shares'). QS are also classified by operation type (catcher vessel or catcher processor) of the qualifying participant. QS annually yield individual fishing quota (IFQ), which are privileges to harvest a particular amount of crab in pounds in a given season. The size of each annual IFQ allocation is based on the amount of QS held in relation to the QS pool in the fishery. So, a person holding 1 percent of the QS pool would receive IFQ to harvest 1 percent of the annual TAC in the fishery.

Under the current regulation, ninety percent of the IFQ issued to holders of catcher vessel owner QS are issued as "A shares" or "Class A IFQ," which must be delivered to a processor holding unused individual processor quota (IPQ). The remaining 10 percent of the annual IFQ issued to holders of catcher vessel owner QS are issued as "B shares" or "Class B IFQ," which may be delivered to any processor. Processor quota shares (PQS) are long term shares issued to processors based on qualifying processing history. These PQS yield annual IPQ, which represent a privilege to receive a certain amount of crab harvested with Class A IFQ. IPQ are issued in an amount equal to 90 percent of the catcher vessel owner IFQ, creating a one-to-one correspondence between Class A IFQ and IPQ. Also, in certain fisheries the program establishes a region designation on Class A IFQ and IPQ. Both A share IFQ and IPQ are 'regionalized' requiring catch made using those IFQ (and landings received using those IPQ) to be delivered in the region of the associated qualifying history. The regional division in most fisheries separates the fishery North/South at 56°20' N latitude.[1]

[1] Exceptions are the Western Aleutian Islands golden king crab fishery, in which 50 percent of the A share

Under the current regulations, catcher vessel C shares are exempt from the A share/B share split (and all associated regionalization and IPQ landing requirements) for the first three years of the program. After three years, both the 90/10 A share/B share split (and the associated IPQ landing requirements) and regionalization would be applied to catcher vessel C shares.

C share allocations are also subject to other management provisions intended to ensure that active fishermen receive the benefits of those shares. C shares may only be acquired by persons that are active in the fisheries, where 'active' is defined as having participated in a landing within 365 days of the share acquisition. An owner-on-board provision and leasing prohibition are also applied to C shares, intended to ensure that C shares would benefit active captains and crew. The Council recognized that logistical complications would likely arise early in the program, as a result of the interaction of owner-on-board requirements, leasing prohibitions, and fleet contraction with the IPQ and regionalization landing requirements applicable to 'A shares'. To facilitate share usage and fleet coordination, the Council exempted C shares from not only the landing requirements of A shares, but also owner-on-board requirements and prohibitions on leasing, for the first three seasons of the program (see 50 CFR 680.41(e) and 50 CFR 680.42(c)(5)). Currently the Council is considering an amendment that would indefinitely exempt catcher vessel C shares from both the A share/B share split and regionalization. That amendment is scheduled for initial Council review in October 2007 and possible Council action in December 2007.

To fully assess the potential effects of changes in the rules governing acquisition of C shares, the Council should consider the rules governing use of these shares. The rationale advanced for the creation of C shares was to crate a pool of shares that may be held only by active captains and crew in the crab fisheries. Although the regulations contain provisions prohibiting leasing of C shares and requiring holders of those shares to be on board the vessel fishing the shares, the current rules governing cooperative use of C shares may make those rules ineffectual. To ensure captains are an integral part of the overall fishery, C share holders are permitted to join cooperatives (see 50 CFR 680.21(a)(1)). As incorporated into regulation, this provision effectively removes any prohibition on leasing of and owner-on-board requirements for C shares. Once a C share QS holder joins a cooperative, any IFQ are allocated to the cooperative. The leasing prohibition and owner-on-board requirements apply only to individual holders of C share IFQ; separate use provisions apply to IFQ held by a cooperative (see 50 CFR 680.21(c)(2)). In the current fisheries, the holders of approximately 75 percent to 95 percent of the C shares by fishery are cooperative members (see Table 1). Given the relatively high rate of cooperative membership of C share holders, relaxing participant requirements for acquisition of these shares could interact with the existing use rules in a manner that results in shares being held by persons with little or no participation in the crab fisheries.

Table 1. Catcher vessel C share IFQ held by cooperatives (2006-2007).

Fishery	Catcher vessel captain and crew IFQ		Percent of vessel captain and crew IFQ held by cooperatives
	held by cooperatives	in total	
Bristol Bay red king crab	350,720	402,768	87.1
Bering Sea *C. opilio*	817,980	929,338	88.0
Eastern Bering Sea *C. bairdi*	35,133	46,358	75.8
Western Bering Sea *C. bairdi*	20,496	27,047	75.8
Eastern Aleutian Islands golden king crab	76,855	80,075	96.0
Western Aleutian Islands golden king crab	38,303	41,914	91.4

Source: NMFS Restricted Access Management IFQ database, crab fishing year 2006-2007.

allocation is regionalized requiring landing west of 174° W longitude, and the *C. bairdi* and Western Aleutian Islands red king crab fisheries, which are not subject to regional designations.

Purpose and Need Statement

To begin the process of developing an amendment concerning the acquisition of C shares, the Council could develop a draft purpose and need statement to guide its development of alternatives. Testimony that led the Council to consider an amendment suggested that the current requirement that a person be active in the fishery in the 365 days preceding the acquisition of C shares prevents some long term participants from acquiring shares that may be useful for securing a position in the fisheries. The following purpose and need statement could be used to develop a set of alternatives for consideration to address that concern:

> *Following rationalization of the crab fisheries, fleet underwent substantial contraction, with withdrawal of more than 50 percent of the vessels from every fishery. Contraction affected experienced captains and crew, including some with substantial experience in the fishery. Current regulations require a person to have participated in the fishery during the 365 days preceding an acquisition of C shares. This requirement has the effect of preventing some displaced long-time captains and crew from acquiring share holdings that would be useful for securing or maintaining position in the fisheries. A revision to the current requirements for active participation could address this problem by providing long-term participants with the opportunity to acquire shares.*

Elements and options

This section presents elements and options that could be used to construct alternatives for Council review. The supporting discussion attempts to bring to light potential issues that could arise under some of the alternatives that might be of concern to the Council, given its purpose for establishing a C share pool.

Under current regulations, C shares can be acquired only by an individual who:

1) is a U.S. citizen,
2) has at least 150 days of sea time as part of a harvesting crew in any U.S. commercial fishery (historic participation), and
3) has participated in at least one delivery in a fishery subject to the crab rationalization program in the 365 days preceding the acquisition (recent participation)(see 50 CFR 680.41(c)).[2]

Public testimony at the February 2007 meeting suggested that the recent participation requirement be removed, allowing long term participants who have been unable to find employment in the fishery since the implementation of the program to acquire C shares. Although the removal of the recent participation requirement would allow long-term captains and crew not currently employed in the fishery to purchase C shares, the simple removal of the provision would substantially broaden the group of persons eligible to acquire C shares to include persons with no participation in either the crab fisheries or Alaskan fisheries.

The Council could consider two aspects of this problem in developing a potential revision to the requirements for acquiring C shares. First, the Council should consider whether the issue is a transitional problem or a long term issue. If the Council believes the problem with the current provision is a transitional problem, it could be addressed with an exemption applicable only for a transitional period. For example, an exemption could be provided to allow persons that have history in the years immediately preceding implementation of the rationalization program (including recipients of an initial allocation of C

[2] Under the regulation, recent participation is demonstrated by 1) a fish ticket imprinted with the person's permit number, 2) an affidavit of the vessel owner, or 3) a signed receipt for an IFQ crab landing on which the applicant acted as a hired master. In the past, the agency has found proof of participation to be problematic. Without additional guidance from the Council, the agency would continue to rely on these three sources for evidence of participation.

shares) to acquire C shares for a period of time. The exemption could apply either for a period of time from implementation of the rationalization program or until some period of time has passed since implementation of the loan program (as suggested by some participants in the fishery). Since the loan program has yet to be implemented and requires Congressional authorization, the second approach would have an indeterminant time period that could be several years.

If the Council believes that the problem is long term, the recent participation requirement could be revised to accommodate persons that have demonstrated history, but do not meet the current recent participation requirement. For example, the Council could relax the current requirement for participation within a year of the acquisition to require participation within 2 or 3 years of the acquisition. This lower recent participation threshold may accommodate not only persons affected by the recent decline in positions, but also persons that are affected by transitional situations in the future. These transitions could arise not only because of changes in the fisheries (such as stock or TAC changes or seasonal closures), but also because of changes in individual circumstances (such as loss of a position through sale of a business by a long term employer). In either of these cases, relaxing the recent participation requirement could provide a crewmember with the ability to purchase shares, in the event that crewmember was unable to secure a position in a given year.

If the Council attempts to develop a solution to a long term problem, it should consider the extent that the solution will require persons acquiring C shares to demonstrate ongoing ties to the crab fisheries. A simple grandfather provision could be used to qualify initial recipients of C shares to continue to acquire additional C shares. While appealing for its simplicity, the provision may not meet the Council's intended purpose. In the long run, initial recipients of C shares are likely to retire from fishing. These retired captains would retain qualification to purchase C shares, potentially competing for purchases with crew who remain active in the fisheries. So, in developing provisions to address this issue, the Council should consider both the transitional issues and potential long term ramifications of solutions to those issues.

In developing revisions to eligibility requirements for acquiring C shares, the Council should define requirements that meet its objectives in establishing the C share pool. The current requirement for acquiring C shares is participation in a single landing from any of the crab fisheries in the 365 days preceding the acquisition. Most long term crew that are fully employed in the fisheries will have little difficulty meeting the current requirement for acquiring C shares on an ongoing basis. Only in a transitional circumstance (such as the current fleet restructuring) would a long term participant be expected to have difficulty meeting the requirement. A provision could be developed as an exception to the current requirement that could accommodate crew confronted with a transitional situation during which the current requirement is not met. For example, the Council could adopt a provision that allows a person that demonstrates longer term participation to acquire shares during a period during which the person is unable to meet the more immediate participation requirement of the current provision. For example, the Council could create an additional provision that would allow a person that can demonstrate participation during 3 of the last 5 years to purchase C shares. This provision would accommodate some transitional circumstances for crew that are regular participants in the fisheries, but who are unable to participate for one or two years.

Lastly, the Council may wish to consider whether it is appropriate to revise the current participation requirement to remove any requirement for participation in the crab fisheries (as suggested in public testimony). Under this approach, a person would still be required to demonstrate at least 150 days of sea time in a U.S. commercial fishery, but may have no experience in either the crab fisheries or Alaskan fisheries. The rationale for this change could be that allowing a person to acquire C shares prior to participating in the crab fisheries could allow the person to use the purchased shares to secure a crew position.

Possible elements and options

Status quo

C shares can be acquired only by an individual who:

1) *is a U.S. citizen,*
2) *has at least 150 days of sea time as part of a harvesting crew in any U.S. commercial fishery (historic participation), and*
3) *has participated in at least one delivery in a fishery subject to the crab rationalization program in the 365 days preceding the acquisition (recent participation)(see 50 CFR 680.41(c)).*

Options to address current transition

For a period of 3, 5, or 7 years from the

Option 1: implementation of the program

Option 2: implementation of the loan program

C shares can also be acquired only by an individual who:

1) *is a U.S. citizen,*
2) *has at least 150 days of sea time as part of a harvesting crew in any U.S. commercial fishery (historic participation), and*

Option 1: received an initial allocation C shares

Option 2: demonstrates participation in a rationalized crab fishery during

a. 3 of the 5 years(2000-2004) or

b. 2 of the 3 years(2002-2004)

immediately preceding implementation of the crab rationalization program

Options to address transitions in the long run

C shares can also be acquired only by an individual who:

1) *is a U.S. citizen,*
2) *has at least 150 days of sea time as part of a harvesting crew in any U.S. commercial fishery (historic participation), and*

Option 1: received an initial allocation C shares

Option 2: demonstrates participation in a rationalized crab fishery during

a. 3 of the 5 years(2000-2004) or

b. 2 of the 3 years(2002-2004)

Immediately preceding implementation of the crab rationalization program

Options for full revision of current qualification

C shares can be acquired by an individual who:

1) *is a U.S. citizen, and*
2) *has at least 150 days of sea time as part of a harvesting crew in any U.S. commercial fishery (historic participation).*

Coordination with other C share provisions

The interaction of the eligibility requirements for acquiring C shares with the rules governing use of those shares should be considered in developing provisions for analysis in this action. Liberal eligibility rules (which require little or no crab fishery participation) to acquire C shares, together with the current exemption of C share holders that join cooperatives from leasing prohibitions and owner-on-board requirements, create an opportunity for C shares to be held by persons with no other connection to the crab fisheries (including no captain or crew time). Given the small size of the C share pool and the stated interest of making these shares available to active captains and crew, the Council should consider whether liberal rules governing acquisition of these shares are appropriate, particularly in the absence of revising the rules concerning participation requirements for C share holders.

If the Council were to consider revising rules governing C share use, it could consider revision of those rules in their entirety, which would result in C share holders that are members of a cooperative being subject to the same requirements as C share members that do not join a cooperative. Alternatively, the Council could retain the current rules for non-members of cooperatives (which will prohibit share leasing and require the holder to be on board the vessel harvesting the shares) and revise only the rules governing cooperative members (which currently allow leasing and have no on board requirement). The rationale for differentiating cooperative members from non-members is not wholly clear, since some C share holders may choose not to join a cooperative unless the vessel owners that they work for are also members of the cooperative. The current rule (which differentiates cooperative members from non-members) creates an incentive for C share holders to put their shares in a cooperative regardless of their employing vessel owners' cooperative membership choices, simply to avoid the complications of leasing prohibitions and owner on board requirements. Cooperative shares cannot be fished by the same boats that fish shares not held by a cooperative. So, a C share holder that fishes on a non-cooperative vessel, but is a member of a cooperative, cannot fish C shares he holds. Applying more relaxed rules for cooperative members could maintain this incentive for C share holders that fish for non-members of cooperatives to commit their shares to a cooperative separate from their own fishing activity.

If the Council were to pursue changes in the current leasing prohibitions and on board requirements, it should consider the transitional issues that led it to consider revisions to eligibility requirements for C share purchases. Specifically, the Council should consider that in current transition fewer vessels are active, at least temporarily removing some long term crew from the fisheries. On board requirements could force some C share recipients to divest shares decreasing their interests in the fisheries and possibly inducing some of these C share holders to permanently leave the fisheries. A less stringent active participation requirement (in lieu of a strict owner on-board-requirement) could be used to ensure that C share holders that are likely to remain active in the fishery in the long run do not have their position in the fishery further jeopardized by compelled divestiture of those shares.

The Council should also consider changes in the prosecution of the fisheries since implementation of the rationalization program. Some vessels are not likely to participate in all fisheries every year. Vessels are likely to move in and out of fisheries with TAC fluctuations and coordination of catch in cooperatives. This change in prosecution of the fisheries could effectively drive more transitional phases for participants (particularly C share holders). Stringent on board requirements could force C share holders subject to these transitions to divest based on the annual participation decisions of cooperatives and vessel owner decisions. C share holdings are very small in size; the largest permitted holdings in most fisheries are limited to 0.06 percent of the quota share pool; the current average holding in the two largest fisheries is approximately 0.02 percent of the quota share pool. In fisheries in which the average vessel fishes in excess of 1 percent of the quota share pool, C share holdings are unlikely to influence operational fishing decisions. Furthermore, even if C share holders could influence these decisions, it is not clear that any benefit would be derived by either C share holders or vessel owners from compelling active vessels to participate in more fisheries to ensure owner on board requirements are met. A cooperative may decide to deploy four vessels in the *C. opilio* fishery; three of the vessels may make two trips with the fourth making a single trip prior to moving on to fish the cooperative's entire (but relatively small) allocation of *C. bairdi*. Under this scenario, owner on board requirements could be met in one of three ways. First, more vessels could be deployed in the *C. bairdi* fishery. Introducing more vessels to harvest the small allocation is likely to drive up fishing costs, which could reduce crew shares. Alternatively, crew could move among vessels, with the *C. bairdi* share holders all working on the same vessel. Operationally, vessel crews differ from one another, even within a common owner's fleet. These differences suggest that compelling crew to move among vessels would not be a good solution for meeting owner on board requirements. Lastly, *C. bairdi* shares could be traded to crew on the vessel harvesting *C. bairdi* for the cooperative. Compelling transfers of this type to meet owner on board requirements would reduce stability for C share holders that are unlikely to be able to influence vessel deployments with their share holdings. In effect, applying an absolute owner on board requirement to C share holders could cause instability of C share investments for their holders.

An alternative approach to revising C share participation requirements could parallel the current eligibility requirement for C share acquisitions. Under that provision, a person that has fished in one of the rationalized crab fisheries during the preceding 365 days is eligible to acquire C shares. A similar requirement could be established for a person to receive annual C share IFQ allocations and maintaining C share holdings. For example, annual C share IFQ allocations could be contingent on the applicant providing evidence (such as an affidavit) of either active participation in a rationalized crab fishery as a crewmember in the previous season or a secured crew position in a fishery for the coming season. A person could be compelled to divest only after a period of inactivity (such as two or three years) in the rationalized fisheries. Under such a provision, C share holders active in at least one of the crab fisheries would be permitted to receive the benefit of all their C share holdings. In addition, C share holders that are unable to secure a position during a brief period of one or two years would not be forced to divest. A flexible approach to participation requirements, such as suggested above, would allow C share holders to retain their shares during periods of instability provided that they remain generally active in the fisheries.

Additionally, the Council could consider a grandfather provision that would extend the time for current C share holders to comply with any active participation requirements. An extended period for current C share holders could be justified by the rapid fleet consolidation that occurred on implementation of the program. An extension could be granted for a period of years allowing current holders a reasonable opportunity to secure a position. An indefinite grandfather provision (which would allow the current holder to retain shares regardless of their participation) would likely protract the time until the C share component of the rationalization program is fully operational. C share holders that obtain the 'grandfather exemption' would be able to retain their holdings into retirement regardless of whether they intend to participate or have a reasonable expectation of future participation. A limited grandfather provision, on the other hand, could provide C share holders with a reasonable period of time to reenter the fishery after which those who are unable or unwilling to secure a position would be required to divest of their holdings.

The Council should consider administrative burdens and complexities when developing provisions governing participation requirements for C share holders. A relatively straightforward rule with low administrative costs should be favoured over a rule that is complex and requires extensive documentation. Given the Council's intention to allow C share holders to participate in cooperatives (pooling C shares with vessel owner shares for harvest), a strict owner on board requirement that requires tracking of IFQ held by the cooperative is viewed as overly burdensome by the agency. In addition, share holders will not receive the full benefit of cooperative membership or their C share holdings, if the cooperative's loses flexibility to coordinate harvest of C shares, as would be necessitated by a strict owner on board requirement.

Draft Purpose and Need Statement Concern Processing Share and Regional Landing Requirements

At its March/April 2007 meeting, the Council directed staff to prepare an analysis of an amendment to indefinitely exempt C shares from the processing share and regional landing requirements (established by the A share/B share structure). Under current regulations, these landing requirements are scheduled to apply to 90 percent of each C share allocation beginning in August of 2008. Council adoption of a draft purpose and need statement for this action would assist staff in development of the analysis of that amendment.

The A share/B share allocation structure, and the associated landing requirements applicable to A shares, has the effect of requiring substantially greater coordination of deliveries, since only the 10 percent allocation of B shares are free to be sold to any buyer. The 90 percent A share allocation (with corresponding IPQ and regional landing requirements) is intended primarily to add stability to the processing sector and regions that process crab and to provide a means for compensated removal of processing capacity from the fisheries. The 10 percent B share allocation is intended to provide negotiating leverage to harvesters, an opportunity for entry to the processing sector, and a check on the processing market (by providing a negotiated market price). These A share landing restrictions would greatly complicate use of C shares and could severely diminish the value of these shares to their holders. Constraining C shares with the IPQ and regional landing requirements would decrease the value to their holders. If C share holders are bound to the A share landing requirements for a portion of their allocations, their shares should be included in the arbitration program, which applies only to A shares. This additional cost would further diminish the value of C shares to their holders. These declines in flexibility of use and value would limit the benefit of C shares to their holders. The Council elected to consider an amendment to exempt C shares from processor share and regional landing requirements indefinitely to ensure that C shares holders receive the greatest benefit from their C share holdings.

The Council could consider the following purpose and need statement for this action:

> *In the crab rationalization program, the Council created a C share pool (comprised of three percent of the total harvest share pool) intended to benefit captains and crew active in the fishery. To provide stability to processors and regions that support crab processing, the Council also created processor share and regional landing requirements applicable catch landed using harvest shares under the program. For the first three years of the program, the Council elected to exempt C shares from any processor share or regional landing requirements to allow time for C share holders to adapt to the new management. The Council also stated its intent to review the application of processor share and regional landing requirements to C shares after 18 months of fishing under the program to determine whether application of those landing requirements to 90 percent of the C share allocation would be appropriate. The application of processor share and regional landing restrictions would greatly complicate use of C shares and could severely diminish the value of these shares to their holders. The value of C shares would also be diminished by their inclusion in the arbitration program, which is necessitated by the application of processor share landing requirements. To allow C share holders to receive maximum benefit of those shares, the exemption of those shares from processor share and regional landing requirements should be considered.*

Conclusion

This paper provides background and a draft purpose and need statement from which the Council could request staff to develop an analysis of an amendment to revise the current eligibility requirements for acquiring C shares. The paper also addresses some potential for C shares to be acquired by persons with little or no past or future crew time in the crab fisheries. If the Council is concerned by this potential, it could also incorporate elements to incorporate active participation requirements for persons holding C shares into the program. Lastly, the paper includes a draft purpose and need statement for consideration by the Council that could be used to support the proposed amendment for maintaining the current exemption of C shares processor share and regional landing requirements.

Post-delivery transfers of crab IFQ and rockfish CQ
North Pacific Fishery Management Council
June 2006

At its February 2006 meeting, in response to public testimony, the Council requested staff to prepare a discussion paper concerning a potential amendment to the crab rationalization program that would permit the transfer of IFQ to cover overages after the time of landing. The provision would be intended to reduce the potential for enforcement actions related to unintended overages, in the event the fisherman can acquire shares to cover the overage within a reasonable time. The Council also directed staff to include discussion of the application of an equivalent provision to the Central Gulf of Alaska rockfish pilot program. This paper responds to the Council request. The paper begins with a brief description of the rationale and use for post delivery transfers, including a brief discussion of the use of systems of post-delivery transfers in fisheries outside of the North Pacific. Since the underlying management programs in the Bering Sea and Aleutian Island crab fisheries and Central Gulf rockfish fisheries differ substantially, the discussion of the possible amendments is separated. For each fishery, the paper includes a discussion of pertinent issues, a draft purpose and need statement, and draft elements and options for Council consideration.

Background

In a share-based fishery, participants catch is limited by individual fishing quota (or IFQ) holdings. During the fishery, participants estimate catch attempting to limit catch to their available quota. Even if discards are permitted (such as the crab fisheries), overages occur at times due to errors in catch estimates. Precisely estimating catch onboard can be difficult (and costly) due to variation in size of crab or fish and sorting and measurement requirements. In fisheries in which discards are counted against quota (such as the rockfish fishery), the precise management is complicated by uncertainty of catch. Uncertainty is compounded by the binding, multispecies nature of the fishery and the allocations of rockfish, incidental catch species, and halibut prohibited species catch in that program.

In many share-based programs, some flexibility is built into the program structure to accommodate imprecision and uncertainty in catch. In the halibut and sablefish program, up to 10 percent of a person's annual IFQ allocation that is unharvested will be reissued in the following year. Conversely, overharvest of up to 10 percent of a person's allocation is permitted, with a deduction from the following year's allocation. These carryover provisions limit the need for precisely estimating or catching IFQ. No similar provisions exist for either underages or overages in the crab or rockfish fisheries.

Allowing post-delivery transfers in the crab and rockfish fisheries could mitigate potential overages, reducing enforcement costs and providing for more precise TAC management. Yet, some caution is warranted in the development of a system of post-delivery transfers. Too liberal reliance on post-delivery transfers could exacerbate overages. Similarly, an unconstrained system of post-delivery transfers could complicate management and oversight of share management and enforcement of overages that are not covered by a transfer. Appropriate limits (on both the magnitude and timing of transfers) could prevent unwarranted reliance on post-delivery transfers to cover reckless overages, minimize management, oversight, and enforcement complications, and prevent potential abuses.

Post-delivery transfer provisions have been used to mitigate potential overages in several share-based management programs outside of the U.S. In Nova Scotia, post-delivery transfers are generally permitted for up to 45 days after a landing has occurred. At the season's end, the transfer period is extended to 2 months.[1] Participants in British Columbia are permitted to cover overages with a post-delivery transfer for

[1] Nova Scotia uses share-based management programs for different gear types. Transfers across gear types are permitted only after the season closing. The rationale for permitting these cross-gear transfers is to prevent potential

30 days after the landing. In Iceland, fishermen are limited to 3 days after notice to cover an overage. Real-time monitoring, online catch accounting, and a system of electronic transfers make this brief period for post-delivery transfers possible. In New Zealand, post delivery transfers are permitted until the 15th day of the month following the landing. In addition, New Zealand's program includes a system of "deemed values," or scheduled charges for catch that is not covered by quota. These charges are refunded in the event a person receives a post-delivery transfer to cover the overage within 15 days of the season closing (see Sanchirico, et al., 2006). Each of these programs limits post-delivery transfers temporally, but does not limit the magnitude of transfers.

Post-delivery transfers in the crab fisheries

In establishing the rationalization program for the crab fisheries, the Council recommended that overages of less than 3 percent of a harvester's available quota would be confiscated without further penalty, while overages in excess of that amount would be subject to additional penalties. Since the Council does not have the authority to set penalties, these aspects of the original Council motion are considered recommendations concerning appropriate penalties.

Two possible (and opposite) effects of constraining harvest allocations could be mitigated by a post-delivery transfer provision. First, harvesters that underestimate their catch could cover any overage with a post-delivery transfer, reducing the potential for violations and TAC overages. Second, harvesters that are conservative in their estimates of catch to avoid overages may leave allocations unharvested for fear of exceeding their quota. Allowing post-delivery transfers (together with well-coordinated end of season trades among cooperatives and among individuals) could reduce the amount of unharvested allocations by allowing harvesters some latitude to address potential overages.

One consideration affecting the need for and scope of any post-delivery transfers is likely to be affected by the extent to which fishing has consolidated in cooperatives. Consolidating shares in cooperatives has limited the number of overages, since each cooperative oversees the harvest of a single annual allocation, based on the share holdings of its members. Instead of each harvester fishing to an individual allocation, groups of harvesters fish a single allocation. Typically, the last vessel fishing the cooperative's allocation is the only vessel in a cooperative that must face a potential regulatory overage.[2]

In the first year of the program, 16 overages occurred in all fisheries combined (see Table 1). Six of the overages exceeded 3 percent of the final trip's quota (the Council's suggested threshold for imposition of a penalty beyond confiscation). The total weight of overages in the two largest fisheries (the Bristol Bay red king crab and the Bering Sea *C. opilio* fishery) was less than 20,000 pounds (or less than 0.05 percent of the combined IFQ in the two fisheries).

TAC overruns and to reduce the incentive to discard.

[2] Any vessel in a cooperative may overharvest the cooperative's allocation to that vessel. This type of contractual overage would be addressed internally by the cooperative under the cooperative contract. A regulatory overage only occurs, if the total harvest of cooperative members exceeds the total allocation to the cooperative.

Table 1. Preliminary estimates of overages and landings by fishery (2005-2006 season).

Fishery	Number of participating vessels	Number of landings	Number of overages	Number of overages exceeding 3 percent	Weight of overages	Percent of landings with overage
Bristol Bay red king crab	89	255	8	4	10,912	3.1
Bering Sea *C. opilio*	78	301	6	*	8,294	2.0
Western Bering Sea *C. bairdi*	43	73	1	0	*	1.4
Eastern Aleutian Islands golden king crab	7	32	0	0	0	0.0
Western Aleutian Islands golden king crab	3	42	1	*	*	2.4

Source: NMFS RAM IFQ database, crab fishing year 2005-2006.
* withheld for confidentiality.

In the first year of the program, a much larger shares of the crab TACs were left unharvested than were overharvested through overages (see Table 2).[3] Under the current rules governing use and transfer of IFQ, harvesters appear to be conservatively estimating catch to avoid potential overages.[4] A few factors likely affected the extent to which allocations remained unharvested in the various fisheries. Many participants are reported to have inadvertently left *C. bairdi* quota unharvested, believing that the fishery closure coincided with the closure of the *C. opilio* fishery (which closed 45 days later). The Aleutian Islands golden king crab fisheries tend to have lower catch rates than the other fisheries. Given these low catch rates, it is possible that sweep up trips to catch relatively small amounts of remaining quota are not cost effective. Lastly, it is not surprising that the least amount of unharvested quota is in the Bristol Bay red king crab fishery, which has the highest value crab. The total amount of remaining IFQ in the fishery is less than a full trip for any of the approximately 90 vessels that participated in the fishery.

Table 2. Landed pounds, IFQ allocations, and unharvested IFQ by fishery (2005-2006 season).

Fishery	Landed pounds	IFQ allocation	Unharvested IFQ	Percent of IFQ unharvested	Unharvested IFQ per landing	Unharvested IFQ per participating vessel
Bristol Bay red king crab	16,472,400	16,496,103	23,703	0.1	93	266
Bering Sea *C. opilio*	33,248,009	33,472,454	224,445	0.7	746	2,878
Western Bering Sea *C. bairdi*	791,025	1,457,995	666,970	45.7	9,137	15,511
Eastern Aleutian Islands golden king crab	2,569,209	2,669,970	100,761	3.8	3,149	14,394
Western Aleutian Islands golden king crab	2,382,468	2,430,006	47,538	2.0	1,132	15,846

Source: NMFS RAM IFQ database, crab fishing year 2005-2006.

Draft purpose and need statement

To develop an appropriate provision for post-delivery transfers, the Council should be guided by a purpose and need statement. The following draft purpose and need statement could be considered by the Council:

> *Under the crab rationalization program, harvesters receive annual allocations of individual fishing quota that provide an exclusive privilege to harvest a specific number of pounds of crab from a fishery. Any harvest in excess of an individual fishing quota allocation is a regulatory violation punishable by confiscation of crab or other penalties. Precisely estimating of catch at sea during the fishery is difficult and costly due to variation in size of crab, and sorting and measurement requirements. Overages can result from inadvertent mistakes by participants attempting to accurately estimate catch. A provision allowing for post-delivery transfer of*

[3] Note that 'landed pounds' includes amounts landed as overages.

[4] Under the regulations governing the harvest of allocations, any overage is considered a violation. Harvesters' conservative approach to estimate quota usage may be a result of these overages constituting a violation.

individual fishing quota to cover overages could reduce the number of inadvertent violations, allowing for more complete harvest of allocations, and reduce enforcement costs without increasing the risk of overharvest of allocations.

Alternative, elements, and options for consideration

This section briefly reviews some considerations and elements and options and that could be used to define alternatives for analysis. The section begins by summarizing three possible approaches to the development of a post-delivery transfer provision. These different approaches could be used by the Council to develop three distinct alternatives. The section goes on to discuss specific provisions that could be used to construct the different alternatives. The section concludes by developing three possible alternatives that could be considered by the Council for analysis. The alternatives are constructed to allow specific options to be substituted, as deemed appropriate by the Council.

Approaches to developing alternatives

Generally, the use of post-delivery transfers would be intended to allow harvesters flexibility to cover overages (or possibly coordinate share usage). A liberal approach to post-delivery transfers would allow any number of post-delivery transfers at the election of a participant. No limit on the magnitude of transfers would be applied. Two limitations could be considered. First, persons without unused IFQ could be prohibited from fishing to prevent possible excessive overages. So, a person that had an overage would be required to cover that overage with a post-delivery transfer and acquire additional IFQ prior to beginning a new trip.[5] Second, all post-delivery transfers would need to be completed by a date certain after the end of the season to allow managers to finalize all share use accounting. This approach might be favoured for its simplicity and its relatively low administrative burden. Whether the approach increases the risk of overages is not clear. Since a harvester is not limited in the ability to cover an overage with a post-delivery transfer, it is possible that a harvester could fish well beyond its share holdings in hopes of covering the overage with a later transfer. On the other hand, since overages that are not covered would be subject to a penalty and would likely increase with the magnitude of the overage, harvesters may still have a significant incentive to avoid overages that they are not certain that they can cover.

A second (and opposite) approach would be to allow very limited post-delivery transfers to limit the potential of harvesters to have overages that cannot be covered with a post-delivery transfer. A system of very constrained transfers might be used to minimize any potential incentive for harvesters to exceed their quota holdings to ensure that overages simply arise from errors in catch estimates, rather than intentionally exceeding quota holdings. This more limited system of transfers might limit the number of overages for which participants seek post-delivery transfers. Yet, it is possible that more uncovered overages could arise under a system of more limited post-delivery transfers. In other words, it is possible that the constraints on the use of post-delivery transfers could limit the effectiveness of the provision for covering overages to an extent that more overages remain at the end of the season. In addition, imposing additional constraints on the use of the post-delivery transfers would increase administrative and enforcement costs related to those constraints.

A third approach could be to choose a system of moderate constraints, which could be intended to balance participants interest in making reasonable use of post-delivery transfers to cover overages against the need to limit any incentive to fish in excess of quota holdings. In developing such an approach, the potential for any limits on the use of transfers to add to administrative and enforcement burdens should also be considered relative to the benefits to participants and risks of abuse that are likely to arise under the system.

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[5] NMFS Enforcement has cautioned that such a requirement could create enforcement complications. For example, would a harvester who chooses to leave fishing pots on the grounds, while making a delivery during which a transfer will be processed be found in violation.

Purpose of post-delivery transfers

As a starting point, the provision would generally define whether post-delivery transfer can be used for purposes other than to cover an overage. Post-delivery transfer could be used to coordinate share usage other than overages. For example, a shareholder may wish to use A shares for a landing, saving its B shares for later use. Allowing a transfer for purposes other than overages could severely complicate administration of the overages. In such circumstances, the landing would initially be charged to one shareholding, after which the harvester would request a transfer to cover a portion of the landing. Administrators would need to revalidate the shares initially used, then charge the landing to the shares received on transfer after the landing. Depending on the scope of the purpose and need statement, the use of post-delivery transfers for purposes other than covering overages may be eliminated at this time. Possible provisions for consideration include:

Possible options

Post-delivery transfers would be allowed exclusively to cover an overage.
Post-delivery transfers are allowed for any purpose.

Shares used for post-delivery transfers

Since several types of shares are currently allocated in the crab fisheries, the Council could consider whether any restrictions (beyond the existing use provisions) should limit the use of shares for post-delivery transfers. Using B shares for post-delivery transfers would be the simplest to administer. These shares are not limited by the requirement for matching individual processing quota (or IPQ). The use of A shares for post-delivery transfers could be more complicated, since those shares require matching IPQ from the processor. Whether a harvester is permitted to cover an overage with an A share post-delivery transfer should depend on whether matching IPQ are held and committed for the landing. If IPQ are committed simultaneously with the transfer, the administration of the transfer and its application to the landing should be relatively straightforward. In the absence of an IPQ commitment, the use of A shares to cover an overage would diminish the IPQ allocations to all processors.

In addition, it should be considered that circumstances may arise when a harvester is able to cover an overage with Class A IFQ, but cannot do so unless a processor is also able to take a post-delivery transfer of IPQ. Whether post-delivery transfers of IPQ should be permitted might be a consideration to accommodate this situation. Allowing post-delivery IPQ transfers could assist harvesters who wish to reserve B shares for other uses.[6]

A few possible, additional concerns should be assessed, if the post-delivery transfer of C shares (captain and crew shares) to cover an overage is to be considered. C shares are intended to provide additional negotiating leverage to active captains and crew, who hold the shares. If C shares are to be included in this action, the Council should consider the degree to which their use for post-delivery transfers could affect the negotiating leverage derived from the shares. Most C shares holders have elected to join cooperatives. As a consequence, the use of C shares is governed by cooperative agreements and private contracts among the cooperative members. Given that these shares are subject to private, cooperative arrangements, it is difficult to know the terms of their current use and how it might differ from use outside of cooperatives. If C shares are pooled with other shares in a cooperative, their use likely matches that of B shares (which they currently resemble in the absence of IPQ matching requirements). Alternatively, the relatively small, flexible C share allocations could be set aside for use to cover overages. If needed, C

[6] If transfers are used only for overages, an IPQ overage would be required for a processor to engage in a post-delivery transfer of IPQ. The complexity of substituting a harvester's A shares for B shares for a completed delivery to allow for an IPQ transfer in the absence of an overage would likely be administratively infeasible.

share values could increase by being put to this use. If the first year trend of few overages is maintained, it is possible that reserving C shares to cover overages could reduce their use (and value).

The Council could also consider whether the post-deliver transfer provision should be extended to catcher processor shares. Although catcher processors weight all of their catch prior to processing, some overages have been reported in the first two years of the program. If appropriately limited, allowing post-delivery transfers could mitigate against these potential overages by catcher processors. In addition, catcher processor shares could be used by the catcher vessel fleet to cover overages and to limit discards that might occur to prevent an overage.

<u>Possible options</u>
Post-delivery transfers of the following shares are permitted:
Option 1: B share IFQ
Option 2: A share IFQ (provided a processor simultaneously commits matching IPQ)
Option 3: C share IFQ
Option 4: catcher processor IFQ
Option 5: IPQ

Limits on the magnitude of a post-delivery transfer
It is possible that allowing post-delivery transfers could lead some fishermen to unreasonable rely on the provision, leading to excessive overages that they are unable to cover through post-delivery transfers. To prevent potential unreasonable reliance on post-delivery transfers, the Council could limit the magnitude of permitted transfers. One (or both) of two approaches to limiting transfers could be considered. Transfers could either be limited to less than a fix amount of pounds or less than a certain percentage of the IFQ used on a trip. Imposing a percentage limit could be appropriate for ensuring that a person did not have an excessive overage, given the available IFQ for the trip. In the first year of the program, fewer than 7 of the 16 overages exceeded 3 percent of the IFQ used on the trip. Imposing a limit as a fixed amount of pounds would ensure that an overage does not exceed a specific magnitude, regardless of the IFQ used on the trip. In the first year of the program, overages averaged less than 2,000 pounds in the two fisheries for which data could be released. If the Council wishes to limit both the overall magnitude of any overage and the potential for a single overage to be excessive given the size of the trip, both of these limitations could be incorporated into a single provision.

In considering whether to include a provision limiting the magnitude of post-delivery transfers, the Council should consider whether harvesters are likely to harvest crab without a relatively high certainty of being able to cover the catch with IFQ. Overharvests are likely to leave a harvester with a choice of either paying the market price for a post-delivery transfer or accepting enforcement consequences. If enforcement consequences are punitive, harvesters may be unlikely to engage in fishing that cannot be covered with a post-delivery transfer.

<u>Possible options</u>
Each post-delivery transfer shall be limited to:
Option 1: a. 5 percent
b. 10 percent
c. 15 percent
of the IFQ used on the trip.
Option 2. a. 5,000 pounds of IFQ (or IPQ).
b. 10,000 pounds of IFQ (or IPQ).
c. 15,000 pounds of IFQ (or IPQ).
(both options could be selected)

Limits on the number of post-delivery transfers
Although not an extraordinary administrative burden, it is possible that excessive use of post-delivery transfers could increase administrative costs associated with allowing these transfers. To prevent this potential excessive burden, an IFQ holder could be limited in the number of post-delivery transfers that it would be permitted to receive (or number of overages that may be covered by post-delivery transfers) in a single fishery. If post-delivery transfers are exclusively to cover overages, each IFQ holder might be assumed to make a single 'last trip'. Under this assumption, it might seem appropriate to limit each IFQ holder to covering a single overage with post-delivery transfers in each fishery. Some IFQ holders, however, may make a sweep up trip combining remaining shares of several IFQ holders. Allowing for a second post-delivery transfer for these trips could improve participants' abilities to harvest their allocations without risk of excessive administrative costs.

The potential for a vessel to have overages in two different regions should also be considered, if the number of post-delivery transfers is to be limited. Balancing accounts for each of two regions could require allowing at least one post-delivery transfer in each region in a fishery.

Under the current rule, it is prohibited for a person to harvest crab in excess of IFQ holdings (see 50 CFR §680.7(e)(2)). If post-delivery transfers are authorized, this provision will need to be revised to accommodate a person covering an overage as permitted by this action. Alternatively, a person (including a cooperative) could be prohibited from beginning a fishing trip, if the person does not hold unused IFQ. This provision could be used to prevent a person from relying exclusively on post-delivery transfers to support a fishing trip. Such a provision might not be necessary, if it is believed that enforcement penalties would be adequate to prevent persons from harvesting crab that they do not have a high degree of certainty of being able to cover with a post-delivery transfer.

Possible options
For each species, an IFQ (or IPQ) holder is limited to receiving:
Option 1. post-delivery transfers to cover one overage
Option 2. post-delivery transfers to cover two overages
Option 3. post-delivery transfers to cover three overages

Option: No person shall be permitted to begin a fishing trip, unless the person holds unused IFQ.

Limits on the time to undertake a post-delivery transfer
An effective and efficient system of post-delivery transfers should allow a harvester a reasonable period of time to cover an overage with transfer. The time period should be long enough to allow the harvester to find a seller, but short enough so that administrators can finalize records for purposes of documenting catch and share usage in the fishery. A time period that is too short may circumvent the purpose of the provision by not accommodating search time needed to find a seller of shares and complete the transaction (including obtaining notarized signatures as are currently required). A period that is too long could add to administrative burdens and also induce lax reliance on the provision that could lead more uncovered overages. An appropriate period for post-delivery transfers could adopt a time limit that balances these competing considerations.

Since share accounting is not finalized until the end of a fishing season, an alternative approach is to allow post-delivery transfers at any time until a few weeks after the season ends. Allowing this longer window to cover an overage could simplify share use accounting arising from allowing post delivery transfers. If the Council elects to consider this longer window, the analysis will need to consider the potential effects of such a provision on share prices and on enforcement, which could be simplified by reducing the number of enforcement actions. In extending the time to cover an overage to the end of a season, the Council should consider the length of the current crab seasons and the timing of fishing.

Particularly in the fisheries that currently have extended seasons, a harvester may complete fishing well before the season's end. If an overage does not need to be covered until after the end of the season, some participants could neglect covering an overage believing the extended period of time would allow adequate time to do so.

Possible options

Option 1. Post–delivery transfers will be permitted *after a landing for a catcher vessel (or weekending date for a catcher processor)* *for a period of:*

Suboption a. 1 week
Suboption b. 15 days
Suboption c. 30 days

Option 2. A post–delivery transfer will be permitted *after the season closure of the fishery* *for a period of:*

Suboption a. 15 days
Suboption b. 30 days

Possible alternatives

Below are possible alternatives that the Council could consider for analysis of post-delivery transfers in the crab fisheries. After the alternatives, a table summarizes the differences between the various suggested alternatives (see Table 3).

Alternative 1 – Status Quo (no post-delivery transfers)

Alternative 2 – Unlimited post-delivery transfers

Purpose of post-delivery transfers

Post-delivery transfers would be allowed exclusively to cover overages.

Shares used for post-delivery transfers

Post-delivery transfers of the following shares are permitted:
B share IFQ
A share IFQ (provided a processor simultaneously commits matching IPQ)
C share IFQ
catcher processor IFQ
IPQ

Limits on the magnitude of a post-delivery transfer

None

Limits on the number of post-delivery transfers

None

Limits on the time to undertake a post-delivery transfer

A post –delivery transfer will be permitted *after a landing for a catcher vessel (or weekending date for a catcher processor)* *for a period of* *30 days.*

Alternative 3 – Moderate limited post-delivery transfers

Purpose of post-delivery transfers

Post-delivery transfers would be allowed exclusively to cover overages.

Shares used for post-delivery transfers

Post-delivery transfers of the following shares are permitted:
B share IFQ

A share IFQ (provided a processor simultaneously commits matching IPQ)
C share IFQ
catcher processor IFQ
IPQ

Limits on the magnitude of a post-delivery transfer
Each post-delivery transfer shall be limited to 10,000 pounds of IFQ (or IPQ).

Limits on the number of post-delivery transfers
Possible options
For each species, an IFQ (or IPQ) holder is limited to receiving post-delivery transfers to cover two overages.
No person shall be permitted to begin a fishing trip, unless the person holds unused IFQ.

Limits on the time to undertake a post-delivery transfer
Post –delivery transfers will be permitted after a landing for a catcher vessel (or weekending date for a catcher processor) for a period of 15 days.

Alternative 4 – Strictly limited post-delivery transfers
Purpose of post-delivery transfers
Post-delivery transfers would be allowed exclusively to cover an overage.

Shares used for post-delivery transfers
Post-delivery transfers of the following shares are permitted:
B share IFQ
A share IFQ (provided a processor simultaneously commits matching IPQ)
C share IFQ
catcher processor IFQ
IPQ

Limits on the magnitude of a post-delivery transfer
Each post-delivery transfer shall be limited to the lesser of 10 percent of the IFQ used on the trip and 10,000 pounds of IFQ (or 10,000 pounds of IPQ).

Limits on the number of post-delivery transfers
For each species, an IFQ (or IPQ) holder is limited to receiving post-delivery transfers to cover one overage.
No person shall be permitted to begin a fishing trip, unless the person holds unused IFQ.

Limits on the time to undertake a post-delivery transfer
Post –delivery transfers will be permitted after a landing for a catcher vessel (or weekending date for a catcher processor) for a period of 1 week.

Table 3. Summary of suggested crab post-delivery transfer alternatives.

Element	Alternative 1 (status quo)	Alternative 2 (unlimited)	Alternative 3 (moderately limited)	Alternative 4 (strictly limited)
Purpose		Only for overages	Only for overages	Only for overages
Maximum amount of transfer	No post-delivery transfers permitted	none	10,000 pounds	Lesser of 10 percent of trip and 10,000 pounds
Maximum number of transfers		none	two per species	one per species
Time limit		Prior to 30 days of landing	Within 15 days of landing	Within 1 week of landing

Post-delivery transfers in the Central Gulf rockfish fishery

The motivations for allowing post-delivery transfers in the Central Gulf rockfish program are largely the same as those for allowing these transfers in the crab fisheries. The crab and rockfish programs differ in many respects. Several crab species are allocated in the crab program, but most are harvested in a single-species directed fishery. The rockfish fishery is a multispecies fishery with three rockfish species allocations, four secondary, non-rockfish species allocations, and halibut PSC allocations are made in the rockfish program. The crab program is an IFQ program, under which participants can choose to co-op, fishing a cooperative allocation made up of all member individual allocations pooled. The share-based portion of the rockfish fishery is exclusively cooperative management, with all shares allocated as cooperative quota (CQ). In the crab program, 90 percent of the catcher vessel owner IFQ are issued as 'A shares,' which must be matched with IPQ. In the rockfish program, all catcher vessel cooperatives are required to associate with a specific processor, who must consent to any transfer of cooperative quota. In the crab fishery, discards are permitted and not counted against an allocation.[7] All catch, whether retained or discarded, is counted against the harvester's allocation in the rockfish program, with harvesters required to cease fishing when any of the allocations is fully harvested. These fishery and program differences create different dynamics, which could influence the effectiveness of post-delivery transfer provisions.

Draft purpose and need statement

The following draft purpose and need statement could be considered by the Council for developing a post-delivery transfer provision for the Central Gulf of Alaska rockfish fishery:

> *Participants in the Central Gulf of Alaska rockfish fishery pilot program are permitted to join cooperatives, which receive annual allocations of cooperative quota, which provide exclusive privileges to catch specific numbers of pounds of Pacific ocean perch, northern rockfish, pelagic shelf rockfish, Pacific cod, sablefish, thornyhead rockfish, shortraker rockfish, rougheye rockfish, and halibut prohibited species catch. Any harvest in excess of a cooperative quota allocation is a regulatory violation punishable by confiscation of catch and other penalties. Since all catch is counted against cooperative quota, the uncertainty of catch quantities and composition creates potential for unintended overages. A provision allowing for post-delivery transfer of cooperative quota to cover overages could reduce the number of inadvertent violations, allowing for more*

[7] Discard mortality is accounted for in the aggregate as a part of the TAC setting process in the crab fisheries.

complete harvest of allocations, and reduce enforcement costs without increasing the risk of overharvest of allocations.

<u>**Alternatives, elements and options for consideration**</u>

This section reviews some considerations and elements and options relevant to the development of alternatives for post-delivery transfers in the rockfish fisheries. As in the crab fishery discussion, elements and options for consideration are set out first. The section goes on to develop three possible alternatives – one with few limits on post-delivery transfers, one with moderate constraints, and a third that is very constrained. The alternatives are constructed to allow specific options to be substituted, as deemed appropriate by the Council.

General provision

Unlike the crab program, which drives distributional impacts through different share types, the rockfish program uses only two share types (catcher vessel and catcher processor) for its allocations. As a consequence, participants would have a very limited need to use post-delivery transfers to coordinate usage of the shares. So, the sole purpose for allowing post-delivery transfers would be to cover overages. No optional provisions are necessary.

<u>Possible options</u>

Post-delivery transfers would be allowed exclusively to cover an overage.

Shares used for post-delivery transfers

The rationale for post-deliver transfers to cover overages applies to both catcher vessel and catcher processor shares. Extending a post-delivery transfer provision would both allow catcher processors to mitigate against potential overages and could allow the catcher vessel fleet to cover overages with transfers from the catcher processor sector, in the event that catcher vessel shares are more costly or not available. This provision would not change the current limits on share usage, which prevent catcher vessel shares from being transferred to the catcher processor sector.

<u>Possible options</u>

Post-delivery transfers of the following shares are permitted:
Option 1: catcher vessel CQ
Option 2: catcher processor CQ

Limits on the magnitude of a post-delivery transfer

It is possible that allowing post-delivery transfers could lead some fishermen to unreasonable rely on the provision, leading to excessive overages that they are unable to cover through post-delivery transfers. To prevent potential unreasonable reliance on post-delivery transfers, the Council could limit the magnitude of permitted transfers.

As suggested for the crab fishery, one (or both) of two approaches to limiting transfers could be considered. Transfers could either be limited to less than a fix amount of pounds or less than a certain percentage of the CQ used on a trip. Imposing a percentage limit could be appropriate for ensuring that a person did not have an excessive overage, given the available CQ for the trip. In imposing a percentage limit, the Council could consider that applying the limit either on a species basis (limiting the transfer of a single species to a percentage of that species CQ used on the trip) or on an aggregate basis (limiting the transfer of all CQ to cover an overage to a percentage of all CQ used on the trip).

Some participants in the fishery might favour high transfer limits to allow a cooperative to cover a tow that is composed primarily of an unexpected species (approximately 50,000). Some stakeholders might oppose allowing large transfers for fear that they could lead to less care in targeting and more flagrant overages. Allowing a transfer to cover such an overage could mitigate any impact of the tow on the stock, since the catch would be counted against available quota in the fishery. Furthermore, in the long run, prices of quota for less available species are likely to rise to a level that creates a disincentive for poor targeting practices.

Depending on conservation concerns and potential mitigating impacts of the transfers, the Council could distinguish transfer limits on secondary species from transfer limits on primary rockfish. The conservation benefits of limiting transfers are not immediately obvious, particularly with respect to secondary species. For example, some stakeholders may advocate tight limits on post-delivery transfers of a secondary species to prevent flagrant overages. The limit, however, could have the effect of translating a single cooperative's overage into a TAC overage for the species, if another cooperative would have been willing to transfer a portion of its CQ of the species and forgo its catch.

Similarly, the Council could consider limiting post-delivery transfers of halibut PSC to limit potential flagrant overages. This limit should be adequate to allow for inadvertent overages, but not so liberal as to support careless fishing practices.

In considering whether to include a provision limiting the magnitude of post-delivery transfers, the Council should consider whether harvesters are likely to overharvest their CQ holdings without a relatively high certainty of being able to cover the catch with a post-delivery transfer of CQ. Share pricing for post-delivery transfers could be a reasonable disincentive for overages that might threaten the TAC, (without direct limits on post-delivery transfers). Overharvests are likely to leave a harvester with a choice of either paying the market price for a post-delivery transfer of CQ or accepting enforcement consequences. If enforcement consequences are punitive, harvesters may be unlikely to engage in fishing that cannot be covered with a post-delivery transfer.

<u>Possible options</u>

A post-delivery transfer of <u>primary and secondary species</u> shall be limited to:
Option 1: a. 15 percent
B .20 percent
c. 25 percent
of the CQ used on the trip
Suboption 1. on a species basis
Suboption 2. on an aggregate basis (i.e.,CQ of all species)

Option 2. a. 5 metric tons of CQ
b. 10 metric tons of CQ
c. 25 metric tons of CQ
Suboption 1: on an aggregate basis
Suboption 2. on a species basis
(both options could be selected)

A post-delivery transfer of <u>halibut PSC</u> shall be limited to:
Option 1. 3,000 pounds
Option 2. 5,000 pounds
Option 3. 7,000 pounds

Limits on the number of post-delivery transfers

Limits on the number of post-delivery transfers could be used to contain administrative costs associated with allowing these transfers. To prevent this potential excessive burden, the Council could limit the number of post-delivery transfers that a cooperative could receive. Two factors could be considered by the Council in assessing these limits. First, under the rockfish program rules, no more than 5 cooperatives can form in the catcher vessel sector and no more than 7 cooperatives can form in the catcher processor sector. In the first year, 5 catcher vessel cooperatives and 2 catcher processor cooperatives are participating in the program. Given that the fishery is likely to have relatively few cooperatives, the potential burden of allowing multiple post-delivery transfers is limited. A second factor to consider is the potential importance and benefit of multiple transfers. With as many as 7 allocated species, it is possible that participants may need multiple post-delivery transfers to cover overages. Unlike the crab program (which generally has single species allocations) in the multispecies rockfish program, it is possible that a cooperative may have an overage of a species on a trip with substantial remaining quota for other species. Allowing these cooperatives to continue fishing after covering the overage (possibly making several additional trips) might be reasonable provided that the cooperative has or acquires quota to cover its catch.[8]

Possible options
For each species, a cooperative is limited to covering:
Option 1. one overage with post-delivery transfers
Option 2. three overages with post-delivery transfers
Option 3. five overages with post-delivery transfer
Option 4. unlimited post-delivery transfers

Limits on the time to undertake a post-delivery transfer
An effective and efficient system of post-delivery transfers should allow time for a cooperative to find a seller, but keep the time period short enough so that administrators can finalize records for purposes of documenting catch and share usage in the fishery. In the rockfish fishery, the need for processor consent to a transfer suggests a longer period. Although processor involvement could complicate negotiations, processor associations should be well-defined in advance of the season, possibly streamlining the negotiation. In addition, the small fishery with relatively few cooperatives should reduce search time. Participating cooperatives are currently working to develop inter-cooperative arrangements for quota management that could be used to manage post-delivery transfers, further reducing negotiation time. The details of share pricing arrangements could change throughout the season as catch rates and available quota changes. These variations suggest that a reasonable negotiating period will be needed to complete post-delivery transactions. In addition, the current requirement for notarized signatures on any transfer should be considered in establishing the time limit for transfers.

Alternatively, the Council could consider allowing post-delivery transfers until some fixed point in time after the season closes, when all share accounting would be finalized. Allowing this extended time period could provide greater flexibility to participants to cover overages with a post-delivery transfer. If considered by the Council, analysis of this provision would need to assess potential affects on share prices, program administration, share use accounting, and enforcement.

Possible options
Option 1. Post–delivery transfers will be permitted after a landing for a catcher vessel (or weekending date for a catcher processor) for a period of:
Suboption a. 1 week
Suboption b. 15 days
Suboption c. 30 days

[8] In the event the Council elects to allow a cooperative to receive multiple post-delivery transfers, the current regulation requires that the cooperative have quota of all species prior to beginning a new fishing trip. No minimum quota holdings are specified for beginning a new trip. If the Council wishes to change this requirement, it should include such a provision in its motion.

Option 2. A post–delivery transfer will be permitted <u>after the season closure of the fishery</u> for a period of:

Suboption a. 1 week

Suboption b. 15 weeks

Suboption c. 30 days

Possible alternatives

Below are possible alternatives that the Council could consider for analysis of post-delivery transfers in the rockfish fisheries. After the alternatives, a table summarizes the differences between the various suggested alternatives (see Table 4).

<u>Alternative 1 – Status Quo (no post-delivery transfers)</u>

<u>Alternative 2 – Unlimited post-delivery transfers</u>

<u>Purpose of post-delivery transfers</u>

Post-delivery transfers would be allowed exclusively to cover an overages.

<u>Shares used for post-delivery transfers</u>

Post-delivery transfers of the following shares are permitted:

catcher vessel CQ

catcher processor CQ

<u>Limits on the magnitude of a post-delivery transfer</u>

None

<u>Limits on the number of post-delivery transfers</u>

None

No cooperative shall be permitted to begin a fishing trip, unless the cooperative holds unused CQ (<u>not an option</u>).

<u>Limits on the time to undertake a post-delivery transfer</u>

A post –delivery transfer will be permitted after <u>a landing for a catcher vessel (or weekending date for a catcher processor)</u> for a period of <u>30 days</u>.

<u>Alternative 3 – Moderate limited post-delivery transfers</u>

<u>Purpose of post-delivery transfers</u>

Post-delivery transfers would be allowed exclusively to cover overages.

<u>Shares used for post-delivery transfers</u>

Post-delivery transfers of the following shares are permitted:

catcher vessel CQ

catcher processor CQ

<u>Limits on the magnitude of a post-delivery transfer</u>

A post-delivery transfer of <u>primary and secondary species</u> shall be limited to <u>25 metric tons</u> of CQ on a <u>species basis</u>.

A post-delivery transfer of <u>halibut PSC</u> shall be limited to 5,000 pounds.

<u>Limits on the number of post-delivery transfers</u>

For each species, a cooperative is limited to covering five overages with post-delivery transfer.

No cooperative shall be permitted to begin a fishing trip, unless the cooperative holds unused CQ for all allocated species (not an option).

Limits on the time to undertake a post-delivery transfer
Post –delivery transfers will be permitted after a landing for a catcher vessel (or weekending date for a catcher processor) for a period of 15 days.

Alternative 4 – Strictly limited post-delivery transfers
Purpose of post-delivery transfers
Post-delivery transfers would be allowed exclusively to cover an overage.

Shares used for post-delivery transfers
Post-delivery transfers of the following shares are permitted:
catcher vessel CQ
catcher processor CQ

Limits on the magnitude of a post-delivery transfer
A post-delivery transfer of primary and secondary species shall be limited to 25 percent of the CQ used on the trip on an aggregate basis (i.e.,CQ of all species) or 10 metric tons of CQ on an aggregate basis (i.e., CQ of all species).

A post-delivery transfer of halibut PSC shall be limited to 3,000 pounds.

Limits on the number of post-delivery transfers
For each species, an IFQ holder is limited to receiving post-delivery transfers to cover one overage.

No cooperative shall be permitted to begin a fishing trip, unless the cooperative holds unused CQ for all allocated species (not an option).

Limits on the time to undertake a post-delivery transfer
Post –delivery transfers will be permitted after a landing for a catcher vessel (or weekending date for a catcher processor) for a period of 1 week.

Table 4. Summary of suggested rockfish post-delivery transfer alternatives.

Element	Alternative 1 (status quo)	Alternative 2 (unlimited)	Alternative 3 (moderately limited)	Alternative 4 (strictly limited)
Purpose	No post-delivery transfers permitted	Only for overages	Only for overages	Only for overages
Maximum amount of transfer - primary and secondary species		none	25 metric tons	Lesser of 25 percent of trip and 10 metric tons all species combined
Maximum amount of transfer - halibut PSC		none	5,000 pounds	3,000 pounds
Maximum number of transfers		none	five per species	one per species
Time limit		Within 30 days of landing	Within 15 days of landing	Within 1 week of landing

Conclusion

Participants in both the Bering Sea and Aleutian Island crab fisheries or in the Central Gulf of Alaska rockfish fisheries have suggested that a provision for post-delivery transfer of quota to cover overages could simplify catch management, prevent inadvertent overages, and reduce discards. If the Council wishes to consider adoption of provisions for post-delivery transfers to cover overages in those crab or rockfish fisheries, it could develop purpose and need statements and elements, options, and alternatives, and task staff to begin an analysis at this time.

UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
Office of General Counsel
P.O. Box 21109
Juneau, Alaska 99802-1109

The NOAA Office of General Counsel for Enforcement and Litigation, Alaska Region, issues the following statement:

On October 15, 2006, the opilio crab fishery season in the Bering Sea subarea opened and, as of the date of this statement, is still open.

On January 12, 2007, the Magnuson Stevens Fishery Conservation and Management Act was reauthorized by the U.S. Congress and signed by the President. (PL 109-479, HR 5946, January 12, 2007).

The following two provisions relating to the processing and use of individual processor quota (IPQ) for the *C. opilio* crab fishery in the Bering Sea subarea are contained in that Act:

SEC. 122. CONVERSION TO CATCHER/PROCESSOR SHARES.

(e) USE CAPS.—

(1) IN GENERAL.--Notwithstanding sections 680.42(b)(ii)(2) and 680.7(a)(ii)(7) of title 50, Code of Federal Regulations, custom processing arrangements shall not count against any use cap for the processing of opilio crab in the Northern Region so long as such crab is processed in the Northern Region by a shore-based crab processor.

(2) SHORE-BASED CRAB PROCESSOR DEFINED.--In this paragraph, the term "shore-based crab processor" means any person or vessel that receives, purchases, or arranges to purchase unprocessed crab, that is located on shore or moored within the harbor.

For purposes of assisting fishermen and processors in complying with the above provisions, the NOAA Office of General Counsel for Enforcement and Litigation, Alaska Region, provides the following guidance:

(1) The phrase "custom processing arrangements" as used in Section 122(e)(1) refers to:

(a) a binding and legal contractual arrangement for the processing of crab that is enter into prior to the occurrence of the processing of the crab and;

(b) in which the processed crab is debited from an IPQ account other than the IPQ account belonging to the owner of the processing plant at which the contract processing occurs.

(2) The phrase "any use cap" as used in Section 122(e)(1) refers to the IPQ use cap as defined in 50 CFR 680.42(b)(1)(ii), or 50 CFR 680.42 b)(2), and calculated as defined in 50 CFR 680.7(a)(7).

(3) The phrase "Northern Region" as used in Section 122(e)(1) refers to IPQ derived from processor quota share designated for the North Region as defined in 50 CFR 680.40(d)(2)(i).

(4) The phrase "shore-based crab processor" as used in Section 122(e)(2) includes the terms "shoreside crab processor" or "stationary floating crab processor" as those terms are defined in § 680.2.

(5) The phrase "moored within the harbor" as used in Section 122(e)(2) means moored within the harbor of St. George Island or St. Paul Island, located in the Pribilof Islands as those harbors are defined in NOAA marine charts 16381 and 16382 respectively.

This guidance is issued under the prosecutorial discretion authority inherent to this office. A formal rule making process is expected to be undertaken in the future to refine the above sections. Publication of a formal rule in the Federal Register constitutes constructive notice to all regulated parties of a rule promulgation. Upon publication of a rule addressing the above sections, this guidance is automatically rescinded and may no longer be relied upon.

Garland M. Walker Date 1/19/07

Garland M. Walker
NOAA Office of General Counsel for Enforcement and Litigation, Alaska Region

AGENDA C-4(c)
Supplemental
JUNE 2007

Alan Bing Henkel
FV Erla N
1736 205th Place N.E.
Sammamish, Washington 98074
425 503 5120

RECEIVED
MAY 29 2007
N.P.F.M.C.

May 29, 2007

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

Re: Agenda item C-4(c) Discussion paper on custom processing

Dear Ms Madsen:

I am the co-owner of the crab fishing vessel Erla N and it is a major participant in the Eastern Aleutian Islands (Dutch Harbor area) golden king crab fishery. I was actively involved in the development of the crab rationalization program and I am knowledgeable about most of the critical aspects of the program.

I wish to recommend that custom processing of Eastern Aleutian Golden King Crab in Unalaska be allowed up to 60 percent of the TAC. This would assure at least two competitive markets, and prevent consolidation of processing in a single processor in the region. However, it will also enable improved economic efficiency amongst the competitive markets.

My experience with markets in Unalaska under the current 30 percent cap in the rationalization program is that my vessel has been required to deliver to four different markets, which has resulted in increased plant operating costs and additional costs to my vessel operations.

Increased costs to the vessel operations arise from it being required to do multiple offloads of a single trip, to more than one processor, in order to comply with the existing 30 percent use cap. Multiple offloads of one trip incur deadloss and scheduling difficulties that result in unnecessary lost time waiting for boats to offload at plants.

Thank you for your consideration.

Alan Bing Henkel
FV Erla N

Deep Sea Fishermen's Union of the Pacific

5215 Ballard Avenue N.W.
Seattle, WA 98107
Phone: (206) 783-2922
Fax: (206) 783-5811
www.dsfu.org

Established 1912

MAY 2 9 2007
N.P.F.M.C

May 29, 2007

Stephanie Madsen, Chair
North Pacific Fisheries Management Council
605 W 4th Avenue, Suite 306
Anchorage, AK 99501-2252

Subject: BSAI Crab Management
"Active Participation" for C-shares

Dear Ms. Madsen:

The Deep Sea Fishermen's Union was first established in 1912 representing the halibut and sablefish schooner fleet fishermen of Seattle. Over half our members are still working on these vessels and are second and third-generation longline fishermen. In more recent years we opened our membership to crabbers, supporting other fixed gear groundfish fisheries. We have a long and distinguished history in the fishing industry. Today we are writing in support of our crabbing members.

The June, 2007 meeting of the NPFMC in Sitka, Alaska is addressing the BSAI Crab Management Plan, in particular, the discussion paper on "active participation" for C-shares. We ask the Council to consider the following:

<u>Current participation requirements</u>:
Based on public testimony and a recommendation from the Advisory Panel, the Council initiated consideration of an amendment to the criteria used to determine a person's eligibility to acquire captain and crew shares (C shares) in the Bering Sea and Aleutian Island crab fisheries governed by the rationalization program. Currently, a person must be an 'active participant' in the fisheries, defined as having participated in a landing during the 365 days preceding the C share purchase. Testimony suggested that this requirement is overly burdensome to some former participants wishing to secure a position in the fisheries, who were unable to participate in the first year of the program because of fleet consolidation. Relaxing participation criteria could facilitate share purchase by persons wishing to reenter the fisheries.

The Union supports the purpose and need statement put forth by Council staff. Our Union sees the problem as transitional, therefore we support the options to address current transition in the discussion paper.

For a period of 5 years from the
Option 2: Implementation of the loan program

C shares can also be acquired only by an individual who:
1) Is a U.S. Citizen,
2) Has at least 150 days of sea time as part of a harvesting crew in any U.S. Commercial fishery (historic participation), and
Option 1: received an initial allocation C shares
Option 2: demonstrates participation in a rationalized crab fishery during
b. 2 of the 3 years (2002-2004)
Immediately preceding implementation of the crab rationalization program

The Union feels this would be a good one time solution to the current situation of accelerated job loss and re-integration into the fleet by long term committed crewmen who lost their jobs.

Statement concerns on processing shares 90/10 split:
We feel C shares should be exempt from the processing share and regional landing requirements. This additional cost would further diminish the value of C shares to their holders. The decline in flexibility and use and value would limit the benefit of C shares to their holders. The C shares are in general in smaller amounts and would be logistically challenging.

Leasing sunset extension:
We strongly suggest that the extent of the sunset for leasing C shares be lengthened an additional 5-years upon the implementation of the loan program. After the 5-years the quota share holder must meet the active participant criteria to be issued IFQ.

The DSFU has been ardently working toward getting help in Congress to activate the federal loan program established for captain and crew. Under the new loan program it is expected that share purchase and distribution will accelerate and define itself in the fleet.

Sincerely,

Tim A Henkel

Tim Henkel
Oystein Lone
Deep Sea Fishermen's Union

RECEIVED
MAY 2 9 2007
N.P.F.M.C.

May 29, 2007

North Pacific Fishery Management Council

Re: BSAI Crab Fisheries

My name is Mikal Mathisen. I currently run the crab vessel Karin Lynn and have been in the Bering Sea Crab industry since 1990. I am a resident of Washington State.

I am writing in support of keeping the C shares as open access; meaning no regionalization and no a/b split. With the timing requirements of share matching it seems like an unnecessary burden to get all of the crew shares lined up as well. It would be a logistical nightmare for the people involved to deal with these relatively small pieces and be quite restrictive of any crew movement after share matching had taken place. The more restrictive the shares are the more likely that some crab will not get caught.

I would also like to see the C shares remain leaseable and co-opable eliminating the participation requirement. With as fast as the fleet has shrunk in the first two years of rationalization it is easy to imagine further shrinking particularly of the King Crab fleet and especially if we ever get a St Matthew/Pribilof Island season. It is hard now and will become even harder with further consolidation for all C share holders to find boat jobs for all fisheries. Some of the crab will undoubtedly then not get caught. People have earned and/or purchased these shares with a lot of time and money, it would be a shame not to get the financial reward.

As far as the purchasing of these shares there is supposed to be a federal loan program in place and I am wondering where that is. Hopefully that will go in effect soon and allow the non-owner crew types that it was designed for some financial options.

As far as the fishery itself I would like to see some form of post delivery transfers put into place. No one is trying to gain financial reward by going over quota because it is all assigned and accounted for. In the case of a boat delivering more or less than he was supposed to it is the simple case of the count being off, or the crab weighing more or less than assumed. We should give people one full week to come up with the pounds from another vessel or co-op to cover their overage. Also when a boat or co-op is done fishing for the season any uncaught pounds left on its quota should automatically transfer to a central account available to cover overage's or allow boats still fishing to catch the quota. It is a shame to leave any pounds in any fishery on the table. Pounds put into this account could automatically go to some pre-arranged lease fee such as 50/50.

Thank you,

Mikal Mathisen
206-842-5154

To: The Honorable Sarah Palin
Governor of Alaska
P.O. Box 110001
Juneau, AK 99811-0001

RECEIVED
MAY 29 2007
N.P.F.M.C.

From: Saint Paul Island Entities

Anthony Philemonoff, President
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Phillip Lestenkof, President
Central Bering Sea Fishermen's Association
P.O. Box 288
St. Paul Island, Alaska 99660
Tel. 907 546-2597
Fax 907 546-2450

Re: Letter from Saint Paul Island Entities

Cover

April 27, 2007

The Honorable Sarah Palin
Governor of Alaska
P.O. Box 110001
Juneau, AK 99811-0001

Dear Governor Palin:

As representatives of Saint Paul Island's main entities, we are writing to express our concern that the carefully constructed balance between processors, harvesters, and communities in the Bering Sea/Aleutian Islands (BSAI) crab rationalization program, which is necessary to protect the interests of all participants, may be altered in a manner that is harmful to our community. The North Pacific Fishery Management Council (NPFMC or Council) is in the first stage of a planned 18-month review of the program, and is naming a crab advisory committee to consider, among other things, the effects of the 90/10 split between "A" shares which are regionalized and must be delivered to processors owning processor quota in designated regions, and "B" shares which can be delivered anywhere.[1]

For various reasons, specified in greater detail below, Saint Paul's economy is almost entirely dependent on crab processing. As a result, negative impacts to the processing sector impact the community's economic base and other dependent businesses. Although crab stocks continue to be low, the rationalization program has ensured that some level of economic activity derived from this fishery has remained on Saint Paul and in the northern BSAI crab region. We therefore urge that the program, which is only 18 months old, be given an opportunity to work.

We would also like to take advantage of this opportunity to extend to you an invitation to visit our historic community and the rich marine wildlife that characterizes the Pribilof Islands.

I. <u>The Transition from Fur Sealing to Fishing on the Pribilof Islands:</u>

For over a century, Saint Paul was not allowed to develop a commercial fishing industry due to the exclusive federal management of the commercial fur seal harvest.[2]

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[1] The program summary included in the "Bering Sea and Aleutian Islands Crab Rationalization Program Report, Fishing Year 2005/06, prepared by NMFS (12/14/06) provides a valuable overview of the main elements of the program on pages 1-9. The report may be accessed at: http://www.fakr.noaa.gov/sustainablefisheries/crab/rat/rpt/2005crabreport.pdf.

[2] The Pribilof Islands have a unique history due to the fact that until 1983 the Islands were administered by the U.S. Department of Commerce for the exclusive purpose of harvesting fur seal pelts. No other commercial (i.e. fishing) activities were allowed by federal administrators out of concern that it would impact the commercial fur seal harvest. The Native Aleut residents on both Saint Paul and Saint George Islands were employed in this commercial operation which was inherited by the U.S. Government when it purchased the Alaska territory from the Russian Empire in 1867. In fact, historians note that it was the valuable Pribilof fur seal operation that spurred

Then, in 1983, the U.S. Congress directed that the federal government's fur sealing operations be phased out. With fisheries being the only viable alternative to fur sealing on the Pribilofs, the community scrambled to develop the necessary fisheries-related infrastructure in the late 80's and early 90's with the support of the U.S. Congress and the State of Alaska.[3] The first stage of the Saint Paul Harbor was completed on August 4, 1990, at a cost of $32,332,600. In addition, the community indebted itself with millions of dollars to upgrade infrastructure and build facilities that would support the development of a fisheries-based economy such as a fuel farm, a power plant, water storage facilities, a landfill, and other utility upgrades.

The 1981 collapse of the Bering Sea king crab fishery and the need by harvesters and processors to diversify from king crab into opilio crab provided Saint Paul with the opportunity to enter a major fishery. The Bering Sea crab fishing industry took advantage of Saint Paul's harbor and the community's considerable investments in fisheries-related infrastructure to initiate shore-side landings, processing, and vessel support services for the fleet. Saint Paul's proximity to the opilio crab grounds with the associated benefits of reduced fuel costs, time, deadloss, and safety risks, plus its fresh water reserves, its airport, and other support services, were extremely valuable to a non-rationalized derby-style fishery. The first significant opilio landings in the harbor occurred in 1993 at the Unisea barge followed in 1995 at the Trident shore plant. The processing and harvesting sectors clearly benefited from their relationship with Saint Paul and the considerable public and private investment on the Island. The community and the State also benefited.[4] As a result, in the late 90's, Saint Paul was, after Unalaska, the largest generator of fisheries business tax in the State of Alaska.

III. The Impacts of the Collapse of the Opilio Crab Fishery on Saint Paul:

In 1999, when the Alaska Department of Fish & Game (ADF&G) announced a significant reduction in the Guideline Harvest Level (GHL) for opilio crab from approximately 192 million lbs. in 1999 to 28 million lbs. in 2000, our community was forced to take drastic actions. The City receives a portion of the State levied fisheries business tax on all crab delivered and processed by the Island's shoreplants as well as by

U.S. interest in acquiring Alaska in the first place. Within ten years of the purchase, the fur seal harvest had paid for Alaska's entire cost to the U.S. of $7.5 million. The history of the American operation of the fur seal franchise on the Pribilof Islands and the treatment of the Aleuts through 1947, is documented in Aleut Community of Saint Paul Island v. United States, 42 (Ind. Cl. Comm. 1, 149 (1978)).

3 A $20 million trust was established pursuant to the 1983 Fur Seal Act Amendments and the federal government and the State of Alaska committed to helping Saint Paul and Saint George build harbors necessary to develop a fisheries-based economy.

4 For the 1995-1999 period, for example, Saint Paul's market share of the opilio crab harvest averaged 36.1% based upon revenues. See "Economic Impact of Bering Sea Crab Stock Disaster on Saint Paul and the Need for Fisheries Diversification in Years 2000 and Beyond," prepared by Natural Resources Consultants, December 1999.

floating processors stationed within three nautical miles of Saint Paul Island[5]. In addition, the City receives a 3% sales tax on crab delivered to processors inside the Saint Paul Harbor as well as a sales tax on fuel and other supplies sold in the harbor. As a result of the fishery collapse, the total decrease in revenues to the City of Saint Paul in 2004, 2005, and 2006, as compared to 1999, was 84%, 84%, and 86%, respectively. This is almost directly proportional to the 85% decrease in the GHL from 1999 to 2000 and subsequent years. Several major areas of City revenues such as onshore and offshore processing, fuel distribution, harbor services, and local businesses continue to be depressed. These effects are summarized in the chart included as Attachment A.

The decline in revenues experienced by the City is indicative of the declines similarly experienced by privately held businesses in the community. These revenue declines have been felt directly by Saint Paul's 460 residents through loss of jobs, loss of consumers, loss of the community day care facilities, and curtailment in air passenger, cargo and bypass services to the mainland. As of the date of this letter, the City of Saint Paul officially has 38 employees, down from 50 in early 2000. The 2000 Census listed the population at 532; many residents have moved off the Island due to lack of work and opportunities. The departure particularly hurts the long-term viability of the Island as many of those leaving are educated, skilled, and young. The community is now heading into the eighth year of the opilio crab fishery collapse. However, the scenario would have been much worse if Saint Paul had not been protected by the Three Pie concept built into the crab rationalization program.

IV. "<u>Three Pie" and the Benefits of Rationalization for Saint Paul</u>:

As a result of the crisis brought on by the crab collapse our community was forced to make a number of difficult decisions. One of the first steps was to request, as an affected fishing community, that the Secretary of Commerce, under the authority extended to him by Section 312 (a) of the Magnuson-Stevens Fishery Conservation and Management Act, declare that a commercial fishery failure had occurred due to a fishery resource disaster. Such determination was made by the Secretary on May 11, 2000, and due to the continued collapse of the opilio crab fishery has been extended by successive notifications from NMFS. This declaration allowed Saint Paul to tap into federal assistance and provided the impetus for proceeding with the development of a rationalization program in the crab fisheries.

On the rationalization front, the community with the support of the State, played a key role in constructing the proper balance among processors, harvesters, and communities, known as "Three Pie." Critical from the community's perspective was that the US Congress, the State of Alaska, and the NPFMC (the Council) recognized that the considerable federal, state, and municipal investments made on Saint Paul that proved invaluable to developing a commercially successful crab fishery in the Bering Sea,

5 The fish tax is 3% for shorebased facilities and 5% for floaters (see A.S. 43.75.015(a)). The state refunds 50% of the tax collected to cities located in unorganized boroughs and 25% to cities located within organized boroughs (A.S. 43.75.130(a)).

merited protection within the context of rationalization, in a manner similar to that extended to the harvesting and processing sectors.

Congressional approval of the crab rationalization program in January of 2004 set the stage for ending the derby style crab fishery and for the consolidation of harvesting and processing activity in the Bering Sea. As the main port in the designated northern region of the Bering Sea, Saint Paul has benefited from this program, even though crab stocks remain low and the community's revenues are still at 85% of what they were in 1999. While at present only two of the six crab fisheries are open, required deliveries to northern region processors have helped generate revenues of slightly more than $600,000 per year during the last seven years which have helped the City to survive until the stocks return and new fisheries can be developed (see Attachment A).

Moreover, even at low quota levels, the limited crab processing taking place on Saint Paul thanks to rationalization provides the economic basis for the local CDQ and IFQ halibut fishery as the local fishermen have no alternative location to process their halibut. CBSFA contracts with Trident at Saint Paul to custom process the halibut delivered by the local fleet. This fishery is a major source of employment and income for the community - in 2006 it generated income of over $2,400,000. This is significant for a small community. Furthermore, through its CDQ allocations, CBSFA has promoted economic activity by delivering its allocations of Bristol Bay Red King Crab (BBRKC) and Opilio to northern region processors based at St. Paul.

Some 300-400 non-residents work at the shore-based Trident processing facility during the crab season. In addition, transient fishermen who deliver crab are also important to the local economy. These individuals are an important group of consumers and source of business for the Community Store, the Tavern, the Package Store, and the Hardware Store. The local village corporation, TDX, obtains substantial revenue from other related services such as leasing land for freezer vans (crab), sales of fuel, and hotel services, as well as jobs. Businesses such as PenAir, Northland Services, and Delta Fuel are dependent on these flows of people and trade. It is clear that without crab processing, the Island would face economical collapse.

Finally, without crab processing the community would be unable to attract investment in the infrastructure, permitting, and other upgrades necessary to diversify into commercially valuable species such as pollock and cod, and survive in the long term. This would be an unfortunate development given that Saint Paul's greater proximity to the commercial fisheries which are gradually moving into the northern Bering Sea, in addition to high fuel costs, makes the Island an ideal location to support the North Pacific industry.

V. <u>Conclusion</u>:

For the above reasons, the community views with concern challenges to the 90/10 A share/B share split. This is not only a harvester/processor issue, as this split is the basis for labeling quota as either northern or southern region quota and is currently the only protection that Saint Paul has. It is therefore important to maintain a proper balance between restricted use (regionalized) processor quota shares, which are matched on the harvesting side with regionalized A-shares, and B-shares which do not need to match PQS/IPQ, and are not regionalized. Preliminary Council analyses, moreover, show that there are no significant B-share and C-share landings in the northern region. The level of landings of B-shares and C-shares in Akutan and Dutch Harbor, in the southern region, which are a full 22% higher than those ports' share of A-share landings, illustrate that the northern region is almost completely dependent on the A-share component (90%) in this program.[6]

The community believes that the problems being attributed to the crab rationalization program by some participants in the Council process are being solved and do not require alterations to key elements of the program at this time. In the northern region, these problems have been aggravated by incidents such as the ice events in the harbor during the last two crab seasons and the fire on the Steller Sea processing vessel. All of Saint Paul's entities, however, are working closely with the processing and harvesting sectors, to solve the problems associated with the low crab quotas by allowing for custom processing arrangements that would maximize operational efficiencies for northern region participants. We hope to have this project up and running in time to allow us to process opilio and BBRK crab as well as CDQ and IFQ halibut for the next season.

Governor Palin, we look forward to the opportunity to discuss these issues and our concerns in person with you in Juneau, Anchorage, or on Saint Paul. We would like to meet with you before the next Council meeting, beginning June 4, at which the crab program review will be discussed and potentially acted upon.

We are aware of your personal commitment to healthy and viable rural Alaskan communities and we hope that you understand our perspective regarding this matter. Again, we would be delighted if you decide to accept our invitation to visit our unique community. We look forward to your response.

Sincerely,

Linda Snow, City Manager
City of Saint Paul Island

Anthony Philemonoff, President
Tanadgusix Corporation

Phillip Lestenkof, President
Central Bering Sea Fishermen's Association

Robert Melovidov, President
Tribal Government of Saint Paul

cc: Denby Lloyd, Alaska Department of Fish & Game

6 "18 Month Review – Bering Sea and Aleutian Islands Crab Management", NPFMC staff analysis, March 2007, page 45, table 16.

ATTACHMENT A

City of Saint Paul Sales and Fish Tax Revenues

(rounded to the nearest thousandth dollar and percentage point)

Revenue Source	1999	2000	2004	2005	2006	Revenue Decline 1999 to 2000	Revenue Decline 1999 to 2004	Revenue Decline 1999 to 2005	Revenue Decline 1999 to 2006
Onshore Processors	782	113	178	191	194	86%	77%	76%	75%
Offshore Processors	1,935	298	272	230	135	85%	86%	88%	93%
Fuel Distributors	85	11	20	28	42	87%	76%	67%	51%
Harbor Services	759	78	69	94	91	90%	91%	88%	88%
Local Businesses	110	60	60	47	45	45%	45%	57%	59%
TOTAL	**3,671**	**560**	**599**	**590**	**507**	**85%**	**84%**	**84%**	**86%**

Although Saint Paul has experienced a dramatic decline in revenues since 1999 resulting from the opilio fishery collapse, the existence of the crab rationalization program has ensured deliveries of crab in northern region ports including Saint Paul.

In the past seven years, these revenues have on average ranged between $500,000 and $600,000 per year providing some relief to the community until the crab stocks return.

AGENDA C-4(d)
Supplemental
June 20

Skippers for Equitable Access

20126 Ballinger Way NE
PMB 158
Shoreline, WA 98155

May 28, 2007

Stephanie Madsen, Chair
North Pacific Fisheries Management Council
605 W. 4th Avenue, Suite 306
Anchorage, AK 99501-2252

Dear Ms Madsen,

Skippers for Equitable Access (SEA) would like to give our comments regarding the 18 month review of the Crab Rationalization Program, specifically as it pertains to C (skipper and crew) shares. Unfortunately, due to scheduling conflicts and difficulties finding accommodations in Sitka it is unlikely that we will be able to attend the June meeting. Therefore we ask that the Council:

- Proceed with the action to delete the default requirement for A/B split of C shares after 3 years. (scheduled for the October meeting)
- Proceed with the action to delete the default requirement for Regionalization of C shares after 3years. (scheduled for the October meeting)
- Extend the sunset on leasing C shares for an additional 5 years after which time the QS holder must meet the Active Participant criteria to be issued IFQ. (An Active Participant has participated in at least one delivery in a fishery subject to the crab rationalization program in the 365 days preceding the issuance of the IFQ (recent participation)(see 50CFR 680.41(c)).

As we have stated previously in testimony, SEA urges the Council to leave C shares as they are now and drop the default requirement for them to become encumbered with the A/B split and regionalization tags after three years. Additionally we request that the Council extend the sunset for leasing C shares for an additional 5 years. As you know the Low Interest Loan Program that was intended to be an integral and important component of the rationalization program is not yet up and running. We would like to thank the Council again for 'going to bat for us' in querying Mr. Leo Irwin at NMFS Financial Services as to the status of the loan program. In response to his answer we have been working toward getting help in Congress to get the necessary authorization attached to an appropriate bill. Without the loan program the anticipated redistribution of C shares has been extremely sluggish. This sluggishness is largely due to a lack of available financing, and the uncertainty as to the final rule on A/B split, regionalization and leasing requirements. We need the extension on leasing so that once the loan program is finally available and the final nature of C shares is known, the redistribution of shares can finally take place.

Another issue pertaining to C shares is the question of who can acquire them and the definition of an Active Participant. SEA feels strongly that only those individuals actively engaged in rationalized crab fisheries should be able to acquire C shares and, therefore, that the status quo definition of Active Participant should be retained with no changes. The criteria for an Active Participant are an individual who:

1. is a U.S. citizen
2. has at least 150 days of sea time as part of a harvesting crew in any U.S. commercial fishery (historic participation), and
3. has participated in at least one delivery in a fishery subject to the crab rationalization program in the 365 days preceding the acquisition (recent participation)(see 50CFR 680.41(c)).

Again, we feel that only those skippers and crew who fulfill the requirements for active participation should be able to acquire C shares.

Sincerely,

Tom Suryan

Tom Suryan
President, SEA
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206.522.1249

Deep Sea Fishermen's Union of the Pacific

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Seattle, WA 98107
Phone: (206) 783-2922
Fax: (206) 783-5811
www.dsfu.org

Established 1912

May 29, 2007

Stephanie Madsen, Chair
North Pacific Fisheries Management Council
605 W 4th Avenue, Suite 306
Anchorage, AK 99501-2252

Subject: BSAI Crab Management
"Active Participation" for C-shares

Dear Ms. Madsen:

The Deep Sea Fishermen's Union was first established in 1912 representing the halibut and sablefish schooner fleet fishermen of Seattle. Over half our members are still working on these vessels and are second and third-generation longline fishermen. In more recent years we opened our membership to crabbers, supporting other fixed gear groundfish fisheries. We have a long and distinguished history in the fishing industry. Today we are writing in support of our crabbing members.

The June, 2007 meeting of the NPFMC in Sitka, Alaska is addressing the BSAI Crab Management Plan, in particular, the discussion paper on "active participation" for C-shares. We ask the Council to consider the following:

Current participation requirements:
Based on public testimony and a recommendation from the Advisory Panel, the Council initiated consideration of an amendment to the criteria used to determine a person's eligibility to acquire captain and crew shares (C shares) in the Bering Sea and Aleutian Island crab fisheries governed by the rationalization program. Currently, a person must be an 'active participant' in the fisheries, defined as having participated in a landing during the 365 days preceding the C share purchase. Testimony suggested that this requirement is overly burdensome to some former participants wishing to secure a position in the fisheries, who were unable to participate in the first year of the program because of fleet consolidation. Relaxing participation criteria could facilitate share purchase by persons wishing to reenter the fisheries.

The Union supports the purpose and need statement put forth by Council staff. Our Union sees the problem as transitional, therefore we support the options to address current transition in the discussion paper.

For a period of 5 years from the
Option 2: Implementation of the loan program

C shares can also be acquired only by an individual who:
1) Is a U.S. Citizen,
2) Has at least 150 days of sea time as part of a harvesting crew in any U.S. Commercial fishery (historic participation), and
Option 1: received an initial allocation C shares
Option 2: demonstrates participation in a rationalized crab fishery during
b. 2 of the 3 years (2002-2004)
Immediately preceding implementation of the crab rationalization program

The Union feels this would be a good one time solution to the current situation of accelerated job loss and re-integration into the fleet by long term committed crewmen who lost their jobs.

Statement concerns on processing shares 90/10 split:
We feel C shares should be exempt from the processing share and regional landing requirements. This additional cost would further diminish the value of C shares to their holders. The decline in flexibility and use and value would limit the benefit of C shares to their holders. The C shares are in general in smaller amounts and would be logistically challenging.

Leasing sunset extension:
We strongly suggest that the extent of the sunset for leasing C shares be lengthened an additional 5-years upon the implementation of the loan program. After the 5-years the quota share holder must meet the active participant criteria to be issued IFQ.

The DSFU has been ardently working toward getting help in Congress to activate the federal loan program established for captain and crew. Under the new loan program it is expected that share purchase and distribution will accelerate and define itself in the fleet.

Sincerely,

Tim A Henkel

Tim Henkel
Oystein Lone
Deep Sea Fishermen's Union

Alaska Crab Coalition
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June 9, 2007

ACC COMMENTS ON NPFMC AGENDA ITEM C-4
(b) Crab overfishing definition analysis; (c) Custom Processing exemptions; (d) Active participation for C share holders; (e) Post-delivery transfers.

The ACC supports the complete package of Advisory Panel recommendations on the C-4 agenda items. The AP has developed a comprehensive package of elements and options for the discussion papers that represent considerable compromises.

Additional recommendations on the need for development of an intercooperative:

The ACC notes that development and participation in an intercooperative has been proposed for harvesters to be eligible to engage in post-delivery transfers of IFQ in order to expedite and streamline transfers.

The ACC recommends development of an intercooperative for the BSAI rationalized crab fisheries. Membership and participation would be on a voluntary basis and should allow for inclusion of both affiliated and non-affilliated, A, B and C shareholders. The current Inter Cooperative Exchange (ICE) is focused on price negotiation and it is restricted to non-affiliated QS holders and therefore it cannot fulfill the need for an industry-wide cooperative body to deal with a wide array of inseason management issues.

A number of the issues have been identified for resolution by the recently appointed NPFMC Advisory Committee and they are listed in their agenda for the first meeting on June 19, 2007. (See attachment)

Major issues are noted under the Agenda item, B share use, their intended and unintended uses, logistical issues—ice and processor shutdown. The B share item also suggests the intercooperative as a mechanism for solutions between harvesters and processors. And under Regulatory issues, an intercooperative will also facilitate overall streamlining of quota share transfers, that will optimize TACs and prevent overages.

Other issues that could, and should be addressed by an intercooperative are: communication systems to avoid hygrading, avoidance of areas with high concentrations of non-marketable crab that result in excessive crab bycatch and related handling and discard mortality; and development of mechanisms for reduction of handling and sorting mortality.

The ACC recommends the Council instruct the NPFMC Advisory Committee to consider the isssues that would benefit from development of a voluntary crab intercooperative in its report to the Council at its October meeting.

Arni Thomson

Crab Advisory Committee
June 19, 2007 Meeting

__Location__ – NMFS Sandpoint facility - Workforce Management Conference Room in Building 1 (the Western Regional Center, not the AKFSC). The room is located right across from the reception desk when you walk into Bldg 1 from across the skybridge.

__Agenda__

Regulatory issues

1) Market reports for fisheries unlikely to open - develop process to eliminate requirement
2) Timing of the golden king crab market report (required before data are available from previous year) - establish new timing requirement
3) Staleness of market reports - should the report be supplemented, should a different process for providing this information be developed or should the requirement be changed in some other way
4) Share matching and initiation of arbitration timing - should season openings be changed (particularly opilio and possibly western bairdi) - should any change be considered for Prib or St Matts fisheries - are there other changes in share matching and arbitration timing that should be considered
5) Streamlining transfers – mechanism to streamline the transfer process to facilitate better share matching
6) Immunity to arbitration organizations, arbitrators and market analysts, and third party data provider
7) Sharing of previous year's highest arbitration outcome with the formula arbitrator – should these decisions be public at some point

B share use

1) Review Council's intended uses - a) competitively marketed by harvesters b) possibly serve alternative product markets and c) processor entry (does anyone think that the list is over- or under-inclusive)
2) To assess extent that shares are serving these purposes consider:
   a) other purposes that B shares are being put to, and
   b) the extent to which B shares are satisfying the Council's purposes
3) Other uses and how can they be addressed
   i) logistical issues (ice/processor shutdown) - are these problems restricted to the opilio fishery/ how do they affect other fisheries - BBRKC and browns - what arrangements can be made to lessen the need for B share use - can intercooperative/interprocessor arrangements can be made to address the problem - (note, must be cognizant of antitrust issues, if coordinated across processors)
   ii) deadloss - is this an issue currently - if so, what arrangements can be made to minimize B share use for deadloss
   iii) other uses

Steve Minor

Post-delivery transfers

The NPFMC looked at the benefit of the AFA pollock cooperatives when designing the crab program, but most of the crab cooperatives are currently operating as "pass through" cooperatives without all of the collective management measures the Council and industry expected.

For comparison, AFA pollock cooperatives schedule deliveries to accomodate member boat commitments to other fisheries; designate a single boat to do end of season cleanup of quota; trade A season quota inside and outside of the sea lion SCA; trade A season and B season quota; and lease quota internally.

On the **inter-coop** level, the AFA coops (with little or no governement involvement) allocate sideboards such as cod and GOA groundfish and PSC allowances to each coop (which then allocates to each boat); run a syatem allowing a boat from one coop to fish for a different coop using the second coop's allocation; **run a coop to coop transfer system**; and run a binding salmon by-catch reduction program.

There is not yet the equivalent level of planning and cooperation in the crab harvest sector. Therefore, we ask that a new element and options be added to the Post-delivery transfer analysis:

To be added to Alternatives 2,3 and 4:

Eligibility for post-delivery transfers:

1. All harvesters
2. Inter-cooperative members
The Inter-cooperative must
A. Represent 30%, 50% or 65% of the IFQ for the fishery
B. Have established Reserve Pool mechanisms
C. Have a contractual transfer process between members
D. Have an authorized representative to manage transfers with the RAM
E. Allow membership by both affiliated and unaffiliated entities (therefore cannot engage in price formation activities).

Dave Fraser

Suggested Revisions to AP Motion on:
Custom Processing Purpose and Needs Statement

~~*In remote areas and small TAC fisheries, the extended fishing seasons under rationalization require processing activity to be extended over a longer period of time. This temporal extension of processing activity, together with the lower throughput levels, limits the ability of processors to achieve production efficiencies. Allowing concentration of processing in fewer facilities, by exempting custom processing at a plant from the use cap of the plant owners, could increase processing efficiency. This efficiency increase could improve competition in processing. In some cases, exemption of custom processing at a facility from use caps of the owner could provide for contingencies in the event of a facility breakdown, assist in allowing full harvest of the TAC, and contribute to community sustainability.*~~

Need

In remote areas (e.g.: the western region) with small TAC fisheries for crab species (e.g.: WAI brown crab) and extended fishing seasons, the goals of sustaining communities in the region and allowing the full harvest of the TAC could be better achieved by exempting custom processing beyond the processing use cap by **shorebased** processors.

Purpose

Two of the **primary** objectives of the proposed action are to protect the economic base of remote communities dependent on **shorebased** crab processing, **which generates local employment, direct and indirect economic activity for local business and provides processing capability for other local fisheries development**; and to allow the efficient prosecution of quota held by fishermen.

Additionally, allowing concentration of processing in fewer facilities, by exempting custom processing at a plant from the use cap of the plant owners, could increase processing efficiency.

Options:

Locations qualified for the exemption:

Adak supports the AP revision of Option #2 to read as follows:

"A shore plant, or floating processor that is moored within the harbor at a dock or docking facility in a community that is a first or second class city."

Adak supports eliminating Option #3 as inconsistent with the problem statement.