Public Testimony Sign Up Sheet

Agenda Item C-6 Bairdi Crab Split

April 2005

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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-6
APRIL 2005

MEMORANDUM

TO: Council and AP Members

FROM: Chris Oliver
Executive Director

ESTIMATED TIME
2 HOURS

DATE: March 28, 2005

SUBJECT: Bering Sea *C. bairdi* crab split

ACTION REQUIRED

Develop problem statement/refine alternatives and take action as necessary

BACKGROUND

At its December 2004 meeting, the Council, anticipating a change by the Alaska Board of Fisheries to manage Bering Sea *C. bairdi* as two separate stocks (one east of 166° W longitude and the other west of 166° W longitude) requested staff to initiate an analysis of the alternatives to allocate shares for the two separate fisheries. The action is necessary because the Council, in rationalizing *C. bairdi* in the Bering Sea, did not distinguish the management of these separate stocks. The alternatives proposed at the December 2004 meeting would allocation QS and PQS, respectively, to an eligible participant in a sector either equally for each fishery or proportional to their harvest in the respective area.

Staff has three requests of the Council at this meeting. First, the Council has yet to adopt a problem statement for this action. Council staff, in consultation with staff of ADF&G and NOAA Fisheries, has developed a draft problem statement for review and consideration by the Council. At this meeting, the Council should adopt a problem statement to direct the analysis and future Council action.

Second, it has come to the attention of the staff that the alternatives for processor allocations are inconsistent with the system for allocation of PQS in the Council's crab rationalization program. Specifically, allocations of PQS for the Bering Sea *C. bairdi* fishery in the current program are based equally on qualified history in the Bering Sea *C. opilio* fishery and the Bristol Bay red king crab fishery. Since the current alternatives would allocate PQS for the Bering Sea *C. bairdi* fishery based on harvests of Bering Sea *C. bairdi*, these alternatives appear inconsistent with the current program provisions. Staff requests that Council verify its intentions concerning the allocation of PQS, suggesting possible alternatives that are consistent with the provisions currently included in the program.

Lastly, NOAA Fisheries has advised staff that allocations of QS and PQS for the Bering Sea *C. bairdi* fishery will be completed in the near future, if implementation of those provisions are not delayed. The final rule (70 FR 10174) implementing the Council's program would allocate *C. bairdi* QS and PQS based on Amendment 18 to the BSAI crab FMP, which does not distinguish *C. bairdi* as two separate quota fisheries. If NMFS issues QS and PQS for the *C. bairdi* fishery based on Amendment 18, and the Council subsequently recommends changes to treat the two *C. bairdi* stocks as separate fisheries, NMFS would

have to void the existing *C. bairdi* QS and PQS and reissue *C. bairdi* QS and PQS. This reissuance is problematic, particularly if allocations are traded. If, instead, allocations of QS and PQS for *C. bairdi* are withheld until regulations are amended to establish allocations of QS and PQS for the separate *C. bairdi* stocks, management complications and potential distributional effects of retracting allocations for a single fishery and reissuing allocations for two separate fisheries could be avoided.

Attached is a discussion paper, **Item C-6(a)**, that presents a brief description of the fishery, a draft problem statement, and a description of the alternatives for the proposed action. This action is scheduled for initial review in June 2005 followed by final action in October 2005.

North Pacific Fishery Management Council
Discussion Paper on Allocating Bering Sea *C. bairdi*
March 29, 2005

Background

In Section 801 of the Consolidated Appropriations Act of 2004, the U.S. Congress included a directive to the Secretary of Commerce to implement a management program for the Bering Sea and Aleutian Islands crab fisheries developed by the North Pacific Fishery Management Council, in motions from June 2002 to April 2003, plus any program amendments adopted by the Council. On March 5, 2005, in response to the Congressional directive, the Secretary issued regulations to establishing the rationalization program.

Under the authority granted to the State of Alaska by the Fishery Management Plan for Bering Sea and Aleutian Islands king and Tanner crabs (FMP), the State of Alaska has determined that the Bering Sea *C. bairdi* are two geographically separate stocks, which should be managed as two separate fisheries. In March 2005, the Alaska Board of Fisheries approved a management plan that directs Alaska Department of Fish and Game (ADF&G) to manage Bering Sea *C. bairdi* as two separate stocks, one east of 166° W longitude and the other west of 166° W longitude. However, the Council action to rationalize *C. bairdi* in the Bering Sea did not distinguish the management of these separate stocks. At its December 2004 meeting, the Council, in anticipation of action on this issue by the Board of Fisheries, requested staff to initiate an analysis of the alternatives to allocate shares for fisheries for the two separate stocks. The alternatives would allocate QS and PQS, respectively, to an eligible participant in a sector either:

1) equally for each fishery, based on all harvests (or landings, as the case may be) regardless of where the qualifying crab was harvested (all qualified crab counts for both fisheries regardless of where harvested); or
2) for each fishery based on harvests (or landings, as the case may be) of qualified crab harvested from the area of the fishery (qualified crab counts only for the area from which it was harvested).

Staff has three requests of the Council at this meeting. First, the Council has yet to adopt a problem statement for this action. Council staff, in consultation with staff of ADF&G and NOAA Fisheries, has developed a draft problem statement for review and consideration by the Council. At this meeting, the Council should adopt a problem statement to direct the analysis and future Council action.

Second, it has come to the attention of the staff that the alternatives for processor allocations are inconsistent with the system for allocation of PQS in the Council's crab rationalization program. Specifically, allocations of PQS for the Bering Sea *C. bairdi* fishery in the current program are based on equally on qualified history in the Bering Sea *C. opilio* fishery and the Bristol Bay red king crab fishery. Since the current alternatives would allocate PQS for the Bering Sea *C. bairdi* fishery based on harvests of Bering Sea *C. bairdi*, these alternatives appear inconsistent with the current program provisions. Staff requests that Council verify its intentions concerning the allocation of PQS, suggesting possible alternatives that are consistent with the provisions currently included in the program.

Lastly, NOAA Fisheries has advised staff that allocations of QS and PQS for the Bering Sea *C. bairdi* fishery will be completed in the near future, if implementation of those provisions are not delayed. The final rule (70 FR 10174) implementing the Council's program would allocate *C. bairdi* QS and PQS based on Amendment 18 to the BSAI crab FMP, which does not distinguish *C. bairdi* as two separate quota fisheries. If NMFS issues QS and PQS for the *C. bairdi* fishery based on Amendment 18, and the Council subsequently recommends changes to treat the two *C. bairdi* stocks as separate fisheries, NMFS would have to void the existing *C. bairdi* QS and PQS and reissue *C. bairdi* QS and PQS. This reissuance

is problematic, particularly if allocations are traded. The expectations of persons acquiring shares may not be realized depending on whether the Council elects to credit qualified harvests based on the location of the harvest. In addition, if allocations of *C. bairdi* for two separate fisheries are based on historic harvest location, the administrative process establishing an official catch record could be greatly complicated, as harvest histories of transferred shares would have to be tracked by the agency. Typically, NOAA Fisheries does not match specific historic harvest and processing activity with specific QS or PQS. Establishing a traceable record for shares would be complex and administratively burdensome.

If, instead, allocations of QS and PQS for *C. bairdi* are withheld until regulations are amended to establish allocations of QS and PQS for the separate *C. bairdi* stocks, management complications and potential distributional effects of retracting allocations for a single fishery and reissuing allocations for two separate fisheries could be avoided. Using this approach, NOAA Fisheries would receive applications for *C. bairdi* QS and PQS during the existing application period that extends through June 3, 2005 and delay the issuance of QS and PQS for *C. bairdi* until the Council takes explicit action on this issue. If the Council were to declare its intention to proceed with the redefinition of the allocations for the *C. bairdi* fisheries and request NOAA Fisheries to withhold issuance of the *C. bairdi* QS and PQS until Council action is complete, NOAA Fisheries would likely comply. Since the fishery will not open this year or next given the rebuilding strategy, fishery participants will not be affected by delaying share allocations. Once the Council makes a recommendation, NOAA Fisheries would proceed with issuance of *C. bairdi* QS and PQS accordingly.

The remainder of this discussion paper presents a brief description of the fishery, including the process under which the management of the two stocks were developed, a proposed problem statement, and alternatives for the proposed action. Currently, this item is scheduled for initial review in June 2005 followed by final action in October 2005.

Description of the Fishery

The Bering Sea *C. bairdi* stock has undergone two large fluctuations. Catch increased from 5 million pounds in 1965 to over 78 million pounds in 1977. After that, the stock declined to the point where no fishery occurred in 1986 and 1987. The fishery reopened in 1988, and landings increased to over 40 million pounds in 1990. Another decline ensued, and the 1995 *C. bairdi* season produced only 4.2 million pounds. The 1995 fishery was prosecuted by 196 vessels and lasted 15 days. In 1996, 196 vessels harvested 1.8 million pounds of *C. bairdi* in the directed fishery (12 days) and incidental to a red king crab fishery (4 days). This poor fishery performance, coupled with depressed stock abundance, was instrumental in the management decision to forego the 1997 fishery that had an estimated guideline harvest level (GHL) of 3.4 million pounds. The fishery has continued to be closed due to the continued depressed stock and predominance of old shell crab. ADF&G will reopen the fishery when the female biomass is above the threshold (21 million lbs of female biomass) and the fishery GHL is above the minimum identified in the rebuilding harvest strategy for two consecutive years. The threshold was not met in the most recent year.

In 1992, the Board of Fish (BOF) modified the harvest strategy so that Bering Sea *C. bairdi* was managed as two distinct stocks split at 168° W longitude with separate GHLs. The eastern stock would be managed to be harvested concurrently with the Bristol Bay red king crab fishery. If sufficient GHL remained after the Bristol Bay red king crab fishery closed, ADF&G would reopen the Eastern Subdistrict west of 163° W longitude for directed *C. bairdi* fishing 10 days after that closure. In the event the Bristol Bay red king crab fishery failed to open, a directed *C. bairdi* crab fishery would open to November 1 for the Eastern Subdistrict west of 163° W longitude.

Recent management actions have focused on reducing *C. bairdi* bycatch and have set *C. bairdi* seasons to coincide with fisheries for *C. opilio* and Bristol Bay red king crab. In 2002, the BOF closed the *C. opilio* fishery east of 166° W longitude to reduce *C. bairdi* bycatch during the *C. opilio* fishery.

In 2005, the BOF moved the *C. bairdi* stock split from 168° W longitude to 166° W longitude to allow for concurrent harvest of *C. opilio* and the western TAC of *C. bairdi* (west of 166° W longitude) and concurrent harvest of red king crab and the eastern TAC of *C. bairdi* (east of 166° W longitude), when the *C. bairdi* fishery is open to reduce handling mortality and discards.

At its June 2002 meeting, the Council selected as the preferred alternative a three-pie cooperative program to rationalize the BSAI crab fisheries, including the Bering Sea *C. bairdi* fishery. Allocations of Bering Sea *C. bairdi* harvest shares are made to both harvesters and captains. Processors are allocated processing shares. Approximately 266 harvest vessels are eligible for Bering Sea *C. bairdi* QS. Approximately 173 captains are eligible for Bering Sea *C. bairdi* QS. Approximately 27 processors are eligible to receive Bering Sea *C. bairdi* PQS. The above eligibility numbers are from the Bering Sea Aleutian Islands Crab Fisheries Draft Environmental Impact Statement, Appendix 1, Chapter 4.

Problem Statement

To provide direction to the staff analysis, the Council should provide staff with a problem statement appropriate to an action. The following is a draft problem statement prepared by Council staff, in consultation with ADF&G staff and NOAA Fisheries staff:

> Under the Fishery Management Plan for Bering Sea and Aleutian Islands king and Tanner crabs (FMP), the State of Alaska, Department of Fish and Game (ADF&G) has management authority for certain aspects of the Bering Sea/Aleutian Islands crab fisheries. Under the FMP, the State of Alaska is authorized to make changes in management subject to criteria defined in the FMP (category II measures), including adjustment of district and subdistrict boundaries for the purposes of managing reasonably distinct stocks of crab. As a part of their management of Bering Sea District *C. bairdi*, ADF&G has determined that two geographically separate *C. bairdi* stocks inhabit the Bering Sea grounds that have historically supported the Bering Sea *C. bairdi* fishery. ADF&G has determined that these two stocks, one east of 166° W longitude and the other west of 166° W longitude should be managed separately. The Alaska Board of Fisheries has approved a management plan that directs ADF&G to manage the Bering Sea District *C. bairdi* as two separate stocks, east and west. The Council action to rationalize *C. bairdi* in the Bering Sea did not distinguish the management of these separate stocks. This action is to consider alternatives for the allocation of QS, PQS, IFQ, and IPQ for these separate fisheries. The Council intends to develop an allocation that is fair and equitable and is based on the harvest and processing histories of the harvesters, processors, and captains in the *C. bairdi* fishery.

Description of the Alternatives

The following are current alternatives for harvester and processor allocations to the two Bering Sea *C. bairdi* fisheries:

For the allocation of harvest shares:

1. Make two equivalent allocations of QS (one for each fishery) based on all of a person's *C. bairdi* history during the qualifying years (regardless of where those harvests occurred). This structure would have two QS pools, one for each of the fisheries.

   For example, if a person has 1% of the historic harvests in Bering Sea C. bairdi in total he would receive 1% of the west QS and 1% of the east QS. These QS would each yield IFQ in their respective fisheries.

2. Make two allocations of QS (one for each fishery) with the allocations based on where harvests occurred. Harvests east of 166° W longitude would yield an allocation of QS in the fishery east of 166° W longitude. Harvests west of 166° W longitude would yield an allocation of QS in the fishery west of 166° W longitude. This structure would have two QS pools, one for each of the fisheries.

   For example, if a person had 1% of the historic harvests in the west and 2% of the historic harvests in the east, he would get 1% of the west QS and 2% of the east QS. These QS would yield IFQ in their respective fisheries.

For the allocation of processing shares:

1. Make two equivalent allocations of PQS (one for each fishery) based on all of a company's *C. bairdi* processing history (regardless of where harvests that led to those landings occurred). Two PQS pools, one for each fishery.

   So, if a company processed 1% of the total historic harvests of C. bairdi, it would receive 1% of the west PQS and 1% of the east PQS. These PQS would each yield IPQ in their respective fisheries.

2. Make two allocations of PQS (one for each fishery) with the allocations based on where harvests occurred. Landings from harvests west of 166 W longitude would yield an allocation of PQS in the fishery west of 166 W longitude. Two PQS pools, one for each fishery.

   So, if a company processed 1% of the historic landings of C. bairdi in the west and 2% of the historic landings in the east, it would get 1% of the west PQS and 2% of the east PQS. These PQS would yield IPQ in their respective fisheries.

Although these alternatives could be used to effectively define allocations for the fisheries, the allocation of PQS proposed is inconsistent with the current program, under which *C. bairdi* processing shares are allocated based on qualified processing histories in the Bering Sea *C. opilio* fishery and the Bristol Bay

red king crab fishery. An alternative approach that is consistent with the current motion could rely on processing history in those fisheries as follows:

1. Make two equivalent allocations of PQS (one for each fishery) based equally on a company's qualified Bering Sea *C. opilio* processing history and qualified Bristol Bay red king crab processing history (regardless of where harvests that led to those landings occurred). This alternative would result in two PQS pools, one for each fishery.

   For example, if a company processed 3% of the qualified landings of Bering Sea C. opilio and 1% of the qualified landings of Bristol Bay red king crab, it would receive 2% of the west C. bairdi PQS and 2% of the east PQS. These PQS would each yield IPQ in their respective fisheries.

2. Make one allocation of PQS for the Bering Sea *C. bairdi* fishery based equally on a company's qualified Bering Sea *C. opilio* processing history and qualified Bristol Bay red king crab processing history (regardless of where harvests that led to those landings occurred). This single type of PQS would yield IPQ that can be used for landings from either fishery (i.e., IFQ west of 166° W longitude or IFQ east of 166° W longitude). This alternative would result in one PSQ pool that would yield IPQ that could be used in either *C. bairdi* fishery.

   For example, if a company processed 8% of the qualified landings of Bering Sea C. opilio and 12% of the qualified landings of Bristol Bay red king crab, it would receive 10% of the C. bairdi PQS. This PQS would yield IPQ that could be used to process C. bairdi crab from either the west or the east district. So, if the general fishery subject to the 90/10 split in the east district opened with a TAC of 12,000,000 pounds and the general fishery subject to the 90/10 split in the west district opened with a TAC of 8,000,000 pounds, this company would receive 10% of the 18,000,000 pound C. bairdi IPQ allocation (1,800,000 pounds of IPQ). These IPQ could be used for landings of Class A IFQ from either the east or the west fishery. If only one of the two fisheries were opened, IPQ would be issued for that fishery in the amount determined by applying the 90/10 split.

If the Council elects to rely on processing history in the *C. bairdi* fishery for making processor share allocations, the Council will need to identify qualifying years to be used for making those allocations.