

Public Testimony Sign-Up Sheet

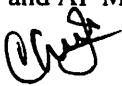
Agenda Item C-7(a) BSAI CRAB REGIONAL

Delivery Relief

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3	George Hall	Provider
4	Simeon Smetoff / Mateo Paz-Soldan	City of St. Paul
5	Heather McCarty	CBSEFA
6	Everette Anderson	APICDA
7	Lisa Ross / Elary Gromoff	TDX
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10	Jake Jacobson	TBSU / KBO Co-ops
11	KALE GARCIA	tauila - CRAB coop ?
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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.

MEMORANDUM

TO: Council, SSC and AP Members
FROM: Chris Oliver 
Executive Director
DATE: February 29, 2009
SUBJECT: Crab management

ESTIMATED TIME 6 HOURS (All C-7 items)
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ACTION REQUIRED

- (a) Initial review BSAI Crab Regional Delivery Relief.

BACKGROUND

- (a) Initial review BSAI Crab Regional Delivery Relief

At its October 2008 meeting, the Council received a discussion paper from staff outlining potential options to define an emergency exemption from regional landing requirements established by the program. Based on that discussion paper and public testimony, the Council directed staff to analyze alternatives for creating such an exemption. Under the alternatives, the exemption could allow a harvester to make a delivery outside of an IFQ's designated region, if delivery in the designated region is prevented by an unavoidable circumstance. The alternatives adopted for analysis would rely on civil contracts between harvesters, processors, and the designee of affected communities or regions to define the circumstances that would qualify for the exemption and other terms (such as any compensation for lost economic activity or revenues that might arise out of the exemption from the regional landing requirement). The exemption would be granted for a specific delivery on the IFQ holder filing an affidavit attesting to a circumstance that qualifies for the exemption. The reliance on civil contracts and affidavits is intended to avoid administrative complexities, which could limit the utility of the exemption, if the exemption were directly administered by NOAA Fisheries. The analysis was mailed to the Council in mid-January. A copy of the executive summary is attached (see **Item C-7(a)**).

In advancing these alternatives for possible action, the Council should consider that none of the options for identifying a regional representative for negotiation of the exemption contract fully identify regional representatives. All of the options use community right of first refusal designations to identify the regional representatives. Since some regionally designated PQS are not subject to rights of first refusal, no community is identified for the purposes of selection of a regional designation. A complete discussion of this issue appears on pages 35 through 38 of the draft analysis.

Executive Summary

In the spring of 2007, the North Pacific Fishery Management Council (the Council) established a committee to address certain concerns with the Bering Sea and Aleutian Islands crab rationalization program (the program). In the course the committee's meetings, members expressed concern that at times of extreme icing and other uncontrollable circumstances, the regional landing requirements applicable to Class A individual fishing quota (IFQ) could pose safety risks, loss of resource (such as excessive deadloss), or extreme economic hardships to participants in the crab fisheries. At its October 2008 meeting, after receiving a staff discussion paper, an advisory panel recommendation, and public testimony, the Council directed staff to prepare an analysis of alternatives to provide an emergency exemption from regional landing requirements. To avoid potential insurmountable administrative burdens the Council identified for analysis a system of civil contracts between harvesters, processors, and a regional representatives as the means of defining the exemption from the regional landing requirements. The analysis contains a Regulatory Impact Review, an Environmental Assessment, and an Initial Regulatory Flexibility Analysis.

Purpose and need statement

The Council has adopted the following purpose and need statement for this action:

In developing the crab rationalization program, the Council included several measures to protect regional and community interests. Among those provisions, the Council developed regional designations on individual processing quota and a portion of the individual fishing quota that require the associated catch to be delivered and processed in the designated region. Periodically, including at times in the first three years of the program, harbors in the Northern Region as defined in the program, are closed by the advance of the Bering Sea ice pack. These ice conditions have disrupted the crab fishery, contributing to safety risks and preventing harvesters from entering harbors to deliver to shore-based and floating processors located in the region, as required by the regional share designations. In addition, other unforeseeable events, events such as an earthquake or tsunami, or man-made disaster, could prevent deliveries or limit the available processing capacity in a region necessary for compliance with the regional designations on Class A IFQ and IPQ. A well-defined exemption from regional landing and processing requirements of Class A IFQ and IPQ that includes requirements for those receiving the exemption to take efforts to avoid the need for and limit the extent of the exemption could mitigate safety risks and economic hardships that arise out of unforeseeable events that prevent compliance with those regional landing requirements. Such an exemption should also provide a mechanism for reasonable compensation to communities harmed by the granting of the exemption to ensure that the community benefits intended by the regional designations continue to be realized despite the exemption.

Alternatives

The Council has adopted the following alternatives for analysis:

Alternative 1 – Status quo

No exemption from regional landing requirements is permitted.

Alternative 2 – Contractually Defined Exemption

Under this alternative, if an unavoidable circumstance prevents an IFQ holder from complying with a regional landing requirement, an exemption might be permitted. An option could be adopted that would require the IFQ holder to hold no IFQ that could support a landing outside of the affected region. A separate option could require that the IFQ holder and IPQ holder to exert reasonable efforts to avoid need

for the exemption, including attempting to access IFQ that would allow a landing outside of the affected region.

To qualify for an exemption, the IFQ holder must have entered an agreement with the holder of matched IPQ and a regional representative. The Council is considering three options for defining the regional representative. Under the first, the regional representative is the same entity that holds the right of first refusal on the matched IPQ. Under the second, the regional representative is selected by the community intended to benefit from the right of first refusal. Under the third option, the regional representative is chosen by agreement of all communities benefiting from the rights of first refusal in the region. An option would require that the contract more fully specify conditions that qualify for an exemption. The contract is also required to specify any compensation that could be paid among the IFQ holder, the IPQ holder, and regional entities, if the exemption were used. The exemption would be administered through IFQ holder affidavits. Under this approach an IFQ holder would be permitted to use the exemption without challenge, on filing an affidavit attesting to conditions qualifying for the exemption.

Alternatives considered but not advanced for analysis

The Council considered four types of alternatives that it elected not to advance for analysis. Generally, these alternatives were perceived by the Council as limiting the effectiveness of the alternatives in achieving their intended purpose. First, alternatives that specifically define exemption criteria in regulation were eliminated as those alternatives are believed to be overly restrictive and cannot be adapted as circumstances may require. Second, alternatives directly administered by NOAA Fisheries were not advanced, as these alternatives were viewed as overly expensive to administer and potentially preventing the exemption from fulfilling its purpose. Necessary fact finding would not only delay decision making, but could also be costly, as verification of conditions may be difficult or impracticable. Third, the Council also elected not to advance for analysis alternatives that specifically define compensation, as those alternatives were deemed too prescriptive to effectively balance the competing interests of parties, which are likely to change with the circumstances surrounding the granting of an exemption. Fourth, the Council chose not to advance alternatives that would redesignate IFQ and IPQ to compensate for landings redirected under the exemption, as those redesignations would be administratively complex and may be impossible, if TACs change substantially year-to-year.

Existing conditions

Nine Bering Sea and Aleutian Island crab fisheries are managed under the rationalization program. Harvesting quota shares (QS) were created in each program fishery. QS are a revocable privilege that allow the holder to harvest a specific percentage of the annual TAC in a program fishery. The annual allocations, which are expressed in pounds, are referred to as individual fishing quota (IFQ). The size of each annual IFQ allocation is based on the amount of QS held in relation to the QS pool in a program fishery—a person holding one percent of the QS pool receives IFQ to harvest one percent of the annual TAC in the fishery.

QS are designated as either catcher vessel QS or catcher processor QS, depending on whether the vessel that created the privilege to the shares processed the qualifying harvests on board. Approximately 97 percent of the QS (referred to as “owner QS”) in each program fishery were initially allocated to license holders based on their catch histories in the fishery. The remaining 3 percent of the QS (referred to as “C shares” or “crew QS”) were initially allocated to captains based on their catch histories in the fishery.

Catcher vessel owner IFQ are issued in two classes, Class A IFQ and Class B IFQ. Class A IFQ are issued for 90 percent of the catcher vessel owner IFQ in a program fishery. Crab harvested using these IFQ must be delivered to a processor holding unused individual processing quota (IPQ).

Short term transfers under leases and cooperative fishing arrangements are the primary means by which QS holders in the crab fisheries have achieved fleet consolidation under the rationalization program. These leases and transfers within cooperatives have also facilitated more complete harvest of allocations and coordination of deliveries in the event of unanticipated circumstances. Liberal rules exempt vessels fishing cooperative allocations from vessel IFQ use caps. Because of these attributes, most QS holders have elected to join cooperatives. By the third year of the program, nearly all IFQ were held by cooperatives. The extent to which cooperatives manage harvest of their allocations varies across cooperatives. Some cooperatives have relatively central management of harvest activities, while others leave members to determine the harvest of their own allocations. Although some cooperatives have continued to allow individual members to arrange the harvest of their shares, over the first three years of the program, cooperative management of quota has increased. This relinquishment of individual management of the harvest of shares not only contributes to consolidation of IFQ harvests, but also has allowed for better coordination in the event of unanticipated circumstances.

In addition to harvest shares, the program also created processing quota shares (PQS), which are allocated to processors and are analogous to the QS allocated to harvesters. PQS are a revocable privilege to receive deliveries of a fixed percentage of the annual TAC from a program fishery. These annual allocations are referred to as individual processing quota (IPQ). IPQ is issued for 90 percent of the owner IFQ pool, corresponding to the 90 percent allocation of owner IFQ as Class A IFQ. As with owner QS and Class A IFQ, PQS and IPQ are designated for processing in a region. While a processing share cap prevents any person from holding or using in excess of 30 percent of the outstanding processing shares in any program fishery, an exception that would exempt custom processing in certain fisheries and regions from the plant owners share cap was adopted recently. That exemption is intended to allow consolidation beyond the caps in fisheries and regions that pose particular economic challenges to processors. The rationalization program provides communities with substantial processing history with the opportunity to designate an entity that is entitled to hold rights of first refusal on certain transfers of IPQ and PQS for use outside of the community in which processing occurred that led to the allocation of the PQS (the community of origin). Based on historical landings, the distribution of rights of first refusal varies across fisheries and regions (see [Table 1](#)).

Over time several communities have benefited from landings and processing activity in the crab fisheries. The rationalization program attempts to protect communities from some of the potential redistribution of landings, in part, by the regionalization of owner QS and Class A IFQ, whereby harvests are required to be delivered within an identified region. Regional designations are based on historic landing and processing, in most instances. The protection of regionalization applies at a regional level. As a result, groups of communities (rather than individual communities) are protected. In fisheries with North/South regionalization, St. Paul and St. George, collectively, are perceived to receive significant protection from North regionalized shares. In the Western Aleutian Islands golden king crab fishery, Adak and Atka, collectively, are perceived to receive substantial protection from regionalization.

Table 1 Distribution of rights of first refusal by community (2007-2008).

Fishery	Region	Right of first refusal boundary	Number of PQS holders	Percentage of PQS pool
Bristol Bay red king crab	North	None	1	0.0
		St. Paul	2	2.7
		Akutan	1	20.8
	South	False Pass	1	3.9
		King Cove	1	9.8
		Kodiak	3	4.0
		None	4	3.6
		Port Moller	3	3.7
Unalaska	11	51.5		
Bering Sea <i>C. opilio</i>	North	None	3	1.0
		St. George	2	9.7
		St. Paul	6	36.3
	South	Akutan	1	9.7
		King Cove	1	6.3
		Kodiak	4	0.1
		None	4	1.8
		Unalaska	13	35.0
Eastern Aleutian Islands golden king crab	South	None	1	1.7
		Unalaska	7	98.3
Pribilof red and blue king crab	North	None	1	0.3
		St. Paul	5	67.3
	South	Akutan	1	1.2
		King Cove	1	3.8
		Kodiak	4	2.9
		Unalaska	5	24.6
St Matthew Island blue king crab	North	None	5	64.6
		St. Paul	4	13.8
	South	Akutan	1	2.7
		King Cove	1	1.3
		Kodiak	1	0.0
		Unalaska	6	17.6

Source: RAM PQS data 2007-2008.

To date, two conditions may have created impediments to deliveries in the fisheries. First, despite the limitation of the ‘cooling off’ provision, in the first two years of the program, no processing occurred in the City of St. George. In the first two years (when IPQ were subject to the cooling off provision), PQS holders petitioned NOAA Fisheries for an exemption from the limitation of the ‘cooling off’ period, claiming unavoidable circumstances prevented their processing of shares in St. George. In both years, NOAA Fisheries granted the exemption concluding that that storm damage to the breakwater at the harbor in St. George prevented safe entry of processing vessels to the St. George harbor. With no other location available to safely process in St. George, NOAA Fisheries granted the waiver of the ‘cooling off’ requirement. In the spring of 2008, repairs to the harbor entrance were completed in St. George. The repairs restored the harbor entrance to its pre-storm condition. Whether the harbor itself is safe and in its pre-storm condition is uncertain and may be disputed.

Ice conditions are the second obstacle to deliveries in recent years. In most years, ice in the North region makes contact with or surrounds St. Paul Island. In some years, ice has also surrounded St. George Island (see Table 2). Depending on the severity of conditions, this ice may prevent deliveries of catch into St. Paul and St. George. Prior to rationalization, harvesters with catch on board could elect to make deliveries to processors in the South, who are unaffected by the ice. Under the rationalization program, deliveries to North locations required by North region IFQ may be prevented by the ice. Whether a delivery is prevented may depend on the circumstances, including spatial distribution and type of ice, the specific vessel, the location of the vessel relative to the islands, the amount and condition of crab on board, the delivery restrictions on available IFQ, and any factors affecting the willingness of the captain to wait for conditions to change. Historical data suggest that in the first three years of the program, some deliveries may have been prevented by ice conditions. Ice abutted St. Paul in each of the first three years and

abuted St. George in two of the first three years. During all but two weeks that ice abuted the islands, North deliveries were made. No deliveries in the North region occurred in the 13th and 14th week of 2008, although deliveries in the North occurred in the weeks both before and after the 13th and 14th weeks. Whether deliveries were prevented by the ice conditions could also be disputed, since fishing appears to have almost stopped during this period. During a four week midseason period, few deliveries were made in the Bering Sea *C. opilio* fishery, with deliveries reaching a midseason low in the 25th week, when three vessels delivered fewer than 50,000 pounds total. This decline in landings was followed by a slight increase, suggesting that fishing was delayed because of ice conditions on the grounds (in addition to ice conditions that may have prevented deliveries into St. Paul).

Table 4 St. Paul and St. George ice conditions (1997-2008) and crab landings in the North region (2005-6 through 2007-8).

Season	Month Week	December		January				February				March				April				May			
		51	52	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20
1997																							
1997-1998																							
1998-1999																							
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2000-2001																							
2001-2002																							
2002-2003																							
2003-2004																							
2004-2005																							
2005-2006	North landings				2	8	26	16	12	7	10	7	9	9	10	15	7						
	Ice conditions																						
2006-2007	North landings								2	4	5	4	5	7	12	18	13	16	2				
	Ice conditions																						
2007-2008	North landings				1	11	15	20	18	14	23	14	14	9	4			5	8	13	3		
	Ice conditions																						

Note: North landings includes all North region Class A IFQ landings and Class B and C share IFQ landings in St. Paul.
 * Includes only 1997 conditions.
 Sources: RAM landings data (2005-6 through 2007-8) and National Ice Center Ice Charts (1997-2008).

Analysis of alternatives

For clarity, the analysis first examines the operation of the different alternatives and options under consideration. The analysis then goes on to examine the effects of the alternatives on different stakeholders (including harvesters, processors, and affected communities) and management and enforcement.

Operation of the alternatives

Under the status quo, holders of Class A IFQ and IPQ must comply with regional landing and processing requirements, respectively. If an event occurs that prevents compliance with these requirements, the IFQ and IPQ holders cannot obtain an exemption from the regional requirements, but must postpone use of their shares until the condition preventing delivery is removed or an alternative delivery arrangement compliant with the regional requirement is made. In some cases, this may be addressed through coordination of the deliveries with other processors in the region or the use of substitute IFQ for delivery in another region. In the worst cases, it is possible that no processor might be available to take the deliveries in the region and no substitute IFQ allowing deliveries elsewhere are available. In these instances, either deadloss could be exacerbated while the harvester waits for the circumstance to pass (or to be addressed) or crab could be returned to the water (with an indeterminate amount of associated handling mortality). Although these circumstances could occur, it may be possible to avoid either of these outcomes. The fleet could organize its deliveries so that IFQ are reserved to address a contingency preventing delivery required by a regional designation. With most IFQ held by cooperatives, it is possible that a cooperative may be able to substitute IFQ that allow deliveries outside of the region, when a regional delivery is prevented. In addition, with fewer than 20 cooperatives participating in any fishery, it is possible that a harvester without IFQ to support deliveries in another region could acquire those IFQ from another cooperative.

The **exemption alternative** would allow an IFQ holder who has reached an agreement with the associated IPQ holder and a regional representative entity to delivery a landing outside of the designated region on filing an affidavit attesting to the occurrence of an unforeseeable circumstance that prevents compliance with the regional landing requirement.

Under this qualifying circumstance definition, an exemption may be granted, if an IFQ holder is prevented from complying with the regional delivery requirement by an unforeseen, unavoidable circumstance. As such, the exemption from regional landing requirements may not be applicable, if other compliant delivery locations with available processing capacity are accessible. A proposed option would allow the parties to the contract latitude to more specifically define the exemption. This added specificity could benefit participants by providing more certainty concerning whether a particular event qualifies for the exemption. Under its terms, the option requires the parties to include additional specificity in the contract. The extent of this additional specificity is not defined. NOAA Fisheries is unlikely to be able to assess whether the parties have adequately met any requirement for additional specificity, making the option difficult or impossible to administer. While requiring additional specificity could be administratively problematic, allowing the parties to include additional specificity could be beneficial. Giving the parties the flexibility to include agreed to terms that define the option (but not requiring additional specificity) could improve certainty, without contributing to potential dissention and standoffs concerning those terms blocking use of the exemption altogether. To qualify for the exemption, the IFQ holder must have entered a contract with the holder of matched IPQ and a regional representative (which may be a community or regional entity) defining conditions under which the exemption will be granted and any compensation that should be paid for the impacts of the redirection of landings.

Three options are under consideration for selecting the regional representative for the contract. Under the first option, the regional representative in the contract would be the entity representing the community of origin in the right of first refusal. Since this entity already represents the community of origin through the right of first refusal on IPQ, that entity could be considered as the contracting entity for purposes of defining the exemption from regionalization (including compensation provisions). In the cases of St. George, St. Paul, False Pass, and Akutan the representative organizations are the local CDQ groups. In all other cases, the groups were designated by the community to hold the rights of first refusal. Use of the right holder as the regional entity would simplify administration by using parties that are already identified by and included in the rationalization program administration. Some participants in the fisheries, however, have expressed concern that the right of first refusal holders (who are generally formed to hold shares in the fisheries) may not be appropriately positioned to represent community or regional interests in landings. It is suggested that some of these entities may not be fully engaged in all tax and economic development interests in the communities (beyond the fishing industries that they participate in). To accommodate this circumstance, the second option would allow the community benefiting from the right of first refusal on IPQ to select an entity to represent regional interests in any contract related to those IPQ. This option would allow the community to select the right holder, in the event that the community believed that the right holder would adequately represent the community's interests in the contract. The community, however, would be allowed to select some other entity, if the community believed that the right holding entity did not adequately represent the community interests. While this option has the benefit of allowing a community to select an entity that it deems most appropriate for representing its interests under the exemption, the option would add to administrative burdens by requiring communities to engage in a selection process and by requiring NOAA Fisheries to document the selection and participation of the entities. Under the third option, the communities in a region that hold (or have held) rights of first refusal would collectively designate a single entity to represent the region in all contracts. The provision would be administered on a fishery-by-fishery basis,

so that interests in the regional exemption parallel community interests in the fishery. While, on its face, this option is relatively simple, its implementation could be complex, and possibly contentious. As written the provision suggests that all communities in a region must agree on the representative entity. Requiring this consensus could be viewed as inequitable since some communities might have relatively minor interests in a fishery and others have large interests. Providing those with a small interest with an effective veto power over the designation could complicate any attempt to develop the contract. If communities are unable to come to agreement, it would seem inequitable to simply disregard the requirement for the contract (as it is the contract that provides the regional protection).

Administration of the exemption would be through the IFQ holder filing an affidavit stating that the conditions of the exemption have been met. Once this affidavit is filed, the exemption would be granted. The use of contracts and affidavits for administration will allow the exemption to be implemented on a case-by-case basis to accommodate individual circumstances that may vary across participants. For example, ice conditions, which to date are believed to be the most likely event that would justify an exemption, vary greatly with location. Also, the ability to navigate through ice safely varies across vessels. The captain of a vessel, with whom the IFQ holder is expected to be in regular communication, is likely in the best position to make any decision of whether that vessel can safely traverse through local ice conditions to make a delivery. The use of an affidavit is intended to place discretion concerning decisions with the captain, who can communicate with the IFQ holder concerning conditions. Under the system of affidavits, NOAA Fisheries would summarily grant an exemption on receipt of a complete application, including the IFQ holder's affidavit attesting to conditions satisfying exemption criteria. The use of affidavits in this manner could aid in overcoming several potential complications in administration.

Some stakeholders may oppose the use of a system of affidavits because it could carry some risk of abuse. Cases where the criteria for an exemption are clearly not met could arise. In addition, less clear cases where conditions may (but do not clearly) merit an exemption can occur. In both of these cases, it may be feared that an IFQ holder would be inclined to pursue an exemption any time borderline conditions are present. For example, an IFQ holder could elect to submit an affidavit supporting an exemption rather than subjecting a vessel to a minor, acceptable risk. Excessive use of affidavits in this manner could have notable effects on stakeholders, particularly communities and processors that depend on landings from the fisheries. Specificity in the definition of the criteria for an exemption may help limit the number of cases where the qualification for the exemption is uncertain. This specificity could be achieved through contractual provisions supplementing the definition, add further specificity to the exemption criteria. In addition (as discussed below), the system of compensation in the event an exemption is granted should create a noticeable disincentive for excessive use of the exemption by IFQ holders seeking only to avoid minor inconveniences.

The exemption alternative includes two options that would require the IFQ holder and holder of matched IPQ to attempt to mitigate the effects of the exemption (or obviate the need for the exemption). The first option requires the IFQ and matched IPQ holders to have exerted all reasonable efforts to avoid the need for the exemption. Including a requirement that all reasonable efforts be exerted to avoid the need for the exemption could lead to fewer exemptions. By not attempting to identify prerequisites for the granting of the exemption, the provision could avoid unintended negative consequences. In the long run, the option could lead to better coordination of share usage by harvesters and processors, avoiding the need for exemption in all but the most limiting circumstances. The second option specifies that an exemption will not be granted in the event that an IFQ holder also holds IFQ allowing delivery outside of the affected region. On its face, this provision appears reasonable, but given the system of commitments between IFQ holders and processors under the program, it is possible that use of other IFQ could constitute a breach of contract by the IFQ holder. To avoid this potentiality, IFQ holders could include a provision for

emergency use of IFQ in contracts in which those shares are committed. Such a provision could serve to limit the use of the exemption and simplify administration by limiting use of the exemption to circumstances where the IFQ holder has no shares that, on their face, could be used to support the landing. Given that the exemption is only to be available to address circumstances that cannot be otherwise controlled, it is unlikely that the exemption could ever be granted without causing delivery schedule disruptions and losses of efficiency. Administration of the exemption may also be simplified by the option that limits use of the exemption to times when the IFQ holder has no IFQ that may be substituted for the regionally limited IFQ.

To ensure the flow of benefits to those intended to benefit from the regional share designations and to limit potential abuse of the exemption, compensation may be specified in the contract in the event the exemption is used. The degree to which it is appropriate for an IFQ holder or IPQ holder to pay compensation for losses arising from exemptions is debatable, since those parties are unlikely to have caused the circumstance that prevented deliveries and effects may differ across IFQ holders and IPQ holders. Some IFQ holders may bear additional costs from rescheduling deliveries and traveling to more distant ports, while others may have no additional costs from the exemption. Likewise, an IPQ holder who has activity and production redistributed to another location will be affected differently from one who loses the benefit of the activity and production altogether. These uncertainties and differences suggest that a flexible mechanism for determining any compensation for exemptions may be appropriate. Although it may appear the regional representative is in a weak position with respect to any negotiations concerning compensation, requiring the contract and making the regional representative a required party to the contract effectively provides that entity with the power to prevent any exemption. IFQ and IPQ holders would therefore be forced to negotiate terms for compensation to the community entity. The community entity might be willing to concede reasonable terms to avoid being cast or perceived as extracting excessive compensation from IFQ and IPQ holders unable to comply with regional landing requirements without exposing their vessels and crews to unreasonable risks or bear excessive costs.

Compensation for costs and losses arising from the exemption could take on a few different forms. The simplest regulatory means of addressing the redistribution of benefits would be a system of cash payments. Yet, the amount of those payments may differ across stakeholders and circumstances. Providing the parties with the ability to negotiate compensation also allows for more creative arrangements to compensate for the effects of the exemption. For example, when deliveries are prevented by unforeseeable circumstances a community may suffer losses in economic activity, in addition to losses of tax revenues. Compensating the community for those losses by delivery arrangements for unrestricted shares at some future time may be a more agreeable resolution to all parties than a payment to the regional entity (or its designee). These delivery arrangements may impose less cost on IFQ and IPQ holders who may already bear unexpected costs arising from the disruption of their operating plans and more adequately compensate the community than simple payments to offset lost tax revenues. An added advantage to using a system of contracts to administer compensation is that NOAA Fisheries need not be involved in the administration of compensation. Instead, the parties can administer any compensation, with enforcement through civil actions between the parties to the compensation contract. Although settlement of claims through civil actions may increase costs to the parties if one party contests a claim, in most instances the private administration of claims will reduce costs and expedite claim processing by removing the administrative requirements that apply to agency processing of claims.

Effects on OS and IFQ holders

Under the *status quo*, no exemption to regional landing requirements on catcher vessel owner Class A IFQ is permitted. Consequently, an IFQ holder must organize the harvest of crab and use of IFQ to comply with the regional landing requirements associated with Class A IFQ. If a landing using regionally

designated Class A IFQ is prevented by an unforeseeable circumstance, the IFQ holder must either delay the landing or arrange for delivery to an alternative location. As a first measure, an IFQ holder may choose to delay a delivery, possibly continuing fishing or waiting in a safe location until the circumstance passes. The ability to effectively delay a landing may be limited, if the circumstance is unlikely to pass quickly. For a lasting condition, an IFQ holder will either need to find an alternative delivery location or return crab to the water to prevent excessive deadloss, which would count against IFQ at the time of landing. While return of crab to the water could lead to excessive mortality, the discarded catch would not be counted against IFQ. Alternative delivery arrangements can be made either by coordinating the delivery with another facility within the region or by accessing IFQ that would support the landing outside of the region (i.e., either Class B IFQ or C share IFQ that can be delivered to any location or Class A IFQ designated for delivery outside the region).

In any case of a landing prevented by an unforeseen circumstance, the IFQ holder will be forced to assess the costs of these different choices. In general, an IFQ holder is likely to choose the alternative that imposes the least cost. An unanticipated circumstance that prevents a delivery will increase costs to harvesters. The distribution of these costs between vessel owners and QS holders will vary across participants. Over the first few years of the program, lease arrangements have evolved so that some agreements deduct certain costs from lease payments. These arrangements that include cost deductions are believed to be more common in cooperatives that use a single IFQ holder that oversees harvest of all IFQ. In these cases, in which revenues of the cooperative are shared across QS holders, the vessel owner's incentives are better aligned with the QS holder. The terms of these arrangements are generally confidential and vary across participants, but agreements are believed to pass on most out-of-pocket costs associated with unanticipated circumstances to the QS holders.

Under the **exemption alternative**, if a delivery is prevented by an unforeseeable circumstance, the holder of Class A IFQ subject to a regional landing requirement that has reached an exemption agreement with the holder of matched IPQ and the representative of the region would be permitted to obtain an exemption from regional landing requirements. By providing the IFQ holder with an additional choice when confronted with an obstacle to a delivery, the exemption could in some circumstances reduce added harvester costs that accompany an unforeseeable circumstance preventing a delivery within a region. The potential for an IFQ holder to direct the use of the exemption will depend on several factors, including the cost of alternative means of addressing the obstacle to deliveries and the cost of any compensation required under the exemption agreement.

Prior to using the exemption, any IFQ held by the cooperative that allows delivery outside of the region (including Class A IFQ designated for another region, Class B IFQ, and C share IFQ) would be required to be used. A few effects could arise from this requirement. First, cooperative members are likely to ensure that share matching contracts (under which Class A IFQ deliveries are committed to specific IPQ) and delivery commitments for Class B and C share IFQ contain clauses that allow for the use of matched or committed shares to address contingencies in the event a regional delivery is prevented. Second, increased coordination of the harvest of IFQ within a cooperative is likely to occur. Currently, if a cooperative is required to use all commonly-held IFQ, the exemption may be virtually inaccessible to some members who do not have the ability to access other IFQ held by their cooperatives prior to using the exemption. These cooperative members would be effectively attempting to acquire access to IFQ through arm's length transactions with other members of their cooperative. Although these other members may be willing to assist, some will have commitments or lease arrangements that make them reluctant or unable to allow others to use the IFQ. To overcome this obstacle, cooperatives will likely include in their agreements (and in other agreements with others that affect cooperative IFQ) provisions that allow the redistribution of the IFQ within the cooperative to address unforeseeable circumstances that prevent

compliance with regional delivery requirements. While returns from IFQ to members may vary within a cooperative, the more coordinated use of IFQ within cooperatives could slightly reduce any variation in pricing, as members will sacrifice some individual control of the use of the IFQ allocations arising from their QS. In addition, the need to make cooperative IFQ available to address contingencies to ensure eligibility for the exemption could lead to more coordinated use of IFQ within each cooperative over time. In addition to using all commonly held IFQ that allow deliveries outside of the affected region, the IFQ holder must also exercise reasonable efforts to avoid using the exemption (including attempting to arrange delivery to another location within the region and attempting to acquire IFQ that allow delivery outside of the region). If an operating facility is available to receive the landing, the IFQ holder would not qualify for the exemption, if that facility is able to accept delivery of the landing. If additional IFQ could reasonably be acquired by the IFQ holder to support the landing outside the region, the IFQ holder would also not qualify for the exemption. Beyond these more obvious means of overcoming the need for an exemption, the IFQ holder would be required to pursue any reasonable measures to accommodate the delivery without the exemption.

Two factors are likely to be considered when determining whether to use the exemption. First, an IFQ holder may have operational costs of travelling to and making delivery outside the region under the exemption. These various operational considerations could make the exemption more or less appealing depending on the circumstances of the vessel. Second, compensation requirements will also affect the decision of the IFQ holder to secure an exemption. Higher compensation amounts could create a disincentive for IFQ holders to use the exemption. In effect, the exemption provides an IFQ holder with an additional choice, if confronted with a circumstance that prevents compliance with a regional delivery requirement. Although available, the exemption is only likely to be used only when it is more favorable than the other options, including waiting for the interfering circumstance to pass and possibly discarding catch. Since the alternative requires the IFQ holder to use all commonly held IFQ that could support the out-of-region delivery prior to obtaining an exemption and to pay compensation as defined by agreement, the exemption is unlikely to be used frivolously.

QS holders will be affected by the exemption, since they likely bear some (or, in some cases, all) of the costs arising when compliance with regional delivery requirements are prevented by unforeseeable circumstances. To the extent that IFQ holders are able to reduce costs associated with these circumstances through use of the exemption, QS holders are likely to benefit from the exemption. Since the exemption is available only in very limited circumstances and comes at a cost of compensation to regional interests (and possibly the IPQ holder), the exemption is unlikely to result in substantial financial savings for QS holders, in most instances. Typically, the use of the exemption will have minor changes in operational efficiency. QS holders fishing the IFQ yielded by their QS will realize all of this savings, while a portion of this savings will be passed on QS holders that have lease arrangements for the fishing of IFQ yielded by their QS.

Effects on vessel operations and safety

Under the **status quo**, vessel operators must comply with regional landing requirements when using regionally designated catcher vessel owner Class A IFQ. In most instances, the effect of these requirements is to reduce efficiency by requiring additional coordination of landings and possibly impose additional costs, if the regionally compliant landing is at a more distant location from fishing grounds. The action considered here, however, could affect vessel operations when unforeseen circumstances prevent compliance with regional landing requirements. Under the status quo alternative, vessel operators prevented from making a landing using regionally designated IFQ have several possible choices. In some instances, the IFQ holder may have alternate IFQ allowing the landing to be made in another location. Alternatively, IFQ may be acquired to allow the landing to be made in outside of the designated region. In

either of these cases, the vessel operators will need to coordinate their activity with the IFQ holder (if the IFQ holder is not the vessel operator) and both the processor (and IPQ holder) who was initially scheduled to receive the landing and the processor (and IPQ holder, if needed) who will ultimately receive the landing. If the condition preventing the landing is likely to pass, the vessel operator could choose to wait to make the delivery. In the extreme, the vessel operator could choose to discard its catch to avoid excessive deadloss that could result from an extended wait. If crab are discarded, the vessel would need to make additional harvests to make use of the IFQ. In general, the effects of the status quo on vessel operations are that harvesters must make additional efforts to coordinate harvest activity with the regional landing requirements on Class A IFQ. When a landing is prevented by an unanticipated circumstance, vessel operations must be adapted to comply with regional landing requirements without exception.

Of greatest concern, the need to full comply with all regional landing requirements increases the incentive for vessel operators (in conjunction with IFQ holders) to force deliveries when circumstances may prevent the vessel from safely making the delivery. In all cases, the captain of a vessel is responsible for the safety of the vessel and may choose not to attempt to make a delivery to ensure the safety of the vessel. The captain, however, will have to balance the safety risk of attempting to make a delivery against the financial cost of redirecting or delaying the delivery. The potential to accept the risk is likely greatest at the end of season when little or no unused IFQ would support a delivery outside of the designated region. In that case, a captain may be unable to substitute IFQ for the regionally designated IFQ. In addition, captains and crews are likely to have less patience for waiting out ice conditions and may be more inclined to accept greater risks to complete their seasons. In these circumstances, the threat to safety will likely be the greatest.

The **exemption alternative** provides an additional option to vessel operators that encounter unforeseeable impediments to complying with regional delivery requirements. Since these unforeseeable events arise infrequently and the exemption is narrowly tailored, it is unlikely to have widespread implications on vessel operations. The alternative, however, could provide some vessel operators with an additional choice in some circumstances that could benefit operators and reduce some safety risks. Specifically, the ability of vessel operators to gain an exemption could relieve some of the financial pressure to accept the risks incumbent in making a delivery under questionable circumstances (such as when ice is present, but is arguably navigable) by providing a limited exemption from the regional landing requirement. Clearly, a vessel operator could still perceive a benefit to complying with the regional landing requirement, thereby avoiding any compensation that might be required in the event of an exemption. Yet, the outlet created by the exemption could be particularly important nearer the end of season when little or no unused IFQ would support a delivery outside of the designated region. In that case, a captain may be unable to use the regionally designated IFQ except by receiving the exemption to the regional designation or accepting risks associated with the delivery. Late in the season, captains and crews are likely to have less patience for waiting out ice conditions and may be more inclined to accept greater risks to complete their seasons. The exemption may provide a reasonable alternative that could lead vessel operators to avoid risks associated with attempting lands despite obstacles.

Effects on POS and IPQ holders and processors

Under the **status quo**, no exemption to regional landing requirements is permitted. So, both regional landing requirements and IPQ commitments must be complied with. Processors will likely be idled in the event compliance with regional delivery requirements is prevented by an unforeseeable circumstance. If additional capacity is available within a region, IPQ holders may be able to make use of their IPQ by redirecting landings to another plant using custom processing arrangements. In some circumstances, compliance with regional landing requirements may require that an IPQ holder arrange for additional

processing capacity in a region to receive deliveries under Class A IFQ/IPQ contractual agreements. Processors may incur additional costs through these arrangements. Clearly, a circumstance preventing compliance with regional landing requirements will increase costs to processors with those costs being dependent on the specific circumstances, the responses of both the harvesting and processing sectors, and any change in pricing that might be negotiated between the parties or driven by the arbitration system.

The **exemption alternative** allows a Class A IFQ holder to obtain an exemption from regional landing requirements, in the event that compliance with that requirement is prevented by an unanticipated circumstance. IPQ holders are likely to require some level of notice prior to exercising the exemption (except in case of emergency). This type of notice requirement should ensure that processors are not expending substantial efforts to overcome the circumstance, only to have an IFQ holder redirect the landing under the exemption. Likewise, a compensation requirement in the contract could be carefully drafted to protect an IPQ holder should an IFQ holder exercise the exemption in a manner that unreasonably imposes excessive cost on the IPQ holder. These two provisions together should limit the extent to which any circumstance imposes an undue burden on an IPQ holder in the event a IFQ holder elects to use the exemption.

Effects on regions and communities

Under the **status quo**, holders of Class A IFQ and IPQ holders must abide by regional landing requirements without exception. Consequently, the only circumstance under which a region will not benefit from a landing from a regionally designated IFQ is if the IFQ is not used. Without an exemption, IFQ could be left unharvested, should an unanticipated circumstance prevent the harvest altogether or make the harvest cost prohibitive. In considering the effects of regional landing requirements, it should be noted that those requirements provide no community specific benefit. As a result, regional landing requirements will only ensure that of additional offloads and processing take place in the region. That activity may not benefit a community or even the regional economy, if the processing occurs outside the boundaries of a community.

The potential for landings to be redirected outside of communities differs across fisheries and regions. In the North region of the Bering Sea *C. opilio* fishery, where unanticipated circumstances might be most likely to arise, the potential to redirect landings away from communities is relatively limited. Areas in the region that are outside of communities are relatively exposed, and likely cannot safely support offloads and processing activities during the winter months when most processing occurs. In the St. Matthew Island blue king crab fishery, locations near St. Matthew Island (and not within any community) provide some protection from weather for processors. Much of the processing historically relied on these locations. In the Pribilof Island red and blue king crab fishery, most processing occurred historically in the Pribilof Island communities. Since the fisheries are relatively small, it is possible that the North processing in the St. Matthew Island blue king crab fishery could be consolidated with processing in the Pribilof Island red and blue king crab fishery in the Pribilofs. The effect of any unanticipated circumstances on the redistribution of processing within the North region in these fisheries cannot be predicted, but would depend on available resources. An unanticipated circumstance might redistribute landings to a different location, but the Pribilofs are the most likely location for processing. In the Western Aleutian Islands golden king crab fishery, the only plant to receive deliveries under the program to date is in Adak. Some participants have suggested that processing could take place in Atka in the future. If deliveries are prevented to Adak or Atka by an unanticipated circumstance, it is likely that landings would move to a different location, if a plant is made available. This movement of landings could be simply between these communities, but also could result in a loss of benefits to communities in the region, if those landings move to a location outside of any community. If a delivery into a South region processor is prevented by an unforeseeable circumstance, it is likely that the processing would

move to a different facility. In Dutch Harbor/Unalaska and Kodiak, it is possible that the processing would simply move to another local facility, unless the entire community is inaccessible. Any other processing location in the South is likely to have processing moved to a different community (or outside of any community) in the event that a delivery is prevented by an unforeseeable circumstance.

Under the **exemption alternative**, if an unanticipated circumstance prevents deliveries within a designated region that delivery may be redirected outside of the region. Since the exemption is relatively limited, requiring an IFQ holder to take all reasonable steps to avoid the need for exemption, it is unlikely to be used liberally or frequently. In cases when the exemption is applied, the community that would have hosted the landing and processing will lose tax revenues and could lose economic activity associated with the landing. In a few circumstances, the community's economic activity may be unaffected. For example, if the landing would have taken place at a floating processor within community boundaries, but with no interaction within the community, it is possible that only tax revenues would be affected.

The effects of any exemption will depend on the circumstances surrounding the redirected deliveries and the terms of the agreement between the IFQ holder, the holder of matched IPQ, and the regional representative. In cases of a few redirected deliveries in the course of a relatively long processing period, it is possible that the community could suffer little loss of economic activity. If the compensation agreement makes up for lost tax revenues, it is possible that the community may be unaffected by the exemption. On the other hand, if the exemption is granted for a large share of a community's processing activity, it could have a very different effect on the community's economy. It should be noted that in some instances, a community that would have received a landing but for an unforeseeable circumstance could be better off under the exemption than with a strict requirement to comply with regional landing requirements. For example, under the status quo, IFQ may be either left unharvested or redirected to another community in a region by an IFQ holder that is unable to make a delivery to a community. If the IFQ holder is able to use an exemption to redirect the landing to another region and is required to pay compensation to the community under the agreement, the community would be better off under the exemption. Arguably, movement of the processing within the region would leave the region unaffected, but redistribution of landings among communities will affect those local economies.

Notwithstanding the case of movement of small numbers of landings, it is also important to consider circumstances that affect a large portion of a community's processing being redirected under an exemption. In these instances, it is likely that processing in the community will have been prevented for an extended period. Obligations to exert reasonable efforts to avoid the exemption and compensation provisions in the exemption agreement should prevent IFQ and IPQ holders from redirecting landings for simple convenience. The provisions should also prevent excessive abuse of the exemption, in the event a single location within a region is unavailable for deliveries, while processors may be accessible in other locations (or a processor can be brought to a location to support deliveries). Assuming deliveries are prevented in a region, without the exemption, these landings would not occur. If they occur under the exemption, the community would receive any compensation prescribed by the agreement (or alternatively the regional interest protected by the compensation provision would receive that compensation).

Effects on management, monitoring, and enforcement

Under the **status quo**, managers monitor use of regionally designated IFQ and IPQ through the elandings system. Since compliance with designations is required without exception, oversight is simplified. Any violation could be tracked and verified through the elandings monitoring system, which creates a record of landings including IFQ and IPQ usage by facility.

Under the **exemption alternative**, NOAA Fisheries managers will be required to oversee a few additional aspects of share holdings and usage. NOAA Fisheries will be required to assess the proper party to contract on behalf of regions with respect to the exemption contract. Since exemptions will only be granted for IFQ and IPQ that are subject to a contract, NOAA Fisheries must also collect exemption contracts for the different parties. Since most IFQ holders will deliver to multiple IPQ holders, it is likely that each IFQ and IPQ holder that wishes to have the exemption available will need to enter several contracts. The number of contracts could differ depending on the option selected for identifying the regional representative. If regions have multiple representatives (such as each right of first refusal holder) more contracts will be required. Once contracts are filed, the exemption is available upon the IFQ holder attesting to unanticipated circumstances preventing compliance with the requirements as specified by the terms of the contract. Any time an exemption is sought, NOAA Fisheries will need to process the affidavit of the IFQ holder attesting to the conditions allowing the exemption and identify both the IFQ and IPQ for which the exemption is requested. These shares will then be permitted to be landed outside of the designated region. To adequately implement the exemption, the affidavit must identify not only the IFQ and IPQ subject to the exemption, but also the specific contract authorizing the exemption and the regional party to the exemption contract. Beyond documentation of usage and eligibility for the exemption, other aspects of exemption oversight and enforcement would be shifted to participants (including the regional entity). By shifting contract performance oversight to the parties, NOAA Fisheries burden for overseeing performance (particularly performance of compensation requirements) is limited. Although the shifting of management burdens to participants should reduce agency administration costs, the costs to participants may increase. The extent of costs to parties will depend greatly on the choices of the parties in the exemption agreements and the complexities and costs of enforcing those arrangements.

Effects on the physical and biological environment

Under the **status quo**, an IFQ holder must comply with regional landing requirements without exception. As a result, it is possible that in some rare circumstances an IFQ holder may be without IFQ to support a delivery outside the designated region and unable to acquire those IFQ at a reasonable price. If a vessel has harvested crab intending to use IFQ in compliance with a delivery requirement, but is prevented by an unanticipated circumstance, that vessel must make alternative arrangements to comply with the landing requirement. Possible measures could be to delay the landing, locate another facility in the region that is able to accept the delivery, or use different IFQ that allow landing outside of the region.

In the extreme, it is possible that an IFQ holder who is unable to arrange delivery to an alternative location within the region and is unable to access IFQ to support the delivery outside the region could be forced to discard catch to avoid excessive deadloss (and receive value from the IFQ). The potential for such a discard is believed to be low, since the IFQ holder would need to incur the cost of reharvesting crab to receive value from the IFQ. This added cost is likely to be a substantial deterrent against any such discard. In addition, most IFQ holders are cooperatives with access to substantial amounts of IFQ that could be allocated among vessels to avoid any the need to discard to meet regional landing requirements.

Under the **exemption alternative**, holders of IFQ subject to regional landing requirements who are able to come to terms with the holders of matched IPQ and regional representative and who are unable to comply with regional landing requirements because of unanticipated circumstances could obtain an exemption from those regional landing requirements. The exemption would require the IFQ holder to attest to conditions qualifying for the exemption and may require the IFQ holder to compensate the IPQ holder and regional interests for losses arising from the exemption. The terms of any compensation would be subject to agreement among the parties. Having the exemption available may allow some IFQ holders an additional choice when faced with an unanticipated circumstance preventing a delivery that meets the criteria for the exemption. This additional outlet may serve to prevent some discards (and associated

mortality), in the event an IFQ holder perceives the exemption as a reasonable alternative to chancing a wait for the condition preventing the delivery to pass. Although the exemption may provide an outlet, the exemption is not likely to fully eliminate the possibility of an IFQ holder making discards to avoid IFQ use for excessive deadloss after waiting for an unanticipated circumstance preventing a regionally designated delivery to pass. In some cases, IFQ holders could misjudge the term of the circumstance or simply refuse to use the exemption because of the cost of compensation. In these cases, it is possible that discards could be made regardless of the availability of the exemption.



January 30, 2009

Mr. Eric Olson, Chairman
North Pacific Fishery Management Council
Anchorage, Alaska

Re: **Agenda Item C7(a)**
Initial Review, BSAI Crab Regional Delivery Relief

Dear Chairman Olson,

The North Pacific Crab Association ("NPCA") represents a significant majority of the Processing Quota Shares ("PQS") holders operating in the rationalized crab fisheries. We support the general concepts embodied in the "Emergency Relief" motion developed recently by the NPFMC, and respectfully submit the attached comments and recommendations.

In summary, our detailed comments support the following framework:

Alternative 2, Option 2; including the Administration language, the Qualifying Circumstance Option (*with one amendment*), both Mitigation Options (*with one amendment*) and the Compensation language.

We are also requesting an amendment to the Problem Statement.

Thank you for this opportunity to comment on this important Program amendment.

Regards,

A handwritten signature in black ink, appearing to be "S. Minor", written in a cursive style.

Steven K. Minor
Executive Director, NPCA

NPCA Comments

Agenda Item C7(a): Initial Review, BSAI Crab Regional Delivery Relief

The Problem Statement

We believe that the current Program carefully balances the interests of Alaska's crab-dependent communities, harvesters and processors. It is important to keep that system in balance by ensuring there are no economic incentives for a harvester to unilaterally request a waiver.

The final sentence of the Problem Statement overlooks the potential impact on the processing sector. Please amend the final sentence of the Problem Statement so that it is consistent with the Initial Review Draft and Program objectives as follows:

“Such an exemption should also provide a mechanism for reasonable compensation to communities *and IPQ holders* harmed by granting of the exemption to ensure that the community benefits intended by the regional designations continue to be realized despite the exemption.”

This amendment is consistent with the analysis on Page 53:

“Alone, allowing the IFQ holder the unilateral authority to exercise the exemption could jeopardize the position of IPQ holders and processors. For example, if a harvester uses the exemption with limited discussion with a processor, it is possible that the processor could take costly steps to attempt to comply with the regional delivery requirement. These efforts could be wasted, in the event a substantial IFQ holder chooses to redirect deliveries under the exemption. Yet, the prerequisite of an agreement including the IPQ holder should prevent any such circumstance, since the agreement can define steps taken prior to exercising the exemption and possible compensation to the IPQ holder once the exemption is exercised.”

“IPQ holders are likely to require some level of notice prior to exercising the exemption (except in case of emergency). This type of notice requirement should ensure that processors are not expending substantial efforts to overcome the circumstance, only to have an IFQ holder redirect the landing under the exemption. Likewise, a compensation requirement in the contract could be carefully drafted to protect an IPQ holder should an IFQ holder exercise the exemption in a manner that unreasonably imposes excessive cost on the IPQ holder. These two provisions together should limit the extent to which any circumstance imposes an undue burden on an IPQ holder in the event a IFQ holder elects to use the exemption.”

Alternative 2, Option 2:

NPCA supports the approach envisioned in Alternative 2, Option 2. Although Option 1 could also work under more limited circumstances, we do not support Option 3. As the analysis points out on page 35:

“ Although IFQ and IPQ are tied to a region, the starting point for establishing regional and community interests related to the IPQ is the community in which processing occurred that led to the allocation of IPQ (the ‘community of origin’). In the first instance, it is this community that was intended by the Council to benefit from the IPQ through the establishment of the rights of first refusal and the requirement to process in the ‘community of origin’ during the first two years of the program under the cooling off requirement. Although other communities in the same region may benefit from the regional designation on shares, the interest of the community of origin was a primary consideration when the program was implemented. Using this rationale, it seems reasonable to require that the compensation agreement include the IFQ holder, the matched IPQ holder, and the community of origin on the matched IPQ.”

Under Option 2, each crab dependent community has the ability to appoint or establish a local entity that is authorized to enter into (and pursue enforcement of) the civil contract. We feel that this sort of local flexibility is important, as born out by the analysis.

For instance, we are concerned that some of the current ROFR entities (Eligible Crab Community Organizations) already hold QS/IFQ and/or PQS/IPQ shares and as such, Option 1 could place them in a conflict of interest position if they are also the party which negotiates the exemption contracts that are directly related to those shares. Option 2 gives the community the flexibility to address his type of concern at a local level. The analysis seems to point to the same conclusion. From page 35:

“Some participants in the fisheries, however, have expressed concern that the right of first refusal holders (who are generally formed to hold shares in the fisheries) may not be appropriately positioned to represent community or regional interests in landings. It is suggested that some of these entities may not be fully engaged in all tax and economic development interests in the communities (beyond the fishing industries that they participate in). To accommodate this circumstance, the second option would allow the community benefiting from the right of first refusal on IPQ to select an entity to represent regional interests in any contract related to those IPQ. This option would allow the community to select the right holder, in the event that the community believed that the right holder would adequately represent the community’s interests in the contract. So, it is possible that this option could result in the same entities being party to exemption contracts. The community, however, would be allowed to select some other entity, if the community believed that the right holding entity did not adequately represent the community interests.”

Finally, in support of Option 2 over Option 3, by linking the exemption to a local (not regional) entity, the Council can solve the problem of “non-ROFR PQS/IPQ” which has been identified in the analysis on pages 35-36 and Table 15.

The problem as described is:

“... the right of first refusal is used to identify the party to the contract; however, some regionally designated PQS and IPQ are not subject to rights of first refusal (see Table 15). In cases of the historical processing occurring outside of any community or in a community with minimal processing history, no rights of first refusal were established.”

NPCA would suggest that selecting Option 2, and then specifying that the “non-ROFR PQS/IPQ” be linked to the community (and plant) in which that PQS/IPQ holder operates, will solve this problem.

Administration of the Exemption

We agree with the proposed language and approach.

Definition of the Exemption

We support the language describing the Qualifying Circumstance.

We support the Option, but feel it could be improved by amendment. Please consider the following amendment to this Option:

Option: Additional specificity of the exemption and its term will *may* be included in any contract between the IFQ holder, the holder of matched IPQ and the entity representing region/community interests.

We believe that additional specificity will be included in the civil contracts and that this Option is important to framework that expectation. However, we are concerned that the use of the word “will” may create an unintended enforcement problem for the Agency because it may be seen to require the Agency to pass judgement on the contents of the contracts themselves. In other words, what level of “specificity” would the Agency be required to assume when the contracts are submitted?

Mitigation Requirements

NPCA supports both Options, but also requests an Amendment to Option 1.

It is our understanding that these Options are not mutually exclusive. As we read them, Option 1 can be seen as direction to the industry, and Option 2 as direction to the Agency for enforcement purposes. With that understanding we request the following amendment to Option 1:

Option 1: To receive an exemption the IFQ holder and the holder of matched IPQ shall have exerted all reasonable efforts to avoid the need for the exemption, which may include attempting to arrange delivery to other processing facilities in the designated region unaffected by the unavoidable circumstance, attempting to arrange for the use of IFQ (and IPQ, if needed) *and CDQ shares* not requiring delivery in the affected region, and delaying fishing.

There is a lack of analysis concerning the role of CDQ allocations in the formation of harvester cooperatives, use and practices of those Cooperatives (for instance, leasing and stacking for efficiency), and impacts on community and regional landings.

CDQ quotas comprise 10% of the TAC in almost all rationalized crab fisheries and, as the Three Year Review pointed out on page 60:

“The integration of the harvest of CDQ allocations with program fishery allocations can be shown by examining the number and quantities of landings that include both program and CDQ allocations. In the Bristol Bay red king crab fishery, between approximately one-half and two thirds of annual CDQ harvests have been landed with harvests from the program fishery allocations. In the Bering Sea C. opilio fishery, between 25 and 40 percent of the annual CDQ harvests are landed with harvests from the program fisheries ... Although the effects of these combined activities do not show the marketing of these landings, they suggest that CDQ groups have actively integrated fishing of their allocations with harvest of program allocations.”

From our Association’s perspective, CDQ is now “integrated” with IFQ at all levels, including harvesting, production and marketing. Therefore, we ask that a vessel also be required to use any reasonably available CDQ shares (in addition to other IFQ shares) before requesting a waiver.

Additional Comments

NPCA remains troubled by an apparent flaw in the data collection process which fails to recognize floaters that are operating while moored at community docks or moored inside community harbors as shore-based plants.

This data collection problem is inconsistent with recent action taken by the NPFMC, as well as recent amendments to the Magnuson-Stevens Act.

For many years, Icicle Seafoods has operated shore-based floating processors inside St. Paul harbor. For several years, UniSea did the same thing. Both operations have taken place with the “floaters” tied to community docks, utilizing local utilities and providing direct economic benefits to that community.

Recently, the MSA was amended to increase processing efficiency in the Northern Region through a modification to custom processing use caps. Under this action, shore-based floaters were recognized as equivalent to shore-based plants. The Council’s

even more recent action concerning custom processing use caps in other regions and fisheries adopted the same approach.

In the Initial Draft Review current under discussion, this problem arises again on page 19, Table 9; wherein the data implies that there is only one "shore-based" plant operating in St. Paul.

NPCA recognizes that this agenda item is not vehicle for fixing this data problem, and we will ask the PNCIAC EDR work group to include it in the EDR work sessions with AFSC; but we did want to bring it to the Council's attention.