

**ADVISORY PANEL  
Motions and Rationale  
Dec 3-5, 2025**

**C1 Crab Arbitration Motion**

The AP recommends that the Council takes final action and selects Alternative 2, Options 1 – 3 and 5, and Alternative 3, Option 2 as the preferred alternatives.

For reference, the full June 2025 motion, and the selected PPAs (in bold) is copied below.

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Alternative 1: Status Quo Action

**Alternative 2: Changes to the regulations governing the arbitration process.**

*Options are not mutually exclusive.*

**Option 1. Remove the requirement that the arbitrator can only select a remedy proposed by one side. Allow the arbitrator to select an independent or compromise remedy based on the facts provided in the arbitration.**

**Option 2. Require a written report and rationale from the arbitrator to the parties to the arbitration. The report should largely mirror the written report submitted by the Contract Arbitrator to NMFS to avoid external costs.**

**Option 3. Remove the requirement for a market report.**

Option 4. Remove the arbitration option for non-performance after a contract has been established to define BSAI crab price, delivery, or other terms.

**Option 5: Streamline the information submitted to NMFS in the Annual Arbitration Organization Report and notifications by removing requirements for information NMFS already has, information that has not changed, and any other information that is no longer necessary.**

**Alternative 3. IFQ and IPQ application withdrawal. IFQ and IPQ applications can be withdrawn after being accepted by NMFS at any time before BSAI crab rationalization species TACs are announced and within**

Option 1: 24 hours or

**Option 2: 48 hours after BSAI crab rationalization species TACs are announced.**

*Motion passes 13-6*

## Rationale in favor of main motion

### Option 1:

- Removing LBO is important because the system is not working as intended. The risks associated with arbitration are causing processors to not process and delay investments in infrastructure, which is harming all participants in the fishery. Allowing the potential for an optimal decision by using all submitted information could more evenly mitigate increasing operational costs and respond to evolving circumstances in the fisheries.
- Removing LBO doesn't eliminate the price formula or regulations requiring that the contract arbitrator make a decision based on the historical distribution of first wholesale revenues between fishermen and processors. Processors are still required to establish a price that preserves the historical division of revenues in the fishery.
- It does not prevent the arbitrator from choosing either the harvester or processor proposal during arbitration just like status quo, but it allows discretion to select a different outcome as supported by the available information if the arbitrator sees fit.
- Moving to a traditional arbitration system allows the contract arbitrator to select an outcome using their judgment as to what is fair and optimal, considering all the facts.

### Option 2:

- Support selection of Alternative 2 because it will allow all parties to understand and adapt to arbitration outcomes, rather than speculating on the arbitrator's rationale.
- Requiring the arbitrator to ensure that their decisions are reasoned, fair, and logical should be a minimum requirement for the process.

### Option 3:

- Reduces costs with no downside.

### Option 5:

- This seems widely supported, and analysis shows no negative impacts on harvesters, processors, or NMFS.

### Alternative 3, option 2:

- Provides clarity and certainty that benefits all stakeholders, while also preventing arbitrary and uneven application of the rule.
- Would not create any new risks or management issues; it would only provide additional certainty and clarity.

## Rationale in Opposition to the main motion

Same as the rationale posted in support of the substitute motion (below).

## **C1 Crab Arbitration Substitute Motion**

The AP recommends that the Council takes no further action.

*Motion fails 17-2*

### **Rationale in Opposition to the Substitute Motion**

- The substitute motion was not responsive to the concerns raised by processors and community representatives.
- The lack of arbitration proceedings, coupled with the declining number of active processors and their documented concerns regarding risk of arbitration, suggests that the current system is not working as intended.

### **Rationale in Favor of Substitute Motion**

#### **Specific to Alternative 2**

- These are not small changes being proposed, but rather a fundamental change to the intended design of the CR program.
- The arbitration program is not broken. There have been 2 arbitrations in the past 10 years. Both of those arbitrations were triggered by processors paying well below the price paid by other processors. Because of baseball-style arbitration, harvesters only asked the arbitrator for a price paid by the lowest payers. Access to the arbitration system is very difficult for harvesters. Because of their FCMA status, ICE is the only cooperative that can arbitrate.
- There have not been any arbitration events in the recent years of low crab TACs.
- As long as harvesters must ShareMatch with IPQ holders the arbitration system must remain in place as it is the only viable means by which harvesters can ensure that they are paid a fair price for their catch.
- Harvesters' agreement to the development of CR Program, which necessarily caused them to give up the right to sell their crab to the processor offering the highest price, was based on the maintenance of the historical division of revenues between harvesters and processors being enshrined in the CR Program. The changes proposed to the Arbitration System will undermine this bargain. Crab harvesters believe the Council should exercise restraint rather than make sweeping changes to address issues that have proven to be fleeting in nature.
- Taking no further action is responsive to some public testimony
- The ICE written comment letter supports this rationale and did a great job of detailing harvester's perspective on these issues.
- Arbitration is a safeguard for harvesters against bad actors. Without it, potential bad behavior is encouraged with no viable recourse by harvesters other than costly and lengthy civil litigation.
- Processors won a price arbitration against harvesters in 2010.

### **Option 1 - LBO**

- Baseball-style arbitration is a fundamental element of the CR program. It was implemented to maintain the balance of power between harvesters and processors due to the issuance of IPQ and requirement to ShareMatch.
- Baseball-style arbitration keeps a lid on the arbitration system. The risk of losing is a powerful disincentive to arbitrate that would effectively be removed if the arbitrator can choose a compromise price. It is reasonable to assume that without “baseball” arbitration, there will be a significant increase in arbitration events and therefore increased costs. This was referenced in the analysis. Further, arbitrators expressed the reasonable assumption of increased costs of arbitrations, due to the fact they are paid by the hour rather than by the event. Also, the current structure drives participants to provide a reasonable offer at the onset of arbitration.

### **Option 2 – Written explanation of Arbitration Outcome**

- The arbitration issues are not that complicated. If a processor offers a price that is well below what others pay, they may end up in arbitration.
- Requiring a written report and rationale will increase the cost of the arbitration program.

### **Option 4 – Remove Arb for Non-Performance**

- Despite the fact that there has never been a performance arbitration, its presence acts as a deterrent to anyone who could otherwise fail to comply with the arbitrator's decision or the terms of a contract. This is an important protection for both parties that should remain in place. Without it, a very expensive civil suit is the only recourse.

### **Alternative 3**

- Harvesters believe there is a lack of consensus amongst processors.
- The withdrawal of IPQ/IFQ applications could be used as a negotiation tactic.
- Even with clearly defined rules, Harvesters fear that this change could be a slippery slope. As it stands, harvesters and processors will often form a "Lengthy Season Agreement" which obligates processors to accept deliveries. It is a basic assumption of the CR Program that holders of IPQ are supposed to actually process the crab. Both harvesters and processors run the risk that a particular season may be unprofitable. The Council should consider that if IPQ holders can unconditionally withdraw applications how are harvesters to be protected? So any new rule must preserve the right to do Lengthy Season Agreements and the right to arbitrate.

### **Purpose and Need**

- The P&N statement details the changes being considered arose out of concerns regarding “high annual uncertainty, fishing closures, and low TACs”. Since this action was initiated, biomass has rebounded, fisheries have reopened and TACs have increased. With biomass trends indicating a high probability of continued improvement, it seems inappropriate to make significant, sweeping changes to address temporary conditions.