

**ADVISORY PANEL  
Motions and Rationale  
June 2-5, 2025 - Newport, OR**

**C4 Crab Arbitration Initial Review**

**AP Motion 1**

The AP recommends that the Council move this analysis to final action for further review.

*Main Motion passed 14-5*

**Substitute**

~~The AP recommends the Council take no further action on Alternative 2, Options 1, 2 and 4, as well as, Alternative 3 and move the analysis of Alternative 1 and Alternative 2, Option 3 to final action for further review.~~

*Substitute Motion failed 6-13*

~~**Amendment 1: ...with Alternative 2, Option 3 selected as the Preferred Preliminary Alternative.**~~

*Amendment 1 failed 9-10*

**Rationale in Support of Main Motion**

- *The motion maker noted the simple motion was intended to keep the existing alternatives and options, without selecting a PPA so that further details on the questions raised in the analysis and staff presentations to be drawn out in the next analysis.*
- *Some members of the AP felt that the main motion was responsive to public testimony from the processing and community sectors, who were saying that the current program does not work.*
- *An AP member noted the goal was to retain processing participants in the fishery, which benefits harvesters and communities, and noted that under the status quo, many processors were withdrawing their IPQ applications – a sign of an unhealthy program.*
- *One AP member supported the motion because there will be additional information provided after the upcoming crab season TACs are announced and the season has been completed, which will provide additional insight that action on adjusting the arbitration system may be appropriate.*
- *There was specific support expressed by an AP member for the following alternatives and options:*
  - *Under Alt 2, support for more transparency (Alt. 2, option 2) and better opportunities to compromise (Alt. 2, option 1)*

- *Under Alt. 3 support because the alt was providing clarity to a current practice and provided greater certainty for all stakeholders.*

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

- *The motion did not identify a PPA for Final Review creating a lack of intent or direction to support.*
- *Additional rationale in opposition to the Main Motion can be found in rationale for support of the Substitute Motion.*

### ***Rationale in Support of Substitute Motion***

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

- *The maker of the motion noted that Alternative 2 is a fundamental change to the intended design of the Crab Rationalization (CR) program and not small changes. Some AP members also specifically pointed out the strong underlying feeling that crab fishermen have about retaining the existing Crab Arbitration (baseball style) since it was implemented as part of an agreement that provided processors quota shares. It was noted in public testimony and at the AP table that when processor shares were originally introduced into the program, they were provided the arbitration as a balance.*
- *The risk of losing baseball-style arbitration 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.*
- *Some AP members noted public testimony and experience that the arbitration program is not broken; there have been 2 arbitrations in the past 10 years which were triggered by the processors in each situation paying less than other processors. Specifically, an AP member noted that in those instances harvesters only asked the arbitrator for a price paid by the next lowest payers. Accessing the arbitration system is very difficult for harvesters. Because of their FCMA status, ICE is the only cooperative that can arbitrate; AP members referenced the ICE written comment letter.*
- *There have not been any arbitration events in the recent years of low crab TACs.*
- *Some AP members noted that as long as harvesters must share-match 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. It was noted that arbitration is a safeguard for harvesters against bad actors. Without it, bad behavior is encouraged with no viable recourse by harvesters other than costly and lengthy civil litigation.*
- *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.*
- *The written report and rationale will increase the cost of the arbitration program.*
- *Despite the fact that there has never been a performance arbitration, its presence acts as a deterrent to anyone who would 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.*

*Rationale Specific to Alternative 3*

- *The maker of the motion noted the lack of consensus amongst processors regarding this Alternative.*
- *It was noted that withdrawal of IPQ/IFQ applications could be used as a negotiation tactic.*

***Rationale in Opposition to Substitute Motion***

- *Some AP members reiterated the importance of the three-legged stool: harvesters, processors, and communities. None of these legs can remain without the other. Although the harvesters have indicated the current arbitration system is working for them, processors and communities have indicated that it is not. It was noted that the substitute motion did not respond to the needs of processors and was the opposite of the compromise that the main motion was trying to achieve.*
- *Processors want to continue processing crab, but should not be forced to do so at a loss. An AP member also noted that most Alaskan fisheries continue to struggle, so there aren't other fisheries available to help buffer the current challenges and costs in the crab fishery, which worsens this situation for processors.*
- *Generally, some AP members in opposition felt the substitute motion was not responsive to public testimony and went too far in eliminating all of the substantive options from the analysis prior to further review and Final Action.*
- *Specifically, one AP member also noted that they couldn't support the motion right now because of the approaches the government is taking regarding efficiencies, that there were conflicting public testimonies, and items that need to be flushed out in an additional analysis. This specific comment was not an attempt to disagree with harvester concerns, but just that they wanted to see further analysis.*

***Rationale in Support of Failed Amendment***

- *It was noted that the amendment captures the consensus of support for Alt 2 Option 3 from both stakeholder groups while continuing to provide opportunity for further analysis of the other alternatives and options.*
- *Since all of the alternatives and options were retained, and only a PPA was selected, it was intended to be substantively different from the failed substitute motion.*
- *It is appropriate to signal to the Council that there is general agreement between stakeholders that removal of the market report is a preferred alternative at this time.*

***Rationale in Opposition to Failed Amendment***

- *Some AP members felt the amendment was not responsive to public testimony and was functionally the same signal as the failed substitute motion, even though all alternatives and options would be retained for further analysis. AP members opposing the amendment felt it would signal to the Council this should be the only PPA, and did not believe that was the consensus of the AP.*