


# Public Testimony Sign-Up Sheet

## Agenda Item C-3(e) BSAI CRAB POST-DELIVERY TRANSFERS

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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: September 24, 2007  
SUBJECT: BSAI Crab Fishery Management

ESTIMATED TIME 10 HOURS (all C-3 items)
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**ACTION REQUIRED**

Initial review of analysis.

**BACKGROUND**

(e) Post-delivery transfers

At its June 2007 meeting, the Council adopted a draft purpose and need statement and alternatives to amend the crab rationalization program to permit the transfer of IFQ to cover overages after the time of landing. The provision would be intended to reduce the potential for enforcement actions related to unintended overages, in the event the fisherman can acquire shares to cover the overage within a reasonable time. In response to the Council's request, staff drafted an analysis of the alternatives for Council review. At this meeting the Council is requested to decide whether the analysis is sufficient to be released for public review.

**Executive Summary**

In August of 2005, fishing in the Bering Sea and Aleutian Island crab fisheries began under a new share-based management program (the "rationalization program"). Under the program, allocations of IFQ to harvesters and IPQ to processors are binding without provision to cover any overage or compensate for any underage. This action considers allowing harvesters and processors to engage in post-delivery transfer of their respective shares to cover overages.

**Purpose and need statement**

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

*Under the crab rationalization program, harvesters receive annual allocations of individual fishing quota that provide an exclusive privilege to harvest a specific number of pounds of crab from a fishery. Any harvest in excess of an individual fishing quota allocation is a regulatory violation punishable by confiscation of crab or other penalties. Precisely estimating of catch at sea during the fishery is difficult and costly due to variation in size of crab, and sorting and measurement requirements. Overages can result from inadvertent mistakes by participants attempting to accurately estimate catch. A provision allowing for post-delivery transfer of individual fishing quota to cover overages could reduce the number of inadvertent violations, allowing for more complete harvest of allocations, and reduce enforcement costs without increasing the risk of overharvest of allocations.*

## **Alternatives**

The Council has identified three alternatives for this action. Alternative 1 is the status quo, under which no post-delivery transfers are permitted. Any overage at the time of landing is considered a violation subject to a potential enforcement action. Under Alternative 2, post-delivery transfers are relatively unlimited. Post-delivery transfers of all share types, including processor shares and catcher processor shares are permitted. The number of post-delivery transfers a person may receive and their size are not limited. Post-delivery transfers are limited to being used to cover overages. Two options for limiting the time period during which the transfer may be made are set out. Under the first, the transfer must take place within 30 days of the landing. Under the second, the transfer must take place by the end of the 'crab fishing year,' which occurs on June 30<sup>th</sup> each year. This alternative also includes two options for defining harvesters that may make post-delivery transfers. Under the first option, any person may make such a transfer. Under the second, only members of an inter-cooperative meeting certain criteria are permitted to engage in the transfer. Under Alternative 3, moderate limits are placed on post-delivery transfers. All share types may be transferred, but exclusively to cover overages. Transfers are limited to two transfers of each species, which are limited to 10,000 pounds each. Two options limiting the time to make transfers are under consideration. Under the first, transfers are required to be made within 15 days of the landing with the overage. Under the second, transfers must be made by the end of the fishing year (which occurs on June 30<sup>th</sup>). Two options also define harvesters who may make post-delivery transfers. Under the first, any harvester may make a transfer. Under the second, only harvesters that are members of an inter-cooperative satisfying specific criteria are permitted to make post-delivery transfers.

### **Effects of Alternative 1(status quo)**

Under the status quo alternative, all overages are subject to an enforcement action and penalty. No provision for post-delivery transfers to cover overage is made under the status quo. Harvesters are likely to have relatively few overages representing a relatively small share of the TAC. Notwithstanding few overages, most harvesters are likely to continue to harvest most of their IFQ allocations, with little IFQ left unharvested. In most cases, overages are likely to remain relatively small.

Processors are generally unaffected by overages, since the overage is charged to the harvester and does not affect the processor's operations. Usually, the processor will process the crab and later purchase it from NOAA Fisheries enforcement at the prevailing price. Although processors cannot engage in post-delivery transfers to cover IPQ overages under this alternative, those overages are extremely rare, as the processor can monitor landings and has no obligation to accept deliveries beyond its holdings.

Under the status, post-delivery transfers are not permitted. Overage prosecution is based on catch accounting records providing relatively straight forward enforcement.

### **Effects of Alternative 2 (Unlimited post-delivery transfers)**

Alternative 2 would establish a system of almost unlimited post-delivery transfers. Although the alternative allows liberal post-delivery transfers, it is possible that few transfers would be made. The provision, however, would be important to participants facing a penalty for an overage, who are able to acquire shares to cover that overage and avoid a possible enforcement action and penalty. If the provision is used in a limited way, participants will use post-delivery transfers to cover small overages of the magnitude currently observed. Overages at the time of landing could rise slightly from their current level, if participants gain confidence that they will be able to cover the overage with a transfer. Overages (not covered with a transfer and) subject to penalty should decline. Despite the relative lack of constraints on transfers under this alternative, the likelihood of substantially more uncovered, large overages is relatively small. Penalties for violations are likely to increase with the magnitude of overages. Persons are unlikely to risk large overages without a known source of shares to cover that overage to avoid a potential enforcement action and penalty.

In some cases, the system of share matching and arbitration could complicate post-delivery transfers of A shares. Harvesters need to match their A shares with IPQ early in the season to access the arbitration system.

Once these commitments are made, transferring shares might require the IPQ holder's consent. Although these barriers are not insurmountable, particularly for transfers of small amounts of IFQ, they will complicate the use of post-delivery transfers. In the long run, participants could develop general (unwritten) standards of practice simplifying post-delivery transfers of small amounts. Active participation of a broad-based group (such as the Inter-Cooperative Exchange) in the system is likely to aid in the development of those practices.

The benefits to processors from post-delivery transfers of IPQ are largely a corollary of the post-delivery transfer of Class A IFQ. Processors should have few overages, since overages can be avoided by simply refusing delivery of landings in excess of IPQ holdings. Only when a harvester has an IFQ overage that would be covered by a post-delivery transfer of A shares should a processor need to obtain IPQ to cover an overage. In this instance, the benefit to the processor (who does not have an overage unless it wrongly accepts the delivery after the harvester acquires Class A IFQ) is secondary to the benefit to the harvester of covering the overage with newly acquired IFQ.

#### Limits on the time to undertake a post-delivery transfer

The Council motion includes two options defining the time during which post-delivery transfers must be completed. Under the first option, a post-delivery transfer must be made within 30 days of the overage. The second option would require the overage to be covered by the end of the "crab fishing year," which occurs on June 30<sup>th</sup> each year. Establishing a time limit based on the time of the overage occurring might be supported to avoid harvesters believing that the extended season established by current management allows substantial time for finding shares to cover an overage. This lengthy period for covering an overage could lead the harvester to unreasonably delay finding shares to cover the overage, which could result in more uncovered overages. On the other hand, most participants in the fisheries know the timing of fishing (which is based on market conditions and meatfill). Given the cost of overage penalties, it is unlikely that many harvesters would delay covering an overage.

The Council motion includes two options defining harvesters eligible to engage in post-delivery transfers. Under the first option, all harvesters would be permitted to engage in post-delivery transfers. Although this provision would appear to allow a harvester to access all harvest shares for a post-delivery transfer, current rules prohibit transactions between cooperatives and non-members of cooperatives, dividing IFQ into two separate pools. Non-members of cooperatives will be greatly disadvantaged in the market for covering overages by this limitation, since almost all IFQ are allocated to cooperatives. The second option requires a person to be a member of an inter-cooperative to be eligible to engage in post-delivery transfers. The inter-cooperative would be required to meet membership threshold of 30 percent, 50 percent, or 65 percent of the IFQ in the fishery. In addition, the inter-cooperative would be required to have a reserve pool of shares to use for covering overages and appoint an authorized representative with RAM to manage its transfers. While an inter-cooperative will likely facilitate coordination of harvesting and post-delivery transfers, whether a strict requirement of inter-cooperative membership to engage in these transactions will have any benefit is questionable. First, an inter-cooperative would include only cooperative members, so IFQ holders that are not members of cooperatives (although holding a relative small portion of the quota) would be completely excluded from post-delivery transfers by this option. The establishment of a threshold membership level to qualify for post-delivery transfers could be used to exclude persons or leverage a position in the fishery. Also, an additional organizational entity is an unreasonable cost in a management program already overburdened with organizational entities. An effective post-delivery transfer will clearly depend on shares being available for transfer. A reserve pool, or a common pool made up of shares contributed by members of the inter-cooperative, that must be set aside specifically for post-delivery transfers could effectively ensure that shares are available for transfer at certain times. Specifying a reserve pool requirement that is effective but not overly burdensome in regulation would be very challenging.

Processors will be affected by this action in a few minor ways. If the harvester elects to use B shares, the transaction should be relatively straight forward for the processor. If a harvester elects to use A shares to cover an overage, the transaction could be substantially more complicated for a processor. In this instance, the

processor must either use IPQ already committed to another IFQ holder or obtain IPQ from another processor. In time, costs of these transactions should be minimal, but it is possible that persons in a position of leverage could periodically assert that leverage to the detriment of a processor.

Under the two alternatives allowing post-delivery transfers, harvesters are permitted to cover IFQ overages with few limitations. The effects of the two alternatives on management and enforcement are very similar, with slight differences arising under the different options. Since post-delivery transfers are permitted only to cover overages, the increase in administrative and record keeping requirements to address post-delivery transfers is somewhat limited. Yet, changes in the timing of administrative decisions and processes will pose challenges. As under the status quo, overages will typically be processed at the time of landing. While this process remains the same under the alternatives allowing overages to be covered with a post-delivery transfer, the timing of this process will differ from the status quo. Under options that limit the time to cover overages from the date of landing (i.e., either 15 or 30 days from the landing), overages would be reported on a rolling basis as overages become final (or the time from each landing with an overage lapses). It is possible that using a time limit based on a landing could contribute to disputes. For example, some harvesters may contest the time limit on notice grounds, if they were not aware of the overage at the time of landing. Even if these disputes are unsuccessful, they could be considered mitigating circumstances when establishing penalties for overages. Requiring all overages to be covered by a specific date (such as the end of the crab fishing season) may help resolve potential conflicts concerning whether post-delivery transfers are timely. A slight increase in the administrative burden will occur, if persons are required to be members of an inter-cooperative to engage in post-deliver transfers. The general requirement is clear on its face and could be satisfied with a simple filing with RAM. If the inter-cooperative is required to establish a reserve pool to be used to cover overages, the administrative burden could increase substantially.

### **Effects of Alternative 3 (Moderately limited post-delivery transfers)**

Alternative 3 is similar to Alternative 2, but imposes a few additional restrictions on post-delivery transfers. The effects of the two alternatives are largely the same, except for differences arising from these additional restrictions. The limits, however, could reduce the effectiveness of the provision in addressing harvesting efficiencies that could be realized through inseason transfers used to coordinate harvesting activity that cannot be completed in a timely manner. Limits on the amount of an transfer under this alternative could be effective in deterring unreasonable reliance on the post-delivery transfer ability to cover an excessive overage. The possibility of unreasonable reliance on a speculative post-delivery transfer to cover an excessive overage is limited. Participants are likely to realize that the cost of covering an overage will rise with the magnitude of the overage. This alternative would also limit each harvester to two post-delivery transfers per species. Although it is possible that a vessel could make more than two 'last trips' during which it has an overage, it is unlikely that the limit of two post-delivery transfers would be constraining.

This alternative includes two options for defining the time for completing a post-delivery transfer. Under one option, post-delivery transfers would need to be completed within 15 days of the landing with the overage. The relatively short time for completing transfers could stymie transactions that involve multiple share holders (such as transactions that involve transfers of A shares and IPQ, which may require approval of persons to whom those shares are committed). The extended time period, under the other option, would leave ample time to accommodate transfers. Allowing harvesters until June 30<sup>th</sup> each year to these complete transfers is not likely to lead to unreasonable reliance on the transfer provision and an increase in uncovered overages. The effects of options concerning eligibility to engage in post-delivery transfers under this alternative are the same as described under alternative 2 above.

The effects of Alternative 3 on processors are very similar to the effects of Alternative 2. The only differences arise under the option shortening the time permitted for post-delivery transactions. Under that option, which shortens the time to complete transfers to within 15 days of the landing, transfers involving A shares are likely to be complicated by the need for relief from commitments involving those shares. In more complex cases, these commitments could involve several IFQ and IPQ holders. Likewise, the effects of Alternative 3 on

management and enforcement are also very similar to the requirements under Alternative 2. Under this alternative, however, the shorter time for covering overages under the second option (15 days from the landing) could result in slightly more overage violations.

**Net benefits to the Nation**

A minor overall net benefit to the Nation is likely to arise from allowing overages to be covered by post-delivery transfers. The number of overages could be reduced. The risk of increasing the magnitude of any overage is also limited, since enforcement actions and the associated penalties are likely to deter careless overharvest of allocations. The action has the potential to reduce administrative and enforcement costs by reducing the number of enforcement actions for overages.

**Effects on small entities**

The effects of this action on large and small participants are similar. Allowing post-delivery transfers should facilitate a reduction in overages that result in forfeiture of catch and other penalties. Small entities, however, could be disadvantaged depending on the options selected by the Council. The options with shorter time periods for completing a post-delivery transfer to cover an overage (either 15 or 30 days after the landing) could disadvantage small entities, who are less likely to have internal administrative capacity to quickly locate shares to cover the overage. This disadvantage is especially likely for participants who harvest their own IFQ, who may be unable to search for shares while actively fishing. Small harvesting entities could also be disadvantaged by provisions requiring inter-cooperative membership to engage in post-delivery transfers. Most small entities regulated by this action will be individual IFQ holders. A provision that requires inter-cooperative membership for eligibility to engage in post-delivery transfers would effectively disqualify individual IFQ holders from the benefits of the action.