

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 “program”). The program is unique in several ways, including the allocation of processing shares corresponding to a portion of the harvest share pool. These processor shares were allocated to processors based on their respective processing histories. To protect community interests, holders of most processor shares were required to enter agreements granting community designated entities a right of first refusal on certain transfers of those shares. Since implementation, community representatives and fishery participants have suggested that some aspects of the rights of first refusal may inhibit their effectiveness in protecting community interests. This amendment package considers actions intended to address the following four concerns:

- 1) the relatively short period of time allowed for exercising and performing under the right;
- 2) the lapse of the right after three consecutive years of use of the individual processing quota (IPQ) outside the community or if a community entity elects not to exercise the right on a transaction to which it applies;
- 3) the requirement that the right apply to all assets involved in a transaction, which could include assets outside the community; and
- 4) the limited protection to community interests by the right of first refusal.

Purpose and Need Statement

The Council has adopted the following purpose and need statement for these actions:

The Bering Sea/Aleutian Islands crab rationalization program recognizes the unique relationship between specific crab-dependent communities and their shore-based processors, and has addressed that codependence by establishing community “right of first refusal” agreements as a significant feature of the program. These right of first refusal agreements apply to the Processor Quota Shares initially issued within each community, and are entered into and held by Eligible Crab Community Organizations on behalf of each respective community.

*To date, there have been several significant Processor Quota Share transactions, resulting in Eligible Crab Community Organizations now holding **between 20 percent and 50 percent of the PQS¹** in each rationalized fishery. However, the ability of the right of first refusal to lapse may diminish the intent to protect community interests. Also, limiting the time period to exercise the right may conflict with the ability to exercise and perform under the right of first refusal. In addition, some communities, when exercising the right of first refusal may have no interest in purchasing assets located in another community and feel the right of first refusal contract should exclude any such requirement.*

Alternatives

The Council has identified three actions for this amendment package. In all cases, the actions are defined

¹ The Council should consider revising this clause to state that community organizations “hold substantial portions of the PQS in each rationalized fishery.” Although it is possible that organization holdings reach these levels in some fisheries, in some cases holdings are indirect. In addition, some holdings of PQS on which a community entity has never held a right of first refusal. Given these circumstances, the statement as written may not be fully accurate or may be misconstrued by readers. A more general statement may address these concerns.

by a single alternative that is compared to the status quo alternative, under which all aspects of the current right of first refusal structure would be maintained. Under Action 1, the time available for a community entity to exercise a right of first refusal would be extended from 60 days to 90 days, and the time for a community entity to perform under the contract would be extended from 120 days to 150 days. Under Action 2, a right of first refusal could be continued, or changed to benefit a different community, depending on the circumstances. Under one alternative, the right would continue to benefit the original community indefinitely (Alternative 2). Under another alternative, the right would shift to a different community, if the PQS is sold and used in that second community for a set period of time (Alternative 3). Under Action 3, a community entity's right would be applied to either the subject PQS only (Alternative 2) or to the subject PQS and assets located in the community intended to benefit from the right of first refusal (Alternative 3). Under Action 4, a PQS holder could only use IPQ yielded by PQS in the community that benefits from the right of first refusal, unless the community benefiting from the right consents to the use of the IPQ outside that community.

Effects of Action 1 – Increase the time for exercise and performance of the right of first refusal

In considering whether to exercise a right of first refusal, a community must examine the merits of the transaction and arrange its performance. These factors suggest that an extending the period to exercise a right and perform under the contract could be beneficial to entities making that decision. The extension is likely to be particularly beneficial for communities that adopted provisions for public notice and meetings to decide whether to exercise the right. Even this extended time period, however, is likely to pose a challenge, for large transactions that include a variety of assets other than the subject PQS. Although lengthening the time for exercise and performance under the right may benefit community entities, lengthening those time periods could complicate transactions for parties affected by the right. Under the terms of the right, a PQS holder and buyer can prevent a community entity from intervening in the transaction, if the buyer agrees to grant a right of first refusal to the community entity and to use a portion of the IPQ yielded by the PQS in the community for a period of years. Although these concessions may affect the value of the assets transferred (including the PQS), the parties to the transaction can effectively limit the ability of the community entity to disrupt the transaction by exercising the right. This ability may reduce the difficulty posed by the time period extensions to PQS holders. As a result, the proposed time period extensions are likely to have only minor effects on PQS holders, the parties with which they might transact, and community entities.

Effects of Action 2 – Extending the right indefinitely or transferring the right to a different community, if original right holder elects not to exercise the right

Under this action, rights of first refusal on PQS would either be extended indefinitely without lapse or rights would be transferred to a new holder, if the original holder elects not to exercise the right and a community develops a dependence on the PQS. Currently, the right lapses on use of the yielded IPQ outside the community for a period of three consecutive years or if the community entity fails to exercise the right when a transfer is made that is subject to the right. Making the right persist indefinitely would establish a perpetual contractual link between PQS and the community where processing occurred that led to the allocation of that PQS (but would not ensure use of the IPQ in the community).

Under the first action alternative, this community/PQS association would be maintained regardless of whether the PQS holder used the yielded IPQ outside of the community for several years or transferred the PQS to another holder. Once triggered by a transfer, the right would supersede the interests of other parties, including communities where the yielded IPQ have been processed in the intervening years. The exercise of a right in this circumstance could disrupt the dependence on the processing activity that developed in the community that attracted the processing. At the extreme, this dependence be established through several years of processing activity. Community entities might also have multiple opportunities

to acquire the PQS, since all transactions for use outside the community would trigger the right. So, a community entity that was unable or unwilling to intervene in a transaction for PQS will have the opportunity to intervene and acquire the shares in any future transaction subject to the right. These future opportunities may be important, if the circumstances and financing of the community entity change or the second transaction is on more appealing terms, which could occur if fewer PQS are included in the transaction or prices change.

PQS holders are also affected by these extensions of the right. To the extent that rights of first refusal diminish the value of PQS, that diminution would be perpetuated by extending the right. Despite the existence of the right, it remains likely that for most transactions PQS holders and buyers will avoid triggering the right by agreeing to use the IPQ in the right holding community to the extent required for avoiding triggering the right. In the long run, meeting this minimal requirement may be more difficult, particularly if processing activity is discontinued in some communities. To the extent that the right is intended to protect community interests, that protection may be lacking under the status quo, in part, because of its current lack of permanence. Yet, several other aspects of the right limit the effectiveness of the provision in protecting community interests. By its nature, the right only applies to transfers. Absent a transfer, shares may move freely among communities under other processing arrangements (including those internal to a company, as well as custom processing arrangements). This limitation on the right leaves a community entity unable to prevent the movement of processing from its community, as long as the PQS holder chooses not to transfer the shares. In addition, communities that become reliant on these allowed movements of processing activity are unprotected by the right in its current form.

Effects of Action 3 – Apply the right of first refusal to only subject processor shares or subject processor shares and assets in the community of the entity holding the right

Under this action, right of first refusal contracts would be required to provide that the right shall apply to only the PQS. In the event assets other than PQS are included in the proposed sale, the price of the PQS shall be determined by an appraisal process.

PQS holders are likely to respond to the application of the right to only PQS in a few predictable ways. First, the PQS holder may attempt to negotiate an agreement with the community entity to allow the sale to proceed without the entity exercising the right. To secure an agreement, the PQS holder may need to provide something of value to the entity, which could be financial remuneration or a portion of the PQS. A community entity may have little leverage in this negotiation, if the PQS holder knows that the entity is without the wherewithal to exercise the right, but the community could receive some compensation for the security it provides in exchange for its agreement to allow the sale. CDQ groups that represent communities are likely to be better positioned to exercise the right than other community entities, but this could change over time if the other entities develop portfolios of fishing privileges and other interests. Alternatively, the person receiving the PQS could avoid the right being triggered by agreeing to use the requisite amount of IPQ in the community for the requisite period and extending the right to the entity in a second contract. This approach would maintain the community entity's interest in the PQS under the terms of the right with the new holder. A third way to avoid community entity intervention in a transaction is for the PQS holder, prior to the transfer, to use the IPQ outside of the community for three consecutive years causing the right to lapse.² To use this approach, the PQS holder would only need to move the IPQ from the community ahead of the transaction to ensure the right lapsed; however, this approach provides the PQS holder with the greatest flexibility at the time of the PQS sale. Lastly, a PQS holder that is undertaking a transaction might also subdivide the transaction. One transaction could be for

² This choice may be unavailable, if the Council elects to extend the right in perpetuity.

the PQS; the other transaction would be for any other assets. By subdividing the transaction in this manner, the PQS holder and the buyer may attempt to ensure that the price of PQS and the price of other assets in the transaction are set at an acceptable level, should the right holder intervene in the transaction. At the extreme, assets not subject to the right could be offered at a nominal price, with the PQS carrying the bulk of the value of the transaction. Although a right holder may contest the contract price for the PQS, the use of that process could be costly. Clearly, a variety of contractual arrangements might be made to increase the potential for the PQS holder receives reasonable value for assets (including the PQS), particularly in cases where the value of the assets is highly dependent on the accompanying PQS. Given the costliness of any administrative process associated with determining a price for assets subject to the right and the potential for PQS holders to avoid triggering the right, it is questionable whether the action alternatives would provide substantially greater protection of community interests than the existing right.

Effects of Action 4 – Require consent of the community benefiting (or formerly benefiting) from the right to use IPQ outside of the community

Under the status quo, a PQS holder may use the IPQ yielded by its PQS in any location that it chooses (provided it complies with regional landing requirements). This flexibility allows PQS holders to derive the maximum value from their PQS, choosing where and how to process IPQ, with limited geographic constraints. Thus, PQS holders have the option to move processing between communities to other plants that they own or through leasing or custom processing arrangements with other plant owners. This flexibility also allows a PQS holder to both derive greater value from their IPQ and to address contingencies that could arise in season, such as plants being disabled or inaccessible.

While this flexibility to use PQS in any location (within a permitted region) benefits its holders, it also creates some uncertainties for communities that have developed dependency on processing of crab for economic activity and tax revenues. The use of IPQ outside of the community from which those IPQ historically originated (particularly on a large scale) may deprive a community of benefits. Transfer of the use of small amounts of IPQ outside of a community would likely only reduce tax revenues of the community (as the economic activity arising from marginal amounts of IPQ is likely to be minimal). The movement of larger amounts of IPQ from a community will likely have a broader effect on a community. Not only are tax revenues affected, but also economic activity in the community that is generated by activity at the plant, vessels making deliveries and their crews, and processing employees. This activity often sustains support businesses that are a critical part of the economies of most communities with processing.

The action alternative would require IPQ processing to occur in the community that benefits from the right of first refusal unless that community consents moving IPQ processing. While the action would strengthen the position of these communities considerably, the action would affect the ability of processors (and possibly harvesters) to achieve efficiencies and derive benefits from the fisheries. Processing consolidation to realize production efficiencies could only take place, if agreed to by communities. End of season consolidation of small amounts of remaining IFQ (and IPQ) in a single trip could require the consent of several communities. In addition, any attempt to respond to an emergency or redirect a landing that might be prevented by an unforeseen circumstance would only be possible with community consent. Even if these consents are reasonable granted, delays could arise, if communities are unable to respond to requests quickly. In deciding this action, these operational concerns should be balanced against community interests that some may believe are not adequately protected under the current program measures.

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 “program”). The program is unique in several ways, including the allocation of annual individual processing quota (IPQ) with a one-to-one correspondence to a specific portion of the annual individual fishing quota (IFQ) pool – “Class A IFQ”. Use of either these IPQ or “Class A IFQ” requires matching with the other share type, on a pound for pound basis. To ensure applicants have adequate due process opportunity to contest any finding concerning qualification for an allocation, at the time of annual issuance of IFQ and IPQ, NOAA Fisheries sets aside quota (either IFQ or IPQ, as the case may be) in an amount needed to cover any possible claim of an applicant, should the final determination favor the applicant. As a result, any application disputes not finalized at the time of the allocation of IFQ and IPQ have the potential to strand quota of the other share type, in the event the applicant does not appeal or does not prevail on appeal (since the withheld quota cannot reasonably be issued to other qualified applicants). Moving the application deadline from August 1st to June 15th may allow additional time to finalize some appeal filings and proceedings, thereby reducing the potential for quota stranding.

Purpose and Need Statement

The Council has adopted the following purpose and need statement for these actions:

Under the crab rationalization program, QS holders and PQS holders must annually apply for allocations of IFQ and IPQ, respectively. In some instances, filing of these applications has been disputed creating uncertainties concerning the one-to-one relationship between Class A IFQ and IPQ, which is critical to parties use of those shares. Moving the application deadline to an earlier date for IFQ and IPQ could allow for additional time to resolve any disputes concerning the timeliness and adequacy of applications by NOAA Fisheries; and thereby, prevent some potential mismatches of the issued Class A IFQ pool and IPQ pools.

Alternatives

The status quo filing deadline for annual cooperative, IFQ and IPQ applications is August 1st. A single action alternative, which would move the deadline for these annual applications to June 15th, is being considered. In addition, an option would allow only 30 days to appeal an initial administrative determination to withhold quota.¹

Effects of the alternatives

Under the status quo, the cooperative, IFQ, and IPQ application deadlines will remain August 1st. This deadline leaves little time for administrators to resolve any disputes concerning qualification of QS holders or PQS holders for IFQ and IPQ, respectively. Since administrators are compelled to reserve IFQ and IPQ sufficient to satisfy any disputes, unallocated shares in either sector can strand not only the unissued shares, but also a matching amount of shares from the opposing sector. For example, unissued Class A IFQ will result in an equivalent amount of issued IPQ being unusable. Under the status quo, persons have 60 days to appeal any decision of the agency to withhold IFQ or IPQ. This time period (although standard for most administrative appeals) also contributes to the stranding of quota, as it extends until early October, when IFQ and IPQ are issued in most fisheries.

¹ It should be noted that transfers of QS and PQS are not permitted from the application deadline until the issuance of IFQ and IPQ. This halt on transfers is needed, in part, to ensure that issuances are made in accordance with rules against the issuance of Class B IFQ to persons who have affiliations to IPQ holders.

Under the action alternative, the deadline for cooperative, IFQ, and IPQ applications would be moved to June 15th. This deadline allows substantially more time for resolution of administrative findings that might deny allocations of IFQ or IPQ. Finalization of those decisions will aid in reducing the amount of stranded quota arising from set asides to ensure quota are available to satisfy possible claims. An ancillary benefit of the earlier deadline is that the June 15th deadline falls during a period that is less busy for participants in the fishery, as a portion of the harvester sector also participates in summer salmon fisheries. Under an option, the time to appeal decisions to withhold IFQ and IPQ allocations would be reduced to 30 days (from 60 days). This reduction in time to appeal will obviously allow less time for a person to initiate an appeal of an administrative decision, but is not believed to be unfairly constraining, especially in light of the efforts of administrators to ensure that participants receive notice of application deadlines and typically attempt to locate persons failing to apply to ensure that failure is intentional. The shorter appeal period is intended to reduce the portions of the IFQ and IPQ pools that must be reserved by ensuring that administrators know which QS and PQS holders are disputing a denial and, possibly, allowing for the resolution of some appeals before or early in the season.

AGENDA C-6
Supplemental
FEBRUARY 2011



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January 18, 2011

Mr. Eric Olson, Chairman
Mr. Chris Oliver, Executive Director
North Pacific Fishery Management Council

Re: C-6(a) Community ROFRs

Gentlemen,

As the Council considers taking Final Action on Community ROFRs, and in light of Dr. Fina's RIR/IRFA analysis as well as previous testimony from the North Pacific Crab Association and others, we recommend the following:

1. That **Action 1 be adopted** without further delay or analysis.
2. That **Action 2, Alternative 1 be adopted; and Alternative 2 be rejected as it is currently written.**
3. That **Action 3, Alternative 1 be adopted; and Alternative 2 be rejected.**
4. That **Action 4¹, Alternative 1 be adopted; and Alternative 2 be rejected.**

Our reasons and analysis follow. First, there is a short overview. Then, our specific comments related to these Actions begin on Page 5.

Sincerely,

Steven K Minor
Executive Director, NPCA

¹ It is mislabeled on Page 31 as "Action 3"

What Was the Council's Original Intent?

From the June 10, 2002 Motion

"...Harvesting and processing capacity has expanded to accommodate highly abbreviated seasons, and presently, significant portions of that capacity operate in an economically inefficient manner or are idle between seasons."

"The problem facing the Council, in the development of comprehensive rationalization, is to develop a program which ... addresses the social and economic concerns of communities, (and) maintains healthy harvesting and processing sectors..."

The Council realized that they were faced with a balancing act; but in the end they also understood that without a healthy private sector, the communities would suffer even more.

The ROFR program was developed to give communities a seat at the table if, and only if, the PQS is potentially being transferred out of the community. Their options then are to either purchase the PQS outright or seek compensation if direct ownership was not desirable or feasible.

The ROFR program has been a significant, and largely unanticipated success, as illustrated in the RIR/IRFA and this document. There have been no instances of abuse, and no clear problems identified -- just "concerns" that aren't really supported in the analysis.

Now the Council has before it at least two Actions that, under the guise of ROFR "amendments", instead replace the market-based aspects of the ROFR program with provisions that expropriate the value of the PQS from the current holders, undermine efficiency goals and completely undo the Council's own Emergency Relief program, which was just approved at the December meeting after two years of collaborative effort by communities, harvesters and processors.

Historically, Who Are the "Crab Communities" in Which ROFRs Apply?

As outlined on page 31 of the RIR/IRFA, there are eight:

Unalaska	King Cove	Akutan
St. George	St. Paul	Kodiak
Port Moeller	False Pass	

Since implementation of the program, under the current regulations, the following changes have occurred:

1. Kodiak gained PQS above it's historic share through "sweep up" provisions that the community successfully lobbied for. Kodiak has also directly purchased PQS, thus extinguishing the associated ROFR.
2. King Cove gained PQS through regional consolidation; and False Pass and Port Moeller lost their ROFR rights in the process. King Cove has also directly purchased PQS, thus extinguishing the ROFR.
3. St. George, through private contract and direct purchase, has secured the PQS earned in that community and may be able to restart processing in the future with this guaranteed share of landings. In the case of the direct purchase, the ROFR has been extinguished. We are less certain of the status of ROFR related to the private contract arrangement, but the community seems satisfied.
4. Atka, through direct purchase, has secured the PQS that they may be able to use as a guaranteed input for future crab processing in that community. This PQS was acquired from an entity that had a ROFR with Unalaska. The Unalaska ROFR holder agreed to the sale and transfer.
5. Unalaska has lost a small amount of PQS as a result of the Atka purchase, but Unalaska specifically waived its ROFR rights to allow the transaction; which is precisely how this program was designed to work. In addition, a significant amount of PQS associated with Unalaska ROFRs has been purchased by a CDQ group, but it remains in the community and therefore the ROFR was not triggered.
6. St. Paul has acquired a significant amount of PQS through direct purchase (thus extinguishing the associated ROFRs), and continues to benefit from the PQS associated with St. George through custom processing agreements.

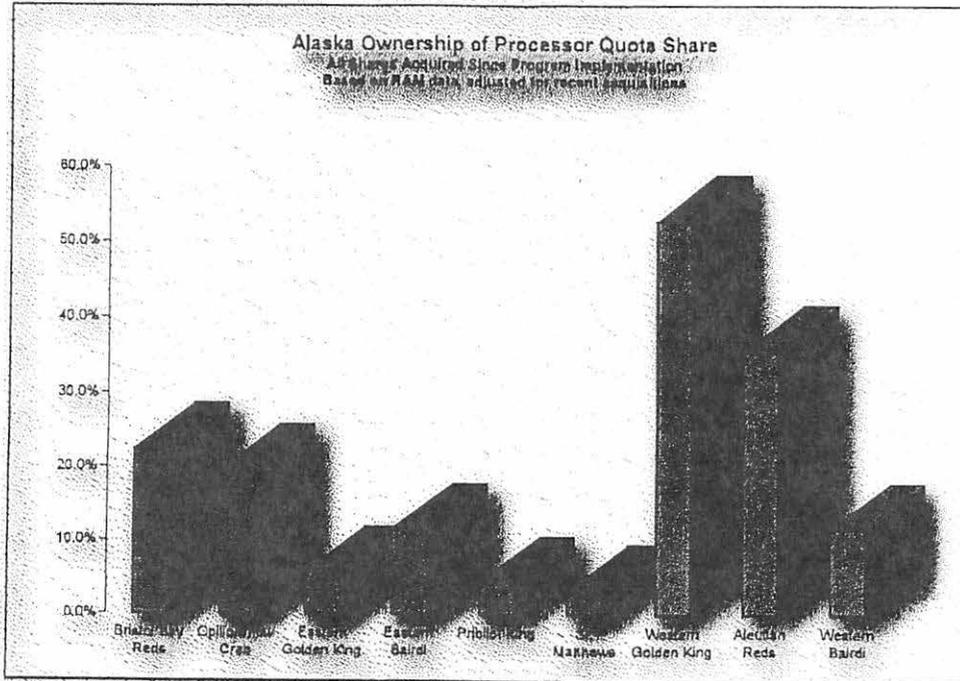
Conclusions

As a result of the current ROFR regulations

- A. King Cove and Kodiak have been the beneficiaries of non-monetary, regulatory transfers that have occurred consistent with Council intent to reduce over-capitalization.
- B. St. George and Atka have made significant investments in PQS as part of their plans to grow and diversify their local economies, consistent with Council intent and program regulations.
- C. St. Paul, Kodiak and King Cove have made significant PQS investments that will guarantee their community's continued access to the resource.

Transfers of PQS to ECCOs and CDQ Organizations

The ROFR program was originally designed as a mitigation tool for communities. But communities have quickly come to understand that PQS ownership guarantees access to the resource, and have aggressively stepped into the market.



To date there have been six major PQS transactions, and in the five instances where there was a ROFR agreement in place, the ECCO has in fact become the PQS buyer without actually triggering the ROFR. It is easy to understand why: since the PQS seller knew they were going to have to deal with the ECCO at some point in the transaction, they simply went to the ECCO first.

Specific Comments

Action 1

Extend the time period for an ECCO to exercise it's ROFR rights.

The NPCA has supported Action 1 since it first came before the Council more than two years ago. We believe it is time to act on it.

Action 2

Make the ROFRs Permanent.

An action similar to this was originally supported by the NPCA; however, we cannot support it in it's current form.

What's wrong with the current version - As Dr. Fina points out, under the current version the ROFR would be held in perpetuity by the community that originally gave rise to the processing history, even if that community chose not to act on the ROFR and thus allowed the PQS to leave the community, *and even if the originating community was appropriately compensated for that transfer at the time.*

As Dr. Fina states on Page 24: *"...once triggered by a transfer, the right would supercede the interests of other parties, including communities where the yielded IPQ have been processed in the intervening years. The exercise of a right in this circumstance could disrupt the dependence on the processing activity developed in the community that attracted the processing."*

Once the PQS leaves the originating community, the ROFR should pass to the new community because (a) the new community will likely be making infrastructure investments over time to support the processing activity and (b) the new community will develop a dependence on the economic activity associated with that PQS. To allow the original community to "take back" the PQS at some future date and long after the economic ties to the PQS have been dissolved could have a dampening effect on the new community's economic development efforts, and certainly seems inequitable in nature.

What should be done to fix it - Develop a new Alternative so that a ROFR becomes a permanent attribute of the PQS, and the ROFR moves from community to community with the PQS.

A final but important note about Action 2. To illustrate the full impact of this Alternative, Dr. Fina correctly points out that *"...the holders of any PQS to which the right applied on implementation of the program would be required to maintain right of first refusal contracts at all times."*

This raises serious implementation issues for the Council, which have not been addressed in the RIR/IRFA:

- A. If all of the original ROFRs have to be reset and made permanent, does the PQS that was "earned" in Port Moeller and False Pass now have to be retagged to benefit those communities; thus wiping out the Council's efficiency goals, regionalization, and any claims that Aleutia or Kodiak may have to PQS they have already acquired that originated in those communities?
- B. What about the PQS that was voluntarily moved from Unalaska to Atka? Does Unalaska now get to reassert its rights in spite of releasing previous claims?
- C. Once an ECCO acquires PQS, even for its own community, this Alternative would require a new permanent ROFR remain in effect -- but who is the new (second) ROFR holding entity?
- D. And if an ECCO itself, on behalf of it's community, transfers PQS to another community in the future (as Unalaska did for Atka); why should that ECCO then be able to exert an indirect and negative influence on the economic development of the new community at some later date?

Action 3

ROFR only Applies to PQS or Selected Assets.

In the absence of a clear and present problem (as opposed to abstract scenarios that are not likely to ever occur), this Alternative is fundamentally flawed for two reasons:

1. It has the potential to destroy the enterprise value of an on-going business without justification or recourse; and
2. In the words of Dr. Fina in the analysis: *"Given the costliness of any administrative process associated with determining a price for assets subject to the right and the potential for PQS holders to avoid triggering the right, it is questionable whether the action alternatives would provide greater protection of community interests than the existing right."*

What is the problem that the Council is trying to address? The two most common reasons for pursuing this Action are not supported by thoughtful analysis:

- A. We have often been told that there is a fear that the sale of a PQS holding entity with more than one location could trigger multiple ROFRs and create a confusing environment of competing ROFR interests. First, A ROFR is only triggered if a buyer expresses its intent to move the PQS out of one of the communities; which would not trigger multiple claims. Second, there are only two or three PQS holders with multiple locations, and each location is large, highly capitalized and serves multiple fisheries in the local area. The fishing industry has matured (as evidenced by over-capitalization issues in all of the major fisheries) and there is

no scenario that we can reasonably predict wherein a new owner would shut down several plants at the same time, and thus trigger several competing ROFRs. We ask that the Council not develop bad regulations based on unreasonable hypotheticals, given that the analysis has not documented any tangible circumstances wherein this sort of an event might occur.

- B. Likewise, we have been told that an ECCO may not be able to (financially) exercise the ROFR. This is hypothesized in spite of the fact that several ECCO related transactions has been consummated to date, even when non-CDQ ECCOs without CDQ resources were involved.

If this is the real issue, it should be noted that more than two years ago, the NPCA and CBSFA proposed that we all work together on the development of a loan program to assist in these transactions. Even in the absence of such a loan program, significant non-CDQ transactions have occurred because of the co-dependence of PQS holders and plant operators. Fostering this sort of market-based collaboration, rather than potentially destroying private sector investments by dismantling a system that is working well, seems to be a better course.

Action 4

Require consent of community ... To use IPQ outside of the community.

This Action arose suddenly at the December Council meeting. It does not address any specific problem, and it goes well beyond the ROFR program to essentially expropriate control and value of the PQS from the private sector and gives it directly to community ECCOs.

This Action removes all flexibility from the crab program and fundamentally overturns the Emergency Relief program that was carefully developed by all of the stakeholders, and adopted by the Council just this past December. The industry could not even move a floater into the region to deal with an emergency, without community permission.

To quote Dr. Fina: *"...the action would affect the ability of processors (and possibly harvesters) to achieve efficiencies and derive benefits from the fisheries. Processing consolidation to achieve efficiencies could only take place, if agreed to by communities. End of season consolidation of small amounts of remaining IFQ (and IPQ) in a single trip could require the consent of several communities. In addition, any attempt to respond to an emergency or redirect a landing that might be prevented by an unforeseen circumstance would only be possible with community consent."*

The Action takes major business decisions away from PQS holders, who are risking millions of dollars, and hands it to the ECCOs. In the process it potentially expropriates a significant portion of the value of the PQS as well as the business enterprise.

C-6 (a) BSAI Crab Right of First Refusal
February 6, 2011

The Council encourages crab rationalization stakeholders to work together within the industry to craft solutions, with respect to community protections associated with the right of first refusal and concerns from communities regarding potential loss of crab processing, that are acceptable to PQS holders, ROFR holders, and communities. Stakeholder solutions will be considered by the Council during the next review of the analysis.

For purposes of strengthening community protections under circumstances where ROFR may lapse or IPQ may be processed outside the subject community, the ROFR holder should considered the community entity.