

MEMORANDUM

TO: Council, SSC, and AP Members  
FROM: Chris Oliver *Ch*  
Executive Director  
DATE: March 25, 2003  
SUBJECT: Crab Management

ESTIMATED TIME  
8 HOURS  
(for all C-2 items)

ACTION REQUIRED

- (a) Receive Committee reports and select preferred alternatives for completed trailing amendments.
- (b) Receive EIS progress report

BACKGROUND

- (a) The following items contained in trailing amendments will be presented to the Council at this meeting:
  - 1) Arbitration System. The Council will be presented the report of the arbitration committee and the analysis of two additional provisions that could be added to the Council's preferred arbitration program. One provision would direct an arbitrator to make a non-binding pre-season price signal that could be used by both sectors as a starting point for negotiations. The other provision would direct the arbitrator deciding the last arbitration proceeding to select the highest arbitrated price applicable to at least 7 percent of the IPQs in the fishery. This highest price could then be applied to all arbitrated deliveries.
  - 2) Alternative protections for communities. The Council will be presented the report of the community protection committee and the analysis of the elements of the right of first refusal on the sale of processing shares in favor of communities with demonstrated reliance on the crab fisheries.

The Council mailing included the analyses of the Arbitration and Community Protections, as well as the recommendations of the Community Protection Committee.

- (b) Staff will update the Council on progress on the EIS and a brief discussion of the document that staff will present to the Council at the June 2003 meeting.

Polar Sea Partnership  
17010 12<sup>th</sup> Ave NW  
Shoreline, WA. 98177  
Email: warness1@attbi.com

David Benton, Chairman  
North Pacific Fisheries Management  
605 West Fourth Avenue, Suite 306  
Anchorage, AK 99501

RECEIVED  
MAR 10 2003  
N.P.F.M.C

Re: Bering Sea Crab Rationalization

Dear Chairman Benton,

We are three partners with families living in the Seattle area. The sole income for these three families, as well as five crewmembers with families that work for us, is derived from the crab fishing vessel "Polar Sea" which we built in 1978.

We are very concerned about the decisions being made by the North Pacific Fishing Management Council in regards to the processor two-pie system. We feel that by giving processors guaranteed deliveries of crab; they will be given the power to completely control the industry. The basis for rationalization was to make this fishery safer and reduce the impact on the resource by slowing it down and eliminating the race for fish. We are sure you are aware that statistics show that crab fishing in Alaska is 16 times more dangerous than being a policeman or fireman. We can attest to this by the number of friends we have lost in the Alaskan waters while trying to sustain our livelihood in the crab industry. The concern we have, is for the processors to completely dominate our fishing seasons with very little or no consideration for safety and resource management.

For fishing gear to work efficiently it needs time for undersized crab to leave our gear. To accomplish this the fishery needs to be slowed down. We need this resource not only for us but for future generations.

Dictating delivery dates to satisfy their markets will lead to accidents and unnecessary stress on the resources. Thirty years ago the "Magnuson Act" gave the fisheries back to the American people from foreign interests. By authorizing processor quotas we are essentially giving them back these rights; as most of these companies are foreign controlled.

We have an association of fishermen, Alaska Marketing Association, that bargain for price which has worked well and given us fair prices. As a business entity, it is essential that we maximize our ability to make a profit. In today's market, with limited fish time and sporadic quotas, we need every penny for maintenance, safety and normal day-to-day operational needs. Some vessels are barely keeping their heads above water, and by giving pricing and delivery control to processors, it will force these boats out of business. Some vessels have already been bought up by foreign controlled companies as they try to control this industry. Other fisheries and regions fear processor quotas as they might set a president for all fisheries.

Please do not allow these corporations to dictate our future; we need your help and influence!

Sincerely

  
Vidar Warness

  
Walter Lee

  
Sigmund Ingebretsen

March 25, 2003

In regards to Bering Sea Processor Quota Shares

North Pacific Fishery Management Council  
605 W. 4th Ave. Suite 306  
Anchorage, Alaska 99501-2252

Dear North Pacific Fishery Management Council:

My name is Mimi Tolva, I am part owner of a crab/tender vessel in Homer, Alaska.

Thank you for your tremendous time and effort in the ongoing Bering Sea Crab Rationalization Program. I can only imagine some of the headaches and frustrations you must be dealing with.

There is one aspect of the proposals concerning Processor Quota Shares that I am very concerned about and wanted to bring to your attention. As we know, the anti-trust laws in our country are there to prohibit dominant companies in a particular industry from conspiring with other companies in a manner that could substantially decrease competition. One of the tactics prohibited by these laws is "anti-competitive acquisitions". Any time an exemption from anti-trust laws is requested, this raises very serious questions and concerns.

We must protect our Alaska processors. However, without the need to competitively bid on product, the free market system would collapse. Fishermen MUST be able to negotiate a fair price. Total control by a very few canneries would negatively affect price negotiations for the crab industry, would stifle any new developing crab markets, and also put boat owners/operators at a severe disadvantage when negotiating tender contracts. It reminds me of the "Coal miner/Company Store" scenario.

The A-share/B-share system can work, but not at the 90-10 split ratio that is currently under review. A 10% B-share does not give fishermen enough negotiating power for price. It eliminates competition. Also, with the B-shares representing such a small part of the fishery, their value as a price indicator for the A-shares would be minimalized. I think a system with 50% A-shares and 50% B-shares would be more fair and workable. The Processors would still be protected with a guaranteed amount of product each season. The price would be based on market demand. Harvesters would have the option of selling all of their product to one processor, or taking half of it to a competitor. The processors would have more incentive to actively seek new markets and to offer the best possible price. Also, the balance of B-Shares to A-Shares would provide a better market price indicator at the beginning of each season. A binding arbitration system with unbiased arbitrators would serve to iron out differences. To ensure that this system is protected, the B-Shares must be protected from being bought up in large quantity by any one Processor or its affiliates.

We certainly do not want to put our processors in a financial bind, but neither do we want too much control in the hands of a few big companies. I think this would spell disaster for the industry, and for the free market.

Thank you so much for your time and consideration in this matter.

Sincerely,

Mimi Tolva

Jim Niemela  
Owner, F/V Nor'Quest  
P.O. Box 2382  
Homer, Alaska 99603

March 26,2003

North Pacific Fisheries Management Council  
605 W. 4<sup>th</sup> Ave. Suite 306  
Anchorage, Alaska 99501-2252

RECEIVED  
MAR 26 2003  
N.P.F.M.C

Dear Council Members,

As an owner of a crab fishing vessel that will be greatly impacted by Bering Sea Crab Rationalization, I am compelled to strongly object to the 90-10 ratio split for processor shares that are currently under review.

I am quite willing to share the risk of financial success or failure in the fishing industry with the processing sector as has always been the case. The traditional processors need some element of protection for the financial investment and commitment made to the fishing fleet, industry, and all of the rural communities in western Alaska. But that being said, I think that a 50-50% split ratio would be more fair, very workable, and present the processors with the protection they seek.

The 90-10 split would allow the processors to remove themselves from having to negotiate a fair price for the product that we would be delivering to only them if all other buyers would be forever excluded from the chance to buy our product. It screams anti-trust and the potential for price-fixing. The processors would still be protected with a guaranteed amount of product each season under a 50-50 split. This would allow new markets to more easily develop, new product-forms, and innovation at all levels of the industry.

As a fisherman, I stress the need for a viable, financially stable processing sector, but the 90-10 split would be a disaster for the industry, and the free market.

Thank you for your time in considering this matter, and my concerns on this topic in your deliberations.

Sincerely,

Jim Niemela

Post-It™ brand fax transmittal memo 7671		# of pages ▶ 1
To NPFMC	From Jim Niemela	
Co.	Co.	
Dept.	Phone (907) 235-6775	
Fax # (907) 271-2817	Fax # Same	

**RECEIVED**  
 MAR 26 2003

**N.P.F.M.C**

P.O. Box 664  
 Homer, AK 99603

Reference: Bering Sea Processor Quota Shares

The Honorable Ted Stevens  
 Fax (202) 224-2354

Dear Honorable Ted Stevens,

Thank you for all the time and effort you have put into helping the Bering Sea Crab Fishermen. We understand this is a long and difficult process.

We are writing again in support of the Bill you currently have before Congress on Crab Rationalization and Processor Quota Shares. We understand there has been a sizeable effort to change some aspects of this Bill in regards to Processor Quota Shares. While it may not be the best plan we do believe it to be workable as it is written.

At times Fishermen are either against each other or against the Processor. On this issue we need to come together as Fishermen and Processors and come up with the best solution for all.

The Bill that is written is just a starting block for us to work from. We still have the ability to form how the arbitration process will work. Our understanding is: this will all be done by the North Pacific Management Council once the Bill has passed Congress. What we need now are people to support you and the efforts you have made for the Fishermen and Processors of Alaska. We as Fishermen have to realize without Processors we have no market and Processors without Fishermen have no product. Therefore we have to do what is best for both interest.

If this Bill doesn't pass soon some Fishermen won't have to worry about free markets or binding arbitration. Last year our King Crab opening was 68 hours and the Opilio season was 10 days this year. We have "marathon fisheries" that you fish in any weather and anytime. This isn't good for crew, crab or processor. You wait for days to deliver, some boats have a tremendous amount of dead loss because of the length of time waiting to deliver. We have to be willing to make a change and as we all know change can be very difficult.

Thank you,

*Jimmy Weaver*  
*Susan Weaver*

Jimmy and Susan Weaver  
 Owner Operator  
 Susitna Maritime, Inc

**REPORT OF THE COMMITTEE ON BINDING ARBITRATION  
APRIL 2003 MEETING OF THE NORTH PACIFIC FISHERY MANAGEMENT  
COUNCIL**

The following is intended to update the Council on recent work of the committee and the committee's position on various issues before the Council at this meeting:

**Issues that may require Council action at this time:**

**Nonbinding Fleetwide Formula (Bundy Amendment)**

A consensus of the committee supports this amendment to the arbitration program. A redraft of this provision supported by the committee is attached. This redraft has three differences from the amendment initially proposed: 1) the arbitrator that conducts the pre-season proceeding should be a different person from that conducting the last best offer arbitration proceedings, 2) the non-binding price should be developed as a benchmark identifying product forms and specific delivery timing and location, which could be adapted by participants for their individual delivery needs, and 3) the price should be developed using the arbitration standard adopted by the Council (rather than the specific years and method specified in the amendment included in the Council motion).

**Highest Price Option (Steele Amendment)**

Several committee members expressed an interest in this provision, while acknowledging that refinement of the provision might make it more workable. A working group has met several times to develop a revision of this amendment, which may be presented to the Council by members of the group at the meeting. Some committee members do not support this amendment or any revision developed to date.

**Harvest Share Ownership Cap**

The committee has discussed the issue of harvest share ownership caps and the difference between caps applicable to individuals and those applicable to CDQ groups and processors. The committee expressed a concern that ownership caps for individual harvesters could affect bargaining power and might be in need of review. A review of C share caps was also proposed.

**Allocation and Transfer of B shares**

The committee generally agreed that processor purchase of B shares after the initial allocation could dilute the competitive effect intended by the creation of those shares. The committee, however, recognized that limiting processor purchases could impact independent harvesters with processor affiliations. Some committee members expressed concern about the allocation of B shares to processors and its affect on the 90/10 split and negotiating leverage.

A committee member requested a qualitative analysis of the issue of processor ownership of B shares and the effect on bargaining strength of harvesters. This analysis would consider two issues:

- 1) The implications of allocating only A IFQs to processors or harvesters that are owned or controlled by processors
- 2) prohibition on the acquisition of B IFQs by processors or harvesters that are owned or controlled by processors

The analysis would also include a qualitative analysis of three different standards for determining affiliation:

- 1) AFA standard – the 10 percent standard used for crab side boards
- 2) MARAD standard – 25 percent standard and the MARAD test
- 3) Coast Guard controlling interest standard – greater than 50 percent ownership

The provision would affect the initial allocation to processor affiliates, which would all be in the

form of A QS. Allocations to independent harvesters would be increase to maintain the 90/10 split. Processors could acquire Class B QS from independent harvesters, but any IFQs issued to processors would be Class A IFQs. The 90/10 ratio would be maintained by increasing B IFQ allocations to entities that are not processor affiliates. These Class B QS held by processors would retain the B share designation, so that B IFQ would be issued by to any future QS holder that is an independent harvester. Regional designation of A shares under this option is unclear and would need to be developed.

As a new proposal, the committee did not feel ready to establish a position, but believed that the Council meeting may be an appropriate time to raise the issue again. The provision could be analyzed for the June meeting, for possible incorporation into the EIS after that meeting.

#### **Issues that do NOT require Council action at this time:**

Department of Justice Antitrust Division Opinion on the Program. Some committee members expressed reservations with the Council fully defining the arbitration program in advance of receipt of the Department of Justice opinion on antitrust. Committee members expressed the opinion that the Council should consider that antitrust opinion prior to finalizing the rationalization program and release of the EIS to the public.

#### **Deadloss Reserve**

The committee discussed the issue of deadloss and reached a consensus that managers should take an aggregate deadloss reserve off the top before allocating IFQs to harvesters and processors. The deadloss reserve would be an estimation of the deadloss of the entire fleet and would be subject to annual adjustment based on past performance, TAC, stock conditions, and other relevant factors. The deadloss reserve should be set to include both acceptable deadloss and catastrophic deadloss. Individuals would be permitted to catch their entire allocation without deduction for deadloss (except in the case of violations of specific fishing standards other than deadloss limitations). Individual accountability would be accomplished through cooperative contracts. It should be noted that individuals will have an incentive to avoid excessive deadloss since overharvests are forfeited (and in extreme cases penalized) and an additional fishing trip to replace deadloss amount is costly. ADF&G staff has raised concerns about this proposal. Committee members hope to meet with ADF&G staff to discuss the deadloss reserve issue during this meeting.

#### **Division of Revenues**

A working group has met several times to discuss the collection of data and the analysis of that data necessary to establish the historic division of revenues necessary for the implementation of the arbitration standard. The workgroup is currently developing a protocol for the collection and analysis of data (using both data collected by the industry and public data) for review by the committee, as a whole.

#### **Dockside Dispute Resolution**

A working group developed a provision that is intended to address dockside disputes. The working group agreed that the dispute should be evaluated by a third party with relevant expertise during or after production. In addition, the committee discussed the development of a number two crab allowance for deliveries to minimize disputes and to reduce incentives to high grading. The committee discussed the problem of setting a uniform standard for quality grades because of the differences in buyers grading standards and changes in standards with market demands. The workgroup and committee will continue to work on this issue.

**NON-BINDING ANNUAL ARBITRATION**

(The Bundy Amendment)

DRAFT

3-20-03

The following is offered as language for the Bundy amendment incorporating what the Council passed and the consensus of the Committee:

There will be a single annual fleet-wide arbitration to establish a non-binding formula under which a fraction of the weighted average first wholesale prices for the crab products from each fishery may be used to set an ex-vessel price. The formula is to be based on the historical distribution of first wholesale revenues between fishermen and processors, taking into consideration the size of the harvest in each year. The formula shall be in the form of a benchmark price including identification of various factors such as product form, delivery time and delivery location. The non-binding arbitration shall be based upon the Standard for Arbitration set out in the February 2003 Council motion, Item 1 including a. through i. The arbitrator in the non-binding arbitration shall not be an arbitrator in the last best offer binding arbitration(s).



6 March 2003

**Concerns from Staff at Alaska Department of Fish and Game over consideration of a fleet-wide deadloss reserve as proposed by the Binding Arbitration Committee.**

- 1) Loss of IFQs is likely the strongest incentive for deadloss reductions by individuals. A fleet-wide deadloss reserve will remove that individual incentive replacing it with a much less powerful incentive (i.e., the need for an additional trip to replace the deadloss, if a cooperative approach doesn't adequately address deadloss).
- 2) The fleet-wide deadloss reserve will increase the burden on regulators. The TAC setting process will also include calculation of the deadloss reserve, which is likely to add another controversial element to the process.
- 3) The fleet-wide deadloss reserve rewards high deadloss operations at the expense of low deadloss operations.
- 4) The fleet-wide deadloss reserve could contribute to closures in years of low abundance. In years with depressed stocks, the deadloss reserve could be the cause of a closure.
- 5) Harvesters and processors should be capable of addressing deadloss in their contractual relationships. Contracts frequently address non-performance issues that are similar to accidental deadloss.
- 6) The concept of a fleet-wide deadloss reserve is inconsistent with the rationalization problem statement's intent to address conservation and deadloss and with the requirement of National Standard 9 to minimize bycatch and the mortality of such bycatch within the crab rationalization program."

## Community Protection Committee Recommendations – February 19, 2003

### **Community Purchase and Right of First Refusal Options**

The committee believes that communities need an effective right of first refusal on any shares sold for use outside of the community. The committee believes that the following provisions should be included in the right of first refusal:

#### **1. General Right of First Refusal**

For communities with at least three percent of the initial PQS allocation in any BSAI crab fishery based on history in the community except for those communities that receive a direct allocation of any crab species (currently only Adak), allow CDQ groups or community groups representing qualified communities a first right of refusal to purchase processing shares that are based on history from the community which are being proposed to be sold for processing outside the boundaries of the community of original processing history in accordance with the provisions below.

#### Entity Granted the Right of First Refusal

The right of refusal shall be established by a contract entered into prior to the initial allocation of PQS which will contain all of the terms specified in paragraphs A through I below. The contract will be between the recipient of the initial allocation of the PQS and:

- 1) the CDQ group in CDQ communities
- 2) the entity identified by the community in non-CDQ communities.

In non-CDQ communities, the community must designate the entity that will represent the community at least 90 days prior to the deadline for submission of applications for initial allocations of PQS.

#### Contract Terms

- A. The right of first refusal will apply to sales of the following processing shares:
  1. PQS and
  2. IPQs, if more than 20 percent of a PQS holder's community based IPQs (on a fishery by fishery basis) has been processed outside the community of origin by another company in 3 of the preceding 5 years.
- B. Any right of first refusal must be on the same terms and conditions of the underlying agreement and will include all processing shares and other goods included in that agreement.
- C. Intra-company transfers within a region are exempt from this provision. To be exempt from the first right of refusal, IPQs must be used by the same company. In the event that a company uses IPQs outside of the community of origin for a period of (two options):
  1. 3 consecutive years
  2. 5 consecutive years

the right of first refusal on those processing shares (the IPQs and the underlying PQS) shall lapse. With respect to those processing shares, the right of first refusal will not exist in any community thereafter.

D. Any sale of PQS for continued use in the community of origin will be exempt from the right of first refusal. A sale will be considered to be for use in the community of origin if the purchaser contracts with the community to:

1. use at least 80 percent of the annual IPQ allocation in the community for 2 of the following 5 years (on a fishery by fishery basis), and
2. grant the community a right of first refusal on the PQS subject to the same terms and conditions required of the processor receiving the initial allocation of the PQS.

E. All terms of any right of first refusal and contract entered into related to the right of first refusal will be enforced through civil contract law.

F. A community group or CDQ group can waive any right of first refusal.

G. The right of first refusal will be exercised by the CDQ group or community group by providing the seller within 60 days of receipt of a copy of the contract for sale of the processing shares:

1. notice of the intent to exercise and
2. earnest money in the amount of 10 percent of the contract amount or (two options)
  - a. \$250,000 or
  - b. \$500,000whichever is less.

The CDQ group or community group must perform all of the terms of the contract of sale within the longer of:

1. 120 days of receipt of the contract or
2. in the time specified in the contract.

H. The right of first refusal applies only to the community within which the processing history was earned. If the community of origin chooses not to exercise the right of first refusal on the sale of PQS that is not exempt under paragraph D, that PQS will no longer be subject to a right of first refusal.

I. Any due diligence review conducted related to the exercise of a right of first refusal will be undertaken by a third party bound by a confidentiality agreement that protects any proprietary information from being released or made public.

## **2. GOA First Right of Refusal**

For communities with at least three percent of the initial PQS allocation of any BSAI crab fishery based on history in the community that are in the area on the Gulf of Alaska north of 56°20'N latitude, groups representing qualified communities will have a first right of refusal to purchase processing quota shares which are being proposed to be transferred from unqualified communities in the identified Gulf of Alaska area.

The entity granted the right of first refusal and terms and method of establishing the right of first refusal will be the same as specified in the general right of first refusal.

## **3. Community Purchase Option**

Allow for a community organization in those communities that have at least 3 percent of the initial PQS allocation of any BSAI crab fishery based on history in the community to be exempted from the restriction for the 150 days of sea time requirement under 1.6 Transferability and Restrictions on Ownership of QS.

#### **4. Identification of Community Groups and Oversight**

For CDQ communities, CDQ groups would be the entity eligible to exercise any right of first refusal or purchase shares on behalf of the community. Ownership and management of harvest and processing shares by CDQ groups will be subject to CDQ regulations.

For non-CDQ communities, the entity eligible to exercise the right of first refusal or purchase shares on behalf of a community will be identified by the qualified city or borough, except if a qualified city is in a borough, in which case the qualified city and borough must agree on the entity. Ownership and management of harvest and processing shares by community entities in non-CDQ communities will be subject to rules established by the halibut and sablefish community purchase program.

# PUBLIC TESTIMONY SIGN-UP SHEET FOR AGENDA ITEM C-2 CRAB RATZ.

PLEASE SIGN ON THE NEXT BLANK LINE.  
LINES LEFT BLANK WILL BE DELETED.

	NAME	AFFILIATION
1.	<del>Gordon Blue</del> / Earl Comstock	CRAB Group
2.	Mimi Tolva	Crab boat owner
3.	Jake Jacobsen	Alaska Marketing Assn.
4.	Joe Sullivan	Mundt Mac
5.	Kevin Kennedy / Row P	TDX Corp / Anderson plant group
6.	<del>Dennis Austin</del>	<del>WDFW</del>
7.	John GARNER	North Pacific Crab Assn
8.	TOM CASEY	AFCA
9.	Gary Johnson	Peter Pan Seafoods
10.	Kelly / Minor / Malachuk / Swethoff	Communities
11.	Alicia Thompson	A.C.C.
12.	FERRY LEITZEL	ICICLE
13.	Gary Painter	FIV Trailblazer
14.	<del>DAVE WOODRUFF</del>	
15.		
16.		
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25.		

C-2  
Mimi Tolva

April 03, 2003

My name is Mimi Tolva, I am from Homer and have a financial interest in a Bering Sea crab vessel.

In regard to the Bering Sea/Aleutian Island Crab Rationalization Program, I am very concerned about the imbalance of the 90/10 percent split ratio of Processor Quota Shares.

In reading the North Pacific Fishery Management Council's letter to U.S Senators and Representatives, I feel that many of the Council's goals, intent and objectives are not being met as a result of this imbalance.

Here are some direct quotes from the Council's letter:

"The crab fisheries in the Bering Sea/Aleutian Islands require this innovative, comprehensive management approach to adequately recognize and protect the interests of all participants."

"The competing interests of harvesters and processors are balanced by allocating different portions of the total harvest to the two sectors."

"The issuance of Class B shares is intended to provide harvesters with additional market leverage for negotiating prices for landings of crab. The ratio of Class A shares to Class B shares is intended to balance the interests of processors and communities in continuing participation in the fisheries with the interest of harvesters in having a free market in which to sell harvests."

"These allocations to processors are intended to protect processor investment in the fisheries and balance the bargaining power of processors with harvesters."

Leaving the remaining 10 percent of processing unallocated, and therefore deliverable to any processor is intended to strike a balance of bargaining power between the harvesting and processing sectors. In addition, this unallocated 10 percent of processing would allow entry into that sector."

How many people really think that a 10% B-share ratio is going to strike this balance and achieve these objectives? The 90/10 split does not fulfill the original intent of Class B shares in providing market leverage for harvesters. It does not protect the free market system. It puts harvesters at a terrible disadvantage, is anti-competitive, and will eliminate or severely curtail opportunities for small businesses to enter the processing sector.

I, and many, many other fishermen and people affected by the fishery feel that harvesters will be unable to negotiate for a fair price if we are forced to deliver 90% of catch to certain processors. Maybe our processors do need to be protected; if so, then I support that, but not at the expense of the harvesters and the free market system. I am not advocating a system that gives unfair advantage to either processors or harvesters.

A 50/50 ratio would better meet the objectives outlined by the Council. It would protect the processors, and the interests of all participants, provide the balance needed for such a program, and provide a better market indicator at the beginning of each season. (As outlined on page 18 of the trailing amendment.)

With such an obvious imbalance, will Congress want to pass this into law? Will Congress support a document that has such conflict with Federal antitrust laws? Will Congress even want to touch something that stinks so bad? I'm sure the Council, Advisory Panel, Committees, and everyone involved in this process do not want to start all over. Maybe a more balanced, fair Processor Quota Share ratio will encourage Congress to look favorably on this proposal.

I ask the Council to please reconsider this Processor Quota Share ratio.

Sincerely,

Mimi Tolva  
Box 2117  
Homer, Alaska 99603

C-2  
Jake  
Jacobsen

Mr. Chairman, Members of the Council –

My name is Jake Jacobsen and I represent the Alaska Marketing Association, the collective bargaining association of Bering Sea crab fishermen.

My comments today are in regard to the Steele Amendment of the Last-Best Offer arbitration plan, the Council's preferred alternative.

The Last-Best plan has serious and unacceptable inequities that the Steele Amendment attempts to address.

The fact is that not all processors are created equal. Certain of the processors have higher operating costs. Some may be owned by foreign interests that influence marketing decisions and sales price. The nature of their organization and ownership make them "price weak" for valid reasons that will be reflected in their winning arbitration awards.

Last Best arbitration will result in a variety of prices. Eventually harvesters will avoid share matching with "price weak" processors and will compete with each other for contracting with "price strong" processors resulting in a downward pressure on ex-vessel prices.

The following example will illustrate one of many ways this may happen:

Processor "A" has an efficient plant and strong sales force. Not surprisingly, they have a history of strong price offers to the AMA. They win an arbitration award at \$1.15.

Processor "C" as a less efficient plant and weak sales force – not surprisingly, their price offers to the AMA have been consistently low (if they make one at all). They successfully demonstrate to the arbitrator that they can only pay 80 cents.

Harvester "X" has a long delivery history with processor "C" but has wisely chosen to keep his shares uncommitted. He informs "A" that he wants to opt in to "A's" arbitration result. "A" has uncommitted shares but since the opt in provision is ambiguous and loosely written, "A" has been collecting "opt-in" tenders, and informs "X" that 20 other boats also want to opt-in and instead offers him a contract at \$1.00. He takes it.

His buddy Harvester "Y" is too late. All of "A's" shares are matched. Indignant, he refuses to crawl back to "C" and fails to match his share. The season starts. "Y" has no price. "C" is the only processor with unmatched shares, but "Y" can no longer opt in to "C's" arbitration award. "C" does him a favor by offering him a contract at 60 cents. Right after the season, he runs over to "A" and signs a contract for the next season for the Bundy arbitration price minus 10 cents.

Re-running the scenario with the Steele Amendment produces the following result:

"X" and "Y" reject "C's" low-ball contract, but now they have incentive to arbitrate with "C". "A" is awarded \$1.15 but they only control 3% of the IPQ. Processor "B" has an arbitrated price of \$1.00 with 4% of the IPQ. "C" is awarded 80 cents, but Steele kicks in and the minimum price is set a \$1.00.

"X" and "Y" decide to stay with "C" because they are getting the same arbitrated price as 97% of the fleet. The next year "C" offers them fair contracts, consistent with everybody else and they don't even have to go to arbitration.

Those opposed to the Steele Amendment center their arguments around a false assumption. They claim that special circumstances will not be given consideration. The Steele Amendment is subject to the Standards of Arbitration. The Steele arbitrator may (at his discretion) apply adjustments, but he will apply them to the Steele benchmark price.

Processors have a distinct advantage in the final best offer scheme. They are one unit, arbitrating with a captive and potentially fractioned group of harvesters, many of whom may have allegiances in the form of tender contracts or outstanding loans.

Binding arbitration was intended to be a "fail safe" mechanism, but last best offer without Steele is sure to fail and anything but safe.

A representative of one of the larger processors offered testimony before the AP that if one major processor had an arbitration award of \$1.15 and his processor received an arbitration award of 80 cents, all else being equal, he would feel no obligation to match the \$1.15.

This attitude is exactly what harvesters are seeking protection against via the Steele amendment. Who would want to arbitrate with such a processor? If there ever were a disincentive to arbitrate, it is that very attitude. Harvesters would be foolish to risk arbitration with a price weak processor, but will rather withhold their IFQ and try to force a fair contract through strikes.

Arbitration is intended to bring stability to the fishery but final best offer arbitration without Steele will have the opposite effect. Ex-vessel price disparity will result in a penalty to efficient processors who will be less competitive in the secondary market.

Last Best Offer arbitration is an open sore. Steele is a bandage. It won't heal the wound by it will help stop the bleeding.



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April 4, 2003

**ALASKA CRAB COALITION TESTIMONY  
ON THE NPFMC ARBITRATION ANALYSIS, "HIGHEST PRICE OPTION"  
(ALSO KNOWN AS THE STEELE AMENDMENT)**

Reference: BSAI Crab Rationalization Program Trailing Amendments, April 2003,  
pages 31-34.

**RECOMMENDATIONS:**

The ACC supports the inclusion of the Bundy and Steele (highest best offer) arbitration amendments to the crab rationalization arbitration process. The ACC also supports the linkage of A and B shares to prevent the erosion of harvester ownership of B shares and the long term negative effects this can have on market price competition.

**INTRODUCTION:**

The April 2nd, Advisory Panel revised version of the Steele amendment continues to rely on the original concept that an arbitrated price finding must apply to 7% of the fishery's IPQs, to qualify as a minimum fleetwide arbitrated price. This proposal allows for aggregation of the arbitration decisions of no more than three companies to achieve the 7% standard and it can result in less than the highest arbitrated price being used, as the highest arbitrated price may only be from one company that holds only 2-3% of the IPQs, so a second or third lower price may become the highest arbitrated price—for all three companies.

**Steele Amendment (Highest Best Offer):**

**BINDING ARBITRATION**, to develop a binding minimum fleet-wide price for arbitrated prices. To be inserted under Process, item #4, Arbitration Decisions, paragraph two.

**The arbitrator, in making the last best offer pre-season arbitration decision will review all of the arbitration decisions for that season and select the highest arbitrated price for a minimum of at least 7 per cent of the market share of the PQ. This provision allows for the aggregation of no more than three arbitration findings, that collectively equal a minimum of 7 per cent of the PQS, to be considered for the highest price for purposes of this provision. If arbitration findings are aggregated with two or more entities, then the lesser of the arbitrated prices of the aggregated entities included to attain the 7 per cent minimum market share of PQ, shall become the minimum fleet-wide price, for all arbitrated prices of that season.**

The following example illustrates the basic concept of the above provision:

Arbitrated prices:

Company A	3% of PQ	\$1.05
Company B	5% of PQ	1.00
Company C	25% of PQ	.96

Under the provision of aggregated findings to meet the minimum 7% standard in the Steele amendment, the highest arbitrated price is \$1.05. In this case A and B combined would pay a minimum benchmark price of \$1.00. In reality, company A will be paying its fleet \$1.05 and company C will be paying the minimum fleet-wide price of \$1.00.

Despite criticisms of the Steele amendment that it is unworkable, it is workable—and not unreasonable. It is modeled after the AMA's present day practices of negotiating prices. Price negotiations today include variances to take into consideration different locations. The variances are verifiable in the historical record. The minimum price is normally based on offers in Dutch Harbor, and Akutan is customarily the same. Variations on the Dutch Harbor price are made for deliveries to the Pribilof Islands, King Cove and Kodiak.

**The Steele amendment has been revised several times by harvesters, in an effort to accommodate the concerns of processors. Major concerns of the processors have now been addressed, and they include leveraging B shares to raise the price of A shares; the Steele process encouraging the entire fleet to arbitrate every year; failure of the Steele amendment to allow for adjustments to a fleetwide price to allow for variances due to timing and location of deliveries. These are addressed in this comment.**

#### THE PROBLEM WITH THE ASSUMPTIONS IN THE ANALYSIS:

The Council analysis, critique and conclusions about the Steele amendment reflect a number of the processors' concerns. However, the criticisms and the conclusions are hypothetical and inaccurate. Below are ACC comments on the assumptions in the analysis, most of which have been discussed in Arbitration Committee meetings.

- The criticisms and conclusions rely heavily on the assumption that most harvesters will join a single collective bargaining association and they will squeeze all the rents out of the processors with the negotiation process envisioned in the Steele amendment. The assumption is the harvesters collective will leverage a large percentage of the B shares and pledge all of them to the highest bidder and that all processors will pay the highest price in order to get the B shares.
- This generalized assumption ignores the chaotic history of the Bering Sea crab fleet and the fact that seldom do more than 40-50% of the permit holders support the Alaska Marketing Association. It also ignores the fact that a large number of harvesters have established long term market arrangements with a single processor, with whom they will likely continue to do business with in the future under rationalization, with or without the assistance of the AMA.
- **In addition, this assumption ignores a major premise of the standards for arbitration —namely that arbitration is for A shares only. Processors can outright refuse to discuss B shares as a contingency for purchase of A shares, and that is more likely what will occur, if a collective bargaining**

**association tries to leverage up the price of A shares, by combining them with B shares. With 90% of production guaranteed to the major processing entities, why would processors allow fishermen to bid the price of A shares up to the price of B shares and thus allow fishermen to squeeze all the profits or rents away from the processing sector?**

- **This generalization also does not take into consideration that the 10% open access B shares, in addition to the intent to insure price competition for harvesters, is intended to encourage small processors to grow and for the entry of new processors into the business who have no PQS. If the general assumption that fishermen will leverage all their B shares to raise the price of A shares is a de facto conclusion of arbitration under the Steele amendment, then one must also conclude that no B share crab sales will occur outside the major IPQ holders. If this occurs, then one can also conclude that small crab buyers will, in short order, petition the NPFMC under the terms of the review process, for redress and modification of the program.**

#### **RESPONSES TO THE FIVE PROBLEMS IDENTIFIED IN THE ANALYSIS:**

**The analysis notes that use of the Steele amendment to develop a single fleet-wide price for all deliveries could pose several problems. The problems identified are hypothetical in nature and inaccurate.**

1. **If the system works as intended, all deliveries in the fishery would be arbitrated.**
  - **This statement assumes the AMA is trying to institute a mandatory arbitration system to squeeze all the rents out of the fishery. The AMA does not want to arbitrate, it is too cumbersome and costly, and the AMA does not have the financial backing to rely on this strategy.**
  - **There is no guarantee the arbitrated price will be higher than a pre-season negotiated price. It could just as well be lower.**
  - **This statement flies in the face of the success of the AFA Pollock cooperatives and the cooperation that has developed between fishermen and processors.**
  - **There are numerous economic incentives to form cooperatives as early as possible, beginning with the ability to stack QS on cooperative vessels. The provision for stacking is otherwise limited to 2% of total QS per vessel for non-coop vessels.**
  - **Early negotiation of prices and delivery terms optimizes profitability for vessel owners as well as processors. Waiting until the last remaining days before the season opening date interferes with market planning and it will reduce fishermen's profitability.**
2. **Predatory price competition amongst processors to drive processor competitors out of business:**
  - **This criticism suggests the Steele amendment is a problem in an arbitration system because it does not protect the processors from themselves. However, with twelve processing entities in control of**

**90% of the production through processor shares, the original intent of the arbitration system was to insure a fair market price for fishermen.**

- This problem exists today under the existing open access system. Processing companies are in some cases, already being purchased and facilities closed down and left dormant. Startup costs and construction costs for new facilities in the Alaska seafood industry are almost prohibitive today. Big processors outpricing small competitors to drive them out of business, the analysis notes, “cannot be predicted.” However, this concern is listed as the number two problem with the Steele amendment.
  - It seems highly unlikely given the market competition and long standing rivalry between the major crab processing companies that this will occur. Are either Peter Pan, UNISEA, Westward, or Trident in our lifetime going to throw in the towel to any of their competitors? It is probable they may be able to buy out some of their smaller competitors, but other seafood companies, like Ocean Beauty, that are not currently involved in BSAI crab, might also buy into the industry.
3. This point goes into great detail to illustrate that the “highest price” system is contrary to the potential benefits of the “last best offer” arbitrations which can address individual circumstances of harvesters and processors attempting to agree to delivery terms.

**However, the arguments contained here not only ignore present day AMA practices, but ignore the Council approved standards in the arbitration process. The standards specifically include consideration of terms, timing and location of deliveries, which are an integral part of the NPFMC Arbitration motion adopted at the February Council meeting :**

- **Item #1, Standard for Arbitration, page 1;**
- **Under the general characteristics of Last Best Offer Binding Arbitration, item #6, Lengthy Season Approach, page 3;**
- **And, under item #4 Arbitration Decisions, paragraph one.**

**These provisions apply to the Steele amendment.**

4. The fleet-wide approach of using a single harvester collective to the arbitration that is likely to drive the arbitration outcome to the highest price is likely to be very confrontational.
- Where or what in the analysis or the present day situation of doing business in the industry leads to a verifiable conclusion there will be a single harvester collective representing fishermen? As already mentioned in the introduction, the present day AMA is supported by no more than 40-50% of the harvesters at any one time. The rest of the vessel owners refuse to cooperate and financially support the AMA. Many of the fishermen are substantial QS holders and highly skilled businessmen with

sophisticated negotiating skills and do not feel they need the assistance of the AMA.

- Arbitration will likely be confrontational at the outset under any circumstances. That is why fishermen and the AMA, will have the incentive to negotiate pre season contracts, and avoid arbitration. Arbitration is also costly, and processors are in a better financial position to subsidize arbitration costs than small groups of fishermen.
- **Without the Steele amendment, the AMA foresees widespread unrest and confrontation between fishermen and processors if there are several arbitrated prices, rather than a minimum fleetwide arbitrated price.**

5. Some participants are concerned that arbitration can occur relatively close to the season opening.

- If you use a formula, as proposed in the Bundy amendment, it does not matter what the market price is at the start of the season, versus the market price a few months prior to the season opening date. Adjustments are implicit in the language of the approved arbitration process.
- Any delay caused by arbitration does not prevent the harvester from going fishing in a timely manner. Fishing and deliveries can be made with an advance price, with the final price being settled after deliveries are completed, a practice that is conducted in numerous fisheries in Alaska today.

Arni Thomson,  
Executive Director  
Alaska Crab Coalition

4-2-03

**ADVISORY PANEL MOTION-BSAI CRAB BINDING ARBITRATION, BOTH AMENDMENTS WERE APPROVED**

**1. Bundy Amendment**

**NON-BINDING ANNUAL ARBITRATION: To be inserted under Binding Arbitration System, item #2, Market Report, paragraph two.**

There will be a single annual fleet-wide arbitration to establish a non-binding formula under which a fraction of the weighted average first wholesale prices for the crab products from each fishery may be used to set an ex-vessel price. The formula is to be based on the historical distribution of first wholesale revenues between fishermen and processors, taking into consideration the size of the harvest in each year. The formula shall be in the form of a benchmark price including identification of various factors such as product form, delivery time and delivery location. The non-binding arbitration shall be based upon the Standard for Arbitration set out in the February 2003 Council motion, Item 1 including a. through i. The arbitrator in the non-binding arbitration shall not be an arbitrator in the last best offer binding arbitration(s).

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**2. Steele Amendment**

**BINDING ARBITRATION, to develop a binding minimum fleet-wide price for arbitrated prices. To be inserted under Process, item #4, Arbitration Decisions, paragraph two.**

The arbitrator, in making the last best offer pre-season arbitration decision will review all of the ZS arbitration decisions for that season and select the highest arbitrated price for a minimum of at least 7 per cent of the market share of the PQ. This provision allows for the aggregation of no more than three arbitration findings, that collectively equal a minimum of 7 per cent of the PQS, to be considered for the highest price for purposes of this provision. If arbitration findings are aggregated with two or more entities, then the lesser of the arbitrated prices of the aggregated entities included to attain the 7 per cent minimum market share of PQ, shall become the minimum fleet-wide price, for all arbitrated prices of that season.

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The following example illustrates the basic concept of the above provision:

Arbitrated prices:

Company A	3% of PQ	\$1.05
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Company C	25% of PQ	.96

Under the provision of aggregated findings to meet the minimum 7% standard in the Steele amendment, the highest arbitrated price is \$1.05. In this case A and B combined would pay a minimum benchmark price of \$1.00. In reality, company A will be paying its fleet \$1.05 and company C will be paying the minimum fleet-wide price of \$1.00.

## NPFMC, Arbitration Motion, for a Preferred Alternative, February 2, 2003

### Binding Arbitration System

#### 1. The Standard for Arbitration

The primary role of the arbitrator shall be to establish a price that preserves the historical division of revenues in the fisheries while considering relevant factors including the following:

- a. Current ex vessel prices (including prices for Class A, Class B, and Class C shares recognizing the different nature of the different share classes)
- b. Consumer and wholesale product prices for the processing sector and the participants in the arbitration (recognizing the impact of sales to affiliates on wholesale pricing)
- c. Innovations and developments of the different sectors and the participants in the arbitration (including new product forms)
- d. Efficiency and productivity of the different sectors (recognizing the limitations on efficiency and productivity arising out of the management program structure)
- e. Quality (including quality standards of markets served by the fishery and recognizing the influence of harvest strategies on the quality of landings)
- f. The interest of maintaining financially healthy and stable harvesting and processing sectors
- g. Safety
- h. Timing and location of deliveries
- i. Reasonable underages to avoid penalties for overharvesting quota and reasonable deadloss

#### 2. Market Report

An independent market analyst selected by the mutual agreement of the sectors will present to both sectors and all designated arbitrators an analysis of the market for products of that fishery.

#### 3. Selection of the Arbitrator(s) and Market Analyst

The market analyst and arbitrator(s) will be selected by mutual agreement of the PQS holders and the QS holders. PQS holders collectively must agree and QS holders collectively must agree. Processors may participate collectively in the selection process. The details of the selection will be decided at a later time.

#### 4. Shares subject to binding arbitration

This binding arbitration system shall address price disputes between holders of delivery restricted IFQ (including Class A IFQ and Class C IFQ when subject to delivery restrictions) and holders of IPQ. Binding arbitration does not apply to the negotiation of price for

deliveries under the class B IFQ and Class C IFQ when not subject to delivery restrictions. C share holders, however, may elect to participate in the arbitration process prior to delivery restrictions taking effect.

**5. Shares of processor affiliates**

Participation of processor affiliates in binding arbitration as IFQ holders will be determined by any applicable rules governing anti-trust. Any parties eligible for collective bargaining under the Fishermen's Marketing Act of 1934 will be eligible to participate in binding arbitration. No antitrust exemption should be made to enable processor affiliated IFQ holders to participate in arbitration.

**6. Payment of the arbitration and market analysis**

The payment for the market analysis and the arbitrators will be shared by the two sectors. Cost shall be shared by all participants in all fisheries.

For shared costs, the payment of those costs shall be advanced by IPQ holders. The IPQ holders will collect the IFQ holders' portion of the shared costs by adding a pro rated surcharge to all deliveries of Class A crab.

**7. Quality dispute resolution**

In cases where the fisherman and the processor cannot come to agreement on quality and thus price for crab, two mechanisms are suggested for resolving the price dispute-after the processor has processed the crab (to avoid waste from the dumping the load at sea): (1) In cases where fishermen and processors have agreed to a formula based price, the two parties would take their normal shares of the price, after the disputed load is sold. (2) This type of dispute would most likely apply in cases where fishermen desire to stay with fixed dockside prices and there is disagreement on quality and therefore price. These cases could be referred to an independent quality specialist firm. The two parties in dispute would decide which firm to hire.

**8. Data used in arbitration**

Under any arbitration structure, the arbitrator must have access to comprehensive product information from the fishery (including first wholesale prices and any information necessary to verify those prices).

Processors may participate in common discussions concerning historical prices in the fisheries.

Subject to limitations of antitrust laws and the need for proprietary confidentiality, all parties to an arbitration proceeding shall have access to all information provided to the arbitrator(s) in that proceeding.

Data collected in the data collection program may be used to verify the accuracy of data provided to the arbitrator(s) in an arbitration proceeding. Any data verification will be undertaken only if the confidentiality protections of the data collection program will not be



compromised.

#### 9. Enforcement of the Arbitration Decision

The decision of the arbitrator will be enforced by civil damages

#### 10. Oversight and administration of the Binding Arbitration system.

Oversight and administration of the binding arbitration should be conducted in a manner similar to the AFA cooperative administration and oversight. System reporting requirements and administrative rules should be developed in conjunction with the Council and NOAA Fisheries after selection of the preferred program.

The structure for the system of Binding Arbitration system shall be as described below:

### LAST BEST OFFER BINDING ARBITRATION

#### GENERAL

The Last Best Offer Model provides a mechanism to resolve failed price and delivery negotiations efficiently in a short period before the opening of the season. The Model includes the following specific characteristics:

1. **Processor-by-processor.** Processors will participate individually and not collectively, except in the choice of the market analyst and the arbitrator/arbitration panel.
2. **Processor-affiliated shares.** Participation of processor-affiliated shares will be limited by the current rules governing antitrust matters.
3. **Arbitration standard.** The standard for the arbitrator is the historic division of revenues between harvesters and processors in the aggregate (across the entire sectors), based on arm's-length first wholesale prices and ex-vessel prices (Option 4 under "Standard for Arbitration" in the staff analysis). The arbitrator shall consider several factors including those specified in the staff analysis, such as current ex vessel prices for both A, B and C Shares, innovations, efficiency, safety, delivery location and timing, etc.
4. **Opt-in.** An IFQ holder may opt in to any contract resulting from a completed arbitration for an IPQ holder with available IPQ by giving notice to the IPQ holder of the intent to opt in, specifying the amount of IFQ shares involved, and acceptance of all terms of the contract. Once exercised, an Opt-in is binding on both the IPQ holder and the IFQ holder.
5. **Performance Disputes.** Performance and enforcement disputes (e.g. quality, delivery time, etc.) initially will be settled through normal commercial contract dispute remedies. If those procedures are unsuccessful, the dispute will be submitted for arbitration before the arbitrator(s). If those procedures are unsuccessful and in cases where time is of the essence, the dispute will be submitted for arbitration before the arbitrator(s). The costs of arbitration shall be paid from the fees collected, although the arbitrator(s) will have the right to assign fees to any party for frivolous or strategic complaints.
6. **Lengthy Season Approach.** For a lengthy season, an IPQ holder and an IFQ holder (or group of IFQ holders) may agree to revise the entire time schedule below and could agree to arbitration(s) during the season. That approach may also be arbitrated pre-season if the holders cannot agree.

## PROCESS

### 1. Negotiations and Voluntary Share Matching.

At any time prior to the season opening date, any IFQ holders may negotiate with any IPQ holder on price and delivery terms for that season (price/price formula; time of delivery; place of delivery, etc.). If agreement is reached, a binding contract will result for those IFQ and IPQ shares. IPQ holders will always act individually and never collectively, except in the choice of the market analyst (which may occur at any time pre-season) and the arbitrator/arbitration panel for which all IFQ and IPQ holders will consult and agree.

### 2. Required Share-Matching and Arbitration.

Beginning at the 25-day pre-season point, IFQ holders may match up IFQ shares not already subject to contracts with any IPQ shares not under contract, either as collective groups of IFQ holders or as individual IFQ holders (the offered IFQ Shares must be a substantial amount of the IFQ Holder(s)' uncontracted shares). The IPQ holder must accept all proposed matches up to its non-contracted IPQ share amount. All IFQ holders "matched" with an IPQ holder will jointly choose an arbitrator with that IPQ holder. The matched share holders are committed to the arbitration once the arbitrator is chosen (if the parties wish, the arbitrator may initially act as a mediator to reach an agreement quickly). Arbitration must begin no later than 15 days before the season opening date.

### 3. Data.

The Arbitrator will gather relevant data independently and from the parties to determine the historical distribution of first wholesale crab product revenues (at FOB point of production in Alaska) between harvesters and processors in the aggregate (across the entire sectors). For a vertically integrated IPQ holder (and in other situations in which a back-calculation is needed), the arbitrator will work with that IPQ holder and the IFQ holders to determine a method for back-calculating an accurate first wholesale price for that processor. The Arbitrator will receive a pre-season market report from the market analyst, and may gather additional data on the market and on completed arbitrations. The Arbitrator will also receive and consider all data submitted by the IFQ holders and the IPQ holder. The Arbitrator will not have subpoena power.

### 4. Arbitration Decisions.

Arbitration will be based on a "last best offer" system, with the Arbitrator choosing one of the last best offers made by the parties. The Arbitrator will work with the IPQ and IFQ holders to determine the matters that must be included in the offer (e.g. price, delivery time & place, etc.) and will set the date on which "last best offers" must be submitted. The last best offers may also include a price over a specified time period, a method for smoothing prices over a season, and an advance price paid at the time of delivery.

If several groups or individual IFQ Holders have "matched" with that IPQ Holder, each of them may make a last best offer. Prior to submission of the last-best offers, the Arbitrator may meet with parties, schedule joint meetings, or take any actions aimed at reaching agreement. The Arbitrator will notify the IPQ holder and the IFQ holders of the Arbitration Decision no later than 10 days before the season opening date. The Arbitration Decision may be on a formula or ex-vessel price basis. The Arbitration Decision will result in a contract for the IPQ holder and the IFQ holders who participated in arbitration with that IPQ holder.

5. **Post-Arbitration Opt-In.**

Any IFQ holder with shares not under contract may opt in to any contract resulting from an Arbitration Decision for an IPQ holder with IPQ that is not under contract, on all of the same contract conditions (price, time of delivery, etc.). If there is a dispute regarding whether the "opt in" offer is consistent with the contract, that dispute may be decided by the arbitrator who will decide only whether the Opt-in is consistent with the contract.

6. **Formula and Prices.**

Throughout the year, the market analyst will survey the crab product market and publish periodically a composite price. That price will be a single price per species, based on the weighted average of the arm's length transactions in products from that species.

**These Additional Modifications will be considered by the Arbitration Work Group and recommendations will be made to the NPFMC for the April 2003 meeting.**

7. **Additional Modifications.**

a. **(Steele amendment)** The arbitrator who makes the last pre-season arbitration decision will review all of the arbitration decisions for that season and select the highest arbitrated prices(s), which is representative of 7% of the market share of the PQ. That price shall become the price for all arbitrated prices of that season, inclusive of the opt-in provision, and, independent of delivery terms at the harvester option. If the arbitration decisions include both formula and straight price decisions, the arbitrator shall have the discretion to select and apply one of each type. The decision on which price is the 'highest arbitrated price' shall take into consideration terms of delivery that may have a significant impact on price, including time and place of delivery.

b. **(Bundy amendment)** A single annual fleet-wide arbitration will be used to establish a non-binding formula under which a fraction of the weighted average first wholesale prices for the crab products from each fishery may be used to set an ex-vessel price. The formula is to be based on the historical (1990-2000) distribution of first wholesale revenues between fishermen and processors. The formula may be adjusted by the arbitrator(s) to take into account post-rationalization developments as the arbitrator(s) deem appropriate, subject to certain general guidelines.