

MEMORANDUM

TO: Council, SSC and AP Members
FROM: Chris Oliver *CO*
Executive Director
DATE: September 20, 2012
SUBJECT: Active participation and crew issues

ESTIMATED TIME 12 HOURS (all C-6 items)

ACTION REQUIRED

- (b) Initial Review of active participation analysis
- (c) Discussion paper of cooperative measures to address crew issues

BACKGROUND

When adopting the crab rationalization program, the Council recognized the novelty of that program and the need to evaluate its performance periodically. As a part of its response to that need, the Council scheduled a comprehensive review to be complete after the fifth year of fishing under the program. In conducting the review, the Council identified issues related to active participation of quota share holders and the effects of leasing of quota on fishery participants for further consideration. These two agenda items address those issues.

- (b) Initial Review of active participation analysis

Under the crab rationalization program, owner quota shares (QS), which makes up approximately 97 percent of the QS pool, may be acquired and held by an individual (or an entity owned in part by an individual) who has demonstrated 150 sea time in U.S. commercial fisheries. On receiving staff's review of the first five years of the crab program, the Council elected to consider an action that would require ongoing crab fishery participation on the part of persons wishing to acquire and hold owner QS. At that time, the Council identified alternatives for analysis and directed staff to prepare an analysis of those alternatives for initial review. A copy of the executive summary of that analysis is attached (Item C-6(b)).

- (d) Discussion paper on cooperative measures to address crew issues

Shortly after the implementation of the crab program, the Council expressed a concern that the leasing of quota under the program may have detrimental effects on crab fishery participants. Specifically, the Council is concerned that a segment of the quota holders in the fishery have little or no involvement in crab fishery operations leading to the development of an environment in which a substantial portion of the interests in the fisheries are held as passive investments. As a result, a share of the quota interests in the fisheries may be unavailable for persons who actively fish (either through vessel ownership or as crew). The Council is also concerned that high lease rates of quota may harm participants in the fisheries by

diminishing returns on investments in vessels and pay to crew. To consider the development of a response to these concerns, the Council requested staff to prepare a discussion paper examining requirements for cooperative agreements to address problems arising from the leasing environment in the fisheries. The Council specifically requested that the paper examine the use of cooperative agreements to implement measures to 1) create share acquisition opportunities for crew and other active participants, 2) establish a limit on lease rates, 3) establish a limit on the amount of leases payments that may be charged to crew, and 4) establish crew compensation standards. The discussion paper prepared by staff in response to this request is attached (**Item C-6(c)**).

Executive summary

Access to the Bering Sea and Aleutian Island crab fisheries is regulated through the allocation of harvest share privileges (or shares). Holders of long term shares, known as quota shares (QS), receive an annual allocation of individual fishing quota (IFQ), representing a privilege to harvest a certain number of pounds of crab during that year. Under the program, 97 percent of the QS pool was initially allocated to holders of limited entry permits under the previous management program. These QS are known as "owner" QS. Under the management program, these owner QS are transferable to any person who meets a minimum sea time requirement; thereafter, holders of these owner shares may maintain those holdings without any further or continuing qualification. At its December 2011 meeting, after receiving a report reviewing the first 5 years of fishing under the current crab management program, the Council directed staff to analyze alternatives to establish active participation requirements for the acquisition of owner shares and retention of those newly acquired owner shares.¹

Purpose and need statement

The Council has adopted the following the problem statement for this action:

The Bering Sea/Aleutian Islands (BSAI) Crab Rationalization Program is a comprehensive approach to rationalize an overcapitalized fishery. Conservation, safety, and efficiency goals have largely been met under the program. Provisions that allow for absentee ownership of crab harvest shares support long-term investment by persons or corporations with little or no involvement in the prosecution of the fisheries and limits the amount of quota available for active participants. This action is intended to ensure that ownership of quota transitions to persons who are actively involved in the prosecution of the fisheries.

Alternatives

Alternative 1: No action

No action, status quo.

Alternative 2: Active Participation - Eligibility criteria for purchase of owner shares

To be eligible to permanently transfer and retain CVO or CPO QS, the QS holder or an individual that is at least a 10, 20, or 33% (options) share holder when the QS is held by a partnership or corporation must meet one of the following requirements:

- a. hold 5, 10, or 20% (options) ownership of a vessel with participation in a rationalized Bering Sea/Aleutian Islands crab fishery in any of the previous 2 to 4 seasons, or
- b. provide documentation of participation as a captain or crew in a rationalized crab fishery (verified by a signature on a fish ticket or crew members' affidavit) for at least 1, 2, or 4 (options) fishing trips in a rationalized Bering Sea/Aleutian Islands crab fishery in any of the 3 or 4 (options) previous seasons.

¹ As a part of its deliberations in the development of alternatives, the Council specified that the action would not affect existing share holdings, but would apply only to shares acquired after implementation of the action.

Analysis of Alternatives

Status quo

Under the status quo, five provisions qualify individuals or entities to acquire owner shares (see **Error! Reference source not found.**), which require some connection to fishing; however, these liberal rules allow persons with no direct connection to the Bering Sea and Aleutian Islands crab fisheries to acquire owner QS.

Table ES-1. Eligibility to acquire owner QS.

Type	Qualification requirement
Individuals and entities	recipient of an initial allocation of QS
Individuals	150 sea time in a U.S. fishery
Entities	owner of 20 percent or more of the entity with 150 days sea time in a U.S. fishery
Community entities	Entities holding rights of first refusal to PQS
CDQ groups.	Any CDQ group
Source: 50 CFR 680.41	

Although specific data are not available to fully evaluate the extent to which holders of owner QS have ownership interests in vessels active in the fisheries, a substantial number of vessel owners are known to have considerable QS holdings. In addition, some share of QS holders are actively fishing on crab fishery vessels; however, a number of QS holders, also with substantial holdings, are believed to have no activity in the fisheries through either vessel ownership or as crew. If the current rules governing share acquisition and use are maintained, it is likely that the QS in the fisheries will continue to be held by a mix of persons with and without active participation (through ownership of an active vessel or activity as a crewmember on such a vessel). Although it is possible for persons with no connection to the fisheries (i.e., no vessel ownership or crew experience) to acquire QS, it is likely that most QS purchasers and holders will have some participation (historical or active) as knowledge of the fishery is important to investment decision making. Over time some portion of these QS holders may choose not to continue to maintain that vessel ownership or crewing activity, while maintaining their share holdings.

Private interests that hold QS are likely to be a mix of vessel owners, active crew, and inactive persons. Most persons acquiring QS are likely to either be active in the fisheries at the time of their purchase (through vessel ownership or crewing on a vessel) or already hold shares in the fisheries. Over time, a portion of the active share holders are likely to become inactive, either retiring from crewing or selling their vessel ownership interests to others. Share holders are also likely to cycle out of the fishery, selling their shares to others who either are active in the fishery or already hold shares. CDQ groups are likely to increase their QS holdings by continuing to acquire QS to advance both to advance their community development objectives and further their interests in fisheries in general. As is the case currently, all CDQ groups are very likely to be active through vessel ownership.

Under this cycle of share holdings, most share holders will have reasonably good information concerning fishery operations that will allow them to make reasonable decisions concerning the use of their shares. These decisions should ensure that share holders obtain competitive returns from shares (either through

harvesting the shares through their own activity or through lease payments), as well as achieve relatively full harvest of those allocations.

Shares are likely to trade at a free market price, unaffected by the sea time requirement, the only qualification needed for private share acquisition. That minimal requirement can be met relatively easily, as many persons nationwide meet that the requirement. In addition, CDQ groups, who are relatively well financed, tend to favor Bering Sea and Aleutian Island fishery investments over other investments, as these fishery investments can aid in meeting their community development objectives. As a result, CDQ groups may be willing to pay premium prices for investments in the crab fisheries, further ensuring that share prices are not reduced by the regulatory limit on private acquisitions.

The current rules for qualification for owner QS acquisition are relatively simple and inexpensive to administer. The sea time requirement is administered through certification of the recipient, who is required to provide specific fishing information, which is subject to some verification. Typically, fishery openings and closings are reviewed to ensure that fisheries were open during identified participation periods. In addition, any suspect information may be given additional review. As a single, one-time qualification, information does not need to be submitted for each application, only once for each individual or entity acquiring QS. This simple qualification allows NOAA Fisheries to maintain an individual or entity qualification indefinitely, without requiring additional qualification information for future acquisitions. Consequently, administration costs of the existing rule are relatively low.

Alternatives to change eligibility to acquire and retain owner shares

The proposed action would require a person to meet an ongoing active participation requirement to acquire and maintain holdings of owner QS.

Under the Council motion, individual's that wish to acquire and hold QS may satisfy the active participation requirement by holding a 5 percent, 10 percent, or 20 percent ownership interest in a vessel that participated on one of the rationalized crab fisheries in 1 of the 2 or 4 preceding seasons. Partnership or corporate held shares would subject to a similar requirement, under which an individual with a 10 percent, 20 percent, or 33 percent interest in the share holding entity would be required to also hold a 5 percent, 10 percent, or 20 percent interests a vessel that participated in a rationalized crab fishery in 1 of the 2 or 4 preceding seasons. For the 2010-2011 and 2011-2012 seasons, fewer than 110 vessels would meet the more liberal landing threshold, which requires one landing in the four preceding years, while fewer than 100 vessels would meet the more stringent landing threshold, which requires one landing in the preceding two years.

If vessel and share ownerships were structured to maximize the number of individuals and entities independently² qualified to hold shares, over 400 individuals and entities could independently meet the most stringent proposed threshold. As of the 2011-2012 season 321 individuals and entities held owner QS, approximately 90 fewer than the maximum number of individuals and entities that could meet the threshold independently. While it is unlikely that vessel ownership structures would independently qualify the maximum number of owner QS holders, overlapping ownership structures could qualify a substantially larger number of owners. For example, a single individual that owns a 25 percent interest in a participating vessel would be qualified, and could also qualify several different companies that he or she holds the requisite interest in. Particularly if the ownership threshold is set relatively low – such as requiring only a 10 percent interest of the vessel owner in the share holding company – it is possible that a

² As used here, independently means that no overlapping interests in QS holdings exists between any qualified individuals and entities. In other words, each entity's qualification is satisfied by a different person meeting the vessel ownership standard.

single vessel could qualify partners in several different entities to hold a relatively large amount of owner QS. In any case, the underlying structure would seem to allow for the qualification of a very large number of entities to hold owner QS.

In general, any revision of share holding eligibility to require a vessel ownership is likely to have a substantial effect on the distribution of QS holdings in the fisheries.³ If only vessel owners (or persons affiliated with vessel owners) are permitted to hold QS, it is likely that vessel owners will gain influence over QS acquisitions and the distribution of QS in the fishery. With each new partnership, it is likely that a portion of the QS will be removed from broader circulation, becoming associated with the vessel (or vessels) controlled by the owner (or ownership group). Over time, it may be expected that concentrations of QS in the fisheries will be associated with the 100 active vessels in the fisheries and be subject to decisions of the owners (and ownership groups) that control those vessels. If QS holdings consolidate into entities associated with the active vessels in the fishery, it is likely to decrease the potential for small amounts of QS to come on to an open market accessible to these crewmembers.

It will remain possible for a person to enter the fishery by acquiring a vessel and leasing quota, but it may also be even more difficult to make such an entry. Since QS holdings will require a vessel ownership relationship, it is likely that a person acquiring a vessel to enter the fishery would need to acquire a substantial amount of QS (or entice holders of substantial amounts of QS to sever an existing relationship with another vessel owner and lease share to be harvested on the entering vessel) to enter the fishery.

In considering the specific operation of the options, it should be noted that for an individual to hold owner QS that person would need to meet the same standard that a single shareholder in a partnership or corporation would need to meet. In other words, an individual owning an active vessel could buy owner QS or could qualify a partnership or corporation to hold owner QS (despite between 66 and 90 percent of the owners of that partnership or corporation having no connection to the fisheries other than their share holdings). A few consequences of this structure are worth considering. First, an individual must make a substantial investment in a vessel to qualify to hold QS. Second, corporate owners may be largely passive, despite a shareholder who meets the corporate ownership threshold also owning an active vessel. Consequently, control of the owner QS may be vested in persons with no active engagement in the fisheries.

As an alternative to qualifying through vessel ownership, an individual or corporation may be eligible to acquire and retain owner QS through participation in the fisheries as a crewmember. Individuals can qualify through verified participation in 1, 2, or 4 trips in one of the previous 3 or 4 years. A partnership or corporation could qualify if an owner with more than a 10, 20, or 33 percent interest in the entity meets the threshold crew participation requirement. Based on landings in the years preceding the 2011-2012 season between 83 and 100 vessels would meet the different trip thresholds. Increasing the trip threshold to four has the greatest effect on the number of vessels that meeting the trip threshold, as between 95 and 100 vessels meet the one and two trip thresholds, while fewer than 90 vessels meet the four trip threshold under either the three or four year window. Again, it should be noted that comparing these data to annual participation levels suggests that some vessels come and go from the fisheries each year. In recent years, vessels in the crab fishery have employed between 5 and 6 unique crewmembers (including captains) annually on average. Assuming that each vessel that meets the threshold qualified the average number of

³ It should be noted that these changes may take some time to manifest themselves, as the proposed action would apply only to new QS acquisitions. Existing holders who liberally lease their shares through existing arrangements with vessel owners will have no need to restructure their holdings or leasing arrangements as a result of this action. Consequently, the transition of QS holdings to active persons (as defined by the action) and resulting effects may not be realized for several years.

unique crewmembers, between approximately 450 and 600 crewmembers would meet a threshold for the 2011-2012 season, depending on which threshold is applied.

While a relatively large number of individuals are likely to meet the qualification to acquire owner QS, it is possible that a large number of these individuals may not have access to funding to purchase QS. Priced transactions of owner QS have averaged in excess of \$150,000 in every year in the Bristol Bay red king crab and Bering Sea *C. opilio* fisheries and exceeded \$1.0 million in one year in the Bering Sea *C. opilio* fishery. Many active crew work on crab vessels as their primary source of income. From 2006 through 2010, mean and median annual compensation of captains on vessels that participated in both the Bristol Bay red king crab and Bering Sea *C. opilio* fisheries ranged from approximately \$100,000 to approximately \$185,000. During the same time period, mean and median compensation for the remaining crewmembers ranged from approximately \$40,000 to \$90,000.

Although a large number of the crew meeting the qualification may not have access to funding to purchase owner QS, they may be able to access funds by forming partnerships and corporations with persons with access to funding who do not meet the active participation qualification, particularly under options that allow the active individual to have a relatively small share of the ownership interest in the QS holding entity. While these minimal stake arrangements may resolve a funding issue for active crew, they will have consequences. As with the vessel ownership thresholds, the Council should consider the potential for active individuals to have very little control over the entity's QS, if the active individual needs to only hold a relatively small interest in that entity.

From the standpoint of crewmembers, the highest annual trip requirement (four trips in a year) could be problematic. If a vessel fishes a relatively small allocation in one fishery, it is possible that the vessel may make only two or three trips in a year. Despite relatively consistent annual participation, such a vessel's harvest may not be adequate to qualify a crewmember to acquire and retain owner QS. In addition, to the extent that a crewmember may attempt to use their qualification to develop partnerships with persons with better access funding for QS acquisitions, potential partners may be reluctant to enter QS purchase arrangements with crew that work on vessels that harvest small amounts of quota despite their consistent annual participation.

The effects of this action on QS holders and holdings are likely to be realized over many years. Under its terms, the eligibility criteria for maintaining owner QS only apply to shares acquired after the action is implemented. As such, current share holders would not be required to comply with any active participation requirements to maintain their holdings. Share holders that currently lease their holdings (not owning an interest in an operating vessel) are likely to continue to lease their shares. In addition, it is possible that some of the owner QS holders that have maintained ownership interests in active vessels could divest of their interest in a vessel and lease their annual allocations to others. Exempting existing share holdings from the action have the dual effects of not disrupting business plans of current share holders and phase in the active participation requirement over what could be a very extended period of time.

A notable aspect of the action alternatives in their current form is that CDQ groups and other entities that hold rights of first refusal on behalf of communities cannot qualify to acquire owner QS. To be eligible a corporation or partnership must have an individual owner that meets either the vessel ownership or crew eligibility criteria. By their structure, CDQ groups and community entities have no specific individual owners. This disqualification would occur despite several CDQ groups directly owning vessels that actively participate in the fisheries. Although CDQ groups and other crab community entities may not meet the eligibility criteria specified in the alternatives as currently specified, qualifying CDQ groups and other crab community entities either directly or through a modification of the proposed active

participation requirements is likely consistent with the Council's intention for the action, as most CDQ groups and other crab community entities maintain direct or indirect interests in active vessels in the fisheries to pursue their community development objectives.

Interactions of the qualifying provisions

The proposed action's two means of eligibility to acquire owner QS are likely to interact. Persons eligible through vessel ownership qualification are likely to dominate the market for owner QS. Vessel owners are likely to have more assets and access to capital to fund QS acquisitions. Vessel owners are also more likely to be viewed as more appealing business partners, as they have greater business experience with investments and operations. While some individuals meeting the crew qualification are likely to have similar qualities and skills, the majority of active crew are likely to be less experienced in business. In addition, qualifying only as a crewmember could pose some risk, as injuries or loss of job could result in a loss of eligibility. While some risk is also inherent in vessel ownership, qualification through a partnership with an established vessel owner is likely to be viewed as a more stable and reliable means of qualification. These factors may constrain opportunities for crew that might be interested in acquiring owner QS through partnerships with others.

Actions that decrease the pool of individuals and entities eligible to acquire owner QS have the potential to decrease competition for those shares. The proposed action will limit eligibility to acquire owner QS by requiring that an individual QS holder have, or entity QS holder have an individual owner who has, either an ownership interest in an active crab vessel or be active as a crewmember on a crab vessel. Even without eligibility requirements, persons with crew and vessel ownership interests are the most likely to invest in the fisheries. These people have the most knowledge of the fisheries and the business opportunities that they present. The alternatives also provide for substantial investments by persons who do not own a vessel ownership or crew, but partner with someone who does own a vessel or crew on a vessel. These means of indirectly qualifying allows for substantial capital to come into the fisheries by persons who do not actively participate in the fisheries. These avenues should ensure that any price effect of the active participation requirements is relatively minor.

Rules establishing active participation requirements for acquisition and retention of owner QS will require NOAA Fisheries to monitor vessel and crew participation and integrate those participation records with vessel ownership and QS holdings information and corporate and partnership ownership information. The burden associated with this monitoring will vary with each case, but could be very high. Vessel owner eligibility would require submission of vessel ownership and participation records for a period of years, which would be similarly compared to vessel participation records. To verify continuing eligibility to hold owner QS, owner QS holders will likely need to submit information concerning their qualifications on an annual basis (either as a part of their annual IFQ application or separately), since the requirements are applied over a period of years. In addition, the timeline for submitting applications and appealing administrative decisions will need to be reviewed, once the Council has fully specified its alternatives (defining the intended consequences of failing to comply with the active participation requirements).

The action alternative would require that individuals and entities meet eligibility requirements to acquire owner QS. The timeline for applications and filing of appeals will need to be given additional scrutiny as this action proceeds. As currently defined by the motion, verification of active participation would require review of ownership records for vessels and QS holding entities depending on the structure of the requirements and the consequences for failing to meet those requirements, the action could create a substantial and costly burden for managers.

**Cooperative measures to address active participant and crew issues
North Pacific Fishery Management Council
October 2012**

At its December 2011 meeting, the Council received a report reviewing the performance of the crab rationalization program during its first 5 years. Based on the report and public testimony, the Council identified certain aspects of the program that it would like to give additional attention. Among those issues, the Council requested a discussion paper concerning certain cooperative measures that might be considered to promote acquisition of quota shares by crew and other active participants in the crab fisheries and equitable crew compensation. The Council specifically requested that the paper examine the “best practice” requirements for cooperative agreements. These cooperative agreement requirements could include:

- Provisions to promote quota share ownership among crew and active participants.
- Maximum lease rate caps.
- Maximum amount of lease rates that may be charged against crew compensation.
- Minimum crew pay standards such as a minimum threshold of gross vessel revenue for crew compensation.

This paper examines the use of cooperative agreements to address these four requirements. At this meeting, the Council also requested an analysis of active participation requirements for holders of quota shares. That analysis suggests that implementation of any active participation through direct NOAA Fisheries administration would be very complicated and burdensome. Cooperative administration of such a measure may avoid some of those costs and complications. This paper also discusses the potential to use cooperative agreements to administer active participation requirements, as an alternative to direct administration by NOAA Fisheries.

Background

Since implementation of the crab program (prior to the 2005-2006 season), critics of the program have pointed to high lease rates, fleet consolidation, absentee QS ownership, and changes in crew compensation as some of the program’s greatest shortcomings. Fleet consolidation reduced overcapacity quickly, as the Bristol Bay red king crab and Bering Sea *C. opilio* fisheries contracted to an average of less than one-third of size in the years preceding implementation of the program (see Table 1).

Table 1. Average catch and average number of vessels by fishery before and after implementation of the rationalization program.

Fishery	Seasons	Average number of participating vessels	Average total catch
Bering Sea <i>C. opilio</i>	2001-2005	189	24,511,160
	2005/2006 - 2010/11	74	44,547,407
Bristol Bay red king crab	2001-2004	243	10,409,223
	2005/2006 - 2010/11	76	15,775,151
Eastern Aleutian Islands golden king crab	2001/2 - 2004/5	18	2,945,451
	2005/2006 - 2010/11	4	2,740,024
Western Aleutian Island golden king crab	2001/2 - 2004/5	8	2,695,600
	2005/2006 - 2010/11	3	2,316,062

Sources: ADFG fish tickets for first time period and NMFS RAM catch data for second period.

Since the number of QS holders has changed little since implementation of the program, a large share of this consolidation is asserted to arise from leasing of shares. The term leasing is often used loosely to refer to short term transfers of shares. The program structure, however, complicates any discussion or consideration of these leases. To induce cooperative membership, the program includes a prohibition on transfers of annual allocations of individual fishing quota (IFQ), except by cooperatives. This prohibition, together with the operational efficiencies gained in a cooperative, has led to almost all quota share holders (i.e., holders of long term shares) joining cooperatives and almost all IFQ being held by cooperatives. A cooperative receives annual allocations of IFQ based on quota share (or long term share) holdings of its members and oversees the harvest and distribution of those IFQ. Although cooperatives trade IFQ, the large majority of all transfers are within cooperatives. These intra-cooperative transfers result in little information being available to know the extent to which transfers that most people would characterize as a traditional lease (i.e., the purchase of IFQ) are the source of consolidation. Under the program's structure, those cooperative held IFQ may be harvested by any vessel registered to fish the cooperative's IFQ, without any documented transfer. Since all IFQ attributable to cooperative members' QS are allocated to the cooperative without identification of the member that contributed QS from which the allocation arises, IFQ use cannot be tracked back to a QS holder. Consequently, a vessel's harvest of IFQ cannot be assigned to a specific QS holder. Even if vessel IFQ usage could be traced to an individual QS holder, participants in the fisheries suggest that a variety of arrangements exist under which vessels coordinate harvests of IFQ by member vessels (some of which may not be considered leases).¹

While the masking effect of the cooperative IFQ allocations prevents identification of the specific source of IFQ use by a vessel, the complexity of share distributions and the variety of ownership structures also limits the extent to which leasing and lease rates can be fully identified. Even if it is assumed that all of the IFQ attributable to a member's QS are harvested by the vessel owned by that QS holder, the prevalence of overlapping (but not identical) ownership of vessels and QS holdings limits the ability of analysts to identify IFQ use arising from a lease (or a short term transfer at a negotiated price), rather than IFQ use arising from transfers that are simply share management arrangements by a business. Often such transfers are undertaken as a business practice among affiliated entities at non-market rates that are structured for internal management reasons, rather than at negotiated lease prices. These arrangements further complicate any understanding of leasing practices and lease rates.²

Despite these challenges, the Council has remained concerned with leasing practices and their effects on the fisheries and fishery participants. Specifically, the Council has expressed concern that leasing practices and associated exorbitant lease rates contribute to a substantial share of the fisheries' value being distributed to persons who are not active in the fisheries as either vessel owners or crewmembers. Although reliable comprehensive lease data are not available, anecdotal information from the fisheries suggests that some leases in the Bristol Bay red king crab fishery may result in compensation to QS holders who transfer their IFQ of as much as 75 percent of the ex vessel revenue of crab landed with those IFQ. In the Bering Sea *C. opilio* fishery, rates are said to be for as much as 65 percent of the ex vessel revenue arising from the transferred IFQ. The removal of revenues through share leases by inactive quota holders is said to have two effects. First, these lower revenues to vessel owners are said to decrease the amount of revenue available for vessel maintenance and improvements. The absence of revenues may pose a challenge to vessel owners who must decide the extent of improvements and maintenance for their vessels. When faced with mortgage payments and ongoing operational costs, vessel maintenance and

¹ These complications have also led to uninterpretable data being collected in the Economic Data Reporting program. To date, that program's collection of lease data contains no definition of leasing, leaving submitters to apply their own interpretation of the term when completing the form.

² These reporting issues contributed to the Council's decision to restructure the economic data collection program recently. Form revisions and rulemaking are underway to implement those changes in the near future.

Cooperative measures to address active participant and crew issues

North Pacific Fishery Management Council

October 2012

improvements, particularly those that are more discretionary in nature, are less likely. A second possible affect is that crew compensation may decline. If a large share of a vessel's revenue is devoted to lease payments, crews (who typically are compensated with a share of the vessels adjusted revenues) may receive less pay for their work as crew.

Although information is not available to assess QS holder participation in the fisheries, data are available to examine changes in crew compensation since implementation of the program. These data can be used to assess the effects of the program on crew.³ These effects vary across participants, but consolidation of catch on fewer vessels has led to crews receive greater average annual compensation from the fisheries, but catching a substantially greater amount of crab. In the first 5 years of the program, average crew pay is approximately three times the average of the three pre-program years for which data are available (1998, 2001, and 2004) (see Table 2 and Table 3).⁴ Average crew pay in the Bering Sea *C. opilio* fishery since program implementation is more than double the average pay from 2001 and 2004 (when the TAC in that fishery was comparable to the TACs since the program was implemented). In 1998, when the TAC in the fishery was near historic highs, average crew compensation was relatively similar to the post program level. In that year, average vessel harvests exceeded the average harvest since the program was implemented by almost one-third, but vessel revenues were lower due to a lower crab price.

Table 2. Average crew compensation before rationalization (1998, 2001, and 2004 through 2010).

Fishery	Year	Number of vessels	Mean vessel harvest (pounds)	Mean vessel revenues (\$US)	Mean captain pay (\$US)	Mean crewmember pay (\$US)	Mean percent of gross vessel revenues paid to crew
Bristol Bay red king crab	1998	185	58,089	198,834	23,504	9,265	35.3
	2001	180	38,279	215,471	26,432	10,389	35.5
	2004	218	58,822	321,595	36,830	14,512	35.7
	2005	83	194,812	994,236	72,002	27,416	25.0
	2006	78	201,666	804,659	54,715	21,658	23.4
	2007	70	289,194	1,276,798	80,982	32,099	22.6
	2008	75	246,932	1,316,599	81,964	34,683	22.8
	2009	67	223,270	1,067,344	62,073	25,183	20.1
2010	61	229,236	1,687,499	92,305	35,956	19.1	
Bering Sea <i>C. opilio</i>	1998	159	1,093,034	830,639	99,745	33,980	36.3
	2001	156	110,497	210,511	23,042	8,383	31.6
	2004	165	124,336	294,977	34,740	13,919	35.2
	2005	147	158,943	307,249	36,137	14,790	34.6
	2006	73	453,455	552,159	39,627	15,240	23.6
	2007	63	496,195	909,874	64,805	25,433	24.4
	2008	72	780,820	1,384,894	97,338	35,650	23.3
	2009	71	721,180	1,073,823	71,348	27,860	22.7
2010	63	702,835	802,493	58,154	23,688	23.4	

Source: Crab Economic Data Reporting.

Notes: Excludes any vessels on which crew were paid in excess of 75 percent of the vessel's gross revenues.
Period after rationalization is 2005 through 2010 in the Bristol Bay red king crab fishery and 2006 through 2010 in the Bering Sea *C. opilio* fishery.

³ The most obvious effect of the rationalization program on crews arose from the contraction of the fleet. The contraction of fleets in the various fisheries to between one-third and one-half of their pre-program size has resulted in the loss of approximately 975 crew jobs in the Bristol Bay red king crab fishery and approximately 675 crew jobs in the Bering Sea *C. opilio* fishery. While these losses have clearly affected a large number of individuals, additional effects have been felt by those crew who have retained their positions in the fisheries.

⁴ Note that all dollar amounts are adjusted for inflation based on the consumer price index (CPI-U) to 2010 dollars.

Cooperative measures to address active participant and crew issues

North Pacific Fishery Management Council

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Table 3. Crew compensation on vessels that fished both Bristol Bay red king crab and Bering Sea *C. opilio* before rationalization (1998, 2001, and 2004) and after rationalization (2006 through 2010).

Year	Number of vessels	Vessel revenues		Captain pay		Crew pay (excluding captain)		Percent of gross to crew (including captain)	
		Mean	Median	Mean	Median	Mean	Median	Mean	Median
1998	146	1,049,914	995,006	125,314	119,222	254,453	236,720	36.0	35.3
2001	141	441,402	374,356	51,248	44,369	99,040	88,933	34.2	34.5
2004	160	641,561	605,355	74,744	72,014	153,048	140,910	35.7	35.6
2006	56	1,404,132	1,278,587	100,672	98,685	200,592	190,302	24.0	24.2
2007	55	2,286,879	2,026,374	149,062	150,596	310,618	293,675	23.0	22.4
2008	61	2,812,381	2,727,185	185,443	182,288	397,179	376,497	22.6	22.4
2009	57	2,318,278	2,145,834	144,558	142,643	313,693	279,722	21.1	20.9
2010	56	2,679,245	2,463,345	154,068	153,947	328,878	316,735	19.9	19.2

Source: Crab Economic Data Reporting.

Notes: 2005 omitted, as Bering Sea *C. opilio* fishery prosecuted as limited entry derby and Bristol Bay red king crab prosecuted as share-based fishery. Excludes any vessels on which crew were paid in excess of 75 percent of the vessel's gross revenues.

While crewmembers, on average, are making larger amounts annually, the average share of a vessel's revenues paid to crew (including the captain) have declined from approximately 35 percent in both fisheries prior to implementation of the program, to below 20 percent in the Bristol Bay red king crab fishery in the most recent year and to approximately 23 percent in the Bering Sea *C. opilio* fishery. Most (if not all) vessel owners are believed to have continued to pay crew a share of vessel revenues after deduction of certain operating expenses (such as food and fuel). The difference in compensation since implementation of the program is believed to have arisen from the deduction of lease payments (made to quota share holders who lease their IFQ to vessel owners for harvest) and mortgage payments or quota costs for purchases of quota share fished by the vessel.⁵

The relationship between compensation and quota consolidation becomes clearer, if the fleet is separated into quartiles of pounds fished (see Table 4). Within each year, in almost all cases, the percent of revenues paid to crew decreases as pounds of crab harvested increases. In other words, as a vessel consolidates quota (by either leasing or purchasing quota), a smaller share of the revenues of the vessel are paid to crews. Although the contractual arrangement likely differs across vessels, this pattern suggests that quota costs are being absorbed, in part, by crew. In addition, a downward trend in share of revenues paid to crews is suggested in the quartiles harvesting the greatest amounts of crab. This trend likely arises, in part, from an adjustment to the change to rationalization. Whether the downward trend reflects a distribution of additional costs (such as added fuel costs) that are disproportional to added revenues or simply an adjustment to the labor market (arising from vessel owners who perceive an opportunity to reduce crew compensation due to overall conditions in the labor market).

⁵ While the deduction of lease payments may be the immediate source of the reduction, it should be noted that modification of crew payments (such as changing from crew share payment system to another payment system or changing the structure of deductions away from charging royalties) could result in the same payment without directly relating the changes to lease royalties (or other quota costs).

Table 4. Crew compensation by quartile of pounds fished (1998, 2001, 2004 through 2010).

Fishery	Year	Number of vessels per quartile	First quartile of pounds harvested				Second quartile of pounds harvested			
			Mean pounds harvested	Mean vessel revenues	Mean crewmember pay (excluding captain)	Percent of gross to crew (including captain)	Mean pounds harvested	Mean vessel revenues	Mean crewmember pay (excluding captain)	Percent of gross to crew (including captain)
Bristol Bay red king crab	1998	47/48	24,360	93,424	4,341	33.5	42,387	148,715	7,332	36.4
	2001	45/46	14,209	85,768	4,412	33.2	25,222	151,201	7,764	36.5
	2004	55	27,841	153,360	7,185	35.2	47,509	263,561	12,430	34.5
	2005	20/21	61,177	304,024	15,171	32.8	111,665	563,925	23,730	28.6
	2006	19	67,950	286,948	12,587	29.2	126,775	530,701	19,468	26.6
	2007	17/18	98,619	467,773	21,816	32.9	192,984	929,189	28,064	22.7
	2008	18/19	85,454	492,858	19,375	29.0	172,991	931,510	31,132	25.0
	2009	16/17	92,251	440,421	15,912	26.9	184,818	879,655	22,804	19.9
	2010	15/16	91,615	654,092	25,791	28.2	192,946	1,419,382	31,418	16.7
Bering Sea C. opilio	1998	40/41	539,777	414,102	19,938	37.3	634,607	689,867	28,976	36.0
	2001	39/40	45,411	87,085	3,106	27.4	77,664	148,716	5,984	30.7
	2004	41/42	84,885	155,385	7,337	33.9	95,520	228,306	11,185	34.7
	2005	38/37	84,930	174,709	8,524	32.4	122,265	250,314	12,674	36.1
	2006	18/19	163,219	179,658	8,269	30.2	308,944	376,027	11,774	22.4
	2007	15/16	185,828	340,954	15,798	32.4	346,523	641,370	21,575	24.5
	2008	18	308,833	513,409	20,092	27.8	557,810	1,006,953	33,367	25.2
	2009	17/18	300,835	427,561	15,974	27.1	512,418	751,928	23,751	23.6
	2010	15/16	272,788	349,898	12,978	27.5	486,393	607,739	22,402	27.5
Fishery	Year	Third quartile of pounds harvested				Fourth quartile of pounds harvested				
		Mean pounds harvested	Mean vessel revenues	Mean crewmember pay (excluding captain)	Percent of gross to crew (including captain)	Mean pounds harvested	Mean vessel revenues	Mean crewmember pay (excluding captain)	Percent of gross to crew (including captain)	
Bristol Bay red king crab	1998	60,997	217,414	9,851	35.1	96,844	340,528	15,647	36.0	
	2001	35,552	214,548	10,655	37.3	69,304	405,699	18,734	35.6	
	2004	62,574	346,225	15,620	36.7	97,283	522,865	22,895	36.3	
	2005	209,205	1,071,051	30,037	21.5	390,937	2,005,075	40,142	17.3	
	2006	212,079	897,926	22,682	20.5	399,862	1,503,062	30,400	17.1	
	2007	294,188	1,384,666	35,366	19.3	482,900	2,286,610	42,781	18.0	
	2008	292,308	1,487,294	46,807	21.6	438,476	2,301,381	40,612	15.6	
	2009	249,735	1,193,592	31,566	19.4	358,570	1,718,830	29,902	14.7	
	2010	243,171	1,786,013	42,628	17.6	379,215	2,815,350	43,485	14.2	
Bering Sea C. opilio	1998	1,222,998	922,977	37,037	34.7	1,689,333	1,292,564	50,519	36.8	
	2001	115,683	223,001	8,827	34.0	209,994	396,386	15,570	33.5	
	2004	128,412	306,500	15,336	36.4	204,208	479,587	21,371	35.4	
	2005	156,099	327,235	16,155	35.6	270,478	473,156	21,437	34.0	
	2006	480,291	597,858	16,817	21.8	849,371	1,028,623	23,634	20.3	
	2007	501,859	916,548	26,002	21.3	931,170	1,705,069	37,756	19.9	
	2008	818,908	1,469,973	37,057	21.8	1,437,727	2,493,834	52,065	19.2	
	2009	736,305	1,080,230	29,379	21.0	1,311,810	1,999,868	41,958	19.4	
	2010	708,306	911,548	23,582	20.3	1,318,975	1,706,250	35,112	18.6	

Source: Crab Economic Data Reporting.

Notes: Excludes any vessels on which crew were paid in excess of 75 percent of the vessel's gross revenues.

Period after rationalization is 2005 through 2010 in the Bristol Bay red king crab fishery and 2006 through 2010 in the Bering Sea C. opilio fishery.

An alternative way to examine crew compensation is to examine daily pay (see Table 5). Since implementation of the program, daily crew pay (counting only days fishing, transiting, and offloading) appears to have declined. If it is assumed that 10 days are spent doing boat and gear work (in addition to the time fishing, transiting and offloading), daily pay appears to have changed little since implementation of the program. It should also be noted that daily pay does not appear to follow any trend, but has fluctuated annual. These fluctuations likely arise from changing conditions in the fisheries (such as changes in catch rates, crab prices, and vessel costs).

Table 5. Daily crew compensation 1998, 2001, and 2004 through 2010).

Fishery	Year	Number of vessels	Fishing, transiting and offloading			Fishing, transiting and offloading plus 10 days boat and gear work		
			Mean number of days	Mean daily captain pay (\$)	Mean daily crew member pay (\$)	Mean number of days	Mean daily captain pay (\$)	Mean daily crew member pay (\$)
Bristol Bay red king crab	1998	190	8.0	3,076	1,214	18.0	1,318	521
	2001	182	6.1	4,654	1,839	16.1	1,670	657
	2004	220	7.0	5,607	2,199	17.0	2,180	858
	2005	83	26.6	3,029	1,184	36.6	2,020	781
	2006	76	22.3	2,741	1,076	32.3	1,749	682
	2007	69	32.4	2,738	1,094	42.4	1,988	792
	2008	75	32.6	2,755	1,185	42.6	1,994	856
	2009	66	30.9	2,272	934	40.9	1,594	652
	2010	60	36.4	2,724	1,093	46.4	2,054	822
Bering Sea C. <i>opilio</i>	1998	162	66.1	1,511	516	76.1	1,313	449
	2001	158	33.4	686	249	43.4	528	192
	2004	167	13.9	2,588	1,028	23.9	1,463	583
	2005	147	11.1	3,620	1,501	21.1	1,781	726
	2006	73	39.7	1,124	427	49.7	830	317
	2007	62	36.8	1,932	751	46.8	1,427	556
	2008	72	48.8	2,090	795	58.8	1,671	630
	2009	70	50.5	1,519	597	60.5	1,215	477
	2010	62	44.4	1,357	556	54.4	1,086	435

Source: Crab Economic Data Reporting.

Notes: Mean crew size is a count of all crew paid shares excluding the captain. Excludes any vessels on which crew were paid in excess of 75 percent of the vessel's gross revenues. Excludes vessels harvesting CDQ allocations for Bristol Bay red king crab in 1998, 2001, and 2004 and for Bering Sea C. *opilio* for 1998, 2001, 2004, and 2005.

To consider addressing these problems, the Council has identified four measures that it would like to explore in this paper: 1) limits on lease rates, 2) limits on the portion of lease rates that may be charged to crew, 3) minimum crew compensation, and 4) measures to promote transfer of shares to active participants. The remainder of this paper briefly discusses these provisions suggested by the Council. As a part of the development of an amendment package, the Council should develop a purpose and need statement to support the action. The Council's purpose and need statement should be based on its Magnuson Stevens Act management authority. This authority stems from both the general provisions of

the Magnuson Stevens Act, which are applicable to all Council actions and the specific authority granted the Council to establish the crab rationalization program. That legislation provided:

Subsequent to implementation [of the program], the Council may submit and the Secretary may implement changes to or repeal of conservation and management measures, including measures authorized in this section, for crab fisheries of the Bering Sea and Aleutian Islands in accordance with applicable law, including this Act as amended by this subsection, to achieve on a continuing basis the purposes identified by the Council.⁶

This appears to provide the Council with authority to amend the program to achieve the purpose and need identified at the time the program was adopted. That purpose and need statement provides:

Vessel owners, processors and coastal communities have all made investments in the crab fisheries, and capacity in these fisheries far exceeds available resources. The BSAI crab stocks have also been highly variable and have suffered significant declines. Although three of these stocks are presently under rebuilding plans, the continuing race for fish frustrates conservation efforts. Additionally, the ability of crab harvesters and processors to diversify into other fisheries is severely limited and the economic viability of the crab industry is in jeopardy. 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. Many of the concerns identified by the NPFMC at the beginning of the comprehensive rationalization process in 1992 still exist for the BSAI crab fisheries. Problems facing the fishery include:

1. Resource conservation, utilization and management problems;
2. Bycatch and its' associated mortalities, and potential landing deadloss;
3. Excess harvesting and processing capacity, as well as low economic returns;
4. Lack of economic stability for harvesters, processors and coastal communities; and
5. High levels of occupational loss of life and injury.

The problem facing the Council, in the continuing process of comprehensive rationalization, is to develop a management program which slows the race for fish, reduces bycatch and its associated mortalities, provides for conservation to increase the efficacy of crab rebuilding strategies, addresses the social and economic concerns of communities, maintains healthy harvesting and processing sectors and promotes efficiency and safety in the harvesting sector. Any such system should seek to achieve equity between the harvesting and processing sectors, including healthy, stable and competitive markets.

The following discussion of the specific measures that follows identifies some possible sources of authority, should the Council elect to advance an action concerning any of the four issues it has identified.

The regulatory structure that defines fishing privileges under the crab program allows for the transfer of both quota shares and IFQ subject to limits on use and holdings of those shares. IFQ, however, may only be transferred within and among cooperatives. In addition, leasing of IFQ (defined as the harvest of IFQ by a vessel not owned by the quota share holder or on which the quota share holder is not present) is only permitted by cooperatives. Transfers of IFQ within a cooperative are overseen only by the cooperative, allowing a cooperative to distribute and redistribute IFQ among member vessels with no administrative limitations or delays. The only IFQ transfers administered by NOAA Fisheries are those between cooperatives. Cooperative vessels are exempt from vessel use caps, freeing cooperative vessels from any

⁶ See Consolidated Appropriations Act of 2004, Sec. 801 amending the Magnuson Steven Act Sec. 313(j)(3).
Cooperative measures to address active participant and crew issues
North Pacific Fishery Management Council
October 2012

regulatory limit on the amount of a cooperative's allocation they may harvest. This cooperative structure provides participants with relatively high operational efficiencies, particularly in comparison to fishing opportunities outside of cooperatives. Because of the contrast between cooperative and non-cooperative fishing opportunities, almost all fishing has occurred in cooperatives. As a result, it is self-evident that the changes brought on by leasing (including changes in active participation and crew compensation) have arisen almost exclusively in cooperatives.

The Council's motion requesting this paper suggests that the measures be considered as requirements of cooperative agreements. The rationale for using cooperative agreements for implementing the measures is clear when considering the structure of the rationalization program. Each of the suggested measures is intended to address effects that arise largely from the share trading and redistribution, which occur exclusively within and among cooperatives. The Council has asked that the paper examine cooperative implementation of these measures, in part, to address the problems at their root. Cooperative implementation may also provide other advantages, which are discussed in the specific sections addressing each of the various measures.⁷

Generally, cooperative implementation could be accomplished through each cooperative being required to incorporate certain provisions in its cooperative agreement to establish the measure. Cooperatives could also collect information from members verifying compliance with the measure. In addition, each cooperative could be required to report to the Council showing its compliance with the measure. These three requirements could be used to establish the measure and ensure that participants follow through with internal oversight of the measure. In addition, the measures should be developed in a manner that provides specific direction to the cooperatives and fishery participants who are subject to the measure. Only measures that are specific can reliably achieve the intended results.

Promoting quota holdings by active participants

The first measure the Council has suggested for consideration is a measure to promote the acquisition of quota by persons active in the fisheries. This measure may be intended to address an overall policy goal of creating additional opportunities for persons active in the fisheries to have better access to quota. Persons who are active in the fisheries may maintain a better understanding of fishery conditions. This understanding is argued to create a stewardship ethic, helping to ensure that the resource is maintained. Active quota holders are also argued to be more engaged in day-to-day operations and have a better appreciation of risks in the fisheries and how those risks evolve. This understanding of risks may translate into better vessel maintenance and operations, improving safety in the fisheries. A requirement that persons holding QS maintain would also consistent with the dictate of the Magnuson-Stevens Act that limited access privileges be held by persons who substantially participate in the fisheries (see Magnuson Stevens Act Sec. 303A(c)(5)(E) or 16 USC 1853a (c)(5)(E)).

While promotion of quota holdings by persons active in the fishery may be argued to have benefits, it is difficult to understand the effects of any such measure, given the vagueness of the current proposal. Cooperatives could adopt a variety of different measures to promote quota ownership by members who are active, such as loan assistance, buyer preferences, or rights of first offer. The specific measures being suggested by the Council are not defined by the motion. The Council could choose one of two means of pursuing the action.

⁷ At times, it has been suggested that industry could independently adopt measures that cap lease payments, limit the extent to which lease payments may be charged to crew, or establish a minimum crew pay standard as a percentage of vessel revenues. Some members of industry have expressed concern that these arrangements could create antitrust concerns, as they could be construed by a court as an attempt by industry to limit prices or payments. As a result, cooperative administration of these measures is suggested to require Council direction.

First, the Council could develop specific requirements for cooperative agreements, which require a cooperative to adopt certain measures to promote acquisition of quota shares by persons meeting active participation requirements (such as vessel ownership or crewing requirements). The cooperative could also be required to monitor the provision and annually report to the Council on the transfers that have occurred and the extent to which transfers were received by persons who are active. This type of a requirement could be difficult to develop. Specific thresholds for active participation will need to be defined. Consequences for failing to meet those thresholds may also need to be defined. Persons could be prevented from forming a cooperative in subsequent years or could simply be subject to enforcement actions. Since cooperatives in the program are strictly voluntary, development of measures to address failing to meet requirements could be complicated. For example, if a cooperative member fails to comply with an agreement's requirement, imposing a limitation on members of that cooperative who are active in the fisheries and had no involvement in the failure to comply may be perceived to be problematic. If the Council wishes to pursue a specific cooperative requirement, considerations such as these may be relevant.

An alternative could be to adopt a more general requirement that each cooperative develop and adopt its own measures to facilitate the acquisition of quota shares by active participants. This alternative would allow each cooperative the flexibility to address the issue in a way that it perceives to be the most appropriate for its circumstances. Each cooperative could also be required to report annually on the performance of the measures. Although a less specific requirement may be less effective in some instances, it may also allow cooperatives flexibility to address their own circumstances. A small cooperative that has mostly active participants may appropriately establish internal financing of crew quota share purchases. A larger cooperative may better address active participation share acquisitions by granting a purchase preference to active participants. This added flexibility may come at a cost, if cooperatives choose to minimally address the issue with measures that do little to ensure that transfers are made to active participants.

Under either of the suggested alternatives, the Council could also require cooperatives to annually report on the extent to which its cooperative's members are active. Such a report could identify the number of quota share holders in the cooperative, the amount of IFQ brought to the cooperative by those quota share holders that are active and inactive, as well as the changes in the number of quota share holders and amount of quota shares that are held by persons who are active. The report could also separately identify members who are active as crewmembers, as well as persons meeting a specified vessel ownership interest.

Limits on lease rates

The high lease rates in the fisheries are said to contribute greatly to the decline in revenues to persons who actively participate in the fisheries as vessel owners and crew. It is suggested that lower lease rates would allow for more of the fisheries' revenues to be realized by vessel owners and crews. These additional revenues could address concerns that vessel owners have reduced revenues for vessel maintenance and that crews have suffered declines in compensation under the rationalization program.

As noted earlier, understanding leasing in the crab fisheries is complicated by the regulatory structure. Most transfers of shares occur inside cooperative and, as such, are not directly reported to NOAA Fisheries. These internal distributions of IFQ are typically directed by members, without cooperative managers having full knowledge of the terms of the transaction (particularly financial terms). Similarly, transfers between cooperatives are often made at the direction of members, without cooperative managers having full information concerning the transfers. For cooperatives to take on a role of overseeing all transactions to implement a cap on leases would require that cooperatives take on the role of monitoring all transfers of shares to ensure that the cap is not exceeded. To effectively monitor transactions in this

manner will require that the Council develop a definition of a lease. Defining a lease for purposes of limiting the lease rate (or the amount of revenues that may be transferred in exchange for use of the shares) may seem relatively straightforward, in comparison to defining a lease for purposes of determining the overall market lease rate. For example, the limitation could be applied to any transfer of IFQ within a cooperative or between cooperatives. While the documentation of specific lease rates could be problematic, as a variety of arrangements (including in-kind transfers) among a variety of different entities are likely, verification that lease rates do not exceed a specified level may be possible.

If adopted, a lease cap could be implemented by requiring each cooperative to include in its cooperative agreement a provision that prohibits leases in excess of the cap. Cooperatives could also be required to report on leases within the cooperative and between the cooperative and any other cooperative, verifying simply that no lease rate exceeded the specified cap. The cooperative could use a system of affirmations from its members to support its report. It should be noted that the report (and supporting affirmations) would not specify any lease rates, but only that lease rates did not exceed the cap.

Whether a measure such as caps on lease rates will achieve desired effects, however, is uncertain. While limiting cash payments to persons who lease QS could complicate efforts by those persons to realize the maximum return from their share holdings, such a limit may not mean that alternative means of achieving the maximum return are not developed. The simplest means of avoiding the cap would be to enter arrangements that avoid the characterization of the share distribution as a lease. Transfers between persons active in the fisheries can include shares of other species or other goods obscuring lease rates. Persons not active in the fishery may use partnerships and corporate share holding arrangements to avoid leases. For example, partnership agreements could be entered annually (or less frequently) that specify that IFQ yielded by certain quota shares will be distributed within a cooperative for harvest by a specific vessel owned by one partner. An inactive quota share holder (who holds no interest in the vessel) may transfer quota to the quota holding partnership and hold a large interest in that partnership, effectively receiving payments equivalent to a lease that pays in excess of the cap. The specific arrangements could be tailored to accommodate a rule developed by the Council to ensure that the distribution of IFQ to the vessel for harvest would not be considered a lease, since the vessel owner may hold an interest in the quota holding entity.

The Council could attempt to close off these opportunities by providing better definition of instances that would be considered a lease for imposing the cap. A lease could be defined as use of IFQ on a vessel that is not owned in part or crewed by the holder of the quota shares that yielded the IFQ. A threshold ownership amount could be established for determining common ownership of a vessel and the held quota shares. Through this definition of leasing, the Council might effectively drive inactive quota share holders into partnerships with persons active in the fishery, but these measures may not fully address the concern of persons whose only interest in the fisheries are quota holdings receiving a substantial amount of the value associated with harvests from the fisheries.

Capping lease payments that may be charged to crew

Crews in the crab fisheries are typically paid a share (or percentage) of adjusted vessel revenues. Historically, adjustments have been made for normal vessel expenses, such as bait and fuel. Since implementation of the rationalization program, many vessel operators have also made adjustments for quota share lease payments. To limit the effects of the leasing market and these lease payment on crew, it is suggested that the amount of any lease payments that may be charged to crews could be limited. Limiting these charges could be used to attempt to protect crews from the financial impacts of high lease rates and widespread leasing practices in the fisheries, which may be contended to contribute to both equity and economic stability in the harvesting sector.

Any limit on lease charges passed on to crews could be implemented in a manner similar to the suggested implementation of the limit on lease rates, discussed above. A cooperative could be required to include a provision in its cooperative agreement prohibiting charging lease rates to crew in excess of a threshold percentage. Cooperatives could also be required to report to the Council that no crews were charged in excess of the threshold. Cooperatives could use affirmations from members to support their reports.

Although capping the amount of lease payments that may be charged to crews is intended to insulate crew from the effects of leasing in the fisheries, whether such a measure would be effective is uncertain. Vessel owners can structure contracts a variety of ways to arrive at the same payment. If lease rates charges are limited, it may be possible to add other charges or adjust the crew share percentage to arrive at the same crew payment that would have been made, if the full lease rate was charged.⁸ It is difficult to envision how a measure could be developed to address these modifications, given the variety of structures crew contracts can take and the number of elements that may be incorporated into those contracts.

Minimum crew pay standards

An alternative to capping lease payments that may be charged to crew could be to establish minimum crew pay standards. Such a standard could define the minimum percentage of gross ex vessel revenues that a vessel may pay to its crewmembers. Such a limit could serve a purpose similar to a minimum wage law. Such a measure would be intended to more directly and comprehensively protect crew from further declines in the share of vessel revenues paid to crew that has occurred under the rationalization program. The more general goal of these measures may be to achieve equity and economic stability in the harvest sector.

As with the preceding measures, cooperative implementation could be accomplished through requirements that a cooperative: 1) to include in its cooperative agreement a provision that requires all vessels to compensate crews in excess of a specified percentage of the vessel's gross revenues, 2) collect from each members' vessels gross revenues and total crew compensation that can be used to verify compliance, and 3) annually report to the Council concerning compliance with the requirement. The annual report may not require a cooperative to specifically report on crew compensation amounts (due to confidentiality limitations), but would simply be an affirmation that the cooperative's vessels all met the standard. A cooperative, however, may elect to provide more specific information concerning crew compensation.

As with other cooperative measures under discussion here, the Council should consider factors that may either limit the success of this proposed measure or pose challenges in defining the measure. Since implementation of the program, crew compensation as a percentage of gross revenues has varied with the amount of harvests (see Table 4). Some participating crews have suggested that the consolidation of quota provides a benefit, even if payments for harvest of that added quota are at a lower percentage due to charges for lease payments. In other words, some crew may believe that the acceptable minimum share of vessel revenues paid to the crew should differ with the amount of harvests. Whether appropriate minimum percentages can be defined that protects crews on vessels that harvest substantially different amounts of crab is uncertain.

Owner operated vessels and vessels that harvest quota of crewmembers could also pose a challenge. It is possible that owner operated vessels and vessels that catch a substantial amount of quota held by crew may be able to achieve the standard by disguising payments for vessel ownership or quota holdings as

⁸ If the Council wishes to proceed with an action to limit lease payments charged to crew it should also consider that quota charges that serve a similar function as lease charges (such as mortgage payment charges) may have a similar effect on crew compensation. The Council should consider whether its measure should be written to include these other charges.

crew compensation. Developing a measure that accurately separates pay for working as the captain on the vessel (or payments for share holdings) from payments for crewing could be difficult.

Reasonable compensation may differ across fisheries due to a variety of factors (such as crab prices and catch rates). These differences are suggested by historical data from the fisheries. For example, the percentage of vessel gross revenues paid to crew in the Bristol Bay red king crab fishery has been lower than that percentage in the Bering Sea *C. opilio* fishery; however, daily pay in the red king crab fishery has exceeded daily pay in the *C. opilio* fishery. Any percentages should consider the whether different percentages are appropriate for different fisheries. In addition, to the extent that harvests overlap across fisheries (such as *C. bairdi* harvests made in the Bristol Bay red king crab and Bering Sea *C. opilio* fisheries), it may be difficult (or inappropriate) to attempt to separate payments by fishery.

Another consideration (that is more concerning) is whether the adoption of such a measure would lead to all (or most) vessels simply paying the proposed minimum payment. Some vessel owners may be tempted to adopt the minimum payment as the Council's recommended crew compensation, rather than as an acceptable minimum. If this practice is adopted, some crew could be harmed substantially.

Active participation requirements

While the high degree of flexibility allowed of cooperatives in use of their IFQ has allowed quota share holders to achieve operational efficiencies increasing the benefits derived from their share holdings, it has also allowed for inactive quota share holders, which concerns the Council and some stakeholders. These QS holders have used cooperative membership to derive ongoing benefits from the fisheries despite maintaining no role in the fisheries beyond leasing of their fishing privileges to vessel operators. Many stakeholders do not object to these QS holders receiving compensation for their share holdings, as those holdings are derived from fishery investments (either in QS directly or in licenses and vessels from which QS allocations were derived). Some stakeholders, however, question whether these QS holders should be permitted to continue to hold QS and receive continuing annual payments from the fisheries, as their holdings may limit the ability of some vessel owners and other active participants in the fisheries from gaining more secure positions through the development of long term share holdings. To the extent that these lease arrangements have limited the amount of QS on the market, vessel owners and active crewmembers are subject to the vagaries of the lease markets for a large share of the vessel's harvests, rather than having a more certain allocation that arises from QS holdings.

A means of redressing this circumstance could be to develop a requirement that any cooperative member meet an active participation requirement. For example, a cooperative could be required to verify that all of its members either own a threshold interest in a vessel that actively fishes in the crab fisheries or meet a crewing threshold in the fisheries. These requirements could be similar to the suggested requirements of the Council's current active participation alternatives. Incorporating these active participation requirements into cooperative requirements, however, could reduce the administrative burden of the agency considerably, by shifting that burden to cooperatives. Each cooperative would need to maintain vessel ownership and vessel and crew harvest records of member quota share holders sufficient to demonstrate compliance with the active participation requirements, as needed to support an annual report.⁹

⁹ Shifting the burden to cooperatives could have the effect of distributing those costs among cooperatives in proportion to the complexity of their circumstance, possibly creating a direct incentive for cooperatives (and their members) to maintain simple ownership structures for purposes of meeting active participation requirements. Under agency administration, this incentive is lacking since any administrative cost borne by industry would be through cost recovery.

Conclusion

The Council requested this paper as a first step in its consideration of a variety of measures to address issues related to share purchase opportunities for persons active in the crab fisheries and high lease payments in the fisheries and the effects of those payments on active participants. The paper outlines possible measures that the Council could consider to develop alternatives for analysis. If the Council wishes to proceed with an action, it will need to first develop a purpose and need statement identifying its reasons for undertaking action to address these issues. Relying on that purpose and need statement, it can then identify alternatives that will address perceived specific issues.



ALASKA

Bering Sea Crabbers

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September 25, 2012

Eric A. Olson, Chairman
Chris Oliver, Executive Director
North Pacific Fishery Management Council
605 West 4th Avenue, Suite 306
Anchorage, Alaska 99501-2252

October 2012 NPFMC Agenda Item C-6(b) "Initial Review of BSAI Crab active participation requirements" and C-6(c) "Discussion paper on BSAI Crab Cooperative Provisions for Crew"

Dear Chairman Olson,
Alaska Bering Sea Crabbers (ABSC) is a 501c(5) non-profit, seafood industry trade association representing roughly 70% of the harvest quota shareholders ("QS holders") in the BSAI Rationalized Crab (CR) fisheries. As such, we appreciate the opportunity to provide the Council with comments on agenda items C-6 (b) and (c).

At this time ABSC would request the Council take no further action on either agenda item C-6(b) or C-6(c). ABSC feels that if the Council decides to move forward on either agenda item at this time, doing so would only increase the regulatory instability that has been emblematic of the BSAI CR program over the past 7 years. Since Rationalization there have been no fewer than 26 proposed regulatory amendments. This translates to an average of 3.7 proposed changes per year over the life of the program. This lack of regulatory stability is likely a major factor constraining investment in the fishery.

ABSC would also like to note the harvest sector has been very proactive in addressing the concerns the Council initially raised during its December 2010 consideration of the 5 Year Review. Specifically, the Inter-Cooperative Exchange (ICE) implemented a voluntary lease rate cap for Bristol Bay Red (BBR) King crab and Bering Sea Snow (BSS) crab beginning in fishing year 2011. This voluntary lease rate cap was intended to address the gradual decline in the percentage of gross revenues being paid to crew. ICE is also in the process of implementing a Right of First Offer (RoFO) program as a means to facilitate the transfer of QS to active participants and crew. This RoFO program is being implemented via a change to the ICE Membership Agreement.

Although ICE and ABSC have expended considerable effort to develop these proposals, neither has had the time to mature. As such, the effects of these programs are currently unknown, nor is there data available by which to measure their

effectiveness. ABSC would contend that if 2011 EDR data was available, the gradual downward trend whereby crew receives a lesser percentage of the gross would be arrested and actually show positive movement in the opposite direction. The preliminary results of an internal survey of ICE members, conducted by the University of Washington Office of Educational Assessment this past summer, support this conclusion.¹

As for the effects of the RoFO, ICE will track QS sales by its members in the year to come in order to determine if the RoFO is a viable mechanism to facilitate the transfer of QS to active participants and crew. It should be noted that significant amounts of QS are already being transferred contrary to popular opinion. That fact is made abundantly clear in Dr. Fina's analysis that shows in 2011 5.05% of the BBR owner QS was transferred compared to only 0.48% in 2010. Similarly for BSS, 5.51% of the owner QS changed hands in 2011 compared to only 0.24% in 2010.² Clearly QS is moving and the market is active. Concerning the movement of owner QS from so called "absentee" owners to active participants, it should also be noted that earlier this summer a very sizeable QS sale occurred whereby a QS holder, wishing to retire, sold his QS to an active vessel owner/skipper who wished to increase his ownership stake in the fishery. It should also be noted that the purchaser is also eligible to own C shares. So, while this sale didn't go through the formal RoFO process, it did have the end result envisioned by the RoFO program.

Council staff make the point that under the RoFO program, as it was presented to the Council in December 2011, "*given the uncertainty of these factors on the performance of the right, the Council could choose to have industry provide a detailed report on the measure prior to its full implementation and periodic reports on its performance that can be used to assess its effectiveness.*"³ ABSC would agree that this is a reasonable approach. ABSC would welcome the opportunity to present the results of the RoFO approach in December 2013 after it has been given a full year of implementation. As for the voluntary lease rate cap, ICE intends to continue this approach in fishing year 2012/2013. As with the RoFO program, ABSC feels it would be prudent for the Council to request that industry provide annual updates. Furthermore, delaying action at this time would also allow EDR data to "catch up" so that analysts would have the appropriate data available for them to measure the voluntary lease rate cap's effectiveness, in conjunction with the annual industry report. The current draft of the NPFMC discussion paper only includes EDR data through 2010.⁴ Considering that the lease rate cap was not implemented until fishing year 2011, ABSC would contend that allowing EDR data to "catch up" would be quite a reasonable approach.

¹ University of Washington Office of Educational Assessment. Unpublished data.


² NPFMC. October 2012. "*Initial Review Draft. RIR/IRFA of Provisions Defining Active Participation Requirements For the Acquisition and Use of Owner Shares.*" p.11

³ *Ibid.* p.14

⁴ NPFMC October 2012 Discussion Paper. "*Cooperative measures to address active participant and crew issues.*" p.3

In conclusion, ABSC requests the Council take no further action on agenda items C-6(b) and C-6(c) at this time, but rather focus its energy on any of the many other pressing issues currently under Council purview. The Council can certainly consider issues related to lease rates, crew compensation, and active participation at a later date if the industry-driven approach proves to be ineffective. Please keep in mind there is no emergency here. Crab captains and crew continue to earn many tens of thousands if not hundreds of thousands of dollars through their participation in the fishery. This fact has been repeatedly highlighted in public testimony to the Council as well as in the EDR's. Once again, ABSC feels it would be prudent for the Council to require industry provide annual reports to measure the effectiveness of the measures that have been implemented to date. In conclusion, ABSC thanks the Council for the opportunity to comment on agenda items C-6(b) and C-6(c).

Sincerely,



Mark H. Gleason, Executive Director

North Pacific Fishery Management Council
210th Plenary Session – Anchorage Hilton Hotel
October 1-9, 2012

C-6 BSAI Crab Management: Captains & Crewmembers on the topics of:

- (b.) Initial Review of BSAI Crab active participation requirements.**
- (c.) Discussion paper on BSAI Crab Cooperative Provisions for Crew.**
- (f.) Crab Economic Data Reporting – Review forms and draft regulations.**

For the Official Record: Ensuring Fair & Equitable Rights or Compensation

Tuesday, September 25, 2012

Secretary Rebecca Blank, Chairman Eric Olson, and Council members:

The Captains and Crewmembers' representatives have long voiced concerns about the unjust level of economic protections provided in January 2004 when Congress amended Section 313(j) of the MSA and in 2006 mandated the Secretary to implement the Crab Rationalization Program – a privatization of once-public fisheries designed to serve special interests while restraining trade.

Brought into law by the trickery of Regulation-Negotiation and breaking the Federal Register (Dec. 14, 2000) provisions to ensure the Council submitted its proposals — on whether or not Crab Ratz should occur — to the appropriate jurisdictional and authorizing bodies of the Congress. It became a winners versus losers action.

The three pie system, a legislative end-run statute, failed to include any provision for all of the captains and crewmembers — the primary 'active participants' — to receive their historical share of the economic take from crabbing. This separate statutory authority' offers no excuse for the Secretary not ensuring that other applicable federal laws got applied. Its rights shifting also offers no excuse for the Leasing of shares (taken off-the-top before Trip Settlements) and other reasons dramatically lowering net crew take home compensation. I.E. rights to shares and rights to compensation may be differentiated, in part, even though diminishing the one clearly leads to diminishing the other. To protect one right, you must first protect the other.

The Commercial Fishing Industry Vessel Safety Act of 1988, 46 U.S.C. §106, and Lay Share laws, 46 U.S.C. §10601 and §11107 still apply. As do Contract Law provisions, where agreements must be fairly negotiated between willing parties, free from duress, and in writing – prior to performance, etc. The Admiralty has a long and storied role in protecting fishermen. Why won't it do the job today in Alaska's fisheries?

You have heard repetitive pleas from crewmembers about how Cooperatives and individual vessel owners have worked together to radically change the compensation system. And to crimp the annual economic earnings of crewmembers by demanding they do low wage-earning shipyard work (displacing higher paid shipyard craftsmen) and partake in summer salmon tendering operations in order to keep their crab jobs. They are not free agents able to maximize their annual incomes on their own basis. Using the terms indentured and 'sharecroppers' is not without accuracy and reason.

The Economic Data Reporting system is seriously flawed because it does not gather the Leasing information required for analysis, and to measure compliance with these other laws. The United States Coast Guard does not have in its boarding requirements a check to see that the vessel carries a copy of all applicable crew contracts for the fishing voyage currently underway. Furthermore, the Council has not provided any means or regulations to ensure Law Share (and contract) laws are followed, let alone collected the data required to ensure "fair and equitable" standards under the MSA, and that staff analysis (e.g. the 5-year review) is possible in this regard.

Please improve EDRs and the analysis to ensure there is no further violation of "the social contract" inherent in Catch Share management. Use 'active participation' measures to help correct the problems encountered to-date and to avoid harms in the future (e.g. upcoming GOA privatization). These things are only a start, as we believe that the Catch Share mentality and model is inferior to the form of a more "restricted common property" approach.

That begins with right thinking – that captains and deckhands are the active participants and (as Abraham Lincoln noted), "*Labor is superior to capital, and deserves the much higher consideration.*"

You'll be tempted to go about 'trying your way out of problems' the Council has largely created for itself. Remember, "*Trying is much harder than just doing it!*" Please just do it right for the sake of the Public stewards of these national resources.

Respectfully,

Stephen Taufen, Groundswell Fisheries Movement

Stephen R. Taufen
P.O. Box 714
Kodiak, AK 99615

C-6(b) Initial Review of BSAI Crab active participation requirements

The Advisory Panel recommends the Council take no further action on agenda item C-6(b) at this time. Rather, the Council should require the Bering Sea crab cooperatives to provide an annual report to the Council describing the measures they are taking to promote quota acquisition by crab crew members and active participants. These annual reports should include the following: a description of any efforts to promote QS acquisition by crab crew members and active participants and the number of transactions whereby QS is transferred to crab crew members and active participants. *Motion passed 15-6.*

Minority Report on C-6(b) Active Participation: A minority of the AP did not support this motion and supported a substitute motion to change the requirement under a) to "be the named owner of a vessel" and add c) OR be a CDQ or non-CDQ community entity. The minority felt that the problem statement presents a valid concern and the Council should continue to move forward with regulatory action to require active participation in the crab fishery. Delegating addressing the issue to the co-op for non-regulatory action does not sufficiently address the problem. Forwarding this for further analysis will provide additional information about regulatory means to address this issue. Signed by: Tim Evers, Becca Robbins Gisclair, Alexis Kwachka, Chuck McCallum, Theresa Peterson and Ernie Weiss.

C-6(c) Discussion paper on BSAI Crab Cooperative Provisions for Crew

The Advisory Panel does not recommend moving forward with a regulatory amendment to address crew compensation at this time. *Motion passed 13-7.*

Minority Report on C-6(c) Crab Cooperative provisions: A minority of the AP did not support this motion. The minority felt that the issues of crew pay, leasing, and amount of lease rates that could be charged against crew pay needs further addressing. The minority felt that the challenges of addressing this issue illustrate the need to get things right initially in a rationalization program. Impacts on crew was one of the greatest impacts of crab rationalization, and this issue deserves additional analysis. Signed by: Tim Evers, Jeff Farvour, Becca Robbins Gisclair, Alexis Kwachka, Chuck McCallum, Theresa Peterson and Ernie Weiss.