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**Crab Advisory Committee Meeting Minutes
June 20, 2007
Nordby Conference Room
Fishermen's Terminal, Seattle**

Committee Members – Jake Jacobsen, John Iani, Mike Woodley, Lenny Herzog, Rick Shelford, Clyde Sterling, Rob Rogers, Dave Hambleton, Phil Hansen, Louie Lowenberg (by phone)
Staff – Mark Fina, Glenn Merrill (by phone), Brian Garber-Yonts

Public – John Jorgensen, Einar Sorvik, Florence Colburn, Linda Kozak, Mike Shelford, Vern Schomacher, Paul Duffy, Lou Laferriere, Steve Minor, Dick Powell, Margo Posten, Brent Paine, Dave Fraser, Margaret Hall, Arni Thomson, Heather McCarty, Mimi Brown, Sandra Moller, Kristy Despars, Beth Stewart

Minutes

The meeting opened with the committee recognizing of the contributions of Chris Heuker to the crab fishery.

The meeting addressed several issues suggested by the Council. The committee addressed issue in two categories, regulatory issues and issues related to the use of B shares. For issues that the committee reached consensus, the proposed amendment is set out.

Regulatory Issues

Market reports and non-binding formulas for fisheries unlikely to open

Under the current regulations, market reports and non-binding formulas are required to be generated annually for each fishery regardless of whether the fishery opens. In the first two years of the program, the St. Matthew Island and Pribilof fisheries have not opened. During this period, the arbitration organizations did not contract for the production of market reports or non-binding formulas for these fisheries. A modification of the regulations could be developed to remove the requirement for producing a market report for fisheries unlikely to open.

The committee reached a consensus that the arbitration organizations could adequately address this issue by agreement. Industry and the organizations have adequate information to assess the potential for fisheries to be closed prior to the season. A modification of the current regulation could be considered to exempt any fishery from the market report and non-binding formula requirements provided the arbitration organizations agree that the fishery is unlikely to open. In the event that ADF&G later announced that the fishery would be opened, the arbitration organizations would be required to obtain the report and formula. The amendment could also require that the arbitration organizations' agreement include a contingency plan for obtaining the report and formula, in the event that a fishery opening was announced.

Possible amendment

In the event that the arbitration organizations representing at least 50 percent of the PQS holders and at least 50 percent of the unaffiliated QS holders agree that a fishery is unlikely to open, neither a market report or non-binding formula will be required for the fishery. Any such agreement will include provision for the production of the market report and non-binding formula, in the event that an opening is later announced for a fishery, specifying a timeline for the production of those reports.

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Timeline for the golden king crab market report and formula does not allow for data from most recent fishery to be used

Under the current regulation, data from the most recent season are not available for use in developing the market report and non-binding formula because those reports are required to be completed 50 days prior to the August 15th fishery opening. Allowing an additional 20 days for the completion of the report and formula would allow the use of data from the most recent fisheries. The committee reached a consensus that the current rule be modified to require the reports 30 days prior to the fishery opening.

Possible amendment

The market report and non-binding price formula for the golden king crab fisheries will be required to be completed at least 30 days prior to the opening of those fisheries.

Staleness of the market reports

The current requirement that market reports be complete at least 50 days prior to the season prevents the inclusion of the most current and relevant pricing information in the report. In addition, the prohibition on supplements to the report prevents modification of the requirement to provide useful market information in season or after completion of the initial report. The committee discussed the antitrust concerns that contributed to the scheduling defined by the existing rule. Committee members agreed that the reports could rely exclusively on publicly available information, which would allay antitrust concerns related to report timing. The committee also suggested that the current timing of the non-binding formula should not be altered.

The committee considered several potential changes to the current requirements, including potentially doing away with the report requirement. The committee expressed a general preference for flexibility in the timing of the report and any supplements, which would allow for the provision of relevant information at critical times before and during the season. In general, the committee believed that the report and supplements would be most useful, if they included relevant market information from publicly available sources together with some analysis describing the significance of that information. The committee reached consensus that a regulation that provided arbitration organizations with the flexibility to define market report requirements (including allowing supplements) would best serve industry. These changes will not affect the timing or content of the non-binding price formula.

Possible amendment

The arbitration organizations agreed to develop specific language for consideration by committee members. The regulatory amendment could generally provide that at least 50 days prior to a season opening, the arbitration organizations representing at least 50 percent of the PQS holders and at least 50 percent of the unaffiliated QS holders are required to reach an agreement for the provision of a market report (which may include supplements at any time prior to the end of the season). The market report will utilize only publicly available information. Such an amendment would provide the arbitration organizations with the most latitude to define a market report that will best serve participants in a fishery.

Compressed time for share matching and initiation of arbitration

Under the current regulations and TAC announcement schedule, the share matching and arbitration initiation time periods for most fisheries are compressed into a very tight time period. All pre-arbitration share matching and initiation of arbitration proceedings for the Bristol Bay red king crab, the Bering Sea *C. opilio*, the Bering Sea *C. bairdi*, the Pribilof red and blue king crab, and the St. Matthew Island blue king crab fisheries takes place during a single 15 day period. Possible solutions could be to extent the length of these periods or to alter season openings for some fisheries to stagger these periods for the different fisheries.

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The committee reached a consensus that simply stating these periods as “business day” periods, rather than “calendar day” periods would relieve some of the time pressure. The committee was reluctant to endorse changes in season openings because those changes could limit changes in fishing practices that could be desirable in the future. The committee also elected to avoid substantial changes in the timing of these periods, which could affect the balance of interests under the current system.

The committee also discussed the difference between the time period to initiate arbitration (15 days after IFQ/IPQ issuance) and the time period to agree to adopt the ‘lengthy season approach’ to arbitration (which must be agreed prior to the season opening). The committee reached a consensus that the current time line for agreeing to the ‘lengthy season approach’ should remain unchanged. (It should be noted that currently approximately 10 calendar days after the IFQ/IPQ issuance are available for electing to adopt the ‘lengthy season approach’. Under the committee’s proposed timeline for initiating arbitration, the period for initiating arbitration will end approximately 22 days after the IFQ/IPQ issuance.

Possible amendment

Modify the current timelines for share matching and initiating arbitration by changing 5 ‘calendar’ day negotiated share matching period and 10 ‘calendar’ day binding arbitration period to ‘business’ day periods.

Streamline transfers

Several committee members expressed concerns over the processing time for transfers. The committee also recognizes that part of their frustration with transfers could arise from a failure to adequately communicate to RAM their concerns and interests. To address this shortcoming, the committee suggested that members (and members of industry generally) develop a list of issues and interests that could be shared with RAM. Also, the committee has asked the staff contact RAM to determine whether a representative of RAM would be available for the next meeting of the committee.

Immunity for arbitration organizations, arbitrators, market analysts, and the third party data provider

Staff reported that the Council has requested NOAA GC examine the potential development of provision of immunity for arbitration organizations, arbitrators, market analysts, and the third party data provider. Any such immunity would not apply to breaches of contract, acts of malfeasance, or similar intentional misdeeds. The committee generally expressed its support of this grant of immunity.

Possible amendment

Pursue the grant of immunity for arbitration organizations, arbitrators, market analysts, and the third party data provider. Any such immunity would not apply to breaches of contract, acts of malfeasance, or similar intentional misdeeds.

Delivery of ‘highest arbitrated outcome’ to the formula arbitrator

Under the current regulation, the formula arbitrator is required to consider the ‘highest arbitrated outcome’ for the proceeding season when developing the non-binding formula. The regulation does not provide an explicit mechanism for delivery of the ‘highest arbitrated outcome’ to the arbitrator. NMFS currently provides the formula arbitrator with the arbitrator’s finding and the last best offer submissions (including supporting materials) of all parties to the arbitration for this purpose. NMFS has suggested that the arbitration organizations deliver these materials to the formula arbitrator to streamline that process. Committee members differed in their initial impressions of the materials that should be provided to the formula arbitrator for this purpose. Some believe that the current practice is appropriate; others believe that only the arbitrator’s finding should be provided to the formula arbitrator. The committee believed that additional time to consider this matter would aid in reaching consensus and agreed to revisit the issue at its next meeting.

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Accessing first wholesale information during arbitration

One committee member suggested that application of the arbitration standard (i.e., preserving the historic division of first wholesale revenues) requires that harvester have access to some standard pricing information from processors. To this end, it was suggested that a list of data be defined that a processor would be required to provide to harvesters who have committed deliveries to that processor certain information including first wholesale prices for its sales that differentiate sales to affiliated entities and domestic and foreign sales. Another committee member suggested that an independent accountant could be included in the list of contract arbitrators for this purpose to ensure confidentiality. The need for harvesters to have access to the information was stressed, since that access could help avoid arbitration proceedings. The committee was uncertain whether of the scope of the issue and requested the committee member raising the issue to provide a written proposal outlining the issue. That proposal should be available for the next meeting.

Time limit for initiating of arbitration under the lengthy season approach

The committee also discussed an ambiguity in the current regulations concerning time limits on arbitrations conducted under the lengthy season approach. The parties to a recent arbitration proceeding raised this issue with the arbitrator presiding over that matter. The arbitrator decided that the arbitration must be initiated prior to the end of the crab fishing year on June 30th (as suggested by the regulation), but that the proceeding need not be completed by that date. In that proceeding, the arbitrator decided that each side would need to present their last best offers on July 16th and their rebuttals on July 19th. Any proceeding would need to be finalized by July 31st, in order to provide the outcome to the formula arbitrator for consideration in developing the following year's non-binding price formula.

B share use

The committee also discussed the current uses of B shares and the extent to which B shares are not being used for the purposes intended by the Council. The committee generally agreed with staff's conclusion that B shares are intended to be used for three purposes: to provide competitive negotiated deliveries, to serve unserved or underserved markets, and to facilitate processor entry.

The committee also reviewed the staff list of current unintended uses of B shares, which included coordination of landings and deadloss. Committee members differed in their opinions concerning the importance of these two issues. Some committee members believed that the logistical complexities require them to reserve B shares against logistical contingencies, preventing their use for their intended purposes. Other committee members suggested that the flexibility of being able to fish shares at any time allowed the cooperatives to address logistical challenges internally.

In general, committee members agreed that the starting point for considering this issue should be a comprehensive reporting of B share uses and prices. Committee members from both sectors agreed to develop an accounting of B share uses and prices for the next meeting. Both sectors agreed that the information regarding B share deliveries and prices would be aggregated in their collection to avoid any anti-trust concerns.

One committee member also suggested that B shares are used to some extent for operational efficiency purposes, such as ensuring that a vessel makes a full trip (rather than catch only a portion of a boat's capacity). Some committee members suggested that these decisions could prevent B shares from serving their intended purposes, but observed that the decision was in the control of the harvester and that the efficiency benefits accrue to the harvester. Harvesters also suggested that B shares are currently used to cover overages on A share deliveries. These members suggested that the benefit from covering an A share overage with B shares exceeds the potential benefit of underharvesting (and underdelivering) an A share commitment to an IPQ holder.

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Some harvesters expressed concern that small niche markets and smaller processors may be difficult to serve under any system because efficiency benefits of delivering a full load are too great to overlook. Delivering to multiple processors increases deadloss and reduces quality for the processor taking the second delivery from the bottom of the tank.

Notwithstanding these uses of B shares, committee members also described the entry of a few small processors to the fishery, who have taken deliveries of B shares. Some of these deliveries were made by cooperatives that pooled B shares to make deliveries to these smaller markets. Some of these deliveries were made to Kodiak in both the Bristol Bay red king crab and *C. opilio* fisheries. One committee member also mentioned the production and sale of a small amount of live Bristol Bay red king crab as evidence of a new product form.

One committee member suggested that relief from regionalization could also limit the extent that B shares are needed to address logistical complications. Another committee member suggested that any 'emergency' relief from regional landing requirements would need to have clear, easily administrable criteria to allow for implementation and enforcement. Another committee member suggested that community consent should be necessary for any emergency waiver of a regional landing requirement to ensure that communities do not bear the costs of the emergency.

The committee also discussed the need for a more streamline system of transfers and a system of post-delivery transfers to alleviate logistical pressures that consume B shares. The committee discussed the potential for an inter-cooperative to address logistical complications. Several committee members expressed concern that use of an inter-cooperative could be complicated, since the current system does not accommodate the inclusion of affiliated harvesters in a cooperative that includes unaffiliated harvesters. The committee also raised the issue of whether an inter-cooperative be developed through new regulations would differ under an inter-cooperative under the existing regulations.

The committee also discussed the potential for trading of processor shares to address logistical complications. Many committee members acknowledged that these trades could be limited by antitrust concerns. In addition, one committee member suggested that the benefits of these transactions could be limited, if they result in a processor having products packaged in another processors packaging and produced to that other processor's specifications.

Next meeting

9:30 a.m. on July 31st in Anchorage.

The specific meeting location will be announced in the near future.

The meeting agenda will be developed by the committee chairs and staff for review by the committee.

Tasks for next meeting

Lenny Herzog – summarize plan for processor sharing of first wholesale information with harvesters in that have committed Class A IFQ landings to a processor.

All committee members – develop list of transfer concerns and system preferences

All committee members – develop accounting of B share uses and prices