

C-2(a) BSAI Crab Rationalization Program
Report from the crab advisory committee

The Council tasks its crab advisory committee to continue the development of the following purpose and need statement and elements and options:

Purpose and need statement

The Bering Sea Crab Rationalization program was designed by the Council and authorized by Congress to recognize the prior economic interests and importance of the partnership between harvesters, processors and communities. The program was developed at a time that harvesting and processing capacity had expanded to accommodate highly abbreviated seasons, and significant portions of that capacity operated in an economically inefficient manner or were idle between seasons.

There have been continuing philosophical differences concerning the Program, but there have also been a number of targeted amendments to improve the Program. Recently, the Council, industry and crab-dependent communities have come to recognize that additional targeted amendments concerning Western AIGKC, community ROFR, long term crew participation in the program, and Emergency Relief from Landings requirements may be required to address the following specific problems:

1. Under-utilization of west-designated WAIGKC. A significant portion of the west designated WAIGKC TAC was left in the water during the 2006/7 season. It is not known if the Council's recent action to create a custom processing use cap exemption for this fishery will be sufficient to solve this problem. Given the potential impact on all participants, the Council has determined that this problem requires additional analysis.
2. Community ROFRs may be inadequate for long-term community protection. The Council has heard from several crab-dependent communities that the current ROFR regulations may be inadequate for long-term community protection under some circumstances. The Council's intent in establishing Community ROFRs was to insure that the PQS earned in a region created long-term benefits for that region, and that community ROFRs provided each community in that region with an adequate opportunity to acquire specific PQS if faced with the prospect that the PQS would move to another community within the region through a sales transaction. Communities have also indicated that they are unable to make their ROFR rights effective due to the lack of funding and because a ROFR may involve processing company's entire holdings and assets in a particular region which may be financially beyond the capacity and interest of a community to undertake, as the community is only interested in the processor holdings within the community boundaries. The current ROFR regulations allow for the expiration of the ROFR under certain circumstances. The Council has determined that this problem requires additional analysis.
3. Long-term crew participation in the program. The initial issuance of C shares was limited to skippers and, although the skipper/crew loan program was recently implemented to support long-term investments, the high cost of IFQ and low turnover rate in IFQ ownership provide very few actual investment opportunities and made it difficult for some long-term participants to secure and maintain their full position in the fisheries. The Council has determined that this problem requires additional analysis.
4. Unexpected events may require some relief from regionalization and other landings requirements. Recent ice events, a processing platform fire and an oil spill have all raised the possibility of temporary emergencies, natural or man-made, preventing delivery and/or processing in certain communities or regions. The challenge is to protect the balance of the program – including the investments of crab-dependent communities – while providing flexibility to industry during extraordinary events. The Council has determined that this problem requires additional analysis.

Elements and Options

Western AIGKC

1. WAG king crab options

1.1 Status Quo

1.2 Convert IFQ A shares to B shares

Suboption 1. with compensation to PQS holders

Suboption 2. without compensation to PQS holders

1.3 Convert West Designated IFQ A shares to B shares

Suboption 1. with compensation to PQS holders

Suboption 2. without compensation to PQS holders

Suboption: new B shares retain west area designation using landing requirements defined under the Custom Processing Amendment

Suboption: new B shares have no regional designation

1.4 Reallocation of PQS among other PQS holders if not utilized 3 years out of 5 years

1.5 Reallocation of PQS, CP, and CPO shares to more adequately address community concerns and processing investment

Suboption 1. with compensation to PQS holders

Suboption 2. without compensation to PQS holders

Community ROFRs

1. Status Quo

2. Establish a new ROFR with a starting date of October 1, 2009

Community entity has more than 60 days and 120 days but no more than 90 and 150 days, respectively, to indicate interest and to finalize agreement

A loan program is to be established to be administered by the Secretary to allow communities to exercise their ROFRs

Long-term crew opportunities

Alternative 1

Status quo

Alternative 2

Establish a market-based program to create additional quota share investment opportunities for active crew.

Element 1: Qualified crew access to shares.

A percentage of all A/B share IFQ sales (range of 3, 5, and 10 percent) shall be made available first to qualified crew.

Suboption 1: Those shares shall remain on the market until sold to qualified crew.

Suboption 2: Those shares may be made available to other potential buyers, if not purchased by qualified crew in (range of 60, 120, 180) days.

Element 2: Eligibility

Eligibility will be based on the "Active Participant" requirements of the program.

Element 3: Share Conversion

Suboption 1: Upon acquisition the shares shall be converted to “C” shares and retain that designation. An aggregate cap of (range of 5, 10, 15 percent) will be established for this program.

Suboption 2: To maintain other program goals, there shall be no share conversion provisions.

Emergency Relief from Landings Requirements:

The Council requests the Crab Committee to develop elements and options for Emergency relief for the June Council meeting.

C-2(b) BSAI Crab Rationalization Program
Analysis of A/B Share Split, Alternatives for Analysis

Purpose and need statement:

The Bering Sea/Aleutian Islands (BSAI) Crab Rationalization Program is a comprehensive approach to rationalize an overcapitalized fishery in which serious safety and conservation concerns needed to be addressed. Conservation, safety, and efficiency goals have largely been met under the program. Many aspects of the program are complex. Moreover, unintended consequences have occurred through rapid consolidation. Dependencies on the binding arbitration system and inadequate data have complicated the implementation and assessment of this program beyond the Council’s expectations at the time of development. The current rationalization program requires government monitoring and enforcement of many aspects of fishery operations that are typically, and perhaps more appropriately, managed through private negotiation and contractual agreements.

Experience under the BSAI Crab Rationalization Program has made apparent the need to analyze alternatives to status quo to achieve: a higher level of competition and efficiency in the processing sector; in-season flexibility; entry-level investment opportunities for active participants; and retention of rents by active participants. Elements of the program that have failed to provide anticipated benefits, such as some community protections, need to be recognized and re-crafted to reduce complexities and uncertainties experienced under the program.

Alternative 1: No action, status quo.

Alternative 2: Extinguish processor quota shares (PQS).

Remove the PQS component from all BSAI rationalized crab fisheries. Maintain the following regionalization components for harvester quota shares:

Option 1) No regionalization.

Option 2) North region *C. opilio*, Pribilof red and blue king crab, St. Matthew Island blue king crab, and Bristol Bay red king crab owner shares. Assign a North region delivery requirement to a portion of *C. opilio*, Pribilof red and blue king crab, St. Matthew Island blue king crab, and Bristol Bay red king crab owner harvesting quota share (QS) holdings. C shares shall not be regionalized. The portion of regionalized QS shall be set such that 37 percent of all *C. opilio* harvesting QS are North region. The portion of the regionalized QS for species other than *C. opilio* to be delivered in the North region shall be set at the same percentage of the TAC as is currently established for those species. North region share deliveries will be subject to a system of binding arbitration.

Suboptions: Apply the North region designation as follows:

- a) based on initial allocation (adjusted proportionally by owner QS holdings such that the appropriate percentage of QS is designated North region).
- b) as a constant percentage to all *C. opilio*, Pribilof red and blue king crab, St. Matthew Island blue king crab, and Bristol Bay red king crab owner share holdings.

Option 3) North region *C. opilio*, Pribilof red and blue king crab, St. Matthew Island blue king crab, and Bristol Bay red king crab owner and C shares. Assign a North region delivery requirement to a portion of all *C. opilio*, Pribilof red and blue king crab, St. Matthew Island blue king crab, and Bristol Bay red king crab harvesting QS holdings. C shares shall be subject to a North region delivery requirement in the same proportion as owner shares. North region share deliveries will be subject to a system of binding arbitration.

Suboptions: Apply the North region designation as follows:

- a) based on initial allocation.
- b) across all *C. opilio*, Pribilof red and blue king crab, St. Matthew Island blue king crab, and Bristol Bay red king crab QS holdings. The portion of regionalized QS shall be set such that the appropriate percentage of the listed species' QS holdings are North region.

Option 4) Maintain existing West/Undesignated regionalization of the Western Aleutian Islands golden king crab fishery.

Alternative 3: Increase proportion of open delivery shares; extinguish PQS in select fisheries. Increase the proportion of open delivery shares in the Bristol Bay red king crab and *C. opilio* fisheries and remove the PQS and regionalization components in all other BSAI rationalized crab fisheries.

Suboption: Do not remove regionalization in other fisheries (where PQS is removed).

Option 1) Increase the proportion of B class IFQ (individual fishing quota) for owner shares in the *C. opilio* and Bristol Bay red king crab fisheries. Change the A/B split to

- a) 80/20.

Suboption: regionalize additional B shares

- b) 70/30.

Suboption: regionalize additional B shares

Option 2) Increase the proportion of C share quota in the *C. opilio* and Bristol Bay red king crab fishery. Change the 3 percent C share allocation to

- a) 6 percent
- b) 8 percent
- c) 11 percent
- d) 14 percent.
- e) 25 percent
- f) 33 percent.

Suboption: Regionalize additional C shares created

Suboptions: Use the following mechanism to achieve the increase:

- i) A pro-rata reduction in owner shares (distributed over a period not to exceed 5 years) to create C shares available for active participants to purchase. Owner share holders who meet active participation requirements would be able to retain their converted C shares.
- ii) A percentage re-designation of owner shares to C shares at the time of each transfer. The purchasing owner is required to comply with the active participation definition or divest of the C shares.
- iii) A pro-rata reduction of PQS (distributed over a period not to exceed 5 years) and conversion into C shares available for active participants to purchase through market transactions.

Option 3) Establish IPQ thresholds. The amount of IPQ (individual processing quota) issued in any year shall not exceed,

Suboption a) in the *C. opilio* fishery,

- i) 26 million pounds.
- ii) 45 million pounds.
- iii) 64 million pounds.
- iv) 112 million pounds.
- v) 157.5 million pounds (status quo).

Suboption b) in the Bristol Bay red king crab fishery,

- i) 12 million pounds.
- ii) 15 million pounds.
- iii) 18 million pounds (status quo).

Option 4) Allow harvesting quota holders to purchase PQS in the *C. opilio* and Bristol Bay red king crab fisheries as a means to increase the percentage of B designated owner shares through market transactions.

Increased level of B shares would be distributed to the purchasing parties (individuals or cooperatives). Allow a variable A/B share split by quota holder to reflect the buyers' purchases of PQS.

Suboption: Additional B shares would be subject to regionalization requirements.

Component 1 (applicable to non-PQS fisheries under Alternatives 2 or 3) – Increase the percentage of IFQ available exclusively to active participants in fisheries where PQS has been removed.

Options: Increase the amount of C share quota from 3 percent of IFQ to

- 1) 6 percent.
- 2) 8 percent.
- 3) 11 percent.
- 4) 14 percent.
- 5) 25 percent.

6) 33 percent.

Suboption: Regionalize additional C shares created

Suboptions: Use the following mechanism to achieve the increase:

- a) A pro-rata reduction in owner shares (spread over a period not to exceed 5 years) to create C shares available for active participants to purchase. Owner share holders who meet active participation requirements may retain their converted C shares.
- b) Re-designate a percentage of owner shares to C shares at the time of each transfer. The purchasing owner is required to comply with the active participation definition or divest of the shares.

Component 2 (applicable to non-PQS fisheries under Alternatives 2 or 3) – Restrict offshore movement of BSAI crab processing in fisheries where PQS has been removed.

Option 1) Except in the community of Atka, all processing must take place at a shorebased processing facility or on a stationary floating processor at a dock or docking facility (e.g., dolphins, permanent mooring buoy) in a harbor in a community that is a first or second class city or home rule city, except for CP-IFQ (catcher/processor individual fishing quota).

Option 2) All processing on catcher/processors (except for CP-IFQ) must take place while at a dock or docking facility (e.g., dolphins, permanent mooring buoy) in a harbor in a community that is a first or second class city or home rule city. A catcher/processor is any vessel that operates as a catcher/processor during the crab fishery year.

Component 3 (applicable to all Alternatives) – Impose a fixed vessel use cap on all vessels fishing C. opilio and Bristol Bay red king crab IFQs (cap would apply to vessels fishing inside or outside of cooperatives).

Options: Vessels are subject to use caps equal to the following poundage threshold, determined by fishery and season, averaged across the 2005/2006, 2006/2007, and 2007/2008 seasons:

- 1) 150 percent of the median vessel harvest (in pounds)
- 2) 200 percent of the median vessel harvest (in pounds)
- 3) 300 percent of the median vessel harvest (in pounds)
- 4) the average of the highest four vessel harvests (in pounds)

Component 4 (applicable to Alternatives 2 or 3, only where reductions in IPQ are not achieved through market transactions with IPQ holders) – Provide compensation to processors through harvester royalty payments.

Note that Congressional authority will be required to authorize NMFS administration of such a system. The annual rate paid by harvesters is to be no more than 5 percent of ex-vessel value, which is also the statutory rate cap for the fishing capacity reduction program in the BSAI crab fisheries.

Options: The total compensation per unit of PQS removed from a fishery shall not exceed

- 1) 0.75
- 2) 1.0
- 3) 1.5

- 4) 2.0
- 5) 2.5
- 6) 5.0
- 7) 7.0

multiplied by the average ex-vessel price per pound (by fishery and region) standardized to PQS units, averaged across the most recent 3 seasons. Since PQS is to be removed from the fishery, not IPQ, standardization to PQS units is necessary.

Suboption a) Select a single maximum multiplier to be applied in all fisheries to which this provision may be relevant.

Suboption b) Select a distinct maximum multiplier for each individual fishery to which this provision may be relevant.

Component 5 (applicable under Alternatives 2 or 3) –

Analyze options to compensate processors by reallocating PQS as CVO QS. Converted CVO QS would retain regional designations. This converted CVO QS would be added to the existing CVO QS pool.

Analyze different ratios for assigning PQS as CVO QS based on the following ratios. Each crab fishery may have a different conversion ratio. These ratios are based on rough estimates of the relative value of each PQS to CVO QS. This range could be expanded or modified based on further analysis.

- a) 1 PQS unit =- 0.5 CVO QS unit
- b) 1 PQS unit =- 0.4 CVO QS unit
- c) 1 PQS unit =- 0.3 CVO QS unit
- d) 1 PQS unit =- 0.2 CVO QS unit
- e) 1 PQS unit =- 0.1 CVO QS unit
- f) 1 PQS unit =- 0.075 CVO QS unit

Option: Regional Designation (different suboptions may apply to each fishery).

Suboption a) Assign regional designations to converted CVO QS

Suboption b) Do not assign regional designations to converted CVO QS.

Economic Data Reporting

The Council concurs with the industry and public review process for EDR metadata recommended by PNCIAC and outlined in its testimony and recommends the following:

1. That, consistent with Council direction, a public meeting between PNCIAC and staff be convened upon completion of the draft metadata table, to inform PNCIAC and other industry members about the draft table, underlying assumptions and related audit results;
2. That immediately following that meeting, a public review and comment period of no less than 45 days be established to provide feedback to staff;
3. That the staff evaluate the comments and recommendations provided by PNCIAC and the public, and incorporate those comments and recommendations where appropriate as a “second draft” to the metadata table;
4. That upon completion of the second draft, PNCIAC will organize a public meeting for a staff presentation of the revised metadata table; and

5. It is anticipated that final comments and recommendations resulting from this process will be provided to the Council by PNCIAC after the presentation of the second draft.

C-2(c, d) BSAI Crab Rationalization Program

Immunity for arbitrators and amendments to the arbitration system

The Council adopts as a preferred alternative a regulatory provision that explicitly provides arbitration administrators with the authority to establish procedures and make administrative decisions concerning the arbitration program, provided those actions are not inconsistent with any other requirement contained in the regulations. The Council would remove any uncertainty concerning the scope of authority granted these administrators. By clarifying that authority, the provision would strengthen any argument that any common law or other immunity should be extended to any acts taken to administer the arbitration program (including the development of arbitration procedures).

The Council adopts the following as preferred alternatives:

- Revising market reports and non-binding price formulas: Alternative 2
- Modifying the timeline for GKK formula: Alternative 2
- Addressing staleness of market reports: Alternative 2

The Council deems proposed regulations that clearly and directly flow from the provisions of this motion to be necessary and appropriate in accordance with section 303(c).

The Council authorizes the Executive Director and the Chairman to review the draft proposed regulations when provided by NMFS to ensure that the proposed regulations to be submitted to the Secretary under section 303(c) are consistent with these instructions.

C-2(e) BSAI Crab Rationalization Program

Active participation requirements for C share acquisition and use

The Council adopts the following as its preferred alternative:

Alternative 2

For a period of 4 years from the implementation of this amendment, C shares can also be acquired by an individual who:

- 1) is a U.S. citizen,
- 2) has at least 150 days of sea time as part of a harvesting crew in any U.S. commercial fishery (historic participation), and
- 3) received an initial allocation of C shares.

Alternative 3

For a period of 4 years from the implementation of this amendment, C shares can also be acquired by an individual who:

- 1) is a U.S. citizen,
- 2) has at least 150 days of sea time as part of a harvesting crew in any U.S. commercial fishery (historic participation), and
- 3) demonstrates participation in the BSAI rationalized crab fisheries during
 - i. 3 of the 5 seasons,immediately preceding implementation of the rationalization program.

Alternatives for revision of active participation requirements for C share holders:

Alternative 2

To receive an annual allocation of IFQ, a C share holder must:

have participated in at least one delivery in a fishery subject to the crab rationalization program in the 3 seasons (i.e., crab fishing years) preceding the application for IFQ.

Suboption: have received an initial allocation of C shares and participated in 30 days of State of Alaska or Alaska Federal fisheries in the 3 seasons (i.e., crab fishing years) preceding the application for IFQ.

No IFQ will be withheld until 3 years after implementation of this amendment.

Suboption: Establish a mechanism for the annual allocation of C share IFQ to ensure that the portion of the TAC available to active C share holders is equivalent to the C share portion of the fishery as established by the Council (currently 3 percent).

Alternative 3

A C share holder who does not meet one of the following active participation criteria will have all C share QS holdings revoked:

The person must have participated in at least one delivery in one of the rationalized crab fisheries in the preceding 4 years (i.e., crab fishing years).

Suboption: The person must have received an initial allocation of C share QS and have participated in 30 days of fishing in State of Alaska or Alaska federal fisheries in the preceding 4 years (i.e.; crab fishing years).

No QS will be revoked before 5 years from implementation of this amendment.

No prohibition of leasing C shares will apply.

The Council deems proposed regulations that clearly and directly flow from the provisions of this motion to be necessary and appropriate in accordance with section 303(c).

The Council authorizes the Executive Director and the Chairman to review the draft proposed regulations when provided by NMFS to ensure that the proposed regulations to be submitted to the Secretary under section 303(c) are consistent with these instructions.

C-1 (f) BSAI Crab Rationalization Program Cooling off period and ROFR for St. George

The Council delays action on this item until the October 2008 Council meeting.