

Council Actions for Item C-1 BSAI Crab Rationalization
October 4, 2002

C-1 BSAI Crab Rationalization

Clarifications

At its October 2002 meeting the Council clarified several issues in the June 10, 2002 motion identifying a preferred alternative for rationalizing the Bering Sea/Aleutian Islands crab fisheries. Since the Council motion of June was not a final action, the Chairman suspended the rule which would require a super majority to alter the motion. Decisions were by a simple majority of the Council. In addition, Hazel Nelson, who joined the Council since the June meeting, was permitted to participate in all votes. The following clarifications of the June motion were made:

1. A cutoff date of June 10, 2002 was established for the processor shares ownership cap grandfather provision - The ownership cap on processing shares to prevent persons from acquiring shares in excess of specific caps would be applied as of June 10, 2002. This cutoff date would prevent persons from acquiring interests in processing history in excess of the specified cap after the cutoff date.
2. Ownership/use cap distinction - The current council motion contains several provisions that limit ownership and use of the harvest and processing shares. These provisions include the following:
 - 1.6.3 contains provisions limiting the ownership of QS
 - 1.6.4 contains provisions limiting processor ownership of QS
 - 1.7.4 contains provisions limiting a vessels use of IFQs
 - 2.7.1 contains provisions limiting ownership of the PQS pool
 - 2.7.2 contains a use cap of 60 percent for the Northern region opilio crab fishery

The Council confirmed that the ownership caps limit ownership of the QS and PQS, which carry a long-term privilege, and IFQs and IPQs, which are annual allocations. Application of the caps to both types of shares is consistent with interpretation of caps in the halibut and sablefish IFQ program, in which use caps are interpreted as limiting IFQ use and the ownership of both QS and IFQs. This broad interpretation has two primary effects. First, this interpretation prevents individuals from accumulating shares in excess of the cap through leasing arrangements. Long term leasing, unlimited under a narrow interpretation of the caps, could allow a person to effectively control shares well in excess of cap. Second, under the broad interpretation the caps operate as a individual use cap since IFQ and IPQ holdings determine use. The IPQ use cap in the North region *C. opilio* fishery also operates as both a cap on ownership of PQS and IPQs in that region and as a use cap on IPQs in that region. The vessel use caps would limit the use of shares on a vessel but would not impose any limit on share ownership.

Although custom processing is permitted by the Council motion, the Council established that limits on ownership and use would count any crab custom processed by a plant toward the cap of the plant owner. The application of the cap to custom processing is intended to prevent consolidation, which could occur if custom processing is not considered.

3. Norton Sound red king crab fishery CDQ allocation - The Council clarified that the increase of CDQ allocations does not apply to the Norton Sound red king crab fishery. The Norton Sound fishery was excluded from the CDQ allocation increase because its currently regulated under a super exclusive permit program that prohibits its participants from participating in any of the other BSAI crab fisheries. The Norton Sound permit rules are for the benefit local, small vessel participants in that fishery.
4. Adak allocation in the WAI(Adak) golden king crab fishery - The Council motion provides for the allocation of unused resource (up to 10 percent) in the WAI (Adak) golden king crab fishery to the community of Adak. The

Council asked for additional information for determining the entity to receive this allocation (see Additional Issues, below).

5. Regionalization of the initial allocation in the WAI (Adak) golden king crab fishery - In the Council's motion, the WAI golden king crab fishery is regionalized by designation of 50 percent of A shares (and corresponding processor shares) as west shares and by the remaining 50 percent of A shares (and corresponding processor shares) being undesignated. The Council clarified that individual processing share allocations would be made with the 50 percent west shares to participants with processing facilities in the west. If the allocations of processors with facilities in the west does not equal 50 percent, the remaining west allocation could be allocated on a pro rated basis to participants without facilities in the west. These remaining west shares could be pro rated so that each shareholder with west facilities would get the same portion of its initial allocation as west shares.

For harvesters, individual harvesters share allocations would be made with each harvester with west history allocated west shares. If the allocations of vessels with west history exceed 50 percent of the fishery, share allocations would be pro rated so that each shareholder with west history receives the same portion of its allocation as west shares.

6. Catcher/processor definition for purposes of processing crab harvested with Class B harvest shares¹ - A catcher/processor must be defined for purposes of applying the restriction on deliveries of B shares to catcher/processors (Section 1.3.3(b)). In a share based program, definition of this sector can be problematic because vessels used as catcher/processors are also used as floating processors. The Council clarified that for purposes of implementing this provision, a vessel that takes deliveries of crab harvested with Class B shares would be considered a floating processor for the duration of the season and would be prohibited from operating as a catcher/processor during that season. Likewise, a vessel that operates as a catcher/processor during a season would be prohibited from taking delivery of crab harvested with Class B shares during that season.
7. Sector cap on catcher/processors - Catcher/processors are permitted to purchase PQS from shore based facilities for use within 3 miles of shore (Section 1.7.2.3, Option 2). The "catcher/processor sector" also is capped at "the aggregate level of the initial sector-wide allocation" (Section 1.7.2.3, Option 8). The Council clarified the following effects of these provisions:
 - A) The catcher/processor sector-wide cap applies only to catcher/processor shares and not to the use or ownership of processing shares by catcher/processors.
 - B) Catcher/processor shares cannot be created by combining the processing privilege of PQS or IPQs with the harvest privilege of Class A QS or IFQs.
 - C) The catcher/processor sector-wide cap applies only to catcher/processor shares and not to the use or ownership of catcher vessel harvest shares by catcher/processors.
8. Regionalization of PQS allocations to catcher/processors - Processing shares allocated to catcher/processors would be regionally designated based on the historic area of processing. State records of processing activity should be adequate for determining the location of processing activity, (per 5ACC 35.055).
9. Definition of a lease - the word "not" was inadvertently omitted from the definition of a lease. The definition was revised to read:

Leasing is defined as the use of IFQs on a vessel that the QS owner holds less than 10% ownership of vessel or on a vessel on which the owner of the underlying QS is not present (Section 1.6.2).

¹ This clarification pertains only to processing of crab harvested with Class B harvest shares and does not pertain to processing of crab harvested with Class A IFQs or the harvesting of crab.

10. Grandfathering vessel use allocations in excess of the cap - The Council clarified that a vessel the activity of which is the basis for an allocation in excess of the vessel use cap would be grandfathered with respect to that allocation.
11. Cost recovery definition - The Council clarified that cost recovery funds would be collected in accordance with the current cost recovery program, which allows for the collection of actual costs up to 3 percent of ex vessel gross revenues. The Council provided that costs would be paid in equal shares by the harvesting and processing sectors (on all landings including landings of crab harvested with Class B IFQs). Catcher/processors would pay the entire 3 percent since catcher/processors participate in both sectors. A loan program for share purchases would be established with 25 percent of the fees collected. The motion authorized the collection of 133 percent of actual costs of management under the new program, which would provide for 100 percent of management costs after allocation of 25 percent of the cost recovery to the loan program.
12. Regionalization of the WAI (Adak) red king crab fishery - The processor share allocation in the WAI (Adak) red king crab fishery would be based on the historical landings in the WAI (Adak) golden king crab fishery. No landings in the golden king crab fishery were in the North during the qualifying years. The Adak red king crab fishery would therefore be entirely South. The South designation will be made despite the landing of a portion of the harvests in the Adak red king crab fishery in the North region during the qualifying years for vessels.
13. Rules governing cooperatives - The Council clarified the following rules for governing cooperatives:
 - A) Exemption from use caps - Cooperative members would not be subject to either the individual or vessel use caps, which would apply to IFQ holders that are not cooperative members.
 - B) Application of ownership caps - To effectively limit ownership, the number of shares (IFQs and QS) that each cooperative member could bring to a cooperative would be subject to the ownership caps (with initial allocations grandfathered).
 - C) IFQ allocations to cooperatives - The annual allocations of IFQs of cooperative members would be made to the cooperative, with use of those shares governed by the cooperative agreement.
 - D) Leasing - Leasing among cooperative members would be unlimited. For IFQ holders that are not cooperative members, leasing would be allowed for the first 5 years of the program.
 - E) Inter-cooperative transfers - Transfers between cooperatives would be undertaken by the members individually, subject to ownership caps. Requiring the inter-cooperative transfers to occur through members is necessary for the application of the ownership caps.
 - F) Four entities are required for a cooperative - The requirement for four owners to create a cooperative would require four unique entities to form a cooperative. Independent entities must be less than 10 percent common ownership without common control (similar to the AFA common ownership standard used to implement ownership caps).
 - G) Monitoring and enforcement at the cooperative level - The monitoring and enforcement of harvest allocations would be at the cooperative level (rather than the individual level). Cooperative members would be jointly and severally liable for the actions of the cooperative.

The Council also conducted an initial review of five amendments to it June 10, 2002 motion. The Council adopted the following motion concerning those amendments:

Community Protection

The Council added and revised alternatives for analysis appearing in Section 3.4 of the Council motions on crab rationalization from April 14, 2002 as supplemented by the Council motion on crab rationalization from June 10, 2002.

Addition:

Alternative 3 Allow for a community organization in those communities that have at least 1% of the initial distribution of processing history of any BSAI crab fishery to be exempted from the restriction for the 150 days of sea time requirement under 1.6 Transferability and Restrictions on Ownership of QS.

Community organization would be defined as:

- (a) CDQ groups for CDQ communities
- (b) non-profit community group (similar to CDQ group structure) for non-CDQ communities
- (c) non-profit community group (similar to group structure under halibut community purchase program) for non-CDQ communities regardless of whether or not they are in a borough.

Ownership and management of harvest and processing shares by CDQ or community group will be subject to rules similar to CDQ regulations

Right of First Refusal (revised alternative)

Option 2. Allow local government entities or CDQ groups representing communities with at least 1% of the processing history of any BSAI crab fishery except for those communities that receive a direct allocation of any crab species, to be provided the option of first right of refusal to purchase processing quota shares which are being proposed to be transferred for processing outside the boundaries of the community of original processing history.

1. CDQ groups for CDQ communities
2. Local government entity means boroughs and cities or villages outside boroughs for non-CDQ communities.
3. Local government entity means cities or villages for non CDQ communities.

Time frame for responses

1. 30 days
2. 90 days
3. 180 days

Cooling off period (New option)

Processing quota earned in a community may not be used outside that community for a period of 2, 3, or 5 years after implementation of the rationalization program.

Suboption: allow transfer of the greater of 10% of IPQ holdings or 100,000, 250,000, or 500,000 lbs by fishery (based on 10% ownership standards, similar to AFA)

This option does not apply to PQ for the Western Aleutian Island Brown KC, Bairdi, and Adak Red Crab.

Further, the Chairman will appoint a small committee of representatives from eligible communities, processors and harvesting sectors to review existing options and programs. Action on this trailing amendment will likely be in February 2003.

Arbitration

The Council accepted the A.P. recommendation for requesting a legal opinion from NOAA GC on antitrust issues associated with binding arbitration using a fleet-wide single event versus binding arbitration with individual processors. The Council also directed the committee to address the issues of uniformly applying quality standards at the time of delivery and to develop options for a price smoothing function under the fleet-wide single event arbitration model.

Captain QS

The Council recommended expanding the definition of active participation in Section 1.8.1.7 to include evidence from other verifiable sources (as proof of participation for eligibility to purchase C shares).

Crab Sideboards

The Council requested staff to expand the discussion of the application of sideboards to vessels, LLP licenses and transfers, and cooperatives for assessing the effectiveness of those caps. The Council also requested staff to consider the impacts that AFA sideboards and sideboard exemptions have had on the Pacific cod fishery in the analysis.

Data Collection

The Council directed the Data Workgroup and staff to continue working on development of a mandatory data collection program. The Council requested that the following issues be addressed at the December Council meeting:

1. the need and usefulness of allocating fixed costs across enterprises and products unrelated to crab,
2. collection of additional information on purchase and expenditure data to estimate community impacts,
3. development of an approach to collect additional data that could be used to study community and social impacts,
4. the usefulness of fish tickets and crew license identifiers to estimate number of crew days by vessel,
5. a discussion of protection of confidential data with input from NOAA GC and the State AG,
6. a discussion of the data collection under a third party system (includes a legal review of PSMFC collecting the data),
7. a discussion of whether arms length transactions are needed to determine “true” market prices, and
8. a discussion of data verification and enforcement under voluntary and mandatory data collection programs (the discussion should also include information on the potential for defense and abuse of the verification and enforcement systems).

The Council also developed three alternatives which consider various levels of fixed costs to be included in the data collection program, via the following motion:

The Council directs the Crab Rationalization Data Committee and staff to continue working on mandatory data collection that meets the intent of the June 2002 Crab Rationalization Preferred Alternative on Voluntary Cooperatives. Complete development of the 9/18/02 survey instrument, *BSAI Crab Rationalization Program Trailing Amendments Data Collection Program*. The purpose of this activity is to assure that the current survey meets the Council intent in the June motion, addresses the methods of allocating fixed costs across enterprises and products unrelated to crab, and determine public costs of the program. Analyze what additional disaggregated expenditure and purchase data is required to measure impacts to communities. Council staff is further directed to devise an approach to collect any additional data on community and social impacts and to report on the extent to which meaningful fixed cost data can be collected and used to accurately estimate change in industry profits resulting from crab rationalization. Additionally, staff is directed to evaluate whether use of fish ticket data combined with mandatory collection of crew license file identifiers at each landing may be used to produce an accurate estimate of crew days, by vessel.

Alternative 1. Complete the analysis with the section on fixed costs (e.g. section 6.2 in the cost data surveys)

Sub option 1. Utilize disaggregated expenditure and purchase data to measure impacts to communities acquired by mandatory data collection

Sub option 2. Utilize disaggregated expenditure and purchase data to measure impacts to communities that are voluntarily provided through a program analogous to the UAF-ADFG on-going opilio impact study.

Alternative 2. Complete the analysis without the section on fixed costs (e.g. section 6.2 in the cost data surveys)

Sub option 1. Utilize disaggregated expenditure and purchase data to measure impacts to communities acquired by mandatory data collection.

Sub option 2. Utilize disaggregated expenditure and purchase data to measure impacts to communities that are voluntarily provided through a program analogous to the UAF-ADFG on-going opilio impact study.

Alternative 3. Complete the analysis with a subset or variant of the fixed cost data in section 6.2 of the cost data surveys.

Sub option 1. Utilize disaggregated expenditure and purchase data to measure impacts to communities acquired by mandatory data collection.

Sub option 2. Utilize disaggregated expenditure and purchase data to measure impacts to communities that are voluntarily provided through a program analogous to the UAF-ADFG on-going opilio impact study.

Confidentiality of Industry Data:

Analyze requests by industry to provide the highest level of protection for confidential information and any improvements needed to regulations and law with the assistance of legal council at the State and NMFS, including assessment of independent audit options and consideration of a 3rd party entity to collect and hold this information.

Additional Issues for trailing amendments:

The Council also included the following relative to additional analysis of the Adak allocation:

Adak allocation clarification

Goals of Allocation: The 10% community allocation of Golden King Crab was developed to provide the community of Adak with a sustainable allocation of crab to aid in the development of seafood harvesting and processing activities within that community. Adak is a community that has similar attributes to the communities that have already been awarded community development quotas (CDQ). It is a very small second class city with a year-round population of over 110 residents, with commercial fishing as the only source of private sector income. As a Bering Sea community, the transportation alternatives are highly constrained without road, ferry, limited air service, or barge service. While the community government is supported by modest local taxes and municipal assistance

a critical source of revenue is the revenue sharing from the Alaska commercial fisheries business tax. Adak does not qualify as a CDQ community because of the reasons described in the Council staffing document, and the Council's allocation to Adak is to serve a similar end. The Council believes that there are no other similarly situated communities in the Western Aleutian Islands that are not already CDQ communities.

Criteria for Selection of Community Entity to Receive Shares:

1. A non-profit organization will be formed under Aleut Enterprise Corporation² with a board of directors selected from the enterprise foundation's board.
2. A non-profit entity representing the community of Adak, with a board of directors elected by the community (residents of Adak) in a manner similar to the CDQ program. As a sub option, the shares given to this entity may be held in trust in the interim by the Aleut Enterprise Corporation and administered by it.

For both options 1 and 2 above, a set of use procedures, investment policies and procedures, auditing procedures, and a city or state oversight mechanism will be developed. Funds collected under the allocation will be placed in trust for 2 years until the above procedures and a plan for utilizing the funds are fully developed.

Performance standard for management of the allocation to facilitate oversight of the allocation and assess whether it achieves the goals: Use CDQ type management and oversight to provide assurance that the Council's goals are met. Continued receipt of the allocation will be contingent upon an implementation review conducted by the State of Alaska to ensure that the benefits derived from the allocation accrue to the community and achieve the goals of the fisheries development plan.

Additional sunken vessel provision

This provision would apply to persons whose eligibility to replace their vessel was initially denied under PL 106-554. The sunk vessel must have been replaced with a newly constructed vessel and have been under construction by June 10, 2002, and participated in a Bering Sea crab fishery by October 31, 2002 for a person to receive a benefit under this provision.

For each of the fisheries for which such a vessel holds a valid endorsement, for all season between the sinking of the vessel and the entry of the replacement vessel to the fishery within the IRS replacement period (as extended by the IRS, if applicable) allocate QS according to 50 to 100 percent of the vessel's average history for the qualifying years unaffected by the sinking. Construction means the keel has been laid.

²The Aleut Enterprise Corporation is a separate corporation from the Aleut Native Corporation formed under ANSCA. The AEC is a multi-ethnic economic development foundation formed to promote economic enterprise in the community of Adak.

CDQ caps

Initiate analysis of the following ownership caps, which would apply to CDQ ownership of QS

Range of Analysis:

Area/Species	QS Pool Percentages
Bristol Bay red king crab	1%, 3%, 5%
Bering Sea opilio crab	1%, 3%, 5%
Bering Sea bairdi crab	1%, 3%, 5%
Pribilof red and blue king crab	2%, 6%, 10%
St. Matthew blue king crab	2%, 6%, 10%
EAI brown king crab	10%, 20%, 30%
WAI red king crab	10%, 20%, 30%
WAI brown king crab	10%, 20%, 30%

The analysis shall include a qualitative discussion of how these caps relate to cooperative formation. The analysis shall also examine caps under 1) the individual and collective rule and 2) using thresholds of 10, 50, and 100 percent ownership for inclusion in calculating cap.