

# North Pacific Fishery Management Council

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TO: The Council, the A.P., and the S.S.C.  
FROM: Mark Fina  
DATE: September 13, 2002  
SUBJECT: Items for Clarification of June 2002 Motion

At its June 2002 meeting the Council adopted a motion identifying a preferred alternative for rationalizing the Bering Sea/Aleutian Islands crab fisheries. Although the motion identifies a comprehensive management structure, the intent of the Council concerning certain items requires clarification for preparation of the environmental impact statement for these fisheries. Clarification of the following items will aid the preparers of the EIS:

- 1) No control date on processor shares ownership cap grandfather provision - Ownership caps on harvest shares and caps on vertical integration both have control dates that would prevent persons from acquiring shares in excess of specific caps. The Council did not explicitly specify a control date for the grandfathering of processor shares in excess of that cap. The Council should clarify whether the control dates are intended to apply to the consolidation of processing shares.
- 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

Application of these provisions requires that the Council determine the shares subject to the ownership cap. Different levels of consolidation would be permitted under different interpretations of the scope of the caps. The following different interpretations are possible:

- A) Ownership caps limit only ownership of the QS and PQS, which carry a long-term privilege.
- B) 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 would be 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. A similar broad interpretation in this program

would apply the ownership caps to both the ownership of QS and PQS and IFQs and IPQs. This broad interpretation would have two primary effects. First, this interpretation would prevent 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, a broad interpretation of the cap would also operate as a use cap since IFQ holdings determine use. Under the narrow interpretation, the only “individual” use caps applicable to either harvesting or processing shares would be in processing in the North region *C. opilio* fishery.<sup>1</sup> Similar to IFQ and IPQ ownership caps, individual use caps would prevent consolidation of the fishery beyond that permitted by narrowly interpreted QS and PQS ownership caps. Each shareholder’s share use would be limited to the specified cap.

Although custom processing is permitted by the Council motion, the applicability of the limits on ownership and use to custom processing should be clarified. Although custom processing can provide additional opportunities and markets for harvesters, if custom processing is permitted in excess of the cap, the resulting consolidation could limit markets for deliveries to harvesters.

- 3) Norton Sound red king crab fishery CDQ allocation - The Council action applies to several of the BSAI crab fisheries, but excludes the Norton Sound red king crab fishery. The Norton Sound fishery was excluded from the rationalization program because its currently regulated under a super exclusive permit program that prohibits its participants from participating in any of the other BSAI crab fisheries. This Norton Sound permit rules are for the benefit local, small vessel participants in that fishery. Section 4, Option 3 of the Council motion provides that the CDQ allocation would be increased to 10 percent for “all crab species”. Since the Norton Sound fishery is part of the CDQ program but is not part of the rationalization program, an inference could be drawn that the motion is intended to increase the CDQ allocation in the Norton Sound fishery to 10 percent. The absence of discussion of the Norton Sound fisheries during deliberations suggest that the increase in CDQ allocations does not apply to the Norton Sound fisheries.
- 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 will need to decide the entity that will receive this allocation or outline the method by which the entity will be determined.
- 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 should specify the method by which these regional designations will be made. Two methods have been suggested. The Council may choose different methods for harvesters and processors, if appropriate. The methods are:

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<sup>1</sup> The vessel use cap, which is double the individual ownership cap, would limit use of shares on a single vessel. The vessel use cap, however, would not prevent an individual from using any amount of shares on multiple vessels.

- A) Divide each allocation of shares 50 percent west and 50 percent undesignated. This could be justified on the basis that it would treat all shareholders equally. This method could result in allocations to persons in the west despite having no history or facilities in the west.
- B) Allocate the 50 percent west shares to participants with facilities (or history) in the west. If the allocations of those with facilities (or history) in the west does not equal 50 percent, the remaining west allocation could be allocated on a pro rated basis to participants without facilities (or history) in the west. These remaining west shares could be pro rated so that each shareholder with west facilities (or history) would get the same portion of its initial allocation as west shares. This could be justified as a means of minimizing allocations to participants in an area in which they have no historical participation (or no facilities).

Under either method share trades and custom processing may be required for efficiency. The number of those transactions might be reduced under option B.

- 6) Catcher/processor definition - 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. For purposes of implementing this provision, the Council must decide when a vessel is acting as a floating processor, as opposed to a catcher/processor. Under the current regulations of the State of Alaska, a vessel becomes a floating processor by registering with and providing notice of location to ADF&G (see 5 AAC 34.055 and 5 AAC 35.055).
- 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). These provisions together raise several questions:
  - A) Does the catcher/processor sector-wide cap limit the ownership and use of PQS and IPQ by catcher/processors. Deliberations suggest that the catcher/processor sector-wide cap applies only to catcher/processor shares and not to the use or ownership of processing shares.
  - B) Are catcher/processors permitted to purchase PQS and Class A QS for use together as catcher/processor QS. If so, would that use be capped at the initial allocation, in effect limiting total catcher/processor activity to a share of each fishery in the amount of the initial allocation of catcher/processor QS. Deliberations suggest that catcher/processor shares cannot be created by combining PQS and Class A QS.
  - C) Would the cap on the aggregate level of the initial sector-wide allocation affect the ability of catcher/processors to purchase catcher vessel QS and IFQ for delivery to shore plants. Deliberations suggest that the catcher/processor sector-wide cap applies only to catcher/processor shares and not to the use or ownership of catcher vessel harvest shares.
- 8) Regionalization of PQS allocations to catcher/processors - Some catcher/processors have taken delivery of harvest during the qualifying years and meet the processor eligibility criteria.

Under the rules of the program these catcher/processors would be allocated PQS for this processing activity. These PQS should be regionalized for consistency with the corresponding Class A QS pool. A few different alternatives exist for regionally classifying these shares:

- A) The shares could be regionally designated based on the historic area of processing. This would require accurate location records for processing history of these vessels, which might be difficult to obtain and verify.
- B) These shares could be regionally designated by a one time choice of the share recipient made at the initial allocation. This would permit the recipient of the shares to make the designation based on operating requirements and for efficiency.

Under either of the potential methods for designating PQS, the coordination of regional shares between the two sectors will not be greatly affected, since the difference between regional distribution of harvest and processing shares will be rectified with an adjustment of harvest shares at the initial allocation.

Allocations to catcher/processors in the Western Aleutian Islands (Adak) golden king crab fishery could be subject to the rule selected for all other fisheries or all allocations could to catcher/processors in that fishery could be designated as West to accommodate processors that have no facilities or history in the West in that fishery (See 5 above).

- 9) Definition of a lease - The word “not” was omitted from the definition of a lease. Under the current language a lease would occur when an IFQ is used on a vessel on which the holder of the “underlying QS is present.” (Section 1.6.2)
- 10) Grandfathering vessel use allocations in excess of the cap - The current vessel use cap provision does not appear to grandfather vessels with qualified catch in excess of the vessel use cap. All other activities of harvesting and processing are subject to the grandfathering of historical activities. If grandfathering provisions are intended to apply to all activities, vessels that are 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 motion does not specify the details of the cost recovery arrangement. The current motion contains two provisions for the allocation of funds from the cost recovery program. One section allocates 25 percent of the collected funds to a low interest loan program for captains and crew (Section 1.8.1). A second provision would divide the remaining fees proportionally (Section 5, Option 5). These provisions suggest that a cost recovery program would be implemented but do not specify the amount of funds to be collected or from whom (i.e., from harvesters, processors, or both). These two different aspects of the program should be specified:
  - A) The entity or entities from whom cost recovery funds should be collected.
  - B) The amount of funds to be collected from each such entity.

The Magnuson-Stevens Act currently authorizes the collection of up to 3 percent of ex vessel revenues from the harvest sector. This amount could be collected from either sector or could be split between the two sectors.

- 12) Regionalization of the WAI (Adak) red king crab fishery - Class A harvest shares and the corresponding processing shares are regionally designated under the program. While historical

activity in each sector determines the regional designation of the specific shares, the overall regional split is based on the processor historical activity during the qualifying years. Harvest shares are subject to an adjustment so that the regional allocations of two sectors will be equal. 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. Records from the WAI (Adak) red king crab fishery show that a portion of the harvests in the qualifying years was delivered in the North region. Anecdotal evidence suggests that these deliveries were made at the end of the season by catcher vessels that stored their pots in the Pribilofs. The Council should verify that it intends this fishery to be regionally designated based on the processing allocation, which results in the entire fishery being designated South.

- 13) Rules governing cooperatives - The Council motion describes several purposes for including cooperatives in the program and a general description of the function of cooperatives. The motion, however, lacks some clarity on the rules that would govern cooperatives and how those rules differ from the rules governing IFQ holders that do not join cooperatives. The following rules are consistent with the Council motion:
- 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 prohibited after 5 years.
  - 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 could be interpreted two ways. The AFA requires four unique entities to form a cooperative. Independent entities must be less than 10 percent common ownership without common control. A weaker standard would not consider common ownership but simply require four distinct QS owners.

**BSAI Crab Rationalization Program  
Trailing Amendments**

**Community Protection  
Binding Arbitration  
Captain's Quota Shares  
Sideboards**

**October 2002**

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### 3.6.2 Alternative Regionalization/Community Protection Option

In June 2002, the Council selected a preferred alternative for rationalizing the BSAI crab fisheries, which regionally designates Class A harvest shares and the corresponding processing shares. Under the current Council action, designated shares could not be transferred from one region to another. The primary reason for categorizing harvest and processor quota shares is to protect the communities traditionally dependent on the crab fishery from relocation of activities in a rationalized fishery. To further address community concerns in the rationalized crab fishery, a number of additional community protection alternatives were identified for analysis as trailing amendments:

Alternative 1.	Processing history may leave an eligible community of origin in which the history was established with permission of the eligible community. The processing QS may change communities with negotiated agreement between the processor and the originating (eligible) community; these agreements will be filed with the Secretary of commerce thirty days prior to the quota share leaving the eligible community.
	"Eligible communities" shall be defined as any community in which aggregate (community) landings exceeded 0-8% of the species for which processor QS is awarded during the qualifying period.
	"Community landings" for closed fisheries will be determined using a formula that mirrors "processor option one" as defined in the current analysis.
Alternative 2.	Under this option, processor quota shares are subject to regional designations as set forth in Section 3.1, 3.2 and 3.3 of Draft Council Motion dated June 10, 2002. A processing quota share holder may switch processor quota from one region to another region (on an annual or permanent basis) by compensating the community that is impacted by that change. A processor must provide compensation only if it switches from one region to another region. A change in location of processing within a region does not require compensation to a community. Compensation for a permanent departure from a region is only required one time; a subsequent change to another region does not require further compensation by the processing share quota owner. A switch of the region of processing under this option would include the following elements:
	<ol style="list-style-type: none"><li data-bbox="399 1316 1398 1465">1. This option does not displace the regional designation of Class A shares or the processing of quota delivered under Class A shares. It instead provides an option for the delivery and processing of quota from Class A shares using IPQ into a different region upon compensation (in a manner and form acceptable to the effected community) to switch to another region.</li><li data-bbox="399 1472 1398 1499">2. The community to be compensated would be determined by the community that</li></ol>

These additional protections might further protect communities from the consequences of rationalization that are not addressed by the more general regional protection in the current motion. Alternative 1 would create community designations for processing quota. Under this alternative, transfers of processing activity from a community would require permission of the designated community. Whether transfers of processing from one region to another would be permitted under this provision is unclear. Alternative 2 would require a processor to compensate the community that is negatively impacted when processing activity moves from one region to another. Compensation for temporarily relocating processing activity would be made by annual



payments. Compensation for permanent relocation would be by a one time lump sum payment. Subsequent relocations of processing activity would not require additional payments.

Implementation of either of these options could provide varying benefits for communities and create varying degrees of hardships for both harvesters and processors by limiting consolidation. In assessing the appropriateness of these options, the expected benefits to communities arising from the options would need to be balanced against the potential hardships. The benefits to communities depend on the effectiveness of the provisions in protecting the historic dependence of communities on crab fisheries. The two options would provide this protection either by providing communities with the ability to prevent processing activity from relocating to another community or by providing the community with a compensatory payment when activity relocates.

One of the primary benefits to processors of rationalization could arise from the consolidation of processing activities. Processors that own several plants might remove plants from operation by consolidating activities into a single plant. Harvesters could also benefit, if consolidation limits requirements for landing small quantities of crab in several different locations. Substantial consolidation has already occurred in these fisheries, as shown by the historic patterns of participation in processing. The community protection options could either disburse processing activity, which would require processors to administratively consolidate activities under the rules of the rationalization program, or limit the ability of processors to further consolidate activities. Although the cost and complexity of consolidation under these options cannot be determined, a few factors that could influence the process of consolidation can be discussed.

The cost and complexity of consolidation under the options would depend on several factors. The degree to which processing activity is disbursed under the initial allocation is a precursor to any analysis. The larger the difference in the community distribution of processing activity under the allocation and the desired geographic distribution of processing activity, the more complex and costly the consolidation of that activity. It is worth noting that the desired regional distribution in a rationalized fishery need not be the same as the current or historical regional distribution of processing activity and cannot be determined prior to rationalization. A second factor that will affect the cost of any consolidation is the willingness of communities to permit allocated processing activity to depart from their community. It cannot be predicted whether a community with a small processing allocation would permit a processor to move processing activity from the community or the amount of a payment that the community would require from a processor to move the allocation.

A related issue is the ability of IPQ holders to move small amounts of shares near the end of a fishery. Under the AFA, cooperatives have been able to catch a very high percentage of their allocations, in part, because of the flexibility of moving small amounts of shares between vessels at the end of the season has allowed the cooperative to consolidate remaining allocations to economically harvest them on a single vessel. If crab processors are unable to engage in a similar consolidation of processing from different facilities or coordinate activities, there is a possibility for shares to go unprocessed (and crab to go unharvested). Given that processors will need to coordinate with several vessels to have an exact match of harvesting and processing shares, the difficulty in this case is more a matter of attaining a clean one-to-one match of processing and harvesting shares, rather than one of timing. For example, if a processor with 100,000 pounds of IPQs in a community would like to purchase crab from a harvester with 95,000 pounds of IFQs the requirement that the additional 5,000 pounds remain in the community could complicate the use of that 5,000 pounds of processing shares. The harvester delivering to that processor would likely need to find an additional 5,000 pounds of harvesting shares or the allocation could go unused because the delivery of such a small amount of crab to a facility is likely to be prohibitive. In this manner, the requirement of community consent or

payments could complicate the use of these small amounts of shares that result from mismatches of harvest and processing share holdings.

In addition to the general concerns discussed above the following potential issues could arise under the alternatives:

#### Protection Granted to Community Interests

Alternative 1 could be very effective in protecting the interests of the communities associated with processing activity. Under this option, a community would appear to have unconstrained authority for prohibiting processing activity from relocating to another community. A community could not prevent a processor from not processing an allocation related to a community, but could prohibit the processor's movement of operations. This unlimited authority raises the question of whether the community authority is excessive and could invite gamesmanship. A community with a small allocation of processing activity could take an unreasonable position in a negotiation, thus preventing the transfer of processing quota from the community. In addition, positions that might be reasonable for one side may not be reasonable for the other. For example, a community with little economic activity may view the loss of a small amount of processing activity as substantial. A processor wishing to move this small amount processing activity would consider doing so for an efficiency gain of consolidating activity. Subsequently, the consequences of these negotiations extend to the harvesting sector. In a two-pie IFQ system, the specific harvester affected by these negotiations is uncertain and may change annually, limiting the ability of the participants in the harvesting sector to take a direct role in a process that could affect them.

Alternative 2 could prove ineffective in protecting community interests. Under this option, the community would be allowed to seek compensation from the processor wanting to relocate processing activity only between regions. The ineffectiveness arises because processing activity would be free to move within a region without permission or payment. This would permit significant geographic consolidation of activity within a region, providing no protection to the communities harmed by that consolidation. The level of protection provided by Alternative 2 depends on whether processors can achieve efficiencies through consolidation of processing within regions. If consolidation across regions is not necessary for processing efficiencies, this option would provide little protection to communities.

#### Identification of the Community/Entity Protected

The assignment of rights to communities under the provisions is critical to the protection of interests. Alternative 1 protects the "community" in which processing history was generated. For this alternative to be effective, the community that is protected must be identified. Community identification could be particularly complicated in areas subject to multiple governing authorities. For example, a community may have its own government and also be a part of an incorporated borough. Would the consent of both governments be required for movement of the shares. If consent of both communities is required to move the shares, any issue related to communities requiring payments from processors is compounded. A potential issue could also arise for processing activity that is in the vicinity of a community but is not in the community itself. Administration of this alternative might be particularly complicated for some floating processors.

Alternative 2 overcomes some of the community identification issues arising under Alternative 1, but leaves others unresolved. The community protected would be determined using fish tax payments. Fish tax payments are a logical method for determining the protected community since they demonstrate community dependence on the processing activity as a source of revenues. Three different options are proposed for identifying communities to benefit from this option. Under option (a) the community that received raw fish taxes for a

period of between 1 and 4 years prior to the proposed transfer would be the recipient of the payment. Attaching the protection to the community in which processing occurred immediately prior to the transfer invites strategic relocations of activity by processors to avoid making payments. For example, if processing is moved to a floating processor in an area where no community receives a fish tax prior to the transfer, quota could be moved outside a region without community compensation. Option (b) would resolve this difficulty by granting the protection to the community where tax payments were made during the qualification period. However, a separate inconsistency arises under this option since processing may be moved within a region without compensation. If the a processor first moves within a region then later decides to relocate activity across the regional boundary, the processor could be required to undergo negotiations with a community that it has had no contact with for several years.

#### Adequacy of Protection of Community Interests

Alternative 2 provides for payments from processors to communities when processing activity is relocated. Although Alternative 1 does not provide for payments, the permission required for relocation of processing and discussions with proponents of the provision suggest that payment would be used to induce the community's permission for relocating processing activity. Neither alternative provides guidance as to the size of any compensatory payment. The adequacy of substituting a financial payment for the economic activity of processing in the community should be considered. Discussions have suggested that the proposed payment might be approximated by the amount of taxes paid to the community as a result of the processing activity. A payment in the amount of the taxation received is likely to be only a small share of the actual benefit that the community receives from processing activity. Some communities realize substantial benefits from jobs and additional economic activity in the community. Consequently, a payment in the amount of the taxes could be inadequate.

#### Entity to Act on Behalf of a Community

Another complication in applying a community protection alternative is that the entity authorized to act on behalf of the protected community must be identified. Alternative 1 provides no direction for identifying the entity authorized to act on behalf of the community. Alternative 2 provides that the State of Alaska or the U.S. Department of Commerce with authority to identify the appropriate entity. No guidance or direction is provided to these entities on the method or criteria for selection. Additional direction would provide predictability and standards for this selection, which could be very political and controversial within communities and with industry participants.

#### Regional Designation of Shares After Transfer

If one of the community protection alternatives is selected, the Council must determine whether the consent of a community for a processor to leave the community will also remove any regional designation (e.g., north, south, or west) . Alternative 1 is ambiguous concerning whether the regional designation will be retained. Removing only the community tag from shares when consent is obtained from the community could be burdensome to processors. If a processor has facilities in both regions, it may wish to consolidate its activities. If regional tags are not removed, doing so could require both that the processor buy out the community designation from the community and trade shares with a processor in the region that it wishes to exit. The costs of these transactions could be substantial relative to the value of shares, particularly if only a few shares are owned. Alternative 2 addresses these issues by defining the circumstances when regional designations will be removed. Alternative 2 would retain the north/south regional designation for single season transfers, while permanent transfers would remove the regional designation. To retain the one-to-one relationship of harvest and processing shares, harvest shares would also need to have the regional tag

removed. If the regional tag is removed, a new designation of harvest share would be created - a harvest share that is Class A without a regional tag. This raises two issues. First, the harvest shares from which the regional tag will be removed must be identified. The choice of which harvest shares to remove a regional tag from could be divisive. Since no direct link between community processor allocations and harvest allocations exist determining the harvest shares that would be reclassified would be necessary. Alternative 2 would address this issue by allowing the processor to select the harvest shares that would have the regional designation removed. The holder of those harvest shares would be free to accept or reject this offer. If the offer were rejected, the processor would be permitted to select different shares for redesignation, until the offer was accepted.

A second issue arises with the creation of a new class of shares (i.e, removal of regional designations from class A harvest shares). Since few of these shares are likely to exist, at least initially, it is likely that a very limited market of processors with corresponding undesignated processing shares would exist. For example, consider the case of a north community agreeing to release a processor from its obligation to process in its community. That processor moves its operations to the south and an equal amount of harvest shares are redesignated as “any region class A” shares. If those shares are used to make a delivery in the north to a processor holding north IPQs, a person holding north designated IFQs will be unable to deliver harvests to a processor holding north IPQs. To maintain the distribution of harvest and processing allocations after the removal of the regional tag from shares requires that the harvest allocation follow the processing allocation. Otherwise, the regional distribution of shares will result in some of the allocation being undeliverable.

### Bargaining Between Communities and Processors

Analysis of bargaining between communities and processors is difficult. The absence of guidance on the amount of the payment that is appropriate for movement of processing from a community creates an opportunity for either the community or the processor to engage in gamesmanship, taking unreasonable positions in any negotiation. In addition, positions that might be reasonable for one side may not be reasonable for the other. For example, a community with little economic activity may view the loss of a small amount of processing activity as substantial. A processor wishing to move this small amount processing activity would consider doing so for an efficiency gain of consolidating activity. The consequences of these negotiations extend to the harvesting sector. In a two-pie IFQ, the specific harvester affected by these negotiations is uncertain and could even change annually under Alternative 3, limiting the ability of the participants in this sector to take a direct role in a process that could affect them.

### Implications for the Harvest Sector

Since no method of allocating harvest shares to communities is included in any of the options, it is assumed that harvest shares could be delivered to any processor in the designated region. Harvesters, however, could be greatly impacted by the distribution of processing activities created by the community protection options. Prediction of the distribution of activities is possible only based on historical landings.<sup>1</sup> If the distribution of

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<sup>1</sup> Alternative 2, allows movement within a region under all circumstances. Consequently, the initial distribution of shares might not be relevant, if processors move shares within a region. This permitted movement limits both the predictability of hardships to harvesters and processors and the predictability of benefits to communities. In addition, under Alternative 2, 2(a), community protections are provided to the community that receives fish taxes for a period of years before the relocation. Since movement is permitted within a region under this option, predicting not only the distribution of activities but also the communities that would benefit from the provision is not possible.

activities during the qualifying period determine the future distribution of activities, some consequences for the harvest sector can be discussed.

Table 3.6-4 below show the allocations to communities based on the preferred alternative selected by the Council. Allocations to multiple communities are aggregated in many cases to protect confidentiality. Aggregations were selected to make the data as revealing as possible. The designations “north” and “south” refer to processing activity that has been tracked to the north and south but could not be tracked to a specific community. The designation “unknown” refers that processing activity that could not be tracked to a region or a community. The activity that could not be tracked to a specific community all occurred on floating processors or catcher/processors that received deliveries from catcher vessels. “Catcher/processor” refers to processing activity on catcher/processors that received deliveries from catcher vessels. The table shows the potential community allocations and sheds light on some of the distributional issues that arise from those allocations.

Table 3.6-4 Community Allocations Under the Alternative Regionalization/Community Protection Option based on the processor qualifying years in the Council’s preferred alternative.

Fishery	Community or Communities	Community Share	Number of Processors
Western Aleutian Islands (Adak) golden king crab	Adak, Akutan, Catcher/Processors, Unknown	0.073	4
	Dutch Harbor	0.927	6
Bristol Bay red king crab	Dutch Harbor, Akutan, King Cove, False Pass, Port Moller	0.867	14
	Kodiak, Homer	0.038	4
	St. Paul, Catcher/Processor, Unknown	0.095	9
Bering Sea <i>C. opilio</i>	Dutch Harbor, Akutan, King Cove	0.448	15
	Anchorage, Kodiak, Wasilla, Ninilchik	0.002	5
	Catcher Processor, South, Unknown	0.089	6
	St. Paul, St. George, St. Matthew	0.462	8
Eastern Aleutian Islands (Dutch Harbor) golden king crab	Dutch Harbor, Akutan	1.000	8
Pribilof red and blue king crab	Dutch Harbor, Akutan	0.258	6
	Anchorage, Homer, King Cove, Kodiak	0.067	5
	St. Paul, Unknown	0.675	7
St. Matthew blue king crab	Dutch Harbor, Akutan	0.203	7
	King Cove, Kodiak, Catcher/Processors, Unknown	0.073	4
	St. Matthew, St. Paul	0.724	5

Several small community allocations would exist in some fisheries. For example, Anchorage, Wasilla, Ninilchik, and Kodiak would receive an allocation when combined total less than one-half of one percent of the Bering Sea *C. opilio* fishery. An element of Alternative 1 would establish a threshold eligibility requirement for a community to qualify for an allocation. Under this alternative, a community would be required to have had landings in excess of a minimum to be eligible for an allocation. The possible threshold would be between 0 and 8 percent. The threshold for eligibility could reduce the barrier to consolidation of small allocations, but the effects would depend on the level of the threshold. Table 3.6-5 shows 1, 5, and 8 percent of the GHF from the most recent season for each of the fisheries proposed for rationalization. The table provides some perspective on the level of the thresholds proposed for community eligibility. For example, a 5 percent threshold would imply that the minimum community allocation in the Bristol Bay red king crab fishery would be approximately 375,000 pounds. In assessing the appropriate threshold level, the Council should consider whether the threshold amount is sufficient to support a processor. If not, a higher threshold should be selected. Alternative 2 addresses the small allocation issue by allowing transfers of quota between communities within a region. These permitted movements of shares would limit the effectiveness of the provision in protecting communities.

Table 3.6-5. Harvests and 1 percent, 3 percent, and 5 percent of harvests from most recent seasons in the BSAI crab fisheries (in pounds).

	Most recent season	Harvest	1 percent of harvest	5 percent of harvest	8 percent of harvest
WAI (Adak) golden king crab	2000-2001	2,902,518	29,025	145,126	232,201
WAI (Adak) red king crab	1995-1996	38,706	387	1,935	3,096
Bristol Bay red king crab	2000	7,468,240	74,682	373,412	597,459
Bering Sea C. opilio	2000	30,258,170	302,582	1,512,909	2,420,654
Bering Sea C. bairdi	1996	1,788,102	17,881	89,405	143,048
EAI (Dutch Harbor) golden king crab	2000-2001	3,086,890	30,869	154,345	246,951
Pribilof blue king crab	1998	494,424	4,944	24,721	39,554
Pribilof red king crab	1998	501,042	5,010	25,052	40,083
St. Matthew blue king crab	1998	2,949,574	29,496	147,479	235,966

Finally, the purpose of filing the transfer agreement with the Secretary of Commerce and the need for the 30 day advance notice is not clear. If the intention is to provide the share administrator notice of the change, the notice should be filed with that administrator (possibly NMFS RAM Division). The advantage of providing 30 days notice is also not clear.

### 3.6.2.1 Legal Analysis of the Community Protection Option

NOAA General Counsel has also expressed concerns about the legality of the Community Protection option. Those concerns are expressed in the following analysis, which NOAA GC provided to Council staff:

The Council is asked to consider alternatives designed to protect eligible communities from the impacts of movement of processor shares away from the community. The alternatives trigger either a procedure whereby the community gives “permission” for relocation of processor shares or a payment of money if the shares leave the communities’ region only. The purpose of the alternatives is to reduce economic damage to communities who have a dependency on the processor businesses and who would presumably experience a decrease in crab processing or closure of the processor and movement of some or all of its processor shares outside the community. Indirectly, the alternatives would appear to prevent or hinder movement of harvester shares since they are tied to processor shares. Another indirect effect would be prevention or deterrence of consolidation of shares.

There are several legal issues presented by these alternatives. Generally, the alternatives are insufficiently defined and, as the analysis points out, present many opportunities for arbitrary enforcement or misuse. In order for these alternatives to improve their chances of survival if challenged in court, substantial review and clarification is needed.

The initial legal issue raised is the absence of authority in the Magnuson-Stevens Act (MSA) for these types of provisions. Currently, the MSA does not authorize Councils to institute measures through FMP’s that empower a local political entity with authority to grant “permission” or extract a compensatory payment for removal of fishing business. To provide legislative history and express intent, Congress may ask for strong reasoning supporting the need for these unusual provisions. While the analysis attempts to clarify or sort-out how these alternatives may work, it shows that it is not clear exactly what economic impacts will be resolved and how they will be resolved by these measures. Because of these unanswered questions, the short and long-term, cumulative and unintended impacts cannot be measured. Without additional answers on how these alternatives will work and

what impacts are in store, there is likely not a sufficient basis to support approval. Whether these alternatives have a relationship to conservation and management goals is a real concern.

The next concern is whether the alternatives will conflict with the National Standards found in the MSA. One issue is the potential commerce-impacting nature of communities holding power to decide when and whether a business may depart or close. In essence, a community authorized to decide whether a business may move or close makes it the de facto board of directors for it. Such a relationship between a business and community means that the business has lost its private character and becomes a privately owned but publicly-directed business. Any business decision leading to moving the business or closing or similar decisions that practically mean altering the size or capacity of the business, mean the community may veto and stop the implementation of the decision. If a “payment” is authorized in order for processor shares to leave, the concerns about how it is paid and the amount may seriously affect a processor’s bottom-line. Ultimately, a community—unless further clarification is provided—could wield tremendous influence over a business and unintentionally drive it out of business. These potentially unusual and perhaps unbalanced relationships between a community and fishing interests may erode the goals of National Standard 5 and 8. National Standard 5 calls for efficiency in utilization of fisheries. These alternatives, in their present form, are a potential barrier to efficient business and financial decision-making. Potentially, they could make fisheries uneconomical. National Standard 8, which calls for measures that will provide for sustained participation of communities in fisheries and minimization of economic impacts, would not necessarily be served if processors and harvesters are tethered to them with unspecified mandatory payments or potentially limitless conditions preceding removal of shares. Potentially, businesses could be financially harmed by payments or the conditions to be met to receive permission to move shares. Processors and harvesters, if burdened with payments and unreasonable conditions to take shares from one community, may not be able to sustain activity in other communities where business is conducted or would be conducted were the shares move.

There are due process concerns with these alternatives. To start, there is insufficient information about key terms and there are several ways to construe them. At this point, “permission” is undefined in terms of what it is and what process for obtaining permission is to occur. If implemented under the loose terminology of “permission”, the government and the community could arbitrarily impose any number of ways to define it. This same concern, as pointed out in the analysis, applies to the payment. We do not know how much the payment will be or how it is paid or whether interest is charged if installment payments are made.

There is no guidance for decision-making in these alternatives. Particularly, there are no guidelines on what a community can consider or cannot consider when it decides whether to grant “permission” or how much a payment should be and what harm it should address and how. The provision speaks to “agreements” for permission—does this mean there is a quid pro quo between the processor and the community as in a contract? An “agreement” is a contract. Does this mean that the agreement to leave will allow negotiation of a time-schedule for moving the business or part of the business and with a certain time-frame in mind? There are no guidelines regarding the extent of authority for a community to negotiate. Will communities have the legal power under their charters or state-granted authority to enter into certain contractual terms? While there is authority in the second alternative for the State or the agency to negotiate for the community, this question is unanswered for the first alternative. Some communities may not have authority under their State-granted enabling legislation to engage in these matters. Finally, without any parameters or guidelines, a processor cannot predict what it will need to show or demonstrate or present when seeking permission to leave with or move processor shares.

Likewise, it is left undefined just how many processor shares proposed to be removed from the community would trigger the provision. Would any amount of quota share (QS) require permission? Would a minimum (a floor) percentage of the QS held by the processor trigger the provision?

The entire decision-making process by the community would have to occur publicly—"in the sunshine". Thus, the process would have to be open to all interested parties and its procedures set forth before decision-making begins. In order for a provision to have a greater chance of escaping invalidation by a court, the Council or NMFS would have to write specific, unambiguous and comprehensive guidelines to be followed by the communities when evaluating "permission" or amount and method of payment for the processor to leave with the shares. As a hedge or security to prevent procedural due process abuses by communities when determining whether to grant permission, it would be highly advisable to implement APA procedures. The APA is a statutory enactment of procedural due process guidelines set forth by the due process clause of the Fifth Amendment to the U.S. Constitution. The APA requires adequate notice of process, a hearing, an unbiased fact-finder and judge and an appellate forum. It also provides for review by the U.S. District Court. GC recommends that the Council consider implementation of APA procedures for the community "permission" or payment determination process as a safeguard against flawed or unfair decision-making. The APA would help ensure that the processors have an opportunity to challenge the process and decision. This is particularly important where there are ambiguities in the provision as it is written today and high potential for arbitrary decision-making.

Implementation of an APA process would also shore-up another flaw in the alternatives—they do not provide for a determination process. At this juncture, there are no guidelines for communities to follow in terms of how to arrive at a decision or enter into an agreement. To avoid potential abuse of process, the provision should specify not only the substantive guidelines on how to determine "permission" and payments, but the process in reaching that decision. Is it a city assembly that makes the determination? Is there authorization for a sub-division of the community to make the decision such as the Harbors board? To what extent can political or organizational sub-divisions of the "community" be involved in the process? How long is this process supposed to take? Months or years? It would seem that whether a processor can financially survive if it is going to move to another region is one dependent on time and a predictable process or else the financial incentive may evaporate and the business founder.

Another unanswered question is how is the process to commence or be initiated. Does the processor commence the process by some type of notice to the community that they intend to remove QS and process elsewhere? The Council or NMFS should determine how the process for seeking permission to remove QS is to start. Once again, it may be helpful to consult with the APA to find an appropriate procedural method that could be adapted to community determinations of whether to grant permission for removal of QS. It may be appropriate to consider a process whereby processors will submit an application for permission for removal of quota shares. A secondary concern here is whether processors will be required to provide financial data to communities or the federal or state governments as a means to facilitate the decision-making process for permission to leave or the amount of the payment.

The first alternative states that the agreement between the processor and the community is to be filed with the Secretary of Commerce 30 days prior to the share leaving the community. This presents several issues. Generally, they involve addressing what it is the Secretary supposed to do after he or she has notice of the imminent departure of the shares. There are several potential answers.

As indicated in the January, 2002, analysis, the notice may be useful to the Secretary for purposes of registration of the movement of the shares from one region to another. To the extent this is its purpose, then RAM would find notice useful and would register the change in its records and follow any further administrative duties. Notice of the move would also assist regional review of the program in the event there is a sunset provision in the authorization or if there are other regional or national reviews of share movement, consolidation and potential violations of the program (such as excessive share concerns). The notice may also be read as a method for NMFS to disapprove or otherwise seek changes in the agreement. However, if this is a purpose of the notice, NMFS would find it difficult



to change or ask for alteration of the agreement since the notice period is only 30 days. This is hardly sufficient time for the agency to react and provide a response before the shares “move”.

If the “notice” requirement remains with the provision, the Council should provide further parameters to it. These would include describing the nature and purpose of the notice and what is anticipated from the agency in terms of response or further determinations.

### **3.6.3 Right of First Refusal for CDQ Groups and Community Organizations**

The Council’s preferred alternative permits transfers of PQS within a region subject only to limits on ownership. An additional option that the Council chose to consider as a trailing amendment would provide CDQ groups or community groups with a first right of refusal on any processing shares sold. The specific option under consideration is:

#### **Option for selling IPQ**

If an owner of IPQ decides to sell the IPQ, the right of first refusal to purchase the IPQ shall be granted to CDQ groups (for IPQ in the Bering Sea) or a community organization approved by the local government (for IPQ in the GOA) providing that any IPQ so purchased is processed at a facility owned at least 50% by the CDQ organization or community group.

Under this proposed option, CDQ groups and community organizations approved by the local government would have a first right of refusal on the purchase of IPQs. Any IPQs purchased by these groups must be processed at a facility owned at least 50 percent by the group or organization.

A right of first refusal provides an entity with the right to purchase an item from a seller for the same price and subject to the same terms and conditions as offered by the seller in an open market. The first right of refusal would operate by the seller notifying the holder of the right of the terms of the pending sale. The holder of the right exercises the right by notifying the seller of acceptance those terms within a specified time period. If the terms are not accepted within the predetermined time period, the open market sale may proceed.

The option as written provides a first right of refusal only on IPQs, not PQS. IPQs are issued to PQS holders annually and provide a single season processing allocation. PQS are a long-term privilege to receive IPQs, the annual allocation of processing privileges. If the purpose of this provision is to ease the entry of CDQ and community groups to the processing sector a right of first refusal for IPQs is unlikely to achieve that end. With only a right to purchase IPQs, these groups will be unlikely to engage in any long term planning. In addition, the first right of refusal on IPQ sales could be disruptive to efforts by harvesters and processors to coordinate deliveries in a season. Transfers of shares late in the season could facilitate full harvest of allocations by consolidating shares of two processors totaling a single delivery at a single facility. If CDQ and community groups can intercede in these transactions, coordination of deliveries is likely to be disrupted. If the provision is intended to apply to transfers of PQS other issues arise.

The first right of refusal would be granted to two potential groups of buyers. The first group of buyers would be CDQ organizations, who would have the first right of refusal for IPQ in the Bering Sea. The CDQ program was implemented in 1992 to provide fishermen who reside in western Alaska communities a fair and reasonable opportunity to participate in the Bering Sea/Aleutian groundfish fisheries, to expand their

participation in salmon, herring, and other nearshore fisheries, and to help alleviate the growing social economic crisis within these communities. Six CDQ groups were developed under the program: Aleutian Pribilof Island Community Development Association (APICDA), Bristol Bay Economic Development Corporation (BBEDC), Central Bering Sea Fisherman's Association (CBSFA), Coastal Villages Region Fund (CVRF), Norton Sound Economic Development Corporation (NSEDC), and Yukon Delta Fisheries Development Association (YDFDA). These six groups serve the interests of approximately 65 communities with a combined population of 27,000. The communities are located within 50 nautical miles of the Bering Sea Coast and on islands in the Bering Sea and are predominantly populated by Alaska Natives. All CDQ groups are non-profit organizations that serve as the managing organizations for implementation of the Community Development Plans. They have created for-profit corporations, non-profit organizations, and limited liability companies. The CDQ groups have become active participants in the BSAI groundfish and crab fisheries. In 2000, seventy-one percent of the CDQ groups' revenue was attributed to royalties received for the right to harvest the allocations granted under the CDQ program. The second largest source of revenue for the CDQ groups, 16 percent of the total, was sale of harvests and processing of their allocations. The majority of the remaining revenues was from the CDQ groups' equity earnings in businesses they have entered with harvesters and processors and from other fishing-related businesses and investments. The total net asset value of the combined CDQ groups as of the year 2000 was \$129 million.

The second group of buyers that would be granted the right of first refusal for PQS would be community groups, who would be granted the right for IPQ in the Gulf of Alaska. The option provides that a community organization must be approved by the local government but provides no other direction on which organizations would qualified for this program. Since no definition is provided, a number of different types of organizations might be eligible for this program, including both for-profit and not-for-profit entities. If any types of organizations are to be excluded from the program, qualifying criteria will need to be specified. In addition, the local governments eligible to identify participating community groups must also be identified. Two issues arise in this respect. First, the geographic limits defining governments permitted to nominate participating groups must be defined. The Council should clarify whether this provision provides community participation for only Gulf of Alaska communities and whether only a portion of the Gulf would be eligible. Some areas of the Gulf, such as Prince William Sound and Cook Inlet have little historic dependence on BSAI crab fisheries. Second, the level of local government able to nominate community participants must be defined. Several different types of local government exist in Alaska. The Council should indicate whether all of these different entities are eligible to nominate participating community groups. In addition, the Council might consider whether groups from areas that are not part of an incorporated borough or community could participate. Several other issues related issues arise. For example, could a community have several eligible groups appointed either all by a single local government or by different local governments in areas that are subject to several local governmental units (i.e., could community governments, tribal governments, and borough governments have overlapping authority to select participating groups).

The proposed option would provide CDQ groups with a first right of refusal for Bering Sea shares, while community groups will have a first right of refusal for Gulf of Alaska shares. The rationalization program, however, does not define "Bering Sea" or Gulf of Alaska" shares. Processing shares are designated North or South, but this definition would include areas of the Bering Sea and all of the Gulf of Alaska in the South. To effectively administer the first right of refusal will require additional geographic definition of shares or some redefinition of the first right of refusal program consistent with the current regional designations.

Granting a first right of refusal to a small number of entities could also have consequences. If a substantial market for PQS develops and the right of first refusal is exercised frequently, it could result some share concentration among a few CDQ groups and community organizations, although the exact level of concentration cannot be determined. This could limit entry opportunities for new processors wishing to

purchase PQS to enter into the crab fisheries. If PQS becomes more concentrated than it would in an open market, the market available for harvesters' crab deliveries could contract. The extent of any consolidation cannot be predicted but would depend on the extent to which holders of the first right of refusal exercise that right. The program would require the share purchaser to process their shares at a facility owned at least 50 percent by the CDQ or community group. This would allow the group to partner with other interests, which could facilitate purchase of shares using the first right of refusal. Given the success of some CDQ groups in partnering with private fishery participants it is likely that additional partnerships will develop. Partnership opportunities under the first right of refusal provision could provide an effective inroad for harvest share owners to enter the processing sector. CDQ and community group partnership arrangements, however, could become the norm for processing, if this option is adopted and future purchasers of processing shares believe it is necessary to partner with CDQ or community groups to ensure that share purchases are completed. The CDQ groups development as effective participants in non-CDQ fisheries suggest that they are capable of developing into effective participants in BSAI crab processing.

The option provides little guidance on administration. No time period for exercising the right is stated in the option. The time period could be critical, particularly if the right applies to in season transactions for IPQ as suggested by the language. A time period for the first right of refusal should be developed for administration of this provision.

In conclusion, the consequences of a first right of refusal provision are very difficult to predict. The development of the first right of refusal could provide an avenue for CDQ and community group participation in the BSAI crab processing. If the first right of refusal is exercised by CDQ and community groups, it could disrupt private transactions for processing shares. To effectively transact in processing shares, it is possible that purchasers will partner with CDQ or community groups. This could benefit some participants that wish to enter the processing sector, since they would not have to negotiate prices, but could rely on the first right of refusal for share purchases. Other participants could be harmed by the provision, if their transactions are prevented by exercise of the first right of refusal by CDQ and community groups.

### **3.6.4 Maximum IPQ Allocation**

The Council motion also includes the following option for inclusion in a trailing amendment, which would establish a maximum annual IPQ allocation:

The amount of IPQ in any year shall not exceed the percentage of the TAC for any crab species as follows:

Option 1: IPQ percentage times a TAC of 150 million pounds.

Option 2: IPQ percentage times a TAC of 200 million pounds.

The option would limit the allocation of IPQs in seasons during which the TAC exceeded a set level. Under the first option, IPQs would be limited to 135 million pounds, 90 percent of 150 million pounds (the percentage of the TAC for which IPQs are issued times 150 million pounds). Under the second option, IPQs would be limited to 180 million pounds, 90 percent of 200 million pounds.

In the preferred rationalization program, harvest quota are issued as either Class A or Class B IFQs. Class A IFQs are allocated for 90 percent of the TAC, corresponding to the 90 allocation of processor shares. Class A IFQs are also subject to regional landing requirements. Harvests with Class B IFQs may be delivered to

any processor in any location. Although the option does not specify any change in harvest share allocation, the Class A IFQ allocation would also need to be changed, to retain the one-to-one correspondence between IPQs and Class A IFQs. Otherwise, a portion of the Class A IFQ allocation would not be deliverable, since harvests with Class A IFQs must be delivered to a processor holding unused IPQs. Less clear is whether the regional landings requirements on the Class A IFQs in excess of the limit would be retained. If so, Class A IFQs would be allocated up to the IPQ limit, with regionalized Class B IFQs allocated for the remainder of 90 percent of the TAC. Class B shares with no regional designation would be allocated for the other 10 percent of the TAC. Under this system, Class A IFQs and the regionalized Class B IFQs would be subject to regional landings requirements. If regional designations are not retained, Class A IFQs would be issued up to the IPQs limit and Class B shares would be allocated for the remainder of the fishery. Under this approach, the regionalization of the fishery would also be subject to the IPQ limit. If one of these options is selected, the Council will need to specify whether the regional landing requirements on the converted Class A IPQs would apply.

Under either option, IFQs in excess of the IPQ limit would not be subject to the IPQ delivery requirement allowing greater flexibility for harvesters. Increasing the share of the fishery that is not subject to IPQ delivery requirements will increase the bargaining strength of harvesters. Since IPQ holders will continue to have exclusive processing privileges for the share of the fishery allocated as IPQs, the position of processors with respect to those deliveries is secure. The position of the processors will only be affected through the competition for deliveries in excess of the IPQ limit.

One possible rationale for the IPQ limit is to stimulate entry to the crab processing industry. Since all crab in excess of the limit would not be subject to IPQ delivery requirements, additional crab deliveries will be available for entering processors willing to compete for those deliveries. The provision in and of itself, however, is unlikely to stimulate any sound, long term investments since crab stocks are known to fluctuate and do not regularly exceed the proposed TAC thresholds. The provision, however, could provide an added incentive for entry or for existing processors to remain in the fishery. These processors would have the opportunity to purchase crab harvested with Class B shares or crab in excess of the IPQ limit in high TAC years. Benefits would spill over to communities that support these processors.

Over the last three decades, only the Bering Sea *C. opilio* fishery has exceeded either of the proposed thresholds. Table 3.6-6 shows the pounds landed in Bering Sea *C. opilio* fishery from 1990 to 2002. During this period, landings have exceeded 150 million pounds six times and 200 million pounds four times. In two years, harvests exceeded 300 million pounds (more than twice the 150 million pound threshold). In the most recent years, harvests have declined significantly, with the total catch not exceeding 30 million pounds in the last 3 years. Although future TAC levels are unpredictable, past harvests suggest that the TAC could reach the 150 million pounds occasionally and may exceed 200 million threshold.

In summary, the primary benefit of applying the threshold on IPQs will be realized by harvesters that experience greater competition for their landings from processors that are not bound by the IPQ requirements. Identifiable benefits to processors and communities are difficult to discern since entry of new processors or expansion to new communities is unlikely to be stimulated given the uncertainty of stocks. If communities are able to entice owners of surplus existing equipment to enter the fishery, it is possible that some benefits could be disbursed in years of high TACs. These benefits are likely to be short lived, if high TACs are not sustained.

Table 3.6-6. Total Landings for Bering Sea *C. opilio* crab from 1990 to 2002.

<b>Year</b>	<b>Total Landed Pounds</b>
1990	161,821,350
1991	325,183,233
1992	312,839,404
1993	229,173,808
1994	147,992,955
1995	74,005,359
1996	64,363,158
1997	117,179,683
1998	240,433,650
1999	182,678,507
2000	30,258,170
2001	22,925,076
2002	24,789,779

Source: Alaska Department of Fish and Game

## ARBITRATION ANALYSIS

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### **3.7 Analysis of Binding Arbitration**

The Council included in its preferred alternative a binding arbitration program intended to resolve price disputes between harvesters and processors. In the current crab fisheries, harvesters often negotiate prices collectively at the beginning of each season. Harvesters have used two strategies for leverage during these price negotiations. In some seasons, harvesters have delayed the beginning of fishing after the opening of the season to pressure processors to pay a higher price for harvests. At other times harvesters have promised additional deliveries to the processor that offered an acceptable price to induce higher offers. The ability of harvesters to use these collective inducements could be limited in a fishery with an extended season and processor allocations. In addition, neither harvesters nor processors believe that delaying fishing is in the best interest of either sector. Binding arbitration is intended to provide an additional method of determining an equitable or competitive price is obtained for sales of crab in a rationalized fishery, given the limited harvesting and processing markets that would be available under a system that allocates both harvest and processing privileges. The idea of using binding arbitration for resolving ex vessel pricing disputes is taken from the Newfoundland snow crab fishery. Because that system is the basis for consideration, a brief review of that system is presented.

#### **3.7.1 The Newfoundland Binding Arbitration System**

The Newfoundland system of binding arbitration was developed after a series of harvester strikes delayed fishing in the crab fishery over the course of several years. The arbitration system was developed by a government appointed commission in 1997. The commission was appointed after a protracted strike kept the fishery closed for a period of months (Task Force on Fish/Crab Price Settlement Mechanisms, 1998).

The Newfoundland crab fishery is relatively young and developed substantially as the groundfish stocks declined in the early and mid 1990s. Growth in crab, however, did not keep pace with declines in groundfish. Pricing disputes arose from several factors, including mistrust between the sectors, a lack of transparency in pricing, weakening markets, product price declines, price differences with other crab fisheries, and the stances of both parties in collective bargaining (Task Force on Fish/Crab Price Settlement Mechanisms, 1998).

In the Newfoundland crab fishery the harvesting and processing sectors each act collectively.<sup>1</sup> Permitting collective action by processors has achieved an industry wide price for the fishery. Fishers have elected to act collectively across the entire fishery. This action on the part of fishers has forced processors to work collectively in the arbitration process, as well (Sackton, 2002). The arbitration process begins with a pre-season market report produced by an independent analyst selected mutually by the parties. The arbitrator, also selected by the parties in advance, has been a person outside of the industry. A negotiating period follows the market report during which the parties attempt to reach an agreement on price. The arbitrator does not participate in the negotiations. If an agreement is not reached 14 days prior to the season opening each party submits a final offer to the arbitrator, who chooses from those two offers

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<sup>1</sup> Currently, in the U.S. only harvesters are permitted to act collectively.

(Fishing Industry Collective Bargaining Act, 2001).<sup>2</sup> In practice, the parties have relied on a pricing formula, under which prices are adjusted every two weeks based on the first wholesale price of three products, which are the primary products of the fishery. The formula also considers the exchange rate, the market share of each of the products, and the product recovery rate for each of the products. The starting point for the formula is a \$1.00 per pound allocation from the first wholesale price to processors, which was agreed by the parties. After that allocation, all additional first wholesale revenues are split 80 percent to harvesters and 20 percent to processors. The first wholesale prices are determined by an independent market analysis based on private surveys of buyers and sellers. The job of the market analyst is to develop independently these private sources of information (Sackton, 2002).

Participants in Newfoundland's fisheries are reportedly satisfied with the resolution of disputes and transparency in pricing that have developed through the program. Transparency is provided through the preseason market analysis, as well as the biweekly adjustments under the price formula (Panel on Corporate Concentration, 2001). No strikes have occurred in the crab fishery since the system was implemented in 1998. The pricing formula seems to be critical to the success of the program. Processors believe that the system protects them in a falling market, while harvesters enjoy having additional market information (received through the market analysis and the arbitration process) and participation in mid-season market increases (Sackton, 2002). The program has been helped by the strong market for outputs of the fisheries in recent years. The fishery is managed with an individual quota system with limited processor entry. Despite the limits on processor entry, several new processors have entered the fishery since the implementation of the program. These new entrants, together with stock declines, have stimulated price competition among processors, so that the prices this season have exceeded the formula price (McGovern, 2002).

The strength of the arbitration system in a declining market is uncertain. In the shrimp fisheries, which are also subject to binding arbitration, a stalemate between the harvesting and processing sectors closed the fishery for approximately two months in the summer of 2001 (Government of Newfoundland and Labrador, September 2001). Government intervention in the dispute reopened the fishery and led to the appointment of a government panel to address issues in the fishery. Pricing disputes in that fishery have arisen from a variety of factors including market declines, seasonality of the fishery, product quality, and access to international markets (Inshore Shrimp Panel, 2002). The inability of price arbitration to stimulate solutions to these problems is not surprising and should not be seen as a shortcoming of arbitration.

The appropriateness of a collective arbitration system (similar to the Newfoundland system) for the BSAI crab fisheries is subject to debate. The use of a collective system could be antithetical to advocates of a free market who believe price differences drive innovations. The system, however, has appeal in that it provides a baseline ex vessel price for all deliveries that can be exceeded by agreement of the parties. The incentives for a processor paying in excess of the baseline price in the two-pie system could differ from the incentives for paying a higher price in a system of limited processor entry.

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<sup>2</sup> Fleet wide arbitration in the U.S. could not use a system with a single final offer from each sector unless Congress were to grant the processing sector an antitrust waiver. Currently, neither sector supports such an exemption.



### 3.7.2 Principles Behind Binding Arbitration

The working group on binding arbitration has proposed the following problem statement justifying the development of the binding arbitration system:

*Issuing harvesting and processing quota raised concerns regarding changes in bargaining power between the harvesting and processing sectors in ex-vessel price formation. Binding arbitration is a mechanism intended to address that issue, and to help achieve the goals articulated in the North Pacific Council's Crab Rationalization Problem Statement.*

The fundamental issue to be addressed by a system of binding arbitration is the change in bargaining power between the harvest and processing sectors in a rationalized fishery. The Council intends to develop a rationalization program that “maintains healthy harvesting and processing sectors.” In addition, “the system should seek to achieve equity between the harvesting and processing sectors, including healthy, stable and competitive markets.”

The system of binding arbitration should protect all participants in the crab fisheries. Harvesters and processors alike should trust the system of binding arbitration. The system should also provide both parties with effective means of enforcing an arbitrator’s decision.

### 3.7.3 Analysis of Alternative of Binding Arbitration Structures

The working group on binding arbitration met several times, developing five general arbitration alternatives. These alternatives range from a system that provides single pre-season arbitration (similar to the Newfoundland system) to a system that provides each harvester with the right to pursue binding arbitration with a single processor at any time before or during the season. Summary descriptions of the five different alternatives are:

#### 2.8.3.1

- I. *A structure of one arbitration per processing firm, with harvesters using one mandated collective bargaining association that would submit one last and final offer on behalf of all IFQ holders. Sub-options for this structure include*
  - a. *Can either be pre-season or at any time the processor is first forced to arbitration.*
  - b. *Instead of mandating a collective bargaining association, the structure could require one last best offer from all IFQ holders (without mandating belonging to the association).*
  - c. *IFQ holders not participating can either have the protection of the arbitration (last man standing is protected) or not (last man standing does not receive the benefit of the arbitration).*
  
- II. *A structure of one arbitration event per processing firm, but with multiple arbitrations allowed. Under this system, arbitration would occur at one time, using one arbitrator, per processor, but any individual IFQ holder or group of IFQ holders could force arbitration of their individual last/best offer. Sub-options for this structure include:*
  - a. *Can be collective bargaining by harvesters or individual or both. If individuals can arbitrate, there would be a notice and joinder opportunity for all harvesters to join into arbitration.*
  - b. *Can either be pre-season (only) or at any time the processor is first forced to arbitration.*

- c. *If an IFQ holder is not part of the arbitration, it can still get the benefit of the minimum price established. The sub-options are the lowest, mean or highest arbitrated price.*
- III. *A structure of multiple arbitration events per processing firm only at firm times.*
- a. *The sub-options for when arbitration is allowed include temporal (such as every two months, or one event one month before the end of the season) or market related (if the market changes up or down over 5%, for example).*
  - b. *It is assumed that any IFQ holder may join in the arbitration.*
  - c. *It is assumed that any IFQ holder has the benefit of the last arbitration. The sub-options are the same as I.c.*
- IV. *A structure of multiple arbitration events per processing firm. Under this structure, arbitration could occur at the election of any quota holder at any time. Sub-options for this structure include:*
- a. *Can be collective bargaining by harvesters or individual or both.*
  - b. *There may be standards that must be met in order to require arbitration, such as a minimum amount of IFQ to cause arbitration.*
- V. *A structure establishing a "fleet wide" single arbitration event.*
- a. *The system would not use "last best offer" but rather the arbitrator could pick any final price the arbitrator wanted.*
  - b. *It would require that the arbitrator develop a formula pricing system*
  - c. *It would require revenue by processor be given to the arbitrator to use in developing the formula. It could require costs by processor be given to the arbitrator to use in developing the formula.*
  - d. *The formula could either adjust weekly with changes in market prices or establish a base or minimum price paid at the time of delivery and adjustment after product sales are completed.*

Since each of the alternatives have several different options, the analysis is developed by first discussing the alternatives generally. The analysis then continues with an analysis of the various options and a brief discussion of their operation and implications.

### **3.7.3.1 Rationalization and Arbitration**

A discussion of the role that arbitration might serve in the rationalization program is useful to frame the analysis and identify potential issues concerning the binding arbitration alternatives. The analysis also considers each alternative structure independently, discussing the merits and shortcomings of each. To some degree the choice of system depends on the character of the industry and whether and how the rationalization program, as a whole, is intended to affect the character of the industry. In evaluating the different alternatives, several different impacts must be considered.

The different arbitration structures could affect the development of efficiencies in the fishery. Efficiencies could be achieved by the coordination of activities between the sectors. Several harvesters and processors participate in fisheries other than the BSAI crab fisheries. Timing of crab activities is important not only to maximizing returns from the crab fisheries but also receiving maximum returns from these other activities. Within the crab fishery, timing of activities is important to receiving the maximum meat fill as well as to scheduling for both harvesters and processors. Scheduling of activities can improve revenues and reduce costs to both sectors, so an arbitration process that facilitates scheduling could be beneficial to

both sectors. Although scheduling efficiencies could be achieved under any of the options, the different arbitration programs could affect the way these efficiencies are achieved.

In a similar vein, the interaction of the different arbitration programs with the preferred rationalization program should also be considered in evaluating the alternatives. Some arbitration programs have IFQ/IPQ share matching periods during which shareholders in the different sectors agree to deliveries in the upcoming season. These share matching periods could aid in the development of delivery relationships between IFQ holders and IPQ holders. If specific harvester/processor relationships are important, these systems that facilitate their development should be favored. At the other extreme, the fleet wide system is independent of any share matching. This systems should be favored if specific delivery relationships are unimportant in the fishery. Because the arbitration program will be a part of the larger rationalization program, it is important that the two systems work together and to the extent possible complement one another.

Arbitration could also affect the development of efficiencies and improvements within each sector. Most importantly, the arbitration system should preserve the incentives so that each sector gains benefits from improvements in its own control. While in some cases sharing of these benefits with the other sector might be appropriate, improvements will not occur unless the sector with control also will realize a reasonable gain from an improvement. In short, the division of revenues must not transfer all of the improvements of one sector to the other sector.

The arbitration program should also consider the degree of homogeneity in the BSAI crab industry and whether the rationalization program is intended to increase or decrease the differences in the participants. An arbitration program that treats all participants the same could contribute to the homogeneity of the industry. For example, if the industry produces few products for a few known markets using common production technologies, a system of arbitration that treats all participants the same might be suitable. If different participants serve different markets with different products produced with different technologies, an arbitration system that treats all participants the same might be unable to protect the interests of all participants. The different arbitration structures vary in the degree of collective action permitted or compelled and the degree to which the arbitration findings are intended to apply to universally to all participants or to varying circumstances of independent participants. Because of these differences, the choice of arbitration programs could influence the degree to which the industry operates as a collective producer of outputs or as a number of independent producers.

Throughout the discussions of the preferred rationalization program and the arbitration program, the issue of the “last man standing” or the last IFQ holder to contract for delivery of crab has received considerable attention. The fear is that this IFQ holder, whose season could depend on the contract, would have little or no negotiating leverage in dealing with a large IPQ holder, who has already contracted for the majority of its shares.<sup>3</sup> The different arbitration alternatives would treat the “last man standing” differently. Although the protection differs, and in some cases could be minimal, in evaluating the alternatives one should also consider whether the “last man standing” had the opportunity to avoid being put in the circumstance of having minimal protection. The arbitration program should be designed to protect IFQ holder interests, including the interests of the “last man standing”. The program, however, might be adequate even though it does not protect the interests of those that do not act to obtain its protections.

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<sup>3</sup> While the IFQ holder’s bargaining position could be improved by Class B IFQ holdings, in a system with free share trading, Class B holdings should not be assumed.

### **Single arbitration proceeding for all IFQ holders and IPQ holders (Structure V).**

Under this system the arbitrator would be tasked with developing a single price formula applicable to all participants in the fishery. One particular caveat with this alternative is the potential for antitrust issues to arise with processors participating in the same process. The system would rely on the arbitrator and market representative to approach each processor independently to avoid antitrust violations. Two issues arise with using this arrangement to overcome antitrust concerns. The first issue is simply whether this would effectively avoid antitrust problems without an antitrust exemption. The second issue, which relates more to the workability of the alternative, is whether the arbitrator would be capable of establishing a universal price formula based on a series of individual contacts with the processors. If processors are fairly homogeneous, the arbitrator could gain some perspective of a single, fair price formula by contacts with each IPQ holder. These individual contacts would give the arbitrator a perspective of the markets and costs necessary to determine an appropriate price. If processors differ substantially, individual contacts might be inadequate to establish a price formula. The arbitrator may need to work with the processors as a group to determine the formula.

Timing could be an issue under this alternative for a few reasons. One of the proposed price formulas contains an assumed relationship between the timing of the price determination and timing of sales. In the formula, price is determined by examining prices of goods in the week of the delivery. The result is that harvesters would use their market predictions to time their fishing activity. Whether this is appropriate is questionable, since products may not reach markets during the same week that harvests are delivered. If certain short term events are known to raise the prices of products and timing of products takes a week, the timing mismatch could even lead to a mismatch between supplies and demand. For example if peak prices occur during a festival (as some participants believe is likely) harvesters will have an incentive to deliver their harvests during the week of that festival. If those deliveries cannot be processed and delivered to market in time to satisfy the festival demand, prices could be inflated by an under supply induced by the price formula.

A separate issue with delivery timing issue under this alternative relates to processor differentiation. Although the price determination takes into account market prices at the time of delivery, the formula as proposed does not take into account individual processor circumstances and the effects of delivery timing on processor costs. For example, if a processor is able to reduce costs substantially by processing all crab from a fishery during a specific window of time, the ex vessel price paid by that processor should be higher during that period. If another processor would benefit from scheduling deliveries at another time, that processor should pay a relatively higher price during its preferred delivery period. A single price formula may not be able to capture these differences. If delivery timing is important to processor costs, the arbitrated price should create an incentive for the harvester to deliver crab when the processor is best equipped to handle the deliveries. If processor costs are independently sensitive to delivery timing, the arbitrator in this system will be in the position of having to select an incomplete price formula.<sup>4</sup>

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<sup>4</sup> An ex vessel price formula that depends on product prices will create an incentive for harvesters to concentrate deliveries during the period when prices are the highest, this may not resolve the processor cost issues, if a processor can maximize revenues by accepting deliveries at some other time and storing frozen product. In any case, an arbitrator will not be able to consider specific circumstances under this arbitration system.

If delivery timing is important to processor costs, a fleet wide price may not resolve the price dispute but instead serve as a precursor to a later price negotiation. If processor costs vary substantially depending on the timing of deliveries, the arbitrator may be forced to make an impossible decision concerning the appropriate price formula. Two circumstances are possible. If the arbitrator establishes a minimum price for crab that is intended to accommodate the additional processing costs of a harvester delivering crab at an inopportune time for the processor, then the arbitration program would provide little protection to IFQ holders. Each IFQ holder would be in the position to negotiate delivery timing with the processor, but the starting point for those negotiations would be the relatively low arbitrated price. At the other extreme, the arbitrator could choose a relatively high price formula that ignores any added processing costs from ill-timed deliveries. In this case, the IFQ holder will start the negotiation with substantial leverage. In either case, if delivery timing is important to processor costs, the arbitration outcome might do little to resolve the actual price dispute between harvesters and processors. The arbitration will instead establish the base line for the price negotiations, which will revolve around settling the timing of the delivery.

An additional set of issues relate to the task of the arbitrator in this program. The program calls for the arbitrator to collect substantial amounts of data from each processor, including cost data, product data, and ownership data. In addition, the arbitrator must consult the IFQ holder representatives to assess their position concerning pricing. All of this data must be assimilated in a short period of time to determine the price formula that will be the arbitration finding. If processors are similar to one another this may not be an insurmountable task. The data from the different processors would likely be redundant and could easily be managed by the arbitrator in making a finding. Minor differences, such as facility location, could be accommodated within the pricing formula. If processors have substantial differences, the arbitrator's task is much more difficult. The arbitrator must take into consideration different product forms and markets, production schedules and plant capacities, and exchange rates. All of this information must then be developed into a single formula to establish a product price for all deliveries in a season. The second issue stems from the need to develop a single price appropriate and applicable to all processors. While the goal of the program may be to set a price that creates an incentive for processor to develop the most profitable products and markets, the appropriate price to create those incentives might not be obvious and could require a substantial amount of time to derive. A related issue relates to the sensitivity of the data collected by the processor. Some may question whether it is appropriate for the arbitrator to collect the data from either or both parties. (Cost data requirements)

#### **Single arbitration proceeding for each IPQ holder, with IFQ holders required to participate collectively (Structure I).**

Under this system, each IPQ holder would be subject to a single arbitration proceeding. The proceeding could occur either on a specific date before the season or once initiated by an IFQ holder. An option could be adopted that would extend the findings of the arbitration to IFQ holders who did not commit to the IPQ holder prior to the proceeding but later decided to deliver to the IPQ holder. The proceedings could use a final offer arbitration system that is favored by many participants.

By establishing a system of arbitration with an identified IPQ holder and specific IFQ holders a share matching procedure would be required under this structure. This share matching procedure could be beneficial in coordinating deliveries and relationships among IFQ holders and IPQ holders.

The arbitration process would isolate each IPQ holder in the arbitration process avoiding issues related to antitrust. IFQ holders would act collectively, with the arbitrator identifying a price formula (or price) specific to the IPQ holder. Depending on the standards for arbitration identified by the Council, the

arbitrator could be permitted to consider the ex vessel price of crab paid by other IPQ holders, as well as all crab product prices in making a decision. The arbitrator's consideration of these prices could be used to ensure that the arbitrated price is a fair market price that reflects a broader market for crab than the market served by the IPQ holder and that the IPQ holder has an incentive to develop markets and efficiencies comparable to other producers.

Under this system, the pricing formula could be developed to address some of the timing issues that are likely to arise for both harvesters and processors. The IPQ holder could present specific evidence concerning its processing requirements and timing. Similarly, requiring the IFQ holders that are delivering to the IPQ holder to participate collectively could facilitate the discussion of their timing requirements and coordination of their activities.

Some IFQ holders could object to being required to participate collectively in the arbitration. For example, an IFQ holder may wish to present an isolated price bid to accommodate special circumstances and scheduling requirements. The ex vessel price paid to any IFQ holder (including those reaching contracts outside of arbitration) could be considered as evidence in the proceeding, but the direct involvement of the IFQ holder could compromise the position of the IFQ holder for the benefit of group. Whether this is appropriate depends on the extent to which the IFQ holder's circumstance is likely to be unique in comparison to other IFQ holders delivering to the IPQ holder.

Under this structure, an IFQ holder might not have committed shares prior to the arbitration proceedings. In this instance, the IFQ holder would either be left out of the arbitration altogether or could receive the benefit of the arbitration decision. The arbitration decision, however, might be inadequate for all IFQ holders that might deliver to an IPQ holder. For example, if the arbitration only involved 40 percent of an IPQ holder's shares, it is possible that the proceedings only concerned deliveries for which the IPQ holder had a specific known but limited market. Application of this decision to all deliveries to the IPQ holder might not be appropriate since other deliveries could be to satisfy secondary demands. A requirement could be added that final offers be broad enough to cover all of an IPQ holder's shares. Under this scenario, the IPQ holder and the participating IFQ holders would include terms for deliveries from others not present at the arbitration. Although this would provide a price for all deliveries, IFQ holders participating in the arbitration are unlikely to give much consideration to an offer for deliveries of the IFQ holders that do not participate. Whether this situation requires a remedy, depends on whether IFQ holders that do not participate in the process in the first instance merit protection. If options are adopted that provide any IFQ holder with a right to join arbitration proceedings by unilaterally committing shares to an IPQ holder, those not participating in the arbitration could be argued to have remained out of the proceedings at their own peril.

### **Single arbitration proceeding for each IPQ holder, with IFQ holders permitted to participate independently or collectively (Structure II).**

This structure is the same as Structure I, except that IFQ holders would be permitted to act independently in the arbitration proceeding. The benefits of a single proceeding and share matching from the Structure I would be retained in this structure. The complication of applying the arbitration finding to IFQ holders not participating would be present in this instance. This structure, however, would permit IFQ holders to act either individually or collectively in the arbitration proceedings. Permitting the participants to act individually would avoid forcing IFQ holders into a collective bargaining unit against their wishes. The disadvantage of not compelling a collective bargaining unit is that the proceedings could be less organized and possibly disrupted by IFQ holders that are too independent. The level of disruption likely

would depend on the specific rules that govern the proceedings and the arbitrator's ability and willingness to control the proceedings by imposing structure on the arbitration process. IPQ holders in this circumstance could be required to negotiate with several IFQ holders independently, which could complicate the development of a single coherent position in the arbitration process. The independent participation of IFQ holders could result in the IPQ holder revealing more information in the process and potentially offering a higher final offer. This will not necessarily ensure IFQ holders of higher prices or greater ex vessel revenues because of the presence of multiple IFQ offers. The results would depend on the amount of information each of the parties has and their expectations concerning the arbitrator's findings.

**Multiple (but a limited number of) arbitration proceedings for each IPQ holder, with IFQ holders permitted to participate independently or collectively (Structure III).**

This structure is similar to Structure II, however, a second arbitration would be permitted for IFQ holders that have shares that are not included in the first arbitration proceeding. The second arbitration would be available to IFQ holders that chose not to engage in the first arbitration or that did not commit all shares at the time of the initial arbitration proceeding. This structure is intended to avoid the need to apply an arbitration finding to IFQ holders that did not participate in an arbitration proceeding. Conditions could be imposed which would limit the availability of the second proceeding to situations where both the IFQ and IPQ holders have substantial shares uncommitted. The arbitration decisions could still be made available to IFQ holders that do not participate in the arbitration to avoid leaving out IFQ holders with minimal holdings.

The need for permitting a second arbitration could be questioned, since under Structure III an IFQ holder would have a unilateral right to commit shares and join arbitration proceedings with any IPQ holder with unsubscribed shares. In addition, defining the circumstances under which an IFQ holder can initiate a second arbitration is likely to be either under inclusive or over inclusive, prohibiting initiating arbitration by an IFQ holder that had a reasonable excuse for not joining a first arbitration or permitting arbitration in some instances where the IFQ holder had reasonable opportunity to join a first arbitration proceeding. Establishing specific criteria for when arbitration is or is not permitted could also lead to some manipulation by those intending to either avoid or qualify for multiple arbitration proceedings.

**Multiple (and an unlimited number of) arbitration proceedings for each IPQ holder, with IFQ holders permitted to participate independently or collectively (Structure IV).**

This structure would be similar to Structure IV above, but would extent the right to arbitrate to any IFQ holder at any time. This structure would avoid need to apply arbitration findings to nonparticipating IFQ holders, since his option would provide an open option to arbitrate. While the option avoids the problem of applying an arbitration finding to those that did not participate, the cost of this option could be excessive. Unlimited multiple proceedings could be disruptive to planning by IPQ holders to the detriment of many IFQ holders. In addition, unlimited proceedings could be costly to all participants, who would share the costs of the arbitrator.

### **3.7.4 Analysis of Optional Provisions**

The committee's five potential structures overlap with each other substantially. To assist the Council in evaluating the alternatives, each option is briefly described and analyzed independently. The different program alternatives to which the option can be applied are noted.

### **3.7.4.1 Market Report**

One feature of the Newfoundland crab fishery system of binding arbitration is a preseason market report prepared by an independent market analyst. The following provision would provide for such a market report in the BSAI crab fisheries:

#### **2.8.3.2**

##### *Market Report*

*Within 30 days prior to the opening of each crab fishery an independent market analyst selected by the mutual agreement of the sectors will present to both sectors and all designated arbitrators an analysis of the market for products of that fishery. (Applies to all alternatives)*

The market analysis is intended to provide transparency of markets and form the basis for negotiations. The analysis should reduce posturing by the parties in negotiations and provide an arbitrator with needed background on market conditions. The report should cover ex vessel prices for deliveries of Class A and Class B crab harvests, as well as both first wholesale and consumer prices for crab and crab products, so that it comprehensively describes the market for crab and crab products. Crab price volatility is likely to limit the utility of the market report for setting fixed ex vessel prices for the season. The report, however, could provide valuable information to participants on the overall conditions of the market preceding the season and information concerning the key factors that may affect prices. With extended seasons peak harvests may not be at the season opening, however, to be useful for negotiations the marketing report must be prepared prior to completion of most delivery contracts. If contracts are based on a formula that adjusts prices with changes in market conditions, general market information may be adequate to provide the needed transparency.

### **3.7.4.2 Selection of the Administrator, Arbitrator (and Market Analyst, if applicable)**

Administration of the arbitration program requires arbitrators and possibly an administrator to oversee the process and a market analyst to prepare the marketing report. The following provision would define the selection process for the administrator and market analyst.

#### **2.8.3.3**

##### *Selection of the Administrator, Arbitrator (and Market Analyst, if applicable)*

*The market analyst and administrator will be selected by mutual agreement of the PQS holders and the QS holders. PQS holders collectively must agree and QS holders collectively must agree. (Applies to all alternatives)*

*A single arbitrator will be selected for each IPQ holder to arbitrate all price disputes between that IPQ holder and any IFQ holder. (Applies to Alternatives I, II, III, and IV)*

*The arbitrator will be selected by the agreement of the IPQ holder and*

- a) the IFQ holders that made deliveries to the IPQ holder in the preceding fishery or*
- b) IFQ holders that have committed deliveries to the IPQ holder in the upcoming season.*



*(Applies to Alternatives I, II, III, and IV)*

*Suboption: If the two sectors are unable to agree on an arbitrator, administrator, or market analyst, each sector will choose an arbitrator, and the two so chosen will choose a third arbitrator, market analyst, and administrator. The three arbitrators will make arbitration decisions as a panel. (Applies to all alternatives)*

*Agreement of a group of IFQ (or IPQ ) holders will be by a majority vote with:*

- 1. one vote per IFQ (or IPQ)*
- 2. one vote per IFQ (or IPQ) holder (Applies to all alternatives)*

*The arbitrator, administrator, and market analyst will be selected \_\_\_\_ \* days before the beginning of the season. (Applies to all alternatives)*

*\* The number of days may vary with the model selected.*

The administrator, market analyst, and arbitrators should be independent persons agreed to by the parties. If the system establishes arbitration on an IPQ holder basis (rather than fleet wide basis), whether the arbitrator is selected by IFQ holder that delivered to the IPQ in the previous season or by IFQ holders committed to the IPQ holder in the coming season may depend on the timing of the selection and the stability of participation and delivery patterns.

The voting method for selecting different persons could have a large impact on selections. If votes are based on holdings, a few large shareholders could dominate in any voting process.

A separate suboption would provide for the selection of an arbitration panel. Under this procedure, each side selects an arbitrator on its own. These two arbitrators then select a third arbitrator. This selection process is common to arbitration proceedings and may be useful to overcome an impasse in the selection of an arbitrator.

### **3.7.4.3 Shares Subject to Binding Arbitration**

Because of the allocation of both harvesting and processing shares for crab harvested with Class A shares, it is thought that transactions for delivery of Class A crab is most in need of arbitration to establish a fair, equitable, or competitive price. Applying arbitration to only Class A crab transactions will maintain market transactions for Class B shares that provide added information to the market analysts and arbitrators.<sup>5</sup> The following option has been suggested:

#### **2.8.3.4**

##### *Shares subject to binding arbitration*

*This binding arbitration system shall address price disputes between holders of Class A IFQ and holders of IPQ. Binding arbitration does not apply to the negotiation of price for deliveries under the IFQ class B shares. Applies to all alternatives.*

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<sup>5</sup> The arbitrator should consider Class B transactions in determining the arbitrated price, but the arbitrator should also consider the different natures of Class A and Class B share transactions in considering Class B share transactions.

### 3.7.4.4 Shares of Processor Affiliates

Since some harvesters and processors have affiliations, the arbitration system should consider that participation of processor affiliated IFQ holders in the binding arbitration process could influence the outcome of that process. To reduce that influence, options to prevent participation of processor affiliates in arbitration are proposed:

#### 2.8.3.5

##### *Shares of processor affiliates*

###### *Option 1*

*Holders of IFQs that are affiliated with processors are not eligible to participate in the arbitration process. Processor affiliation will be determined using the threshold rule with percent thresholds of 10, 25, and 50 percent. (Applies to all alternatives)*

###### *Option 2*

*Entities that are partially owned by processor affiliates will be permitted to participate in arbitration, however, the participation will apply only to a share of IFQs equal to the ownership share of owners not affiliated with a processor (e.g., if an entity owning any part of a processor owns a 75 percent interest in 100 IFQs, the nonaffiliated owner of those IFQs may participate in arbitration with 25 shares. (Applies to all alternatives)*

###### *Option 3*

*Participation of processor affiliates in binding arbitration as IFQ holders will be determined by any applicable rules governing anti-trust. Any parties eligible for collective bargaining under the Fishermen's Marketing Act of 1934 will be eligible to participate in binding arbitration. (Applies to all alternatives)*

Option 1 would use a threshold rule for determining processor affiliation that would prevent participation as an IFQ holder. Option 2 would allow IFQ holders that own shares collectively with processors to participate in the arbitration with respect to their interest in the commonly held shares. Option 3, the preferred alternative of the committee, would rely on anti-trust rules for determining whether a processor affiliate could participate in arbitration. The separation of interests in the binding arbitration program could be compromised by participation of processor affiliates as IFQ holders. The exclusion of these parties, however, might be inconsistent with current practices, as some processor affiliated vessels have participated in fleet price negotiations. In addition, current negotiations are often conducted by captains, whose shares are affected by the ex vessel price regardless of whether the vessel has a processor affiliation. Because of the sensitivity of ex vessel price negotiations under the new program, a conservative approach to participation of processor affiliates in price negotiations might be appropriate.

### 3.7.4.5 Timing of Arbitration

An effective binding arbitration program must establish a price (or price formula) for ex vessel deliveries in a time frame that does not result in excessive pressure on either sector. Determining a price too early could subject one party or the other to unreasonable risk from volatile crab prices. Determining a price too late could disrupt planning or marketing efforts. A series of provisions have been developed to sequence the arbitration process to have efficient resolution of price disputes.

### 3.7.4.5.1 Arbitration Period

In the arbitration alternatives in which a single IPQ holder is opposite one or more IFQ holders, a system must be instituted for the matching of IPQs to IFQs. This share matching will determine the participants in an arbitration proceeding. The following option is proposed as the starting point for the share matching process.

#### 2.8.3.6

##### *Timing of Arbitration*

#### 2.8.3.6.1

##### *Share Matching Period*

*The process of binding arbitration will begin 45 days prior to the beginning of each crab season. On that date, a share matching period will begin between IFQ holders that have agreed to deliver and IPQ holders that have agreed to accept crab to be harvested with Class A IFQs.. During the share matching period, the parties will negotiate the terms of delivery of crab harvested with the committed Class A IFQs. This share matching period will expire 14 days prior to the beginning of the applicable season. (Applies to Alternatives I, II, III, and IV)*

##### *Suboption A*

*IFQ holders that have agreed to deliver crab to an IPQ holder may, but are not required to negotiate collectively during the share matching period. (Applies to Alternatives II, III, and IV)*

##### *Suboption B*

*IFQ holders that have agreed to deliver crab to an IPQ holder will negotiate collectively by a representative selected by a majority vote of the committed IFQ holders with:*

- 1. one vote per IFQ*
- 2. one vote per IFQ holder (Applies to Alternative I)*

The share matching period is intended to facilitate negotiations between IPQ holders and IFQ holders. The commitment of shares is intended to determine the participants in a negotiation (and if necessary arbitration proceeding). The two suboptions represent alternative approaches to collective negotiations for the harvest sector. Mandatory collective negotiations could be a barrier to individual IFQ holders realizing the full value of their shares by accommodating an IPQ holder's delivery requirements. Collective negotiation, however, could provide IFQ holders with additional negotiating leverage.

The following options are proposed to further the matching of shares:

#### 2.8.3.6.2

##### *Notice of Unsubscribed IPQs*

*If the share matching period expires without agreements subscribing all IPQs held by an IPQ holder, the IPQ holder must notify the administrator of the amount of IPQs which are not subscribed. The administrator will notify all IFQ holders of the number of unsubscribed IPQs for each IPQ holder. (Applies to Alternatives I, II, III, and IV)*

#### 2.8.3.6.3

##### *Commitment of IFQs*

*At the end of the share matching period, an IFQ holder that has not agreed to deliver all of its shares to a processor may commit any uncommitted shares to any processor that holds unsubscribed IPQs by notifying the IPQ holder of the intent to commit shares. Receipt of the notice shall result in the subscription of IPQs. The IPQ holder shall notify the administrator on receipt of commitments for all of its IPQs. The administrator shall then notify all IFQ holders that the IPQ holder is fully subscribed. (Applies to Alternatives I, II, III, and IV)*

After the period of voluntary share matching IFQ holders would be able to commit their shares to any IPQ holder with unsubscribed IPQs, by notice to the IPQ holder. The IPQ holders will be subscribed on a first come-first served basis until all IPQs are fully subscribed. The notice requirement is intended to provide the administrator and all IFQ holders with notice of available IPQs. By allowing IFQ holders to commit shares to IPQ holders, the participants in the various arbitration proceedings will become more fully defined. An additional benefit to this coordinated commitment of shares is that it will facilitate the use of all IFQs and IPQs. Permitting the unilateral commitment of shares by IFQ holders simplifies the process and provides IFQ holders with more control over their choice of processors to transact with.

#### **3.7.4.5.2 Initiation of Arbitration**

A procedure to initiate the arbitration proceedings must be defined. The three following options have been developed for consideration:

#### 2.8.3.6.4

##### *Initiation of Arbitration*

###### *Option 1*

*Any time after the end of the share matching period a committed IFQ holder can initiate arbitration by notice to the administrator and the IPQ holder. The administrator will notify all IFQ holders of impending arbitration. (Applies to Alternatives II, III, and IV)*

###### *Option 2*

*Arbitration may be initiated by any committed IFQ holder at any time between the expiration of the share matching period and*

- 1. 14 days prior to the opening date of the season or*
- 2. 30 days prior to the end of the season. (Applies to Alternative IV)*

###### *Option 3*

*On conclusion of a negotiated price for any shares, the IFQ and IPQ holders will notify the administrator of the completion of the contract (but not the terms). Any shares for which contracts have not been completed 14 days prior to the opening date of the season will automatically be subject to arbitration. (Applies to Alternative I and II)*

Option 1 would permit any IFQ holder that has committed shares to an IPQ holder to initiate arbitration with that IPQ holder at any time after completion of the share matching period. To facilitate participation

of IFQ holders without negotiated contracts in the proceedings, the administrator would notify all IFQ holders of the impending arbitration.

Under Option 2, the arbitration could be initiated by an IFQ holder with committed shares during a specified time period beginning 14 days prior to the season opening and ending 30 days prior to the end of the season. Limiting the initiation of arbitration at the end of a season is intended to avoid the burden of arbitration proceedings close the end of a season when most crab has been delivered. Limiting arbitration at this time is unlikely to burden participants in the fishery that have made good faith efforts to negotiate contracts, provided the window for initiating proceedings is not unreasonable short.

Under Option 3, all participants that have not agreed to delivery contracts prior to a specific date would be required to participate in arbitration.

### **3.7.4.5.3 Joining and Exiting Arbitration**

To have the more comprehensive program, a provision for parties to join an arbitration proceeding could be included in the program:

#### **2.8.3.6.5**

##### *Joining and Exiting Arbitration*

*Any IFQ holder with uncommitted shares may join arbitration by notice to an IPQ holder of commitment of IFQs by providing notice to the administrator and the IPQ holder within 20 days of the date of the notice of impending arbitration. Entry of new IFQ holders to the arbitration will be limited to the amount of unsubscribed IPQs. (Applies to Alternatives I, II, III, and IV)*

*At no time after entry to the arbitration process may an IFQ holder withdraw from participation in the arbitration. (Applies to Alternatives I, II, III, and IV)*

To broaden the number of participants in the arbitration process, all harvesters with IFQs that are not committed to an IPQ holder will be notified of the pending arbitration. A window of time could be designated during which harvesters will be permitted to join the arbitration. Committed IFQ holders could join at any time. Uncommitted IFQ holders could join provided the IPQ holder had unsubscribed IPQs. The prohibition on exiting the arbitration process is intended to prevent disruption of the arbitration proceedings.

### **3.7.4.6 Standard for Arbitration**

The standard to be applied by the arbitrator in deciding the price is critical to the results of the process. The committee developed the following three options for standards for the arbitration process:

### 2.8.3.7

*Standard for Arbitration (All options apply to all alternatives)*

#### *Option 1*

*The arbitration decision will attempt to make an equitable division of rents in the fishery (using the historic division of revenues as a surrogate for the division of rents for existing product forms).*

#### *Option 2*

*The arbitration decision will attempt to set a competitive or fair market price for crab delivered.*

#### *Option 3*

*The arbitrator shall consider relevant factors in making an arbitration decision, including but not limited to:*

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

#### *Option 4*

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

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

Options 1 and 2 are two specific standards for establishing the price. The first option would determine the price to result in “an equitable division of rents”. The second option would establish a “competitive price”. The question arises as to whether either of these ends can be achieved, particularly without opening the books of all participants in the fishery to the arbitrator. Even then, several different factors may make the determination of an equitable division of rents or a competitive price elusive since both of these are somewhat abstract economic concepts. Options 3 and 4 provide several factors that may be considered by the arbitrator in reaching a decision. The list of pertinent factors would not constrain the arbitrator from consideration of other relevant factors but would provide a starting point and foundation, which could be extended by other pertinent information. Under Option 4 the primary role of the arbitrator would be to establish a price that preserves the historical division of revenues in the fishery.

### **3.7.4.7 Final Offers**

The Newfoundland arbitration system is a system of final offer arbitration. In such a system, each party submits to the arbitrator a final offer. The arbitrator’s decision making is limited to choosing one of those two final offers. A substantial amount of research has been done on arbitration and mediation (including journals dedicated to the subject). One such technical paper compares various types of arbitration (Dickinson, 2001). That paper found that the existence of any arbitration procedure increases dispute rates, but arbitration procedures decrease the time needed to reach a negotiated settlement without affecting the monetary outcome. Therefore we might expect that in the crab fisheries the threat of binding arbitration will lead to more price disputes rather than fewer. Final-offer arbitration was found to result in higher dispute rates than conventional arbitration. Conventional arbitration, therefore, is likely to produce a more satisfactory result since parties are more likely to have negotiated the settlement rather than relying on arbitration. Although the final offer arbitration might be shown to result in more disputes, it could be suitable for the complex price negotiations, which are likely to arise in the crab fishery. Most participants believe that formula pricing is the most equitable resolution of pricing in the fishery. Formulas are likely to include several parameters, possibly time of delivery, quality of crab, product market prices, product market shares, and exchange rates. Although persons familiar with the crab industry might be capable of developing such a formula given an extended period of time, arbitration will likely be conducted in a tight time frame, allowing the parties a limited amount of time to educate the arbitrator on crab markets. A final offer system could be more effective in both compelling the parties to develop pricing formulas and to reduce the amount of information necessary for an arbitrator’s decision. Some participants in the fisheries have indicated that they are unlikely to trust an arbitrator with a free hand to decide a price formula under conventional arbitration. This could contribute to increased settlement of price disputes, but also could affect the bargaining positions of the parties.

Under any system, both the terms to be included in the pricing formula must be decided. The following options define those terms and evidence:

#### **2.8.3.8**

##### *Terms included in the Final Offer and Evidence Considered*

##### *Option 1*

*Each final offer shall include the following terms plus any other pertinent terms identified by the parties:*

1. *Price*
2. *Quantity*
3. *Quality*

4. *Acceptable delivery dates*
  5. *Location of delivery*
  6. *Product outputs of the processor and their prices*
- (Select any or all of 1. to 6.)*

*The final offer shall be:*

1. *fixed values of each term, or*
2. *a formula that includes each term as a variable or fixed term and may be a revenue sharing formula.*

*Each party will be permitted to submit any evidence that that party believes is relevant to the arbitration proceeding.*

*(Applies to Alternatives I, II, III, and IV)*

*Option 2*

*Within 3 days after the decision to arbitrate the parties will meet with the arbitrator to determine:*

*a. The terms to be included in the final offers to the arbitrator and any terms that can be stipulated by the parties. Terms could include the amount of crab to be delivered, the date of the deliveries, the price (which could subject to vary with delivery date, quality, and possibly other factors), quality, and any other terms deemed pertinent by the parties and the arbitrator. In addition, the form of the final offers shall be agreed. Possible forms are a fixed minimum price for crab delivered subject to the applicable terms or a price formula that includes each applicable term as a variable.*

*b. Appropriate evidence to be considered in the arbitration. This evidence could include historical ex vessel and market prices, historical division of revenues and rents, costs of harvesting and production, and any other evidence deemed relevant by the parties and the arbitrator.*

*If the parties do not agree on the terms to be included in the final offers and the evidence to be submitted at arbitration, the arbitrator will decide those terms and that evidence.*

*(Applies to Alternatives I, II, III, and IV)*

Option 1 enumerates a list of terms to be included in a final offer. Any evidence relevant to the proceedings may be submitted by either party. Option 2 would require the parties to meet with the arbitrator to decide the form of the final offers and the evidence to be considered by the arbitrator. In the event the parties are unable to agree on the terms or evidence, the arbitrator will have the authority to determine the terms of final offers and the evidence to be considered. No fixed price option is included since participants believe that a fixed price will not be adequate to accommodate inseason price changes and other factors that should affect price, such as time of delivery.

The two options take a slightly different approach, with the Option 1 defining terms in a final offer and permitting the parties to submit any evidence deemed pertinent to the offers. Option 2 involves the arbitrator with both parties in deciding the terms and evidence on a case-by-case basis. The involvement of the arbitrator and both parties could help facilitate the arbitrator's decision making or assist the parties in reaching a negotiated settlement.



### 3.7.4.8 Submission and Selection of Final Offers

The following options would govern the selection and submission of final offers by the participants:

#### 2.8.3.9

##### *Submission and Selection of Final Offers*

###### *Option 1*

*The IPQ holder and each IFQ holder participating in an arbitration proceeding will submit a final offer. For each IFQ holder, the arbitrator will select from the IPQ holder's final offer and the final offer of that IFQ holder. IFQ holders may submit collective bids at their discretion. (Applies to Alternatives II, III, and IV)*

###### *Option 2*

*The IPQ holder will submit a final offer to the arbitrator. All IFQ holders participating in the arbitration will collectively submit a final offer to the arbitrator. The arbitrator will choose one of these two final offers, which will apply to all participants in the arbitration. The terms of the offer submitted by the IFQ holders will be determined by a majority vote of the IFQ holders participating with:*

- 1. one vote per IFQ*
- 2. one vote per IFQ holder (Applies to Alternative I)*

###### *Option 3*

*Once 50 percent of the unaffiliated IPQs of a processor are subscribed, committed IFQ holders will have the option of collectively entering binding arbitration by selection of an agent to represent the IFQ holders. To proceed collectively, the agent must be selected by a 50-75 percent vote of subscribed IFQ holders with:*

- 1. one vote per IFQ*
- 2. one vote per IFQ holder*

*The IPQ holder and the agent of the IFQ holders will each submit a final offer. The arbitrator will select from the IPQ holder's final offer and the final offer of the IFQ holder's agent. The processor and all IFQ holders delivering to the processor will be bound by the finding of the arbitration. (Applies to Alternative I)*

*Suboption: In the event that the IFQ holders have not selected an agent to represent them in arbitration within 14 days of the opening of a season, IFQ holders may individually initiate binding arbitration subject to the rules of Option 1. (Applies to Alternative I)*

The options differ primarily in their treatment of collective action on the part of the IFQ holders. Under all of the options, IPQ holders act independently. Option 1 would permit any IFQ holders to submit independent final offers. IFQ holders would be permitted to act collectively, if they desire. Under Option 2, all IFQ holders are required to act collectively and submit a single final offer in arbitration. Option 3 provides for the selection of an agent to represent all IFQ holders. The agent would submit a bid on the part of committed IFQ holders. The suboption, which applies only to Option 3, would permit IFQ holders to act independently in the arbitration if an agent is not selected within 14 days of the season opening.

As noted, the difference in the options is the degree of freedom granted to IFQ holders to act independently. Although collective bargaining can be an effective tool for participants to gain bargaining

strength, participants might wish to represent themselves in the process. Although this could result in lower ex vessel prices, it is possible that some participants could be more effective in negotiating their own prices than a bargaining association. Anecdotal evidence from the current fishery suggests that some participants have obtained prices higher than the price negotiated by the collect bargaining association. Options 2 and 3 require collective action on the part of IFQ holders, while Option 1 permits IFQ holders to participate either collectively or independently.

### **3.7.4.9 Transferability of Benefits of Arbitration to Other IFQ Holders**

If multiple arbitration proceedings cannot be initiated, it is possible that IFQ holders that are late to commit deliveries to an IPQ holder could be left out of those proceedings. To protect these IFQ holders, the benefits of arbitration could be made transferable to IFQ holders that did not participate. The following options could apply to transfers:

#### **2.8.3.10**

##### *Transferability of benefits of arbitration to other IFQ holders*

*If an IFQ holder does not join in an arbitration with an IPQ holder, but ultimately delivers crab to the IPQ holder, the IFQ holder will receive at a minimum, the terms of the*

- 1. lowest arbitrated price with that IPQ holder*
- 2. mean arbitrated price with that IPQ holder*
- 3. highest arbitrated price with that IPQ holder*
- 4. the IFQ holder's choice of the final offers selected at the arbitration with that IPQ holder.*

*Any price applied to deliveries by an IFQ holder not participating in arbitration will be subject to time and delivery limitations and other terms specified in the selected final offer. (Applies to Alternatives I, II, III, and IV)*

*Suboption: In addition, the IPQ holder shall retain 2 percent or \$0.05 per pound, which shall be used to defer the shared costs of administration of the program. (Applies to Alternatives I, II, III, and IV)*

Allowing non-participants (who hold Class A IFQs) the benefit of the arbitrator's decision has the effect of dispersing the benefits of arbitration across the fleet. An arbitration decision, however, would bind only the participating IPQ holder. If the arbitration system permits different IFQ holders to submit different offers, several different arbitrated prices could exist. The choice of which offer will apply to an IFQ holder that did not participate in the arbitration process is important in establishing the protection of IFQ holders (particularly if a system with a single arbitration each season is adopted). A few alternatives are proposed. The highest, lowest or mean price could be applied. The difficulty with these prices is that if arbitration establishes formula prices, the highest, lowest, and mean offer could vary over time subject to changes in the different parameters of the formula. Allowing the IFQ holder to select the applicable price would overcome this difficulty. In addition, the chosen price would permit the IFQ holder to obtain the full benefits of the arbitration process without participating and avoid any costs that could be imposed by a participant submitting a low bid. Arguments that the price could be excessively high might not be appropriate since the offer would need to be selected by the arbitrator. Any offer applied to a nonparticipating IFQ holder would be applied to the IFQ holder subject to any limitations and other terms in the offer. For example, if a price is contingent on delivery during a certain window of time or a limited

quantity, those terms would apply. These limitations could be critical to an IPQ holder purchasing crab for a particular customer who demands a limited quantity of crab at a specific time.

The suboption would apply to IFQ holders that did not participate in arbitration but decide to receive the benefits of a decided price. The provision is likely to compel IFQ holders that have not negotiated a price to participate in arbitration.

### **3.7.4.10 Limits on the Use of Binding Arbitration**

To effectively resolve price disputes, arbitration must protect all shareholders. Excessive use of the system, however, could be costly and disruptive to the fishery. The following options are proposed concerning the availability of arbitration:

#### **2.8.3.11**

##### *Limits on the Use of Binding Arbitration*

###### *Option 1*

*Each IPQ holder shall be limited to one arbitration per season with one arbitrator. (Applies to Alternatives I and II)*

###### *Option 2*

*Each IPQ holder can be subject to arbitration initiated by any IFQ holder that commits to deliver to the IPQ holder 0 - 40 percent of the IFQs held regardless of whether that IPQ holder has participated in other binding arbitration proceedings in that season. All arbitration proceedings will be decided by the single arbitrator selected for that IPQ holder. (Applies to Alternative IV)*

###### *Option 3*

*An IPQ holder is required to participate in only one arbitration per season, unless the season exceeds 60-90 days in which case the IPQ holder may be required to participate in a second arbitration 30 days before the end of the season, if the IPQ holder has unsubscribed shares. (Applies to Alternative III)*

###### *Option 4*

*An IPQ holder may be brought to arbitration at least once in any season, but no more than twice in a season. A second arbitration may be initiated at any time 60-90 days or more after the decision in the first arbitration provided the IPQ holder has:*

- 1. received commitments for less than 80-90 percent of its unaffiliated IPQs at the time of the first arbitration and/or*
- 2. has in excess of:*
  - a. less than 75,000 pounds of unaffiliated, uncontracted IPQ for a of TAC < 3 million pounds,*
  - b. 75,000 to 150,000 pounds of unaffiliated, uncontracted IPQ for a of TAC 3-8 million pounds,*
  - c. 150,000-250,000 pounds of unaffiliated, uncontracted IPQ for a of TAC 8-10 million pounds,*
  - d. 250,000-500,000 pounds of unaffiliated, uncontracted IPQ for a of TAC 10-25 million*

pounds,

- e. 500,000-1,000,000 pounds of unaffiliated, uncontracted IPQ for a of TAC 25-75 million pounds,
- f. 1,000,000-2,000,000 pounds of unaffiliated, uncontracted IPQ for a of more than TAC 75 million pounds

*The IFQ holder initiating the arbitration has committed to deliver to the IPQ holder at least 0-40 percent of that IFQ holders total (or uncommitted) IFQ holdings and/or at least*

- a. 20,000 pounds of unaffiliated, uncontracted IPQ for a of TAC < 3 million pounds,
- b. 20,000 to 40,000 pounds of unaffiliated, uncontracted IPQ for a of TAC 3-8 million pounds,
- c. 40,000-60,000 pounds of unaffiliated, uncontracted IPQ for a of TAC 8-10 million pounds,
- d. 60,000-75,000 pounds of unaffiliated, uncontracted IPQ for a of TAC 10-25 million pounds,
- e. 75,000-150,000 pounds of unaffiliated, uncontracted IPQ for a of TAC 25-75 million pounds,
- f. 150,000-250,000 pounds of unaffiliated, uncontracted IPQ for a of more than TAC 75 million pounds

*In the second arbitration, all notice of rules and joinder of additional IFQ holders rules applicable to the first arbitration shall apply. (Applies to Alternatives III*

The first option would limit each IPQ holder to a single arbitration, preventing any IFQ holder not participating in this arbitration from going to arbitration later in the season with that processor. For a system with a single arbitration to effectively protect all IFQ holders delivering to an IPQ holder, the single arbitration must be comprehensive enough to establish a fair price for all crab delivered to the processor. The limit, however, will effectively constrain the expense of multiple arbitration proceedings to processors. The second option is intended to provide a more individual protection to each harvester's interests. The second option might be preferable if non-participating IFQ holders cannot derive benefits from arbitration proceedings undertaken by others. This option, however, could lead to a processor being brought to arbitration several times in a season by different IFQ holders. The requirement that an IFQ holder commit a certain percent of share holdings is intended to reduce the potential for proceedings being initiated for a few shares. The third option is intended to provide a second arbitration but limit the disruptions to business planning that could occur if the IPQ holder has to participate in multiple arbitrations. In a long fishery, a second arbitration could be reasonable to revisit a price (even a formula price) if changes in the market or fishery justify a price change. The fourth option is intended to permit a second arbitration for IFQ holders that are late to commit shares to the IPQ holder. The requirement of outstanding unsubscribed IPQs would ensure that the arbitration applies to a significant amount of deliveries. In addition, the requirements are intended to allow arbitration in cases where the first arbitration could be for a limited amount of the processor's IPQs and therefore may be inadequate for establishing a price for all IFQ holders.

#### **3.7.4.11 Payment for the Arbitration and Market Analysis**

Industry intends to fund the arbitration program. The options for funding arbitration are the following:

#### 2.8.3.12

##### *Payment of the Arbitration and Market Analysis*

*The payment for the market analysis, the arbitrators, and the administrator will be shared equally by the two sectors. Within each sector the analysis shall be paid for on a pro rated basis determined by the shares held by the members of the sector. Cost shall be shared by all participants in all fisheries. (Applies to all alternatives)*

*Participants in the binding arbitration will each pay the costs of their own participation. Within the harvest sector, payment shall be pro rated based on the number of IFQs committed to the participating processor. (Applies to all alternatives)*

##### *Option 1*

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

##### *Option 2*

*Administration of payments will be accomplished by allocation of a share of the cost recovery funds to the binding arbitration program. (Applies to all alternatives)*

Costs of administering the arbitration program should be shared equally by the two sectors. Within each sector, payment for the arbitration costs will be based on shareholdings. Each sector, however, should bear the cost of its own participation and representation in any proceeding, with costs of collective arbitration by IFQ holders pro rated by based on the shares committed. Option 1 would provide for administration by the industry without direct involvement of NOAA Fisheries. Option 2 would allocate a portion of the cost recovery funds to support binding arbitration.

### **3.7.4.12 Enforcement of the Arbitration Decision**

An effective system of arbitration will require effective enforcement of decisions. Both harvesters and processors could benefit from the certainty that arbitrated findings may provide, if enforcement is adequate and available to both sides. The following options are proposed for enforcement of arbitration decisions:

#### 2.8.3.13

##### *Enforcement of the Arbitration Decision*

*The decision of the arbitrator will be enforced by:*

- 1. civil damages*
- 2. specific performance*
- 3. forfeiture of unused IFQs or IPQs in the fishery for the following season (1 year use-it-or-lose-it) subject to hardship exceptions. (Applies to all alternatives)*

The first option for enforcement of arbitration decisions is civil law. Although enforcement would require court action, civil action might be predictable than the other remedies. Under civil law damages would be based on harm and therefore would be determined based on the specific circumstances. In addition, civil damages would require parties to take reasonable steps to mitigate damages, so participants could not take advantage of a breach by another party. Option 2 would enforce arbitration decisions by specific

performance (i.e., requiring parties to perform in accordance with the arbitration decision). While fulfilling the findings of the arbitrator, forcing a harvester to fish or a processor to process could be infeasible and viewed as draconian. The third option would impose a “use-it-or-lose-it” that would forfeit unused IFQs and IPQs for a single season. Such a provision could be implemented in two ways. First, a “no fault” provision would result in both parties losing their shares for a year. The loss of shares, however, could impact the two parties differently, offsetting the bargaining positions and balance of market power. Alternatively, a system could forfeit the shares of the breaching party for a year. A fault based system, however, could be difficult to administer since adjudication and appeals processes could be time consuming. In addition, adjudications could overly complicate administration of annual share allocations for RAM Division.

### **3.7.4.13 Options for the Fleet wide Arbitration Alternative**

The fleet wide arbitration structure (Structure V) was developed as a separate alternative. Although some of the different options in structure could be included in other structures, the options are presented separately in this section. After each option, the alternative structures into which each option could be incorporated are noted.

#### *2.8.3.15*

*Data Gathering. The arbitrator(s) and the market analyst gather data relevant to determining the historical distribution of crab product revenues between harvesters and processors.*

*Option 1: They also determine (i) the vertical integration of each IPQ holder, and value accrued by the processor at each point up to and including the first point at which it sells on an arm's length basis to a third party (which will serve as the basis for the weekly composite price); and (ii) the variety of crab product forms being produced and the market percentage represented by each product form.*

*Option 2: The arbitrator(s) and the market analyst gather data they determine necessary for the task, including: (i) crab processing cost structures for each IPQ holder; (ii) vertical integration of each IPQ holder, and value accrued by the processor at each point up to and including the first point at which it sells on an arm's length basis to a third party (which will serve as the basis for the weekly composite price); and (iii) the variety of crab product forms being produced and the market percentage represented by each product form. (Applies to all alternatives)*

The fleet wide alternative as proposed would rely on slightly different information for the development of the arbitration finding. Under Option 1, the arbitrator and market analyst would consider the value of the product at the first arm's length transaction by the processor (or a vertically integrated affiliate). Rather than relying on prices for sales to affiliates, which could be affected by a number of factors, including accounting practices, this option would look to the first independent sale of product for determining revenues. Proponents of this option believe that sales to affiliated companies could mask the actual value of products resulting in a decreased ex vessel price finding by the arbitrator. They argue that the first arm's length transaction is the only valid indicator of the market value of the products sold by processors. The first arm's length transaction, however, might not be an appropriate measure of the revenue for all processors. Some primary processors are not vertically integrated, but sell only in the first wholesale market. Others are vertically integrated to different degrees, serving different markets. Consideration of

secondary processing by affiliates could disadvantage some processors, particularly those that are not vertically integrated. Whether, and the extent of, any disadvantage would depend on the arbitrator's treatment of secondary processing and its affect on the ex vessel price determination. If the arbitrator includes secondary processing in the division of revenues, the price determination could be different from developing an ex vessel price based on revenues from first wholesale revenues (where the arbitrator uses sales up to the first arm's length transaction to verify the accuracy of the first wholesale prices). If sales of secondary processors are used to determine revenues in the fisheries, processors that are not vertically integrated could be disadvantaged. For example, if secondary reprocessing adds an additional 10 percent to the value of products and reprocessing revenues are considered by the arbitrator to determine the division of revenues between the sectors, a processor that does no reprocessing could lose a share of its revenues. To overcome this bias against processors performing only primary processing, the arbitrator could be requested to consider only the revenues realized through primary processing (and first wholesale of the product) in making the arbitration decision. Analyzing the added information concerning sales by secondary processors would complicate the arbitrator's job, in part because different secondary processors serve different markets in different locations with different products. To discern whether the stated first wholesale price is accurate, the arbitrator might need to gather cost information concerning secondary processing, including transportation costs. The ability of an arbitrator to effectively verify first wholesale prices using secondary processing revenue and cost information through the first arm's length transaction from the various processors and their affiliates in a short period of time is not certain.<sup>6</sup>

Under Option 2, the arbitrator would rely on all of the same information used by Option 1, but would also consider primary processing costs for each IPQ holder. Whether cost information is appropriate for collection by the arbitrator depends on the standard to be applied. If a division of rents is the desired standard, the collection of cost information would be appropriate, since rents are the realized revenues after the payment of all costs. If the arbitrator is to determine a price based on a division of revenues, cost information would not be relevant to the decision. The use of rents as an arbitration standard is discussed in Section 3.7.4.6.

The following two pairs of options are proposed to establish the arbitrated pricing. Option 1 under paragraph 4 is paired with Option 1 under paragraph 6. Option 2 under paragraph 4 is paired with Option 2 under paragraph 6.

#### 2.8.3.15

##### *First Option*

*Initial Discussions/Mediation. Not less than 90 days before the opening of the first crab fishery of the upcoming year, the arbitrator(s) meet with each processor individually (to address antitrust concerns) and with fleet representatives collectively to discuss the information gathered and to receive any additional information the parties consider relevant.*

*Option 1: The arbitrator(s) seek consensus among representatives of the harvesting and processing sectors regarding: (i) the third party transactions that will establish the weekly composite price; and (ii) the historical revenue share per sector.*

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<sup>6</sup> The collection and consideration of cost information would also extend the scope of role of the arbitrator in a revenue based arbitration program.

*Implementation. Throughout the year, the market analyst surveys the crab product market, and produces a weekly composite price based on the survey structure developed by the arbitrator(s). The weekly composite price is a single price per species, based on the weighted average of the arm's length transactions in products produced from that species.*

*Option 1: For deliveries not subject to a contract, the fisher receives the stipulated percentage of the most recently announced weekly composite price.*

#### *Second Option*

*4 Initial Discussions/Mediation. Not less than 90 days before the opening of the first crab fishery of the upcoming year, the arbitrator(s) meet with each processor individually (to address antitrust concerns) and with fleet representatives collectively to discuss the information gathered and to receive any additional information the parties consider relevant.*

*Option 2: The arbitrator(s) seek consensus among representatives of the harvesting and processing sectors regarding: (i) the third party transactions that will establish the weekly composite price; (ii) a formula under which a scaled percentage of the weekly composite price is allocated to the processor component, with the balance being allocated as the ex vessel price to fishers; and (iii) a seasonal advance amount, which is paid by the processor at delivery.*

*Implementation. Throughout the year, the market analyst surveys the crab product market, and produces a weekly composite price based on the survey structure developed by the arbitrator(s). The weekly composite price is a single price per species, based on the weighted average of the arm's length transactions in products produced from that species.*

*Option 2: For deliveries not subject to a contract, the fisher receives the stipulated advance per pound at delivery, and receives a per pound settlement based on the composite price in effect for the week(s) within which products from the fisher's delivery are sold.*

The First Option would establish an arbitrated price that would be a composite price based on the market price of crab products identified by the arbitrator. The price paid for deliveries would be the composite price, which is adjusted weekly based on the market price of the identified products. This pricing would be similar to the pricing formula used in the Newfoundland crab fisheries. Although this pricing formula has been successful in those fisheries, the success of the formula in a declining market has not been fully established (Sackton, 2002). In a declining market, processors would pay the composite price based on market prices on the date of landing. If market prices decline, product sales would be made at market prices lower than those which formed the basis for the ex vessel price. In an increasing market, the processor can realize additional revenues from the lag between landings and product sales. These post landing revenues have not led to dissatisfaction of harvesters, likely because the ex vessel prices are clearly related to product prices on the date of landing.

The Second Option would establish an arbitrated price based on a composite price during the week of the sale of the crab by the processor. A post season adjustment would be used to finalize the price. In season, harvesters would receive a base price at the landing. This option would establish an ex vessel price based on the date of sale of the crab by the processor. This pricing mechanism appears to be somewhat arbitrary



because the product of an individual harvester's landing could be a small part of the weekly sales from the fishery. For example, a harvester might make a small delivery to a processor who processes the delivery for a high end specialty market. If the processor's sale is made during the same week that a large sale of lower value product is sold, it is possible that the formula would dictate a very low ex vessel price. In addition, because the timing of product sales is out of the control of the harvester, pricing based on a week of product sale composite could be manipulated by a processor. While the scale of manipulation is likely to be limited, some transparency in pricing would be lost. An added complication of this option is the need for processors to monitor each harvester's deliveries through its sale. While this may be simple in some instances, it is also possible that a delivery could be segmented and delivered to several customers over time.

### **3.7.5 Oversight and Administration of the Binding Arbitration Program**

An effective binding arbitration program will require careful oversight and administration. A system of rules will define the program. The realization of the program's goals will depend in large part on whether these rules function effectively and have their intended effects. To mitigate unintended effects, the program will need to be adaptable. Adaptation is particularly important given the novelty of the program. Two general approaches to administration of the program are possible.

#### **2.8.3.14**

##### *Oversight and Administration*

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

Under the first approach, NMFS and the Council would have a very active role in administering and monitoring the details of the program. Under the second approach, industry would be required to comply with reporting requirements providing NMFS and the Council with the information necessary to assess the success of the program and to rectify fundamental shortcomings in the program. Administration would be undertaken primarily by industry, avoiding government involvement in pricing setting process and providing greater flexibility to adopt agreed to modifications without government action.

Under the first administration alternative, NMFS would oversee the details of the program. Administration under this approach presents several problems. First, the Council and NMFS would be required to develop detailed rules governing the binding arbitration process, using the standard APA regulatory process. Once the program is implemented, NMFS would oversee the day-to-day operation of the program, attending to the details of any required notices and possibly overseeing hearings. The agency would be required to follow the public process requirements of the APA, resulting in very long response times. This level of oversight is likely to be expensive for the agency and could result in significant agency involvement in the details of price negotiations. Extensive government involvement in private contracts could be viewed as overly intrusive. This approach would also require the Council and NMFS to fine tune the rules of the program. Some of these changes could be fundamental to the program and therefore are the province of the Council and are best decided through the Council process. Other provisions, however, are likely to be less controversial and pertain to the general operation of the

program. For example, the parties may decide that a notice period is either too long or short, interfering with the parties' ability to reach a negotiated agreement. Altering such a provision through the Council process or through some other procedure administered through NMFS would likely be costly, cumbersome, and time consuming and could be an obstacle to the program achieving its objectives.

The second alternative for administration and oversight would be patterned after NMFS administration of the AFA cooperatives. NMFS oversight of the cooperatives focuses on elements of that program that are important to public management of the fisheries. Cooperatives are required to report harvests, bycatch, discards, monitoring procedures, and penalties in an annual report to the Council and NMFS. On a more general level operations of the cooperatives are overseen by requiring cooperatives to file a copy of the cooperative's contract 30 days prior to beginning fishing under the contract. These reporting requirements provide NMFS and the Council with information necessary for determining whether the program is functioning effectively. In the case of binding arbitration, requirements could be developed for the filing of signed arbitration agreements and price contracts, best offers, identifying the agreed upon arbitrator and independent market analyst, and similar general requirements of the program. General reporting requirements and a general oversight role for NMFS should provide both NMFS and the Council with the information necessary to determine whether the program is serving its stated purpose without creating cumbersome requirements for modification and operation of the program. Under this model, minor modifications could be adopted by the parties without direct involvement of NMFS or the Council. The scope of these permitted changes could be defined by the Council and NMFS and could be limited to aspects of the program that are less appropriate for government involvement. Limiting government involvement will remove some of the restrictive requirements of public decision making. The parties could petition the Council for changes in the program, if they believed that it was not serving its purpose or needed modification.

### **3.7.6 Legal Analysis of the Arbitration**

NOAA General Counsel has also expressed concerns about the binding arbitration option. NOAA GC will provide the Council with a written statement of legal issues related to the binding arbitration program at the October meeting.

## CAPTAIN'S QUOTA SHARE ANALYSIS

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### **3.8.1 Analysis of Share Allocations to Captains (C Shares)**

The Council motion of June 2002 identifying a preferred alternative for rationalization of the Bering Sea/Aleutian Islands crab fisheries provided that captains would be allocated 3 percent of the harvests in the fisheries. The Council motion also provided for the selection of a committee to develop specific options to implement the allocation of those shares. The committee developed a set of options and identified specific preferred options for the program. The preferred program and each option in that program were unanimously supported by the committee.

In assessing the different options, interactions between elements of the program should be considered. In addition, the objective for allocating captains shares (or “C shares”) should be kept in mind to ensure that a program that meets those goals is developed. At the same time, the interaction of these rules with other aspects of the rationalization program must be considered to determine the effect of C shares on the program, as a whole.

#### **3.8.1.1 Basis for the Allocation**

Two options for the basis of the allocation are proposed:

##### *1.8.1.2 Percentage to Captain:*

- 1. Initial allocation of 3% shall be awarded to qualified captains as C shares.
  - a. Allocation from QS pool*
  - b. Allocation is from each vessel's allocation to the skipper on the vessel**

Option a would set aside 3 percent of the total QS pool for allocation to qualified captains as “C shares”. Option b would make available up to 3 percent of the QS awarded to any vessel for distribution to qualified captains that fished on that vessel during the qualifying period.

Option b is an attempt to structure a distribution under which each vessel would retain its allocation unaffected by the allocation to captains. The logic behind the proposal is that a vessel’s allocation would go either to its owner or the captains that fished on the vessel. Following the rationale, the total allocation to each vessel would be unaffected by the captain share allocations since the vessel’s allocation would go to the owner and its captains. Whether a vessel’s allocation remains whole, however, depends on whether the captain remains with the vessel.

Taking the C share allocation from the QS pool as a whole (rather than from each vessel) might be favored for several reasons. First, this allocation would distribute the burden of C shares equally among all vessel owners. Allocation on a vessel basis would not be distributed equally among all vessel owners but would burden vessel owners that maintained a single captain during the qualifying period the most. In addition, if the Council’s intention is to allocate 3 percent of the QS pool to captains taking that allocation from the QS pool directly is a more direct approach to making the allocation. A vessel based allocation with up to 3 percent of each vessel’s allocation available to eligible captains that fished on those vessels would allocate less than 3 percent of the QS pool to captains because landings by ineligible captains would reduce the total C share allocation from 3 percent.

Administration of the allocation is also simplified if the allocation is from the QS pool since the C share allocations would be independent of the vessel allocations. Administration of the allocation on a vessel basis would be cumbersome since it would require that a vessel’s allocation be finalized prior to finalizing the allocation to its captain.

Allocation of a portion of the QS pool to captains would be fairer to participating captains since the allocation would be based solely on the activities of the captain, independent of the vessels on which the captain fished. For example, allocation on a vessel basis would preclude eligible captains that fish on unqualified vessels from getting an allocation. Legal landings could be made on unqualified vessels fishing under an interim permit. The captain of the vessel would not be rewarded with C shares, if the allocation comes only from the vessel (rather than the QS pool) since no vessel allocation would exist.

Allocating C shares from the QS pool could also help build captain/vessel owner relations. If a captain's allocation comes from a general pool, the vessel owner's allocation is not affected by the captain's allocation. A vessel's harvest will be maximized by obtaining the largest allocation for the captain. So, a vessel owner and captain have a common interest in maximizing the allocation to the captain. If the captain's allocation comes only from the vessel that the captain fished on, the owner of that vessel would have an interest directly opposed to the captain. Under that system, a vessel owner's allocation would be maximized by minimizing its captain's allocation. By pitting the owner against the captain, relationships could be harmed.

The vessel-based allocation is also likely to reward vessel owners with a history of poor relations with captains. A vessel that does not retain a captain could have prevented that captain from qualifying. The allocation that would go to the captain would then remain with the vessel. If the captain's allocation is from the QS pool as a whole, the captain's own activities determine the allocation. Captains unable to maintain good relations with vessel owners would receive shares based strictly on their participation, which is likely to be compromised by those poor relations.

### **3.8.1.2 Fishery Basis for Allocations**

The following provision would define the C share allocation the different fisheries:

#### *1.8.1.3 Species specific:*

- 1. As with vessels.*

This provision is assumed to provide that C shares will be categorized by fishery. This is necessary for a complete allocation of harvest shares in each fishery.

### **3.8.1.3 Eligibility**

The following options would define eligibility for C share allocations:

#### *1.8.1.4 Eligibility:*

##### *Option 1*

- 1. A qualified captain is determined on a fishery by fishery basis by*

- 1) having at least one landing in*

- a) 1 of the qualifying years used by the vessels*
- b) 2 of the qualifying years used by the vessels*
- c) 3 of the qualifying years used by the vessels and*

- 2) having recent participation in the fishery as defined by at least*

- a) one landing per season in the fishery in the last two seasons prior to June 10, 2002.*
- b) one landing per season in the fishery in one of the last two seasons prior to June 10, 2002.*
- c) one landing per season in the fishery in two of the last three*

seasons prior to June 10, 2002.

*Suboption: For recency in the Adak red king, Pribilof, St. Matthew, and bairdi fisheries a qualified captain must have at least*

- a) *one landing per season in the opilio, BBRKC, or AI brown crab fisheries in the last two seasons prior to June 10, 2002 (operators of vessels under 60 feet are exempt from this requirement for the Pribilof red and blue king crab fishery).*
  - b) *one landing per season in the opilio, BBRKC, or AI brown crab fisheries in one of the last two seasons prior to June 10, 2002 (operators of vessels under 60 feet are exempt from this requirement for the Pribilof red and blue king crab fishery).*
  - c) *one landing per season in the opilio, BBRKC, or AI brown crab fisheries in two of the last three seasons prior to June 10, 2002 (operators of vessels under 60 feet are exempt from this requirement for the Pribilof red and blue king crab fishery).*
2. *A captain is defined as the individual named on the Commercial Fishery Entry Permit.*

*For captains who died from fishing related incidents, recency requirements shall be waived and the allocation shall be made to the estate of that captain. All ownership, use, and transfer requirements would apply to C shares awarded to the estate.*

*Option 2*

*Point System*

*Point system-following alternative is provided:*

- 1) *Participation 1996-2001*  
*Qualified by delivery in at least two different species*  
*(Maximum 36 points)*

*Graduated Scale weights most recent participation*

<i>Year</i>	<i>Points Awarded</i>
<i>2001</i>	<i>7 points</i>
<i>2000</i>	<i>7 points</i>
<i>1999</i>	<i>6 points</i>
<i>1998</i>	<i>6 points</i>
<i>1997</i>	<i>5 points</i>
<i>1996</i>	<i>5 points</i>

- 2) *Consistent Participation 1996-2001*  
*Qualified by making total catch in a season for two different species*  
*(Maximum 24 points)*  
*4 points for each year*

- 3) *Vessel Ownership As of January 1, 2002*  
*(Maximum 6 points)*

<i>% of Ownership</i>	<i>Points Awarded</i>
<i>1-50%</i>	<i>4 points</i>
<i>51-75%</i>	<i>5 points</i>
<i>76-100%</i>	<i>6 points</i>

*\* This could be used to qualify captains as a general group or on fishery by*

*fishery basis.*

The options include two participation requirements, a historical participation requirement and a recent participation requirement. The historical requirement options range from requiring at least one landing in one qualifying year to requiring at least one landing in three qualifying years. Requiring a single landing is likely adequate given that small GHGs in recent years have limited several fisheries to single landing seasons. The requirement of participation in multiple qualifying years might be favored to show dependence on the fisheries.

Three different recent participation options are proposed, one landing in one of the last two seasons, one landing in two of the last two seasons, and one landing in two of the last three seasons. For fisheries that have been closed in recent years, options are included that would require recent participation in an open fishery. Although strict requirements (i.e., requiring participation in both of the most recent seasons) are likely to limit eligibility of participants that have left the fishery or have limited dependency on the fisheries, these strict requirements could also eliminate participants with a long history who have missed a recent season because of unavoidable circumstances. An additional option would provide an exemption from the recency requirements to captains who died from fishery related causes. Allocations would be made to the captain's estate and would be subject to any transfer and use requirements under the program.

Table 1 shows the number of eligible captains in each fishery for each combination of the eligibility options where eligibility is based on qualification and recent landings in the fishery. Table 2 shows the number of eligible captains in each fishery for closed fisheries using recent participation requirements for fisheries that are currently open. The number of captains eligible in each fishery differs substantially under the different options. The recency requirement of having landings in two most recent seasons reduces the number of eligible captains in some fisheries by as much as half from the most liberal option of having a landing in one of the two most recent seasons. In general, requiring landings in multiple qualifying years also reduces the number of eligible captains slightly from a requirement of a single landing in one qualifying year. The qualifying year participation requirements, however, could be justified since a single instance of an unavoidable circumstance is unlikely to eliminate a person from eligibility and participation in the qualifying years demonstrates reliance on the fisheries.

Requiring recent participation in an open fishery to be eligible for an allocation in a closed fishery also reduces the number of eligible captains, in the most extreme cases by as much as one third. These recency requirements, however, could be justified to avoid allocating shares to persons that left the fisheries as long as 5 years ago.

The tables show that the number of eligible captains under most of the alternatives is less than the number of harvest allocations. The exception in most fisheries occurs if landings are required in only one qualifying year and in one of the two most recent seasons. A more inclusive standard might be favored if the objective of the program is to provide all captains with some interest in the fishery that can be sold on departing. A drawback to including participants with a landing in only one qualifying year is that the allocation is likely to be very small. The marketability of these small allocations is questionable. The result could be that several small allocations are not fished, as occurred in the halibut and sablefish fishery. More restrictive eligibility rules will result in allocations that are on average larger and could be more easily sold or fished. Narrow allocation rules could be problematic in the Western Aleutian Islands (Adak) red king crab fishery where only 4 captains would receive an allocation under the more restrictive options.

Table 1. Number of eligibility captains in each fishery under various qualifying year landings and recency requirements.

Qualifying Years Fished	Recency Requirement <sup>1</sup> (Landings in most recent seasons)	Fishery							
		Western Aleutian Islands (Adak) Golden King Crab	Western Aleutian Islands (Adak) Red King Crab	Bristol Bay Red King Crab	Bering Sea C. Opilio	Bering Sea C. Bairdi (EBS Tanner Crab)	Eastern Aleutian Islands (Dutch Harbor) Golden King Crab	Pribilof Red and Blue King Crab	St. Matthew Blue King Crab
Landings in 1 Qualifying Year	1 of 2 seasons	19	22	264	196	283	17	76	167
Landings in 2 Qualifying Years	2 of 2 seasons	8	2	180	148	130	12	34	81
	2 of 3 seasons	13	7	224	186	180	13	48	111
Landings in 3 Qualifying Years	1 of 2 seasons	11	7	232	182	250	15	55	121
	2 of 2 seasons	7	2	172	142	130	12	34	81
Landings in 3 Qualifying Years	2 of 3 seasons	11	7	216	174	180	13	48	111
	1 of 2 seasons	9	6	195	161	227	14	45	85
Landings in 3 Qualifying Years	2 of 2 seasons	6	2	152	130	124	12	32	68
	2 of 3 seasons	9	6	189	155	174	13	43	83
Number of harvest share allocations		11	28	254	245	266	12	110	138

<sup>1</sup> Most recent seasons are those most recent prior to June 10, 2002.

Sources: NPPFMC Crab Rationalization Database, Version 1, 2001 and ADF&G Westward Fish ticket records.

Table 2. Number of eligible captains in currently closed fisheries under various qualifying year landings requirements with recency requirements based on landings in fisheries currently open.

Qualifying Years Fished	Recency Requirement <sup>1</sup> (Landings in most recent seasons in an open fishery) <sup>2</sup>	Fishery				
		Western Aleutian Islands (Adak) Red King Crab	Bering Sea C. Bairdi (EBS Tanner Crab)	Pribilof Red and Blue King Crab	St. Matthew Blue King Crab	St. Matthew Blue King Crab
Landings in 1 Qualifying Year	1 of 2 seasons	15	171	49	125	125
Landings in 2 Qualifying Years	2 of 2 seasons	13	131	44	97	97
	2 of 3 seasons	14	159	48	115	115
Landings in 3 Qualifying Years	1 of 2 seasons	4	161	40	96	96
	2 of 2 seasons	4	124	37	79	79
Landings in 3 Qualifying Years	2 of 3 seasons	4	150	40	92	92
	1 of 2 seasons	4	152	36	73	73
Landings in 3 Qualifying Years	2 of 2 seasons	4	118	34	62	62
	2 of 3 seasons	4	143	36	72	72
Number of harvest share allocations		28	266	110	138	138

<sup>1</sup> Most recent seasons are those most recent prior to June 10, 2002.

<sup>2</sup> Open fisheries are the Bering Sea C. opilio, the Bristol Bay red king crab, the WAI (Adak) golden king crab, and the EAI (Dutch Harbor) golden king crab

Sources: NPPFMC Crab Rationalization Database, Version 1, 2001 and ADF&G Westward Fish ticket records.



Option 2 is uses a point system to determine eligibility. This system could also be used to determine allocations. Since the point system has no crediting of catch, allocations would be based solely on participation. Participation would be verified with fish tickets. Although a well crafted point system could be substituted for a participation based system, the proposed system may not be appropriate. The consideration of vessel ownership seems misplaced in a system that is intended to benefit hired captains. If a point system is believed to be appropriate for allocating C shares, additional proposals will likely be necessary.

The following option would base allocate C share allocations to eligible captains on the same qualification periods used for the allocation of shares to vessels. The distributions would be based on the landings shown by fish tickets with each eligible captain receiving shares equal to the average annual percentage of the qualified landings during the qualifying years.

*1.8.1.5 Qualification period:*

1. *As with vessels.*

*1.8.1.6 Distribution per captain:*

1. *C QS based on landings (personal catch history based on ADF&G fish tickets) using harvest share calculation rule.*

Fish tickets would be used to verify landings, simplifying administration of the program. The allocation method would be the same as used for vessels, under which an allocation is equal to the annual average harvests in a fishery.

### **3.8.1.4 Share Designations**

The preferred rationalization alternative creates several different types of harvest shares, which impose delivery requirements on crab harvested with those shares. The following options would subject C shares to none, some, or all of these designations:

*Regionalization and Class A/B Designation*

*Option 1: C shares shall be a separate class of shares and not be subject to Class A share delivery requirements.*

- Suboptions*
- a. *This allocation shall be made off the top and shall not affect the Class A/Class B share split for harvest shares. C shares shall not be subject to regional designations.*
  - b. *This allocation shall be made from the harvest Class B shares. C shares shall not be subject to regional designations.*

*Option 2: C shares shall be a separate class of shares but shall be subject to the Class A/Class B split and any related delivery requirements associated with the parallel harvest shares. C shares shall be subject to regional designations.*

*Option 3: C shares shall be a separate class of shares and shall all be subject to Class A share delivery requirements.*

*Option 4: C shares shall not be regionally designated or have an IPQ delivery requirement, but when used shall be delivered with the same regional distribution as the harvest shares used on the vessel on a season by season basis.*

### *Initial Allocation Regionalization*

*If C shares are regionalized, at the initial allocation regional designations shall be made based on the captain's history, with an adjustment to the allocation to match the PQS regional ratio made based on the same scheme used for regional adjustment of harvest shares.*

In determining whether to apply delivery restrictions the Council should consider the nature of the C shares and their use. Subjecting C shares to the Class A/Class B designation of harvest shares would require that C share holders match deliveries with processor shares. While this may be workable in instances where the captain and vessel owner have a good working relationship, coordination of deliveries would add complication, which could be particularly problematic if a processor does not hold sufficient shares to receive all of a vessel's harvester shares and the vessel captain's C shares. Although this situation is unlikely to occur frequently, the C share holder is likely to have little leverage in negotiating the delivery of the C shares. In addition, imposing regional delivery restrictions might have only a minor impact on the regional distribution of landings. For example, if only 75 vessels participate in a fishery and most of the 75 vessels have some C shares fished,<sup>1</sup> landings of C share harvests are likely to be distributed in a similar manner to the overall IFQ landings. In addition, the impact landings distributions from regionalization of C shares is likely to be limited because C shares are only a small percentage of the total harvest.

Complications arising from delivery restrictions are more problematic if C shares are subject to limits on leasing, owner on board requirements and ownership and use caps. These provisions could be important to fulfilling the purpose of C shares but will limit the ability of C share holders to use shares other than on a perfectly matched vessel. If leasing of shares is not allowed, captains will make long-term investments in C shares. Regional and delivery requirements could also have an effect on the market for C shares. While these share designations could decrease the price received by sellers, they also will segment the market for buyers interested in purchasing shares. If those shares must have a regional distribution similar to the vessel owners, a captain could have few alternatives if a vessel owner is unreasonable in negotiating payments to the captain for operating the vessel or consolidates fishing operations. For example, consider the case of a captain owning C shares and operating a vessel that fishes in the *C. opilio* fishery with landings in the North and the Bristol Bay red king and the Pribilof red and blue king crab fisheries with landings in the South. If the owner decides not to rehire the captain, the captain will be forced to either sell shares or locate a vessel that fishes with shares with the same regional distribution. In short, if C share transfers are limited, delivery restrictions on C shares could have a limited effect on the distribution of landings but could have a substantial effect on the utility of those shares to their holders. The limitations on use and transfer, in and of themselves, will also contribute to the distribution of C share landings more closely corresponding to harvest share landings.

If C shares are regionalized, the suboption would provide that regional designations would be made using the same method as will be used for regionalizing vessel harvest share allocations. Under that system, shares are regionalized based on historic landings with an adjustment made pro rata to all shareholders to match the aggregate harvest share allocation to the aggregate processor share allocation.

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<sup>1</sup> Since C shares could be owned by captains and crew, multiple C share holders could fish their shares from a single vessel. With multiple share holders some concentration of shares could occur.

### 3.8.1.5 Transferability

The following options would govern the transferability of C shares:

#### 1.8.1.7 Transferability criteria:

##### 1. Purchase of C QS.

##### a. C QS may be purchased only by persons who are

*Option 1. US citizens who have had at least 150 days of sea time in any of the US commercial fisheries in a harvesting capacity and*

*Option 2. active participants*

*An "active participant" is defined by participation as captain or crew in at least one delivery in a crab fishery included in the rationalization program in the last 365 days as evidenced by ADF&G fish ticket or affidavit from the vessel owner.*

The motion contains two options concerning the sale of C shares, either or both of which could be adopted. The first option would permit transfer to any person with at least 150 days of sea time in a U.S. commercial fishery in a harvest capacity. The second option would allow transfers of QS only to active participants, where active participants are defined as skippers and crew that have participated in at least one delivery in a fishery included in the proposed rationalization program in the last 365 days. This participation could be demonstrated by either an ADF&G fish ticket or an affidavit of the vessel owner.

Permitting transfer of C shares to any person could limit the effectiveness of these shares in protecting the rights of crewmembers. If C shares could be sold to vessel owners, it is likely that the shares would protect only captains and crewmembers that receive an allocation, and not entering captains and crew or captains and crew wishing to increase their interests in the fisheries. Allowing transfer and use only by active captains and crew with a history of participation as a harvester would create a separate class of shares that could result in a lower share price, making the shares more affordable to crew wishing to purchase shares. This limitation on transfers would also decrease the windfall to those captains that received an initial allocation. This separate class of shares would only be available to active captains and crew, increasing the likelihood that their interests are protected by these shares. Requiring participation in the BSAI crab fisheries increases the likelihood that C shares will be held only by those knowledgeable of the fisheries.

The following options have been proposed to regulate leasing of C shares:

#### 1.8.1.7

##### 2. C share leasing

##### a. C QS are leasable for the first three seasons a fishery is prosecuted after program implementation.

*Suboption: limit to the following fisheries only:*

*Pribilof red and blue crab and St. Matthew blue crab*

##### b. In cases of hardship (injury, medical incapacity, loss of vessel, etc.) a holder of C shares may lease C QS, upon documentation and approval, (similar to CFEC medical transfers) for the term of the hardship/disability or a maximum of 2 years over a 10 year period.

Prohibitions on leasing are intended to ensure that C share holders are active in the fisheries and hold shares as a long term investment to support their active participation. The first provision would permit leasing of C shares in each fishery for the first three years the fishery is open after implementation of rationalization. Permitting leasing in these early years could assist captains in the transition to a rationalized fishery. The suboption would limit this three year permitted leasing to the St. Matthew blue

king and Pribilof red and blue king crab fisheries. This provision would be premised on the idea that these fisheries are less accessible and have fewer participants. As such, it is possible that not all skippers and crew would participate in these fisheries in every year, or that consolidation of the fleet would occur under a rationalization program and fewer vessels and crew would be used to harvest the quota. Leasing would permit a skipper or crewmember to maintain an interest in the fishery in the event that he or she is unable (or it is not economical for him or her) to participate in the fishery in one of the first years of the rationalization program.

An additional option would permit 2 years of leasing in the case of a hardship (such as a medical disability). Permitting leasing during hardships will prevent a forced divestiture of C shares by a person unable to participate because of uncontrollable circumstances.

### **3.8.1.6 Owner On Board Requirements and Ownership Caps**

Owner on board requirements could be applied to C shares to ensure that the shares benefit active captains and crewmembers.<sup>2</sup> Ownership caps would ensure that the benefits of the shares are distributed among several participating captains and crew. The following owner on board requirements and ownership caps are proposed:

#### *1.8.1.9 Captain/Crew on Board requirements*

- 1. Holders of captain QS or qualified lease recipients are required to be onboard vessel when harvesting IFQ.*
- 2. C QS ownership caps for each species are*
  - Option 1. the same as the individual ownership caps for each species*
  - Option 2. the same as the vessel use caps for each species*
  - Option 3. double the vessel use caps for each species*

*C share ownership caps are calculated based on the C QS pool (i.e. section 1.7.4). Initial allocations shall be grandfathered.*

The only owner on board option would require that the owner of the underlying QS be on board the vessel on which the shares are fished. Any permitted leasing of shares would be an exception to this owner on board requirement.

Three options are provided for establishing ownership caps. These range from the individual ownership cap to the double the vessel use cap (or four times the individual ownership cap). Permitting C share ownership up to the vessel use cap could be justified as a means to allow each captain to own a portion of the C share pool equivalent the share of the QS pool that can be fished on a vessel. This would allow the number of participating captains holding C shares to be reduced to the same level as the number of participating vessels in each fishery. Since C shares could be owned by captains or crew, multiple persons on each vessel could own C shares. Lower caps on C share ownership could facilitate a more active market for C shares and prevent their consolidation. The small share of the fishery represented by C shares should also be kept in mind in setting the cap.

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<sup>2</sup> Permitted leasing of shares would be an exception to the owner on board requirements.

The following provision would exempt C shares from a vessel's use cap:

1.8.1.9

3. *Use caps on IFQs harvested on any given vessel shall not include C shares in the calculation.*

By exempting C shares from use caps applicable to vessel owner harvest shares, captains are provided greater mobility and flexibility to move throughout the fleet. In addition, this would treat C shares as a separate share class governed by rules designed specifically for C shares including caps on C share ownership and use.

### **3.8.1.7 Catcher/Processor Captains**

Catcher/processors have a unique role in fisheries because of their participation in both harvesting and processing. The following options relate to allocations and use of C shares by catcher/processor captains:

1.8.1.10

*C/P Captains*

*Captains with C/P history shall receive C/P C QS at initial issuance. C/P C shares shall carry a harvest and processing privilege.*

*Option 1. The same rule applies to C/P C QS if they leave the C/P sector as in section 1.7.2.4.*

*Option 2. C/P C shares shall be useable only on C/Ps.*

*Option 3. C/P C shares may be harvested and processed on C/Ps or harvested on catcher vessels and delivered to shore based processors.*

*Option 4. If C shares are not subject to IPQ delivery requirements, C shares may be harvested and processed on C/Ps or harvested on catcher vessels and delivered to shore based processors.*

The first provision would allocate catcher/processor C shares to captains with catcher/processor history. This provision is necessary for these captains to continue their historic participation. Four different options are proposed for governing later use of catcher/processor shares and the use of C shares on catcher/processors. Option 1 would permit catcher/processor shares to be divided into separate harvest shares and processing shares, if they were taken out of the catcher/processor sector. This provision only applies if C shares are subject to processor share delivery requirements. Option 2 would limit the use of catcher/processor C shares to the catcher/processors. Option 3 would provide greater flexibility allowing use of catcher/processor shares on catcher vessels delivering to shore based processors. Options 2 and 3 could be adopted whether or not C shares are subject to processor share delivery requirements. Option 4 would provide additional flexibility for the use of C shares, if C shares are not subject to IPQ delivery requirements. The provision would allow the use of all C shares on catcher/processors.

### **3.8.1.8 Cooperatives and Binding Arbitration**

The following option would permit C share holders to enter cooperatives:

1.8.1.11 *Cooperatives*

*C share holders shall be eligible to join cooperatives.*

Permitting cooperative membership for C share holders might facilitate greater coordination of the use of C shares with harvest shares. Cooperative membership, however, would not affect the restrictions on use and leasing of the C shares.

Whether C shares holders are eligible for binding arbitration should depend on the nature of the shares. If IPQ delivery restrictions are imposed on the shares, inclusion in the arbitration program is more appropriate. If C shares are not subject to delivery restrictions the need for inclusion of the C share holders in the binding arbitration program is decreased.

### **3.8.4 The Loan Program**

The Council motion provided for the development of a loan program to assist captain and crew purchase of QS with the following option:

#### *1.8.1.8 Loan program for crab QS*

*A low-interest rate loan program consistent with MSA provisions, for skipper and crew purchases of QS, shall be established for QS purchases by captains and crew members using 25% of the Crab IFQ fee program funds collected.*

In addition to the loan program proposal advanced by the Council, the captain's QS committee proposed additional options concerning the proposed loan program:

*These funds can be used to purchase A, B, or C shares.*

*Loan funds shall be accessible by active participants only.*

*Any A or B shares purchased under the loan program shall be subject to any use and leasing restrictions applicable to C shares (during the period of the loan).*

*National Marine Fisheries Service (NOAA Fisheries) is directed to explore options for obtaining seed money for the program in the amount of \$250,000 to be available at commencement of the program to leverage additional loan funds.*

The committee proposed that loan funds be available only to active participants, defined as a person with at least one landing in a BSAI crab fishery in the last 365 days. In addition, the committee recommends that the initial funding of \$250,000 be sought, which would be available for loans on implementation of the rationalization program. Development of funding through the cost recovery program could take as long as three years and significantly affect both purchasers and sellers of C share holders. The proposed initial funding could be used to finance loan money of approximately \$25 million, which would provide stability to the C share market from the outset. The committee supports active participation in the fisheries by any purchaser of shares during the life of any loan used to purchase the shares. Several details of the loan program will need to be specified prior to implementation of the program. Eligibility criteria for loans, maximum loan amounts, any limitations on the number of shares that can be purchased with loan money all must be determined. The current committee could continue to work to develop the details of the loan program.

The options proposed for the loan program are intended to advance the program as a means for active participants to obtain or expand interests in the fishery. Permitting active participants to use loan funds to purchase any type of harvest shares provided the buyer complies with limitations on use and transfers that require active participation in the fishery should facilitate the increased interests of active participants in the crab fisheries. Obtaining advanced funding for the loan program would also assist in the development of a market for C shares, which could prevent some consolidation of C shares in the early years of the program.

### **3.10.1 The Effects of Rationalization on Other Fisheries**

#### **3.10.1.1 Council Alternatives**

Rationalization of the BSAI crab fisheries may provide opportunities for fishermen to alter their crab fishing patterns to take greater advantage of other fisheries. Increasing their effort in those other fisheries could negatively impact other participants in those fisheries that have traditionally relied on them for fishing income. Changes in fishing patterns may also provide more opportunities to become involved in other fishing related activities such as tendering. Similar concerns were raised when the AFA was passed. Based on those concerns and requirements to protect participants in other fisheries prescribed in the AFA, the Council spent considerable time developing sideboard caps which limit the amount of other species AFA pollock boats can harvest to their historic levels. A detailed discussion of those caps may be found in the AFA Draft EIS (NMFS, 2001).

#### **3.10.1.2 Historic Participation in Other Fisheries**

To expand their operations into Federally managed groundfish or scallop fisheries, crab vessels qualifying under the rationalization program would be required to hold a license and endorsements allowing participation in those fisheries. Groundfish licenses are area specific (GOA and BSAI) with area endorsements for the Western Gulf, the Central Gulf, and the Eastern under the GOA license and area endorsements for the Bering Sea and the Aleutian Islands under the BSAI license. In the future, endorsements for trawl gear, non-trawl gear, or both gear types will be added to the general license limiting gear deployment to the endorsed type. The Council and the Secretary of Commerce have approved those amendments. Current expectations are that the gear endorsements will be added to licenses for the 2003 fishing year.

BSAI crab vessels meeting the legal requirements could also enter State water fisheries for Pacific cod in the GOA. These vessels also tender when they are not fishing. Each of these options is discussed below. Projecting impacts on the other fisheries and vessel owners, however, is difficult. Movement into those fisheries will ultimately depend on a variety of factors that cannot be projected with accuracy at this time. Some of those factors are the amount of crab quota a vessel owner holds and crab TACs, the cost of converting the vessel to participate in other fisheries, the licenses held by the vessel owner that could be applied to a vessel, and the ability of a vessel to operate efficiently in other fisheries.

Table 3.10-1 lists the crab and groundfish endorsements associated with vessels that appear to qualify under the proposed rationalization alternatives. That table indicates that 86 of the 253 licenses carry endorsements for one endorsement area for groundfish. 63 of the 86 licenses carry endorsements for either the BS or AI. The remaining 23 licenses carry endorsements to fish federally managed groundfish in a GOA endorsement area. Other crab licenses (the remaining 167 licenses) are bundled with a groundfish license that has endorsements for more than one area. Twenty of those licenses carry endorsements for only the BS and AI.

Table 3.10-2 indicates that less than 4 percent of the ex vessel revenue generated by crab vessels that are projected to qualify for the rationalization program came from fisheries other than the BSAI crab fisheries being considered for rationalization, the pollock fisheries, and the Pacific cod fisheries. Of the 4 percent, other groundfish species accounted for less than 1 percent and species outside the Council's FMPs accounted for the remaining 3 percent. These numbers include the AFA catcher vessels whose participation in other fisheries is already capped. When the AFA vessel revenues are excluded, the revenues generated from the pollock and Pacific cod fisheries drop dramatically (see Table 3.10-3).

Table 3.10-1: Number of LLP vessels with various combinations of crab and groundfish endorsements and CFEC tender permits

Crab Endorsements	Groundfish Endorsements																Grand Total	CFEC Tendering Permits
	WG	SE	CG	CG & WG	BS	BS & WG	BS & CG	AI	AI & BS	AI, BS & CG	AI, BS & WG	AI, BS, CG & WG	BS	& WG & CG	CG & WG	AI, BS, CG & WG		
PRBK	2	3	1	1	1	1	1	1	1	1	1	1	1	1	1	1	7	3
NSRBK	1	2	3	4	1	1	1	1	1	1	1	1	1	1	4	1	16	3
NSRBK & PRBK					3	3	3	3	3	3	3	3	3	3	3	3	3	3
BBRKC	2				2	2	2	2	2	2	2	2	2	2	2	2	2	3
BBRKC & PRBK,	1				1	1	1	1	1	1	1	1	1	1	1	1	1	1
BAOB			2	1	3	1	1	1	1	1	1	1	1	1	1	1	7	3
BAOB, PRBK,			1														1	
BAOB, BBRKC	5	1	2	5	4	11	1	4	12	19	19	19	19	19	19	19	64	30
BAOB, BBRKC, & ,STMBK			19	8	2	5	9	2	2	3	6	6	6	6	6	6	55	23
BAOB, BBRKC, & PRBK	1	2	1	5	2	4	5	1	1	1	2	2	2	2	2	2	24	13
BAOB, BBRKC, PRBK, & STMBK	1	3	1	18	7	2	2	3	3	3	3	3	3	3	3	3	40	26
AIRK, BAOB, & BBRKC																	1	
AIRK, BAOB, BBRKC, & STMBK			2	1	1	1	1	1	1	1	1	1	1	1	1	1	4	2
AIRK, BAOB, BBRKC, & PRBK	1																1	
AIRK, BAOB, BBRKC, PRBK, & STMBK			5	1	1	1	1	1	1	1	1	1	1	1	1	1	8	2
AIBK, BAOB, BBRKC, & STMBK	1				2	2	2	2	2	2	2	2	2	2	2	2	5	5
AIBK, BAOB, BBRKC, PRBK & STMBK	1				2	1	1	1	1	1	1	1	1	1	1	1	5	3
AIBK, AIRK, BAOB, & STMBK																	1	
AIBK, AIRK, BAOB, BBRKC, & STMBK			1		1	1	1	1	1	1	1	1	1	1	1	1	1	1
AIBK, AIRK, BAOB, BBRKC, PRBK, & STMBK																	2	2
Grand Total	4	1	18	9	60	29	18	33	3	20	18	6	33	33	1	1	253	114

Source: NMFS RAM Division LLP data

Key: PRBK = Pribilof red king crab and Pribilof blue king crab  
 NSRBK = Norton Sound red and blue king crab  
 BBRK = Bristol Bay red king crab  
 BAOB = EBS snow crab and EBS tanner crab  
 AIRK = Adak red king crab  
 AIBK = AI golden king crab



Table 3.10-2: Gross revenue (nominal \$ mill.) by crab vessels projected to qualify under rationalization, by area endorsement on groundfish license

Year	Fishery	Groundfish Area Endorsements on License										Grand Total
		BS	BS & WG	BS, CG, & WG	AI & BS	AI, BS, & WG	AI, BS, & CG	AI, BS, CG, & WG	All Other	Grand Total		
1996	\$ from BSAI Crab	\$ 33.28	\$ 12.68	\$ 2.77	\$ 4.10	\$ 13.07	\$ 5.19	\$ 2.05	\$ 7.35	\$ 8.50	\$ 88.99	
	\$ from Pollock	\$ 0.07	\$ 1.17	\$ 0.20	\$ 1.76	\$ -	\$ 2.31	\$ 0.00	\$ 4.81	\$ 0.00	\$ 10.31	
	\$ from P. Cod	\$ 3.73	\$ 0.91	\$ 1.13	\$ 1.53	\$ 0.00	\$ 0.57	\$ 0.05	\$ 0.74	\$ 0.18	\$ 8.84	
	\$ from Other Groundfish	\$ 0.00	\$ 0.12	\$ 0.23	\$ 0.30	\$ -	\$ 0.01	\$ 0.15	\$ 0.18	\$ 0.22	\$ 1.22	
	\$ from Other Species	\$ 0.67	\$ 0.15	\$ 0.75	\$ 0.73	\$ 0.28	\$ 0.00	\$ 0.28	\$ 0.36	\$ 0.99	\$ 4.22	
1997	\$ from BSAI Crab	\$ 32.21	\$ 10.60	\$ 3.34	\$ 4.49	\$ 9.15	\$ 5.88	\$ 1.87	\$ 5.54	\$ 7.65	\$ 80.72	
	\$ from Pollock	\$ 1.21	\$ 1.48	\$ 1.51	\$ 3.95	\$ 0.09	\$ 12.67	\$ 0.10	\$ 11.24	\$ -	\$ 32.25	
	\$ from P. Cod	\$ 3.28	\$ 0.74	\$ 1.14	\$ 2.40	\$ 0.05	\$ 2.93	\$ 0.00	\$ 1.71	\$ 0.01	\$ 12.26	
	\$ from Other Groundfish	\$ 0.01	\$ 0.00	\$ 0.19	\$ 0.67	\$ 0.00	\$ 0.41	\$ 0.31	\$ 0.01	\$ 0.23	\$ 1.84	
	\$ from Other Species	\$ 0.41	\$ 0.52	\$ 1.68	\$ 1.81	\$ 0.29	\$ 0.00	\$ 0.45	\$ 0.01	\$ 0.84	\$ 6.00	
1998	\$ from BSAI Crab	\$ 42.36	\$ 14.48	\$ 3.85	\$ 5.97	\$ 10.41	\$ 7.64	\$ 1.92	\$ 8.32	\$ 8.95	\$ 103.89	
	\$ from Pollock	\$ 0.99	\$ 0.83	\$ 1.09	\$ 3.41	\$ 0.02	\$ 7.67	\$ 0.08	\$ 6.34	\$ 0.00	\$ 20.44	
	\$ from P. Cod	\$ 1.11	\$ 0.18	\$ 1.23	\$ 2.75	\$ 0.15	\$ 0.95	\$ 0.14	\$ 1.43	\$ 0.07	\$ 8.02	
	\$ from Other Groundfish	\$ 0.01	\$ 0.00	\$ 0.31	\$ 0.46	\$ 0.00	\$ 0.01	\$ 0.17	\$ 0.01	\$ 0.05	\$ 1.03	
	\$ from Other Species	\$ 0.20	\$ 0.40	\$ 0.58	\$ 1.35	\$ -	\$ 0.00	\$ 0.20	\$ -	\$ 0.53	\$ 3.26	
1999	\$ from BSAI Crab	\$ 53.76	\$ 18.69	\$ 6.24	\$ 10.18	\$ 16.97	\$ 10.34	\$ 3.01	\$ 13.54	\$ 13.02	\$ 145.76	
	\$ from Pollock	\$ 1.02	\$ 1.40	\$ 2.12	\$ 4.58	\$ 0.39	\$ 12.80	\$ 0.01	\$ 12.52	\$ 0.00	\$ 34.84	
	\$ from P. Cod	\$ 2.72	\$ 0.68	\$ 1.87	\$ 4.12	\$ 0.36	\$ 1.54	\$ 0.03	\$ 1.38	\$ 0.31	\$ 13.00	
	\$ from Other Groundfish	\$ 0.01	\$ 0.00	\$ 0.12	\$ 0.40	\$ 0.00	\$ 0.01	\$ 0.07	\$ 0.03	\$ 0.09	\$ 0.72	
	\$ from Other Species	\$ 0.40	\$ 0.49	\$ 1.30	\$ 2.64	\$ -	\$ 0.00	\$ 0.28	\$ 0.15	\$ 0.65	\$ 5.90	
2000	\$ from BSAI Crab	\$ 21.26	\$ 7.34	\$ 2.22	\$ 3.98	\$ 6.28	\$ 3.97	\$ 1.71	\$ 5.16	\$ 8.37	\$ 60.28	
	\$ from Pollock	\$ 1.37	\$ 1.52	\$ 1.61	\$ 2.65	\$ 0.37	\$ 9.42	\$ 0.00	\$ 7.30	\$ 0.00	\$ 24.24	
	\$ from P. Cod	\$ 4.95	\$ 1.79	\$ 2.17	\$ 2.70	\$ 0.86	\$ 3.02	\$ 1.09	\$ 1.44	\$ 0.82	\$ 18.83	
	\$ from Other Groundfish	\$ 0.02	\$ 0.01	\$ 0.18	\$ 0.62	\$ 0.00	\$ 0.01	\$ 0.00	\$ 0.13	\$ 0.07	\$ 1.04	
	\$ from Other Species	\$ 0.00	\$ 0.68	\$ -	\$ 0.13	\$ -	\$ -	\$ -	\$ 0.06	\$ -	\$ 0.88	
Total	\$ from BSAI Crab	\$ 182.87	\$ 63.79	\$ 18.42	\$ 28.71	\$ 55.88	\$ 33.02	\$ 10.56	\$ 39.91	\$ 46.48	\$ 479.64	
	\$ from Pollock	\$ 4.66	\$ 6.41	\$ 6.53	\$ 16.35	\$ 0.87	\$ 44.87	\$ 0.19	\$ 42.21	\$ 0.00	\$ 122.08	
	\$ from P. Cod	\$ 15.78	\$ 4.29	\$ 7.55	\$ 13.49	\$ 1.41	\$ 9.01	\$ 1.32	\$ 6.70	\$ 1.40	\$ 60.96	
	\$ from Other Groundfish	\$ 0.05	\$ 0.14	\$ 1.03	\$ 2.45	\$ 0.00	\$ 0.45	\$ 0.70	\$ 0.36	\$ 0.66	\$ 5.84	
	\$ from Other Species	\$ 1.68	\$ 2.25	\$ 4.30	\$ 6.66	\$ 0.57	\$ 0.00	\$ 1.21	\$ 0.58	\$ 3.00	\$ 20.25	

Source: NPFMC Bering Sea Crab Database 2001 Version 1

Table 3.10-3: Gross revenue (nominal \$ mill.) by non-AFA crab vessels projected to qualify under rationalization, by area endorsement on groundfish license

Year	Fishery	Groundfish Area Endorsements on License										Grand Total
		BS	BS & WG	BS & CG	BS, CG, & WG	AI & BS	AI, BS, & WG	AI, BS, & CG	AI, BS, CG, & WG	All Other		
1996	\$ from BSAI Crab	\$ 33.25	\$ 12.45	\$ 2.55	\$ 3.61	\$ 13.07	\$ 4.94	\$ 2.05	\$ 5.82	\$ 8.50	\$ 86.24	
	\$ from Pollock	\$ 0.06	\$ 0.00	\$ -	\$ 0.19	\$ -	\$ -	\$ 0.00	\$ -	\$ 0.00	\$ 0.25	
	\$ from P. Cod	\$ 3.60	\$ 0.73	\$ 0.98	\$ 1.29	\$ 0.00	\$ 0.07	\$ 0.05	\$ 0.01	\$ 0.18	\$ 6.91	
	\$ from Other Groundfish	\$ 0.00	\$ 0.00	\$ 0.23	\$ 0.30	\$ -	\$ 0.00	\$ 0.15	\$ 0.18	\$ 0.22	\$ 1.08	
	\$ from Other Species	\$ 0.67	\$ 0.15	\$ 0.75	\$ 0.73	\$ 0.28	\$ 0.00	\$ 0.28	\$ 0.36	\$ 0.99	\$ 4.22	
1997	\$ from BSAI Crab	\$ 31.73	\$ 10.35	\$ 2.86	\$ 3.86	\$ 9.07	\$ 4.17	\$ 1.72	\$ 4.25	\$ 7.65	\$ 75.67	
	\$ from Pollock	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.32	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 0.32	
	\$ from P. Cod	\$ 2.84	\$ 0.41	\$ 0.68	\$ 1.32	\$ 0.01	\$ 0.71	\$ 0.00	\$ 0.00	\$ 0.01	\$ 5.98	
	\$ from Other Groundfish	\$ 0.01	\$ -	\$ 0.19	\$ 0.56	\$ -	\$ 0.19	\$ 0.16	\$ 0.00	\$ 0.23	\$ 1.35	
	\$ from Other Species	\$ 0.41	\$ 0.52	\$ 1.68	\$ 1.57	\$ 0.29	\$ 0.00	\$ 0.45	\$ 0.01	\$ 0.84	\$ 5.76	
1998	\$ from BSAI Crab	\$ 41.94	\$ 13.86	\$ 3.57	\$ 5.23	\$ 10.30	\$ 6.09	\$ 1.85	\$ 5.88	\$ 8.95	\$ 97.65	
	\$ from Pollock	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.13	\$ -	\$ 0.00	\$ -	\$ 0.00	\$ 0.00	\$ 0.13	
	\$ from P. Cod	\$ 0.94	\$ 0.17	\$ 0.37	\$ 1.86	\$ 0.00	\$ 0.10	\$ 0.14	\$ 0.14	\$ 0.07	\$ 3.79	
	\$ from Other Groundfish	\$ 0.01	\$ -	\$ 0.12	\$ 0.30	\$ -	\$ 0.00	\$ 0.09	\$ 0.00	\$ 0.05	\$ 0.58	
	\$ from Other Species	\$ 0.20	\$ 0.40	\$ 0.58	\$ 1.21	\$ -	\$ 0.00	\$ 0.20	\$ -	\$ 0.53	\$ 3.12	
1999	\$ from BSAI Crab	\$ 52.38	\$ 17.55	\$ 5.44	\$ 6.74	\$ 16.68	\$ 8.18	\$ 2.84	\$ 9.03	\$ 13.02	\$ 131.86	
	\$ from Pollock	\$ 0.00	\$ 0.00	\$ -	\$ 0.16	\$ 0.00	\$ -	\$ 0.00	\$ -	\$ 0.00	\$ 0.16	
	\$ from P. Cod	\$ 2.33	\$ 0.61	\$ 0.97	\$ 2.80	\$ 0.16	\$ 0.16	\$ 0.03	\$ 0.17	\$ 0.31	\$ 7.54	
	\$ from Other Groundfish	\$ 0.01	\$ 0.00	\$ 0.12	\$ 0.29	\$ 0.00	\$ -	\$ 0.07	\$ 0.00	\$ 0.09	\$ 0.58	
	\$ from Other Species	\$ 0.40	\$ 0.49	\$ 1.30	\$ 2.32	\$ -	\$ -	\$ 0.28	\$ 0.15	\$ 0.65	\$ 5.58	
2000	\$ from BSAI Crab	\$ 20.46	\$ 7.08	\$ 2.00	\$ 2.97	\$ 6.18	\$ 2.48	\$ 1.61	\$ 3.92	\$ 8.37	\$ 55.08	
	\$ from Pollock	\$ 0.00	\$ 0.00	\$ 0.07	\$ 0.10	\$ 0.00	\$ 0.00	\$ -	\$ 0.03	\$ 0.00	\$ 0.19	
	\$ from P. Cod	\$ 3.88	\$ 1.07	\$ 1.27	\$ 1.98	\$ 0.71	\$ 0.51	\$ 0.34	\$ 0.60	\$ 0.82	\$ 11.19	
	\$ from Other Groundfish	\$ 0.02	\$ 0.00	\$ 0.18	\$ 0.46	\$ 0.00	\$ 0.00	\$ -	\$ 0.12	\$ 0.07	\$ 0.85	
	\$ from Other Species	\$ 0.00	\$ 0.68	\$ -	\$ 0.13	\$ -	\$ -	\$ -	\$ 0.06	\$ -	\$ 0.88	
Total	\$ from BSAI Crab	\$ 179.77	\$ 61.30	\$ 16.42	\$ 22.41	\$ 55.29	\$ 25.86	\$ 10.08	\$ 28.91	\$ 46.48	\$ 446.50	
	\$ from Pollock	\$ 0.06	\$ 0.00	\$ 0.07	\$ 0.89	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.03	\$ 0.00	\$ 1.06	
	\$ from P. Cod	\$ 13.60	\$ 2.98	\$ 4.27	\$ 9.26	\$ 0.88	\$ 1.55	\$ 0.56	\$ 0.92	\$ 1.40	\$ 35.41	
	\$ from Other Groundfish	\$ 0.05	\$ 0.00	\$ 0.84	\$ 1.91	\$ 0.00	\$ 0.20	\$ 0.48	\$ 0.30	\$ 0.66	\$ 4.44	
	\$ from Other Species	\$ 1.68	\$ 2.25	\$ 4.30	\$ 5.97	\$ 0.57	\$ 0.00	\$ 1.21	\$ 0.58	\$ 3.00	\$ 19.55	

Source: Summarized from the NPFMC Bering Sea Crab Data Base / 2001\_1

The Council may wish to consider the information presented in Table 3.10-3 when contemplating sideboards, since the AFA fleet's participation in other fisheries is already capped. Information in Table 3.10-3 shows that the non-AFA vessels had relatively small levels of participation in groundfish fisheries under the Council's authority. A total of \$12.23 million was generated from groundfish fisheries in 2000. Access to the directed BSAI pollock fishery is already limited under the AFA and should not be a concern. Pacific cod accounted for \$11.19 million (over 91 percent) of the total. Participation in other groundfish fisheries generated only \$0.85 million for these vessels in 2000. Therefore, if sideboard caps were placed on these vessels based on their recent historic catch, they would be limited to very small amounts of groundfish other than Pacific cod.

BSAI Pacific Cod Participation in the BSAI Pacific cod fishery is already limited through a variety of regulations. Those include a split of the available BSAI Pacific cod TAC (after CDQ and bycatch deductions) with 51 percent allocated to fixed gear, 47 percent to trawl gear, and 2 percent to jig gear. That split in the BSAI TAC prohibits vessels using one gear type from preempting another gear type's harvest of the quota. Amendment 64 (effective in 2000) further split the fixed gear quota among pot and longline vessels, with pot and longline vessels under 60 feet in length receiving 1.4 percent of the allocation and pot vessels receiving 18.3 percent of the allocation.

The Council and the Secretary of Commerce have also approved adding gear endorsements to groundfish licenses, which are projected to be added to the licenses for the 2003 fishery. Gear endorsements will further limit the number of vessels that will be allowed to use gear types they have not traditionally fished to harvest Pacific cod from the BSAI.

Participation in the BSAI Pacific cod fixed gear fishery will be limited further by Amendment 67. Amendment 67 will add a Pacific cod endorsement to BSAI groundfish fixed gear licenses. The RIR that was developed to implement Amendment 67 projected that only 47 pot catcher vessels met the qualifying criteria for a Pacific cod endorsement (less than half of the number of vessels that have participated annually from 1996-2000). When implemented this will limit the number of crab pot vessels that can participate in the BSAI cod fishery. Finally, the Council is considering Amendment 68, which would further split the pot gear quota (18.3 percent) among pot catcher vessels and pot catcher/processors. This action will be considered when the Council takes up the BSAI Pacific cod split between the fixed and trawl gear sectors that is set to expire on December 31, 2003.

The current Pacific cod harvest limits and limited entry programs (and those under consideration) for the BSAI seem to provide members of the cod fishery protection from increased participation of BSAI crab vessels that could result from rationalizing the crab fisheries. If that level of protection is deemed to be inadequate, the Council could decide to limit BSAI crab vessel harvests to historic levels.

GOA Pacific Cod In 2002, the overall GOA Pacific cod ABC was reduced about 15 percent relative to 2001. An increase in the amount of Pacific cod allocated to the State fishery also occurred in some areas in 2002.

Ninety percent of the GOA Pacific cod has been allocated to the inshore sector and 10 percent to the offshore sector since the first Inshore/Offshore amendment was implemented in 1992. Vessels in the BSAI crab fleet would be assigned to the inshore sector if they deliver GOA Pacific cod to a shorebased processor, they process less than 126 mt of groundfish per week, or they deliver to a floating processor that remains in a single geographic location in the GOA throughout the year. It is assumed that most of the BSAI crab vessels that are eligible to fish in the GOA (under the LLP) could meet the inshore criteria, and harvest Pacific cod assigned to the inshore sector.

Currently the only requirement to fish Pacific cod in the Federal waters of the GOA is a valid groundfish license. Of the crab vessels that appear to qualify for the crab rationalization program, 122 vessels are licensed

to fish in the Western Gulf, 106 in the Central Gulf, and two in the Eastern Gulf of Alaska. Given the above distribution of licenses, the primary areas of concern for spillover from the BSAI crab fisheries appear to be the Western and Central Gulf management areas.

Unlike the BSAI, the GOA cod TAC is not divided among gear groups. A single allocation is made that can be fished by any legal gear type (trawl, hook and line, pot, and jig). All cod fisheries are closed once the TAC for a season is taken. Halibut bycatch is apportioned to the trawl and hook and line sectors separately. Separate closures are made for trawl and longline vessels if either gear type catches its halibut bycatch allotment before the TAC is harvested. Pot vessels are exempt from halibut bycatch closures. Therefore, vessels using pot gear are allowed to continue fishing cod even if the halibut bycatch allotments are taken. The pot fishery is closed only when the cod TAC available to them has been harvested.

Western Gulf of Alaska The 2002 Western Gulf TAC is 16,849 mt and will be split 60/40 between the A and B seasons, respectively. The A/B splits are then further divided so that 90 percent is apportioned for processing by the inshore sector and 10 percent is allocated to the offshore sector.

In 2000, Western Gulf Pacific cod harvests made using pot gear averaged about 685 mt per week during the seven weeks (using week ending dates) from January 22, 2000 through March 4, 2000 (NMFS Blend data). Over 98 percent of the Pacific cod harvested with pot gear from the Western GOA (according to NMFS Blend data) was taken during those weeks. The maximum weekly reported catch during this period was 857 mt. The smallest weekly catch was 517 mt. Recall that in 2000 the BS *C. opilio* season was postponed until April 1<sup>st</sup>, so the entire BS *C. opilio* fleet had the opportunity to fish Pacific cod in the BSAI or the GOA during January and February.

In 2001, the Pacific cod A season opened on January 20<sup>th</sup> for trawl gear and January 1<sup>st</sup> for all other gear types. The inshore fishery closed to all gear types on February 27<sup>th</sup> and the offshore fishery was closed on April 26<sup>th</sup>. The pot gear fishery was then reopened on September 1<sup>st</sup> and stayed open for the remainder of the fishing year. The inshore longline fishery reopened on September 1<sup>st</sup> and closed on September 4<sup>th</sup>. The trawl inshore and offshore fisheries opened September 1<sup>st</sup> and closed September 5<sup>th</sup>. The trawl fishery then reopened on October 1<sup>st</sup> and closed on October 21<sup>st</sup> for the remainder of the year.

About 21 percent of cod harvested in the Western Gulf were taken with pot gear during 2001, 22 percent in 2000, 12 percent in 1999, and 8 percent in 1998 (NMFS Web Site<sup>1</sup>). The trend indicates that the harvest of Pacific cod by pot gear in the Western Gulf increased in percentage terms each year from 1998 through 2000 and then declined slightly in 2001. The increase in the percentage of cod harvested with pot gear in 2000 and 2001 likely resulted from a few factors. The BS *C. opilio* season opening was delayed from January 15<sup>th</sup> until April 1<sup>st</sup> in 2000, allowing participants in that fishery to increase participation in the cod fishery in January and February. In addition, the harvests in the BS *C. opilio* fishery declined substantially in 2000 and remained relatively low in 2001, freeing up participants to increase their activity in the cod fisheries. This overall increase in effort may indicate that there is some need for sideboards in the Federal Western GOA cod fishery.

During the 1995-2000 fishing years, an average of 27 vessels that appear to qualify for the crab rationalization program participated in the Western Gulf Pacific cod fishery. Those vessels harvested an average of 10.7 percent of the fish retained in the directed Pacific cod fisheries during those years (the numbers include the Pacific cod as well as the other species that were retained in the directed cod fishery). Table 3.10-4 shows the

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<sup>1</sup>The source of these data was the NMFS web site. An example of the location where these files can be found is [www.fakr.noaa.gov/2001/goa01g.txt](http://www.fakr.noaa.gov/2001/goa01g.txt). for the year 2001. The other years (1998 - 2000) can be found by inserting the correct year in the appropriate two places in the Internet address.

overall participation of BSAI crab vessels in the Western Gulf fisheries over that time period. The percentages show these vessels' groundfish harvests in the Western Gulf using all gear types relative to the total TAC for the area. The total tons of retained harvest and the percent of the Western Gulf TAC are relatively low. Information from both State and Federal waters fisheries are included for Pacific cod. State waters fisheries include those fisheries open after the Federal fishery closes. State waters fisheries typically open seven days after the Federal fishery closes.

Table 3.10-4: Participation of BSAI crab rationalization qualified vessels in the Western Gulf groundfish fisheries.

Year	Number of vessels	Pacific cod (mt)	Pacific cod percent of TAC	All other groundfish (mt)	All other groundfish Percent of TAC
1995	31	1,572	7.8	828	2.0
1996	22	2,286	12.1	1,471	1.4
1997	24	2,486	10.3	603	1.6
1998	25	2,204	9.5	481	1.0
1999	17	2,158	5.0	694	1.7
2000	43	4,026	19.5	343	1.0
Average	27	2,455	10.7	737	1.5

Source: Summarized from the NPFMC Crab Data Base 2001 Version 1

As the table shows, the catch of all species taken during the directed Pacific cod fishery almost doubled in 2000. That increase is likely related to the delay of the BS *C. opilio* fishery. If the crab fleet is rationalized, it is unlikely that all 122 LLP eligible crab vessels would elect to fish Pacific cod in the Western GOA during January and February. Some of the vessels would likely continue to fish BS *C. opilio* in these months. Other vessels would likely be sent by their owners to fish cod in the BSAI. Still other vessels would likely be idled, if it were economically efficient to do so. Estimates of the number of vessels that will be used in each activity cannot be made with any certainty. A variety of factors will contribute to a vessel owners ultimate decision to pursue a particular activity. It can only be assumed that owners will consider all factors and determine the best use for a vessel at a particular time of the year. Many of these factors, including relative exvessel prices in the future, variable costs associated with participation in other activities, and tendering options cannot be quantified with the information currently available to the analysts. Given the uncertainty surrounding future decisions, it can only be concluded that a portion of the BSAI crab fleet will elect to participate in future Western GOA cod fisheries.

Central Gulf The TAC set for the 2002 Central GOA cod fisheries is 24,790 mt. Sixty percent of the allocation is assigned to the A season (14,874 mt) and 40 percent to the B season (9,916 mt). The overall 2002 TAC set in the Central Gulf is about 10 percent lower than the 2001 harvest. In the Central GOA, approximately 15 percent of the 27,297 mt of cod taken during the 2001 fishery was harvested using pot gear. About 86 percent of the Central GOA pot cod harvests came from the inshore allocation, and the remaining 14 percent was harvested by vessels defined as offshore.

The pot/jig and longline cod fisheries opened on January 1<sup>st</sup> and closed March 4<sup>th</sup> (note that the BS *C. opilio* fishery opened on January 15<sup>th</sup> and closed on February 14<sup>th</sup>). The trawl cod fishery opened on January 20<sup>th</sup>, and also closed on March 4<sup>th</sup>. All gear types were allowed to resume fishing Pacific cod on September 1<sup>st</sup>. The

longline fishery closed on September 4<sup>th</sup> and the trawl fishery closed September 5<sup>th</sup>. Vessels using pot/jig gear were allowed to continue fishing the remainder of the year.

In 2000, the BS *C. opilio* fishery was delayed until April 1<sup>st</sup> and closed on April 8<sup>th</sup>, so the GOA cod fishery did not overlap with the BS *C. opilio* fishery. Pot vessels harvested over 38 percent of the Central Gulf TAC in that year. That percentage of the harvest is fairly close to the 36 percent harvested in 1999, the year the Council considered the allocation split among the BSAI Pacific cod fixed gear sector. However it is much higher than either the 15 percent pot vessels harvested in 2001, the 21 percent harvested in 1998, or the 18 percent harvested in 1997. From this information it could be conjectured that rationalization of the BS *C. opilio* fishery could have spillover impacts in the Central Gulf cod fishery. Increases in Pacific cod catch suggest that the pot fleet has already stepped up participation in the Central Gulf cod fishery. The decline in the BSAI crab stocks along with the fixed gear Pacific cod rationalization in the BSAI have likely motivated these increases in cod harvests.

During the 1995-2000 fishing years, an average of 27 vessels that appear to qualify for the crab rationalization program participated in the Central Gulf Pacific cod fishery. Those vessels harvested an average of 9.4 percent of the fish retained in the Central GOA Pacific cod fishery during those years. Table 3.10-5 shows the levels of participation in the Central Gulf fisheries over that time period. The percentages show these vessels' harvest in the Central Gulf using all gear types relative to the total TAC for the area. Information from the Federal waters fisheries are only included for the Pacific cod fisheries. As can be seen from Table 3.10-2 retained catch in the Pacific cod target fishery was almost double the 1995-2000 average. Retained catch by the qualified crab vessels in other fisheries was relatively low.

Table 3.10-5: Participation of the BSAI crab rationalization vessels in the Central Gulf groundfish fisheries.

Year	Number of Vessels	Pacific cod (mt)	Pacific cod Percent of TAC	Other groundfish (mt)	Other groundfish percent of TAC
1995	37	3,652	8.0	616	0.6
1996	22	2,864	6.7	809	0.8
1997	14	1,479	3.4	1,007	0.8
1998	16	3,675	8.8	596	0.4
1999	38	4,759	11.1	168	0.1
2000	37	6,278	18.4	143	0.3
Avg. 95-00	27	3,784	9.4	557	0.5

Source: NPFMC Crab Database 2001, Version 1

Eastern Gulf In the Eastern GOA only 3 mt of cod were harvested using pot gear in 2001. Three metric tons is equal to about two percent of the total cod harvested in that area. Given that there are only two vessels that appear to qualify for the crab rationalization program that also hold a license to fish in the Eastern Gulf, that area might not be considered a serious spillover concern.

Fisheries Managed by the State of Alaska Should the State of Alaska wish to limit the participation of BSAI crab vessels in fisheries under their authority, they would need to do so through the BOF process. The State waters Pacific cod fishery and Gulf of Alaska crab fisheries are the most likely candidates for additional effort from these vessels. The cod fisheries may be harvested by pot and jig gear only, and some areas have vessel size restrictions (ADF&G, 2001). The State Pacific cod fisheries in the Chignik and South Alaska Peninsula

areas are only open to vessels 58 feet in length and shorter. All of the vessels in the rationalization program are larger than that limit. Only 25 percent of the allocation in the Kodiak area is available to pot vessels over 58 feet in length. The State waters Pacific cod fishery in the Kodiak area is currently allotted 12.5 percent of the Central Gulf's allowable biological catch, and pot gear vessels greater than 58 feet in length are allowed to harvest 25 percent of the allotment in that area. There is no vessel size limit in the Cook Inlet and Prince William Sound areas. Vessels using pot gear are allowed to harvest 50 percent and 40 percent of the allocations in those areas, respectively. The limits on vessel sizes and pot limits that are currently in place should help to protect these fisheries from spillover impacts. However, if additional protections are needed, the BOF has the authority to modify the regulations for these fisheries.

Crab fisheries in the Gulf also fall under the Authority of the Alaska Board of Fish. When open, the quotas in those fisheries have been relatively low in recent years. The Tanner crab fishery in the Kodiak district<sup>2</sup> currently has a 30 pot limit (based on the GHF being less than 2,500,000 pounds). In the South Peninsula district, a 58 foot vessel limit precludes larger vessels from participating in the Tanner crab fishery. That limit effectively excludes the BSAI crab fleet from fishing Tanner crab in that area. Other fisheries are closed or have regulations that would limit the BSAI crab fleet's participation. Should additional regulations be required, the BOF could implement them through their process.

Korean Hair Crab and Bering Sea Golden King Crab: Participants in both the Korean hair crab fishery and the Bering Sea golden king crab fishery have expressed concern that the BSAI king and Tanner crab rationalization program will provide BSAI crab vessels with both the funds and the opportunity to enter these crab fisheries.

The Korean Hair Crab fishery is not included under the BSAI king and Tanner crab FMP. It has historically been a very small, specialized fishery with only few participants on an annual basis. For example, during the past five years only 20 unique vessels participated, and only 8 vessels have fished 6 or more years. The Alaska Legislature placed this fishery under a vessel moratorium in 1996, with only 24 vessels qualifying. Since the moratorium, only 12 unique vessels have fished 3 or more years. The moratorium is set to expire July 1, 2003. In 2002, a law was signed that tasked the Commercial Fisheries Entry Commission (CFEC) with developing a limited entry program for Korean hair crab. CFEC is expected to have the limited entry program in place before the Korean hair crab moratorium expires. In any event, some of the current participants that qualify for the BSAI crab rationalization could increase participation at levels above their historic average. Because the BOF lacks authority to establish restrictions on vessels that qualify for a federal crab rationalization program, the Council may want to consider sideboards to protect historic participants in this fishery.

The Bering Sea (Pribilof) golden king crab fishery is considered a developing fishery and is managed under a Commissioner's permit. There is no stock assessment, and long term sustainable harvest are unknown. The few vessels have consistently participated in this exploratory fishery are concerned that vessels qualifying for the crab rationalization program will enter their limited harvest area and disadvantaging historic participants. The current low GHF and low pot limit may dissuade such entrance, but later BOF action could entice participation. Because the BOF lacks authority to establish restrictions on vessels that qualify for a federal crab rationalization program, the Council may wish to consider sideboard for this fishery as well.

Tendering A total of 114 of the vessels projected to qualify under the crab rationalization program currently are permitted by the Commercial Fisheries Entry Commission to operate as a tender vessel (see Table 3.10-6). No data are collected by ADF&G or NMFS on actual tendering activities. Because of the lack of data, the number of permits held is the only quantitative information available. Yet, it should be noted that various individuals have indicated that tendering is an important part of their vessel's annual activities. If the structure

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<sup>2</sup>A total of 144 vessels harvested 516,406 pounds in 2001

of tendering contracts changes as a result of the crab rationalization program, historic participants could be harmed. However, given the lack of information on this activity, the Council will need to rely primarily on public testimony when considering the impact of tendering on the fleet.

### 3.10.1.3 Analysis of the Council Alternatives

To address concerns related to the increase of BSAI crab vessels in other fisheries, the Council included the following options in Section 1.8.5 of its motion:

#### 1.8.5 Sideboards

Sideboards shall be addressed through a TRAILING AMENDMENT, which shall evaluate the following options:

1. Non AFA vessels that qualify for QS in the rationalized opilio crab fisheries would be limited to their
  - a) GOA groundfish catch history excluding sablefish or
  - b) inshore pcod catch history in the GOA fisheries (with offshore pcod exempt).

The years for qualification would be the same as the qualifying period selected from 1.4.2.1.

2. Sideboard exemptions:

1. exempt vessels from sideboards which had opilio landings in the qualifying years of:
  - Option a. <100,000 pounds
  - Option b. <70,000 pounds
  - Option c. <50,000 lbs
  - Option d. <25,000 lbs

3. exempt vessels with more than 100, 200, or 500 tons of cod total landings in the years 95-99
4. vessels with <10, <50 and <100 tons total groundfish landings in the qualifying period would be prohibited from participating in the GOA cod fishery.

The Council motion defines three alternatives for implementing sideboards in the GOA. The first two are contained in Section 1.8.5 - Option 1 of the Council's motion. Option 1(a) would limit non-AFA vessels that qualify for BS *C. opilio* QS to their combined percentage of the GOA groundfish fisheries during the qualifying years. The qualifying years for the BS *C. opilio* fishery are 1996-2000. Alternatively, Option 1(b) would the amount of Pacific cod that could be harvested by these same vessels from the inshore allocation to the percentage of the inshore allocation they harvested from 1996-2000. Harvests from the offshore Pacific cod allocation by vessels that qualify for BS *C. opilio* QS would not be limited under Option 1(b). Finally, Option 4 would prohibit vessels that landed less than 10, 50, or 100 metric tons of groundfish in the GOA during the qualifying period from participating in the GOA cod fishery.

None of the BSAI crab vessels that qualify to fish in the Eastern Gulf had groundfish landings in that area between 1996 and 2000. Therefore, no tables are constructed for the Eastern Gulf since the sideboards in that area would be zero for all the options under consideration. In the other areas of the GOA, tables were constructed based on the catch of LLP qualified vessels that also appear to qualify for BS *C. opilio* QS based on the Council's preferred alternative. Some vessels that appear to qualify for BS *C. opilio* QS but do not hold the appropriate groundfish license/endorsements also had GOA groundfish landings. Those landings were excluded from the calculations used to derive the tables. The intent of these options is to allow GOA qualified vessels the opportunity to maintain their historic harvest levels. Including the catch of unqualified vessels in the sideboard calculation would have allow qualified vessels to increase their individual harvests from historic levels.



In the Western Gulf, a total of 29 qualified vessels<sup>3</sup> had 6,854 mt of retained groundfish landings (excluding sablefish) during the qualifying period. Pacific cod from the inshore allocation accounted for 6,839 mt of these harvests. Other groundfish accounted for the remaining 15 mt. These catch levels would yield inshore Pacific cod sideboards of 6.79 percent of the total TAC and sideboards for all other groundfish combined set of 0.01 percent of the total TAC for those species. Given these levels, NMFS is unlikely to open a directed fishery any fishery other than the inshore Pacific cod fishery for the vessels operating under these sideboard caps.

Table 3.10-6: Catch History of LLP qualified (Option 1) vessels in the Western Gulf (1996-2000).

	Total Groundfish	Sablefish	Inshore Pacific Cod	Groundfish (less Sablefish)	Other Groundfish
Number of Vessels	29	0	29	29	11
Sideboarded Vessel's Harvest (mt)	6,854	-	6,839	6,854	15
Harvest of all Vessels (mt)			100,655	263,065	162,410
Percent of Total Harvest			<b>6.79%</b>	<b>2.61%</b>	<b>0.01%</b>

Sources: NPFMC Crab Database 2001, Version 1 and NMFS annual harvest reports from the web (as of August 28, 2002) for the years 1995-2000 (e.g., [www.fakr.noaa.gov/1995/goa95b.txt](http://www.fakr.noaa.gov/1995/goa95b.txt))

In the Central Gulf of Alaska a total of 35 qualified vessels made groundfish landings totaling 1,606 mt. Thirty-two vessels had inshore Pacific cod landings totaling 15,906 mt. Given these harvest levels the BS *C. opilio* fleet would have sideboard caps of 8.16 percent of the inshore Pacific cod fishery and 0.01 percent of the combined other groundfish fisheries. As in the Western Gulf, it is likely that NMFS would open a directed fishery only for inshore Pacific cod for these vessels.

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<sup>3</sup> This includes only vessels that are qualified under the groundfish LLP to fish in the Western Gulf, that are not AFA eligible, and would qualify to be receive BS *C. opilio* QS.

Table 3.10-7: Catch History of LLP Qualified (Option 1) vessels in the Central Gulf (1996-2000)

	Total Groundfish	Sablefish	Inshore Pacific Cod	Groundfish (less Sablefish)	Other Groundfish
Number of Vessels	35	15	32	20	27
Sideboarded Vessel's Harvest (mt)	16,605	640	15,906	15,965	59
Harvest all Vessels (mt)			194,835	662,300	467,465
Percent of Total Harvest			<b>8.16%</b>	<b>2.41%</b>	<b>0.01%</b>

Sources: NPFMC Crab Database 2001, Version 1 and NMFS annual harvest reports from the web for the years 1995-2000 (e.g.,www.fakr.noaa.gov/1995/goa95b.txt)

Option 4 would preclude vessels that had less than 10, 50, or 100 mt of groundfish landings in the GOA during the qualifying period from participating in the GOA Pacific cod fishery. Table 3.10-8 shows the number of vessels that would be precluded from fishing by this provision and their catch in the GOA cod fishery. Catcher vessels and catcher processors are not separated in this table because there were too few catcher processors to report their landings under the confidentiality standards. The table shows the tradeoff between the thresholds under consideration. As the catch threshold is increased, vessels with larger catch histories are prohibited from fishing in the GOA. Increasing the threshold from 10mt to 100mt would result in the exclusion of an additional 43 vessels from the GOA cod fisheries. Those 43 vessels had 1,972 mt of groundfish landings in the GOA during the qualifying period. The 134 vessels that would be prohibited from participating using the 10mt threshold had only 69 mt of groundfish landings during the qualifying period.

Table 3.10-8: Number of vessels that would be prohibited from fishing Pacific cod in the GOA under Option 4 and their catch in the GOA cod fisheries from 1996 to 2000.

GOA Endorsements	Number of Vessels			Catch History of Vessels		
	<10 mt	<50 mt	<100 mt	<10 mt	<50 mt	<100 mt
No Grounfish License	53	58	59	22	178	232
No GOA Endorsements	55	65	77	21	311	1,174
CG Only	4	5	5	9	23	23
WG Only	9	14	19	8	175	541
WG and CG	9	12	13	9	111	199
All GOA areas	4	4	4	-	-	-
Grand Total	69	758	2,041	134	158	177

Source: NPFMC Crab Database 2001, Version 1

Table 3.10-9 shows the number of BSAI vessels that would remain eligible to participate in the GOA groundfish fisheries under Option 4 and the catch history of those vessels in the qualifying period. The "Grand Total" row reports the total number of vessels that achieved the required landings to remain eligible. However, since not all of those vessels qualify for GOA endorsements under the Groundfish LLP not all the vessels would be allowed to participate in the cod fishery under current regulations. Information in the table indicates that between 33 and 39 vessels would be allowed to fish in the Central Gulf (depending on the option selected) and between 23 and 38 vessels would be allowed to participate in the Western Gulf.

Table 3.10-9: Number of vessels that would be allowed to fish Pacific cod in the GOA under Option 4 and the catch of those vessel in the qualifying period.

GOA Endorsements	Number of Vessels			Catch History of Vessels		
	<10 mt	<50 mt	<100 mt	<10 mt	<50 mt	<100 mt
No Grounfish License	18	13	12	2,292		2,082
No GOA Endorsements	35	25	14	4,915	4,606	3,669
CG Only	20	19	19	8,080		8,066
WG Only	19	14	9	4,809	4,642	4,275
WG and CG	18	15	13	16,299		16,150
All GOA areas	1	1	1	-	-	-
Grand Total	111	87	68	36,395		34,424*

Source: NPFMC Crab Database 2001, Version 1.

Note: \* means that the catch of the one vessel that is qualified in all areas was excluded from the totals so that the total could be reported without violating confidentiality protections.

If the vessels permitted to participate under Option 4 are capped at their historic harvests during the qualifying years, those vessels would be capped at the sideboard percentages shown in Table 3.10-10. The percentages range from 8.5 percent to just over 9 percent. For example, if the option of <100mt was selected, the crab fleet would be capped at 8.82 percent of the Central Gulf and 8.50 percent of the Western Gulf Pacific cod TAC allocated to the inshore sector.

Table 3.10-10: Pacific cod sideboard amounts under Option 4

Threshold	Central Gulf	Western Gulf
<10mt	8.85%	9.01%
<50mt	8.83%	8.84%
<100mt	8.82%	8.50%

Source: NPFMC Crab Database 2001, Version 1 and NMFS annual harvest reports from the web for the years 1995-2000 (e.g., [www.fakr.noaa.gov/1995/goa95b.txt](http://www.fakr.noaa.gov/1995/goa95b.txt))

### Sideboard Exemptions

Two options were also proposed that would exempt vessels from the sideboards under consideration. Option 2 in Section 1.8.5 would exempt vessels from the sideboards that had less than 25,000, 50,000, 70,000, or 100,000 pounds of *C. opilio* landings during the 1996-2000 period. The Option 3 would exempt vessels that had more than 100, 200, or 500 metric tons of Pacific cod landings during the years 1995-1999.

The language in Option 2 is not clear regarding whether it is intended to apply to a vessel's total catch of *C. opilio* during the qualifying years or if it is a vessel's average landings during the years. According to the fishticket data, seven vessels had less than 100,000 pounds of landings of *C. opilio* during the 1996-2000 qualifying period and two vessels had less than 70,000 pounds. The seven vessels had a total of 11,357mt of Pacific cod landings during that period (or about 40 percent of the total cod landings by BS *C. opilio* qualified vessels).

If the exemption is based on the average annual *C. opilio* landings of a vessel (total landings divided by 5 years), then the number of vessels that would qualify increases to between 11 and 17 vessels, depending on the option selected. These vessels accounted for 12,120 to 14,366 mt of Pacific cod landings during the qualifying period, depending on the option selected.

Table 3.10-11: Vessels that would be exempt from sideboards under Option 2 with *C. opilio* landings requirements are based on either total catch or average annual catch.

<b>Total</b>	<b>&lt;100,000# Total</b>	<b>&lt;70,000# Total</b>	<b>&lt;50,000# Total</b>	<b>&lt;25,000# Total</b>
Number of Vessels	7	2	0	0
C. Opilio (Lbs.)	559,809	*	-	-
Pacific Cod (mt)*	11,357	*		
<b>&lt;100,000# Avg.</b>	<b>&lt;70,000# Avg.</b>	<b>&lt;50,000# Avg.</b>	<b>&lt;25,000# Avg.</b>	
Number of Vessels	17	16	15	11
C. Opilio (Lbs.)	2,554,477	2,107,173	1,830,202	1,018,469
Pacific Cod (mt)*	14.366	12.387	12.120	12.120

Source: NPFMC Crab Database 2001.

\* Pacific cod metric tons are from those vessels that have GOA groundfish endorsements on their groundfish license.

Option 3 would exempt vessels from sideboards that had more than a minimum amount of Pacific cod landings. The minimum levels under consideration are 100, 200, or 500 metric tons. Though not explicitly stated in the alternative, it is assumed that this applies to GOA cod landings only. Pacific cod landings from the BSAI are not included in the calculations to determine whether a vessel met the stated thresholds.

Table 3.10-12 shows that the 100mt threshold would exempt 38 of the 76 BS *C. opilio* catcher vessels with cod landings in the 1995 to 1999 time period. These 38 vessels accounted for over 95 percent of the BS *C. opilio* fleet's Pacific cod catch during that period. Increasing the minimum cod landings to 500 metric tons would exempt only nine catcher vessels. However, those nine vessels accounted for approximately 75 percent of the total cod landings of the BS *C. opilio* fleet.

Seven BS *C. opilio* catcher/processors had cod landings and were LLP qualified for GOA groundfish. Two catcher/processors would be exempt from cod sideboards at the 500 metric ton level threshold, three at 200 metric ton threshold, and five at 100 metric ton threshold. The five catcher/processors exempt at the 500 metric ton level accounted for about 97 percent of the C/Ps cod landings during the period. The catch totals at the other levels cannot be reported to protect confidential landings record.

Table 3.10-12: Vessels that would be exempt under Option 4 if only Pacific cod landings from the GOA are included in the calculation.

<b>Catcher Vessels</b>	<b>&gt; 500mt</b>	<b>&gt; 200mt</b>	<b>&gt; 100mt</b>	<b>All Cod CVs</b>
Number of Vessels	9	22	38	76
GOA Cod (Lbs.)	15,855	19,052	20,117	20,966
<b>Catcher/Processors</b>	<b>&gt; 500mt</b>	<b>&gt; 200mt</b>	<b>&gt; 100mt</b>	<b>All Cod CPs</b>
Number of Vessels	2	3	5	7
GOA Cod (Lbs.)	-	-	2,974	3,070

Source: NPFMC Crab Database 2001.

Note: The catch of catcher/processors is not reported if there are fewer than 4 vessels for confidentiality reasons.

### Korean Hair Crab

The Council requested that staff analyze the economic dependence of participants in the Bering Sea Korean hair crab fishery to determine if sideboards are warranted. To illustrate this dependence two tables have been generated. The first is Table 3.10-13. It shows the participation patterns of the vessels that have fished Korean hair crab from 1991-2000. The pounds of Korean hair crab landed by these vessels are also reported in the table on an annual basis. Information in the table shows that participation has declined in recent years. More vessels participated in the early to mid 1990's than 1998 forward. In terms of years of participation, the table indicates that 24 of the vessels only fished one year (of 48 total). Five vessels fished

two years, two vessels fished three years, five vessels fished four years, four vessels fished five years, two vessels fished six years, four vessels fished seven years, one vessel fished eight years, and one vessel fished nine years. No vessel fished every year from 1991-2000.

Table 3.10-14 shows the vessels participation in Korean hair crab, BSAI crab (excluding Korean hair crab), and other fish and shellfish. The table is broken out by various ranges of years. For the period 1991-2000, Korean hair crab accounted for about 6 percent of the fleet's revenues. When the period 1995-2000 was used, the dependence on Korean hair crab increased to 10 percent. Dependence decreased as more recent years were used. In the 1999-2000 period the Korean hair crab fleet only generated 4 percent of their revenues from that species.

Table 3.10-13: Participation patterns of vessels in the Korean hair crab fishery

Vessel	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000
1	-									
2	-									
3	-									
4	-									
5	-									
6	-									
7	-									
8	-									
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Vessels	7	15	22	14	21	19	16	12	8	3
Catch	384,715	1,356,288	1,439,155	1,904,287	1,986,106	713,309	650,240	290,347	216,979	*

Source: NPFMC Crab Database 2002.

Table 3.10-14: Dependence on Korean hair crab

Time Period	Korean Hair Crab			BSAI Crab			Other Species		
	Vessels	Pounds	Value	Vessels	Pounds	Value	Vessels	Pounds	Value
1991-2000	48	8,949	\$ 23.8	46	327.28	\$ 365.2	43	100.41	\$ 26.3
1995-2000	24	3,859	\$ 10.8	23	74.11	\$ 98.2	21	43.47	\$ 10.2
1996-2000	20	1,872	\$ 5.6	19	55.80	\$ 62.5	16	32.24	\$ 7.1
1997-2000	16	1,159	\$ 3.6	16	47.43	\$ 49.5	12	7.60	\$ 2.1
1998-2000	12	0,509	\$ 1.5	12	29.29	\$ 30.4	11	5.20	\$ 1.6
1999-2000	8	0,229	\$ 0.7	8	10.88	\$ 15.3	7	3.93	\$ 1.2

Source: NPFMC Crab Database 2002.

Finally, Figure 3.10-1 shows the percent of revenue each of the 48 vessels derived from the Korean hair crab fishery during the period 1991 through 2000. The vessel deriving the most revenue, in percentage terms, generated 63 percent of its revenue in that fishery. A total of five vessels generated over 20 percent of their income from the Korean hair crab fishery, 11 vessels generated more than 10 percent, and 16 vessels generated more than 5 percent. At the other end of the spectrum, 20 vessels generated less than 1 percent of their revenue from the Korean hair crab fishery.

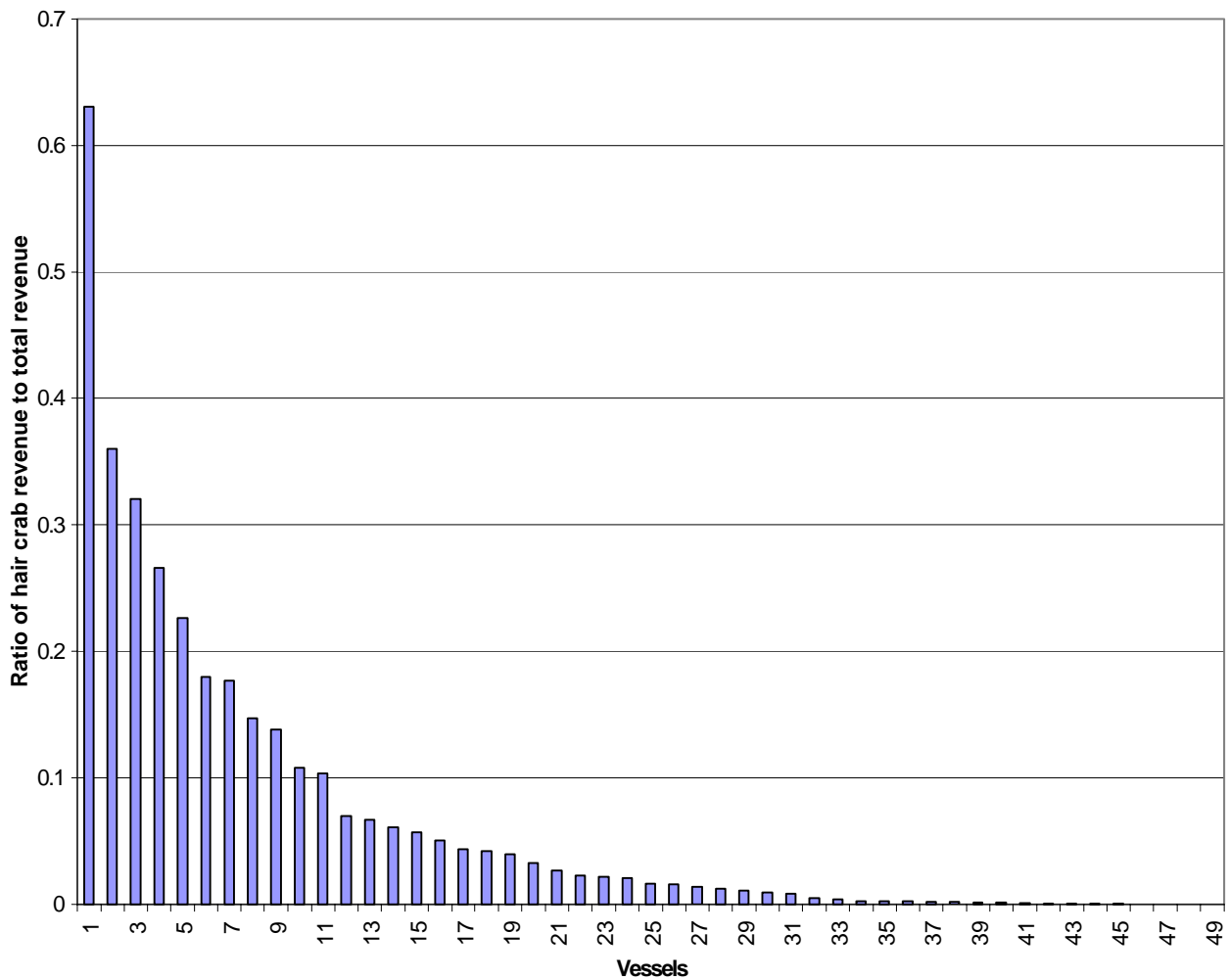


Figure 3.10-1: Relative portion of ex-vessel revenue derived from Korean hair crab, 1991-2000