

RECORD OF DECISION
FINAL BERING SEA ALEUTIAN ISLANDS CRAB FISHERIES
ENVIRONMENTAL IMPACT STATEMENT
National Marine Fisheries Service
Alaska Region

This Record of Decision (ROD) documents the decision by the National Marine Fisheries Service (NMFS) to select Alternative 2, identified as the preferred alternative in the Final Bering Sea Aleutian Islands Crab Fisheries Environmental Impact Statement (EIS), as its choice for the management of the Bering Sea and Aleutian Islands (BSAI) king and Tanner crab fisheries. Alternative 2 is the Three-pie Voluntary Cooperative Program (also known as the Crab Rationalization Program or Program). To implement Alternative 2, NMFS approves Amendments 18 and 19 to the Fishery Management Plan for BSAI King and Tanner Crabs (FMP), which amend the FMP to include the Program. NMFS published a proposed rule implementing Amendments 18 and 19 on October 29, 2004 (69 FR 63200) and will publish the final rule in March 2005.

The purpose and scope of the EIS is to provide decision-makers and the public with an evaluation of the environmental, social and economic effects of the current FMP and alternative rationalization management programs for the BSAI crab fisheries. The EIS is intended to serve as the central environmental planning document for crab fisheries management measures developed by NMFS and the North Pacific Fishery Management Council (Council) to implement the FMP. To achieve the purpose and scope, the EIS conducted a broad, programmatic review and assessment of the crab fisheries under the current BSAI crab FMP, as well as alternative rationalization management regimes. This broad, programmatic review and analysis provides the Council, NMFS, the State of Alaska (State), and the public with a greater level of information on which to make decisions about crab rationalization, and will inform subsequent crab management decisions. A programmatic review also serves to address the crab management problems identified by the Council's problem statement and discussed in Chapter 1 of the EIS. Finally, a programmatic review was needed because the Crab FMP was adopted in 1989 without an EIS, and changes in the crab fisheries, the methods of crab management, and our scientific understanding of the fisheries, have occurred since its adoption. This programmatic review evaluates these changes and provides valuable information about the environmental impacts that will likely occur when the current management regime is replaced with a rationalization-based management regime.

ALTERNATIVES CONSIDERED

The following is a brief summary of the alternatives considered in detail in the EIS and other alternatives considered but eliminated from detailed study in the EIS. Further detailed description of the alternatives may be found in Chapter 2 of the EIS.

Four alternatives are evaluated in the EIS: status quo and three rationalization programs. The rationalization programs were designed to capture the range of management options developed and considered by the Council over the six years in which the rationalization programs have been under development. Each alternative encompasses a broad range of management measures for an entire

fishery management program and the EIS analyzes the environmental consequences of each program as a whole.

During the course of developing a preferred alternative for a crab rationalization program, the Council examined suboptions under each management component. The alternatives presented in the EIS are designed to capture the range of key issues and decision points that the Council, affected industry, and public have identified during scoping as critical from an environmental, economic, and socio-economic perspective. In addition, the Council considered a wide range of options for each program element contained in the three rationalization program alternatives. The Regulatory Impact Review/Initial Regulatory Flexibility Analysis (RIR/IRFA) contains the analysis of the complete set of options for each program element, including the options that were not included in the alternatives (EIS Appendix 1).

Given the broad scope of this EIS, the alternatives framework for the EIS contains a two-step analysis: (1) an FMP-level review, and (2) an alternatives analysis. The discussion of Alternative 1, status quo, encompasses an FMP-level review that qualitatively examines and analyzes the overarching management principles set forth in the FMP and all of the FMP management measures. This examination is intended to inform decision-makers whether the basic structure of the FMP should be changed to improve crab fisheries management by addressing the problems identified in the Council's problem statement. The FMP structure determined by this analysis is the FMP structure under which the rationalization program would be implemented. Existing FMP management measures that may be impacted by the rationalization alternatives are identified in the FMP-level review and further examined in the alternatives analysis. Those management measures that will not be impacted by the rationalization alternatives are not carried forward for further examination in the alternatives analysis. The FMP-level review also identifies any alternative FMP management measures considered but not carried forward. The second step in the programmatic analysis is a comprehensive look at the alternative rationalization programs.

The following is a brief synopsis of each alternative.

Alternative 1 Status Quo (No action). The alternative would continue the current FMP for BSAI king and Tanner crab fisheries, and all activities authorized under the FMP, the current suite of FMP management measures, and the State of Alaska (State) and federal regulations developed to implement those measures. The analysis of Alternative 1 provides an understanding of the effects on the human environment of the existing crab fisheries management regime as well as the expected consequences to the affected environment should the agency undertake no action to modify the current FMP. See Chapter 2.1 of the EIS for a more detailed description of this alternative.

Alternative 2 Three-pie Voluntary Cooperative (Preferred Alternative). The Program is complex and includes several fisheries management elements in an effort to manage and balance the interests of several identifiable groups that depend on these fisheries. Allocations of harvest shares would be made to harvesters, communities, and

captains. Processors would be allocated processing shares. Designated regions would be allocated certain percentages of the crab landings and processing activities to preserve their historic interests in the fisheries. Harvesters would be permitted to form cooperatives to realize efficiencies through fleet consolidation. The novelty of the Program has compelled the Council to include in the Program several safeguards against unintended consequences, including an arbitration system for the resolution of price disputes, extensive data collection, and a program review to assess the impacts of the program. See Chapter 2.2 of the EIS for a more detailed description of this alternative.

Alternative 3 Individual Fishing Quota (IFQ). This alternative would establish an IFQ program for the BSAI crab fisheries. The primary difference between the IFQ alternative and Alternative 2 is the absence of processor shares in the IFQ alternative. Allocations of harvest shares would be made to harvesters, communities, and captains. Designated regions would be allocated certain percentages of the crab landings to preserve their historic interests in the fisheries. The novelty of this program has compelled the Council to include, as a safeguard against unintended consequences, extensive data collection and a program review to assess the impacts of the program. See Chapter 2.3 of the EIS for a more detailed description of this alternative.

Alternative 4 Cooperative. This alternative would establish a cooperative program for harvesters in the BSAI crab fisheries. The primary difference between the cooperative alternative and Alternative 2 is that processors would not receive processor shares but would instead be licensed and receive the benefit of harvest delivery requirements arising out of processor associations with cooperatives. These associations would be based on the pattern of landings in the year prior to implementation of the program. Harvesters would form cooperatives to realize efficiencies through fleet consolidation and coordination. The novelty of this program has compelled the Council to include, as a safeguard against unintended consequences, extensive data collection and a review program to assess the impacts of the program. See Chapter 2.4 of the EIS for a more detailed description of this alternative.

ALTERNATIVES CONSIDERED AND ELIMINATED FROM DETAILED STUDY

During the development of the alternatives for the proposed action, the Council considered several different options for managing the BSAI crab fisheries. Some of these alternatives received extensive analysis, either as alternatives in this EIS or in the RIR/IRFA (EIS Appendix 1), while others were eliminated from further detailed study because the management structure was considered to be unsuitable for management of the BSAI crab fisheries. Chapter 2.6 of the EIS provides a summary of the alternatives that received minimal analysis. These alternatives include:

- Exclusive federal management/exclusive State management alternatives,
- No fishing alternative,
- A share-based program in which shares are sold or auctioned to participants, and

- A share-based program in which harvest shares are allocated to both harvesters and processors.

THE ENVIRONMENTALLY PREFERABLE ALTERNATIVES

The CEQ regulations require that the ROD specify “the alternative or alternatives which were considered to be environmentally preferable” (40 CFR 1505.2(b)). This alternative has been interpreted to be the alternative that will promote the national environmental policy as expressed in section 101 of NEPA. Ordinarily, this means the alternative that causes the least damage to the physical and biological environment, and that best protects, preserves, and enhances historic, cultural, and natural resources.

The Final EIS analysis in Chapter 4 demonstrates that Alternatives 2, 3, and 4 are the environmentally preferable alternatives. The environmental effects of these alternatives derive primarily from changes in crab fishing and processing patterns that are expected to result from the structural and organizational changes in the crab fisheries caused by implementing a rationalization program. The most significant structural change resulting from a rationalization program is the allocation of the crab resource. This allocation would eliminate the race for fish, reduce fishing effort, and allow for more efficient, safer crab fisheries. These major structural and organizational changes are expected to affect the patterns of crab fishing and processing in the BSAI.

As discussed in Chapter 4 of the EIS, Alternatives 2, 3, and 4 will benefit the BSAI environment by:

- Reducing bycatch and bycatch mortality,
- Reducing habitat impacts of harvesting and processing,
- Improving the manageability of the fisheries, and
- Improving fishing practices.

NMFS DECISION AND FACTORS CONSIDERED IN THE DECISION

The Decision

The decision is whether to continue the existing crab management regime or to manage crab under a rationalization program. NMFS selects Alternative 2 in the Final EIS as its choice for management of the BSAI crab fisheries. The rationale for this decision is discussed below. The rationale is fully supported by the environmental analysis documented in the Final EIS.

Rationale for the Decision

NMFS' decision to select Alternative 2 in the Final EIS, and thereby approve Amendments 18 and 19, was reached after a comprehensive review of the relevant environmental, economic, and social consequences of the alternatives. Taking into account the Magnuson-Stevens Act, the Marine Mammal Protection Act, the Endangered Species Act, other applicable statutory and policy considerations, and all public comment, NMFS decided to select Alternative 2 and approve

Amendments 18 and 19. Alternative 2 is the alternative that best balances its suite of management measures to enable NMFS and the Council to manage the BSAI king and Tanner crab fisheries while meeting their statutory, regulatory, and national policy requirements, goals, and objectives.

In June 2002, the Council, by unanimous vote, selected Alternative 2 as its preferred rationalization program from the several alternatives analyzed. Through June 2004, the Council further refined Alternative 2 through a series of trailing amendments. In January 2004, Congress amended section 313 of the Magnuson-Stevens Act through the Consolidated Appropriations Act of 2004 (Pub. L. 108-199, section 801), by adding paragraph (j). As amended, section 313(j)(1) requires the Secretary to approve by January 1, 2005, and implement thereafter, the Program as it was adopted by the Council between June 2002 and April 2003, and all trailing amendments, including those reported to Congress on May 6, 2003. This Program, as legislated, is Amendment 18 and was contained in Alternative 2 in the Draft EIS, issued in March 2004. Although Congress mandated the Secretary to approve the Program, the amended Magnuson-Stevens Act also states that the Secretary is not precluded from approving by January 1, 2005, and implementing thereafter any subsequent program amendments adopted by the Council. Given this discretion, in June 2004, the Council recommended three changes to the Program to improve implementation. Amendment 19 authorizes these changes. Alternative 2 in Chapter 2.2 of the Final EIS represents the legislated Program, as modified by the Council.

In addition to the legislative mandate to approve the Program, the following discussion summarizes the rationale for selecting Alternative 2 based on the EIS, including its appendices. Under Alternative 1, the status quo, the BSAI crab fisheries have followed the well known pattern associated with managed open access fisheries. The BSAI crab fisheries have been characterized by a “race-for-fish,” capital stuffing behavior, excessive risk taking, and a dissipation of potential rents because fishermen are enticed by the prospect of capturing 100 percent of the benefits, while externalizing all but a very small “common” share of the cost of an individual fishing decision. In the face of substantial stock declines, participants in these fisheries are confronted by significant surplus capacity in both the harvesting and processing sectors; financial distress; and widespread economic instability. These factors have all contributed to resource conservation and management difficulties.

In response to worsening biological, economic, social, and structural conditions in many of the BSAI crab fisheries, the Council determined that the status quo management structure was causing significant adverse impacts to the participants in these fisheries, as well as to the communities that depend on these fisheries. The management tools in the existing FMP (e.g., time/area restriction, LLP, pot limits) do not provide managers with the ability to effectively solve these problems, thereby making Magnuson-Stevens Act goals difficult to achieve and forcing reevaluation of the existing FMP.

In an effort to alleviate the problems caused by excess capacity and the race for fish, the Council determined that the institution of some form of rationalization program is needed to improve crab fisheries management in accordance with the Magnuson-Stevens Act. Hence, the Council developed three rationalization program alternatives: Alternative 2, the Three-pie Voluntary Cooperative Program; Alternative 3, an IFQ program; and Alternative 4, a cooperative program.

Alternative 3, the IFQ program, would allocate individual shares of the crab total allowable catch (TAC) to harvesters, imparting a transferable access privilege in a share of the TAC, thus removing the undesirable “common property” attributes of the status quo on qualifying harvesters. Alternative 3 would allow operators to slow their rate of fishing and give more attention to efficiency. Some of these operations and the vessels they use could be negatively impacted if the allocations they qualify for are small and cannot be fished economically. The vessel owners, however, would be permitted to lease or sell their allocations, and could obtain some return from their allocation.

Alternative 4, the Cooperative program, yields many of the positive economic, social, and structural results cited above for Alternative 3. In addition, Alternative 4 holds out the promise of providing efficiency gains to both harvesters and the processors. Alternative 4 offers all of the same “improvements” over the status quo as does Alternative 3 while including another population of participants the Council expressed explicit concern about protecting in its problem statement and objectives for this action, crab processors. On the basis of available information, Alternative 4 appears to minimize negative economic impacts on participants to a greater extent than does Alternative 3 and both appear to minimize negative economic impacts compared to Alternative 1.

Neither Alternative 3 nor Alternative 4 distribute the benefits and costs of a rationalization program on the affected participants as evenly as Alternative 2. After an exhaustive public process, spanning several years, the Council and NMFS concluded that Alternative 2 best accomplishes the stated objectives articulated in the problem statement and applicable statutes, and minimizes to the extent practicable adverse economic impacts on fishery participants. Furthermore, the Magnuson-Stevens Act mandates the Secretary to approve all virtually components of Alternative 2.

Alternative 2 is a carefully crafted program that strikes a balance of the interests of several identifiable groups that depend on these fisheries and was developed to fit the specific dynamics and needs of the BSAI crab fisheries. Alternative 2 builds on the Council’s and NMFS’ experiences with the halibut and sablefish IFQ program and the American Fisheries Act cooperative program for Bering Sea pollock. Alternative 2 is intended to address conservation and management issues associated with the current derby fishery and to reduce bycatch and associated mortalities. Share allocations to harvesters and processors, together with incentives for cooperation, are intended to increase efficiencies, provide economic stability, and facilitate compensated reduction of excess capacities in both harvesting and processing sectors. The arbitration system is intended to resolve price disputes between harvesters and processors, which in the past have delayed fishing. Community interests are protected by Community Development Quota group allocations and regional landing and processing requirements, as well as several community protection measures. Captains are allocated a portion of the catch to protect their interests in the fisheries. These “owner on board” shares are intended to provide long term benefits to both captains and crew. Alternative 2 includes a comprehensive economic data collection program that would aid the Council and NMFS in assessing the success of Alternative 2 and developing amendments necessary to mitigate any unintended consequences. Perhaps most importantly, Alternative 2 would improve the safety of participants in the fishery by ending the race for fish.

NMFS believes that the crab fisheries in the BSAI require this innovative, comprehensive management approach to adequately recognize and protect the interests of all participants. Alternative 2 recognizes all components of the fishery as a balanced, inextricably linked system, rather than individual, competing components.

Public Comments

NMFS summarized and responded to the public comments received on the Draft EIS in the Comment Analysis Report, which is Chapter 8 of the Final EIS. NMFS made changes to the EIS from draft to final in response to public comments and these changes were noted in the Comment Analysis Report. NMFS received no letters of public comment on the Final EIS. NMFS has made this decision after careful review of the public comments on the Draft EIS, issued March 2004.

MITIGATION MEASURES AND MONITORING

Section 1505.2(c) of the CEQ regulations state that the ROD shall state whether all practicable means to avoid or minimize environmental harm from the alternative selected have been adopted, and, if not, why they were not. Chapter 4 in the Final EIS describes a number of ways that Alternative 2 will mitigate the adverse effects of fishing under status quo and produce benefits to the human environment over time. Alternative 2 is one of the environmentally preferable alternatives and mitigates the negative effects of the status quo fisheries management regime by ending the race for fish. Additionally, Alternative 2 contains the following extensive monitoring, enforcement, data collection, and review provisions as measures to mitigate against unintended consequences and potential harm to the human environment of harvesting and processing under the Alternative, as identified in the EIS.

Monitoring and Enforcement

NMFS and the State of Alaska will coordinate monitoring and enforcement of the crab fisheries under Alternative 2. Harvesting and processing activity will be monitored for compliance with the implementing regulations. Methods for catch accounting and catch monitoring plans will generate data to provide accurate and reliable round weight accounting of the total catch and landings to manage quota share accounts, prevent overages of IFQ and individual processing quota, and determine regionalization requirements and fee liability. Monitoring measures include vessel monitoring systems, electronic reporting, and plans to catch weight and species composition, bycatch, and deadloss to estimate total fishery removals.

Economic Data Collection

Alternative 2 includes a comprehensive economic data collection program to aid the Council and NMFS in assessing its impacts and in developing amendments necessary to mitigate any unintended economic consequences. An economic data report, containing cost, revenue, ownership, and

employment data, will be collected on a periodic basis from participants in the harvesting and processing sectors. The data will be used to study the economic impacts on harvesters, processors, and communities. Participation in the data collection program will be mandatory for all participants in the crab fisheries.

Annual Reports and Program Review

NMFS, in conjunction with the State of Alaska, will produce annual reports on the management of the crab fisheries under Alternative 2. Before July 1, 2007, the Council will review the processor quota share, arbitration system, and crew share components of Alternative 2. After July 1, 2008, the Council will conduct a preliminary review of the fisheries, as prosecuted under Alternative 2. A full review will be undertaken in 2010. Additional reviews will be conducted every 5 years. These reviews are intended to objectively measure the impacts of Alternative 2 in achieving the goals and objectives specified in the Council's problem statement and the Magnuson-Stevens Act. These reviews will examine the impacts on vessel owners, captains, crew, processors, and communities, and include an assessment of options to mitigate negative impacts.

CONCLUSIONS

Through the EIS and as documented in this ROD, NMFS has considered the objectives of the proposed action and has analyzed a reasonable range of alternatives that adequately address the objectives of the proposed action. Furthermore, NMFS has analyzed the associated environmental consequences and impacts of the alternatives, and identified mitigation measures to address, to the extent practicable, those consequences and impacts. NMFS also has considered public and agency comments received during the EIS review periods. Consequently, NMFS concludes that Alternative 2 provides reasonable, practical means to avoid, minimize, or compensate for environmental harm from the action. Future actions consistent with Alternative 2 will be carefully considered following the procedures authorized by the Magnuson-Stevens Act and NEPA.

CONTACT PERSON

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